



**STUDY ON SYSTEM OF
INTERNATIONAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS IN MONTENEGRO**



CENTRE FOR MONITORING AND RESEARCH

LEGAL FRAMEWORK AND JUDICIAL PRACTICE
FOR THE PERIOD 2020-2023

STUDY ON SYSTEM OF INTERNATIONAL LEGAL ASSISTANCE IN CRIMINAL MATTERS IN MONTENEGRO



Publisher:

Center for Monitoring and Research CeMI
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www.cemi.org.me

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Circulation:

100

Year of publication:

2023



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INTRODUCTION

Increased levels of human mobility, resulting from intense development and globalization, are accompanied by a trend of rising level of transnational crime. In order to provide a robust response to such phenomena, states and international organizations have decided to strengthen their mutual cooperation and create mechanisms for international collaboration and legal assistance.

International legal assistance represents a form of collaboration among states for the purpose of collecting and exchanging information. It involves intergovernmental relations in which one state acts upon the request of another. The authorities of one state can also facilitate the provision of evidence from that state, thus assisting in criminal investigations and proceedings in another state. Additionally, extradition is another means of providing international legal cooperation in criminal matters, involving the surrender of individuals from one state to another for facing criminal proceedings or serving a sentence.

The jurisdiction and *modus operandi* of the state authorities of a country depend on the international instruments and agreements in force in that country, as well as on the national legal framework regulating international judicial cooperation in criminal matters. Additionally, if specific issues are not addressed by international instruments or agreements, there are bilateral agreements between two states to establish procedures and methods for coordinating legal assistance.

The authority that most commonly serves as the central point of communication for matters of international legal assistance in criminal matters in a country is the Ministry of Justice. However, other state authorities, such as courts and public prosecutor's offices, can also perform these tasks.

Considering Montenegro's aspiration for European Union membership, the Montenegrin system of international legal assistance in criminal matters is developed based on established EU principles in this field:

- the principle of mutual recognition, as one of the key prerequisites for the smooth functioning of authorities in serving the justice,
- the principle of direct communication between competent authorities,
- the principle of unhindered circulation of information and evidence with simplified procedures.

Under the Law on International Legal Assistance in Criminal Matters of Montenegro, international legal assistance shall include the extradition of the accused and sentenced persons, transfer and assuming of criminal prosecution, enforcement of foreign criminal verdicts, as well as other forms of international legal assistance stipulated by this law—referred to as “small legal assistance.”

The document is based on the study of: international documents and standards in the field of international legal assistance in criminal matters with a review of key institutions and organizations in this field, an overview of the practice of the European Court of Human Rights, the current legal framework of Montenegro, with a focus on key institutions in Montenegro responsible for international legal assistance in criminal matters.

Additionally, the authors have developed a specific questionnaire aimed at screening the current state of international legal assistance in criminal matters, from the perspective of judges handling such cases, as well as the judicial practice for the period 2020-2023, which includes an analysis of five cases made available by the Higher Court in Podgorica to the non-governmental organization CeMI for the purposes of the study. The final chapter contains conclusions and recommendations for the improvement of the situation in this field.

COMPLIANCE OF MONTENEGRO WITH INTERNATIONAL STANDARDS

A robust national system of international legal assistance in criminal matters is a prerequisite for meeting the rule of law criteria in Montenegro's negotiation process for European Union membership. Since the opening of negotiations in Chapters 23 and 24, Montenegro has taken significant steps to improve the system of international judicial cooperation in criminal matters and has achieved considerable success in establishing an adequate legal framework and a well-coordinated system for the implementation of activities in this field.

With the adoption of a systemic legal act, the Law on International Legal Assistance in Criminal Matters, Montenegro has ratified a series of international legal instruments in this field, accompanied by the signing of several bilateral agreements, especially with neighboring countries.

Regarding key international instruments, Montenegro is a signatory to multiple multilateral conventions in the field of international legal assistance in criminal matters. This primarily includes Council of Europe instruments, among which stand out: the European Convention on Mutual Assistance in Criminal Matters, Strasbourg (1959), with its accompanying additional protocols, the European Convention on Extradition, Paris (1957) and its accompanying additional protocols, the European Convention on the Transfer of Sentenced Persons, Strasbourg (1983) with an additional protocol, and the European Convention on the Transfer of Proceedings in Criminal Matters, Strasbourg (1982). In order to participate in joint investigation teams with other countries, Montenegro has also ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

For the purpose of enhancing collaboration with the European Union member states, Montenegro has signed and ratified the Agreement on Cooperation between Montenegro and the European Union Agency for Criminal Justice Cooperation (EUROJUST). Thus, Montenegro has become an integral part of the European system of judicial cooperation in combating serious forms of transnational crime. The Agreement establishes institutional mechanisms for more effective international judicial cooperation in criminal matters. The Agreement defines the frameworks of cooperation between Montenegro and EUROJUST, designates competent bodies for its implementation, and outlines mechanisms and institutes for mutual collaboration, such as the appointment of a state prosecutor or magistrate as a liaison with EUROJUST, contact persons, modalities for information exchange with a special emphasis on privacy, protection of personal data, and data security, as well as the relationship of that body with the competent authorities of other countries.

Furthermore, Montenegro has signed and ratified the Agreement on Strategic Cooperation with EUROPOL, while operational cooperation takes place through liaison officers with both Interpol and the National Interpol Bureau within the Police Administration. Montenegro has delegated liaison officers to both agencies.

At the regional level, the existence and functioning of quality bilateral cooperation are inevitable. As a territorially small state, oriented towards tourism and strategically positioned in a region at the crossroads of many transnational criminal activities, effective combating of organized crime cannot be envisioned without adequate mechanisms of cooperation between the competent authorities of the countries in the region. Montenegro engages in criminal cooperation with regional countries based on signed bilateral agreements, including

those with Bosnia and Herzegovina, the Republic of Croatia, Italy, the Republic of Serbia, and North Macedonia, among others.

In most of the mentioned agreements, the focus of the content is on cooperation in crimes of organized crime, corruption, and money laundering, specifically for offenses punishable by imprisonment of four or more years or serving a prison sentence of at least two years for the mentioned criminal offenses. In the Agreement with the Republic of Serbia, in addition to the previously mentioned elements, there is also the possibility of extraditing own citizens for crimes against humanity and other criminal offenses punishable by imprisonment of at least five years. The Agreement with the Republic of Italy recognizes the possibility of extradition of citizens for the purpose of conducting criminal proceedings for which a prison sentence of five or more years may be imposed. An additional bilateral agreement to the European Convention on Extradition, signed between Montenegro and the Republic of Italy, aims to facilitate its application. Article 1, paragraph 1 specifies that the condition for extraditing one's own citizen for the execution of a prison sentence or any decision restricting the personal freedom of the requested person is that the sentence is at least five years.

Legal assistance in criminal matters between Montenegro and other countries, which cannot be carried out based on ratified international instruments or bilateral agreements, is conducted according to domestic legislation. Primarily, the Law on International Legal Assistance in Criminal Matters is applied, taking into account the principle of reciprocity.

MONTENEGRO AND INTERNATIONAL INSTITUTIONS AND ORGANIZATIONS

The strengthening of the judicial cooperation system within the European Union has led to a change in the paradigm of the functioning of judicial authorities across the entire European continent. By promoting the principle of mutual recognition among EU member states, which is fundamentally based on the mutual trust of one state in the judicial system of another state, a certain level of harmonization of the criminal justice systems at the EU level has been achieved.

The system could not function if appropriate institutional and coordination mechanisms were not previously established at the EU level, both in the form of agencies and various networks for the cooperation of judicial authorities. Montenegro has proactively approached the process of preparing for EU membership in this area and secured observer status in key EU networks for judicial cooperation. After ratifying the Agreement between Montenegro and Eurojust in December 2016, Montenegro became the first Western Balkan country to appoint a state prosecutor as a liaison with Eurojust.

Montenegro is also a member of the European Judicial Network (EJN), which represents a network of national contact points (prosecutors, judges, representatives of justice ministries, and law enforcement agencies). Their main task is to participate in activities related to international judicial cooperation in criminal matters. EJN contact points are recognized as central services for facilitating judicial cooperation between states, and their role includes identifying and establishing direct contact among competent authorities within the EU, providing legal and practical information about judicial cooperation. The Ministry of Justice and the Supreme State Prosecutor's Office have appointed contact points for cooperation with the European Judicial Network.

In addition, the Ministry of Justice has been granted observer status in the Network for Legislative Cooperation between the justice ministries of EU member states. The Supreme State Prosecutor's Office has observer status in the Network of General Prosecutors at the Supreme Courts of the EU. The Supreme Court has secured observer status in the Association of State Councils and Supreme Administrative Jurisdictions, the European Network of Councils for the Judiciary, and the Network of Presidents of the Supreme Courts of the European Union. The Training Center in the Judiciary and Public Prosecution also has observer status in the Judicial Training Network.

At the regional level, Montenegro is a member of the Southeast European Prosecutors Advisory Group – SEEPAG, which operates as part of SELEC and serves as an instrument for the countries in the Southeast European region for international legal assistance in criminal matters.

On the other hand, concerning the Council of Europe, the oldest pan-European organization, of which Montenegro is a member, in the field of adopting and respecting established standards for assistance in criminal matters, our country provides a significant contribution. Representatives of Montenegro's competent authorities, primarily the Ministry of Justice and judicial bodies, are members of key Council of Europe committees in this field, such as CEPEJ, CDCJ, CDPC, PC-OC, CCJE, CODEXTER, MONEYVAL, CCPE, GRETA, GRECO, and T-CY.

Similarly, Montenegro contributes to the development of international legal assistance in criminal matters at the global level through its membership in the United Nations and participation in the work of committees of this organization, such as UNCAC, UNODC, HRC, and CAT.

REPORTS OF THE EUROPEAN COMMISSION FOR MONTENEGRO

In the latest report of the European Commission, Montenegro is consistently praised for its implementation of international legal assistance. In this, as well as in previous reports, it is emphasized that the Montenegrin legal framework for judicial cooperation in criminal matters is largely aligned with the legal acquis of the European Union.

In 2021, there was a slight increase in the volume of judicial cooperation compared to 2020, although it remained lower than pre-Covid-19 levels. In 2021, 843 cases of international legal assistance in criminal matters were processed (compared to 784 in 2020), and 701 cases in civil matters (compared to 671 in 2020). The main partners continued to be Western Balkan countries and EU member states. In an unofficial Working document of the European Commission from May 2022¹, the Commission noted an increase in the volume of judicial cooperation, with a total of 958 cases of international judicial cooperation in criminal matters processed, an increase of about 100 cases compared to the previous reporting year.

Eurojust and Montenegro signed a Cooperation Agreement in May 2016, and the Liaison Prosecutor took office in December 2017. Liaison prosecutors play a crucial role in facilitating ongoing investigations into serious cross-border organized crime and terrorism, given the increased number of cases linked to the Western Balkans. In 2021, around 17 cases related to Montenegro were opened at Eurojust (compared to 23 in 2020), including three cases initiated by Montenegro. A working arrangement with the European Public Prosecutor's Office (EPPO) was signed in September 2022.

In September 2021, Montenegro, for the first time, concluded an agreement with a third country (the Republic of Moldova) to establish a joint investigative team on a common case of drug trafficking and money laundering. This agreement enabled coordinated searches, apprehension of individuals, and seizures in both countries.

In addition to the mentioned, it is noted that the Special State Prosecutor's Office has formed a special investigative team and requested international legal assistance from the prosecutor's office in Bosnia and Herzegovina. Montenegro is also highlighted for maintaining good cooperation with neighboring countries and the International Residual Mechanism for Criminal Tribunals.

It can be noted with pleasure that in the European Commission reports international judicial cooperation in criminal matters is generally not presented as a problematic issue. On the contrary, assessments have improved further after establishing cooperation between Montenegro and Eurojust.

¹ Unofficial Working Document of the European Commission from May 2022, https://www.eu.me/wpfd_file/rule-of-law-non-paper-regarding-chapters-23-and-24-for-montenegro-may-2022/

LEGAL FRAMEWORK IN MONTENEGRO

The legal framework in Montenegro in the field of international legal assistance in criminal matters is regulated based on ratified instruments of international organizations, national legislation, and signed and ratified bilateral agreements between Montenegro and other states. The legal order of Montenegro is established in Article 9 of the Constitution, which stipulates that ratified and published international treaties and generally accepted rules of international law are an integral part of the internal legal order, take precedence over domestic legislation, and are applied directly when regulating relationships differently from domestic legislation.

At the operational level, procedures are defined by a series of signed memoranda of cooperation between institutions at the national level and competent authorities of Montenegro and other countries. From the perspective of compliance of Montenegro's legal regulations with international instruments and requirements from the EU accession negotiation process, it can be noted that Montenegro has all the necessary legal prerequisites for the efficient development and implementation of international legal assistance and judicial cooperation in criminal matters.

When it comes to international instruments, Montenegro has signed and ratified key conventions, accompanying protocols, and other legal instruments that enable quality cooperation in criminal matters with member states of the Council of Europe, as well as competent agencies and bodies of the European Union (more details in the previous chapter: Compliance of Montenegro with International Standards).

If specific issues of importance for cooperation are not defined by ratified international documents or bilateral agreements, the competent authorities of Montenegro are obligated to apply national legislation. The systemic law in this area in Montenegro is the Law on International Legal Assistance in Criminal Matters. This law stipulates that international criminal assistance may be provided if the offence for which the provision of international legal assistance is requested is a criminal offence both under the domestic law and under the law of the foreign state the judicial authority of which presented the letter rogatory for international legal assistance. (Article 5). In addition to the prescribed general provisions (Articles 1-9), this law also provides provisions for extradition of accused or sentenced individuals (Articles 10-33), as well as the transfer or assuming of criminal prosecution (Articles 34-37), enforcement of foreign criminal verdict (Articles 38-41), formation of joint investigative teams (Articles 41a-41d), and other forms of international legal assistance (Articles 42-52).

In addition to the mentioned law, certain provisions of the following laws are applied in the field of international legal assistance in criminal matters:

- Criminal Procedure Code,
- Law on Prevention of Money Laundering and Terrorism Financing,
- Law on Witness Protection
- Law on Criminal Liability of Legal Entities,
- Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity,
- Law on Internal Affairs,
- Law on Courts,
- Law on the State Prosecutor, and
- Law on the Special State Prosecutor's Office.

All the mentioned laws contain provisions regarding the authorities of Montenegro to directly or through another competent authority utilize mechanisms of international legal assistance in criminal matters when conducting activities related to the detection or prosecution of individuals suspected of committing criminal offenses.

For example, the Criminal Procedure Code lays down a series of procedural provisions for acting on letter rogatory for international legal assistance from other states, as well as from Montenegro to other states. According to Article 199, item 4, if it does not concern letter rogatory from domestic courts for international legal assistance in criminal cases, court documents are delivered to Montenegrin citizens in another state through the diplomatic or consular representation of Montenegro, provided that the other state does not object to such a method of delivery and that the recipient voluntarily agrees to receive the court document. An authorized employee of the diplomatic or consular representation signs the delivery note as the deliverer if the court document is delivered in the embassy itself, and if the document is delivered by mail, this is confirmed on the delivery note. According to Article 256a, item 2, in cases where evidence has been obtained based on letter rogatory for international legal assistance, a decision must be made within one month from the date of obtaining the evidence through the letter rogatory. Regarding the issuance of a warrant and publication, Article 511, item 3, stipulates that if it is probable that the person for whom a warrant has been issued is located in another country, with the consent of the ministry responsible for justice affairs, an international warrant can be issued. Furthermore, within item 4, it is prescribed that, upon the request of the authorities of another country, a warrant can be issued for a person suspected to be in Montenegro, if the request includes a statement that, in case of finding that person, their extradition will be requested.

Montenegro has adopted the Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union, aiming to prescribe provisions on judicial cooperation in criminal matters between the competent judicial authorities of Montenegro and the judicial authorities of other member states of the European Union. In accordance with Article 214, it is stipulated that this law comes into force on the day of Montenegro's accession to the European Union. The law prescribes key EU mechanisms in judicial cooperation in this area and provides more detailed definitions of application procedures, especially regarding the European Arrest Warrant and surrender procedure, Order for the confiscation of property or evidence, European Investigation Order, Recognition and enforcement of decisions on the confiscation of property or objects, Recognition and enforcement of decisions on penalties, Recognition and enforcement of judgments on imprisonment or measures involving deprivation of liberty, and Recognition and enforcement of decisions on security measures.

Article 78 of the Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity stipulates the basis for international cooperation, so international cooperation for confiscation and management of confiscated assets is carried out in accordance with an international agreement. If there is no international agreement or certain issues are not regulated by an international agreement, international cooperation is carried out in accordance with this law, provided that reciprocity exists or it can be expected that the foreign state would execute a letter rogatory for international legal assistance from the domestic judicial authority. For questions of international cooperation not regulated by this law, the provisions of the law regulating international legal assistance in criminal matters are applied accordingly. The division of permanently confiscated assets with other countries can be regulated by an international agreement.

INSTITUTIONAL FRAMEWORK

In Montenegro, multiple institutions within their respective jurisdictions have responsibilities for international legal assistance in criminal matters, which they carry out based on the principles of mutual cooperation and coordination.

In accordance with the national legal framework, the central authority for international legal assistance in criminal matters is the Ministry of Justice, Human and Minority Rights. Article 3 of the Regulation on the Organization and Operation of State Administration ("Official Gazette of Montenegro," No. 118/2020, 121/2020, 1/2021, and 2/2021) stipulates that the Ministry of Justice, Human and Minority Rights, among other responsibilities, performs administrative tasks related to international legal assistance in criminal and civil matters, extradition, cooperation in the field of international criminal justice, and cooperation with international organizations in the field of justice. It is also responsible for the preparation, drafting, and execution of international agreements in the field of international legal assistance.

In accordance with Article 4 of the Law on International Legal Assistance in Criminal Matters ("Official Gazette of Montenegro," No. 4/2008, 36/2013, and 67/2019), the domestic judicial authority shall forward letters rogatory for international legal assistance to foreign judicial authorities and receive letters rogatory for international legal assistance from foreign judicial authorities through the ministry responsible for justice affairs – the Ministry of Justice, Human and Minority Rights. In cases where there is no international agreement or reciprocity, the Ministry forwards and receives letters rogatory for international legal assistance by diplomatic means. Exceptionally, when stipulated by an international agreement or when reciprocity exists, the domestic judicial authority may directly send and receive a letter rogatory for international legal assistance from the relevant foreign judicial authority, with the obligation to provide a copy of the request to the Ministry of Justice, Human and Minority Rights. In urgent cases, if reciprocity exists, requests for international legal assistance can be forwarded and received through the National Central Bureau of INTERPOL. Courts and the state prosecutor's office are competent for providing international legal assistance, in accordance with the law.

So, in addition to the competent ministry, other institutions directly involved in international legal assistance are the State Prosecutor's Office and the courts, while to some extent, the Ministry of Foreign Affairs, through diplomatic and consular representations, and the Ministry of Interior, specifically the Police Administration, have jurisdiction through NCB Interpol.

In accordance with the Law on Courts ("Official Gazette of Montenegro," No. 11/2015 and 76/2020), the jurisdiction of the Basic and Higher Courts in international legal assistance in criminal matters is stipulated. Article 14, item 6, lays down that the Basic Court is competent to perform tasks of international criminal legal assistance in criminal matters concerning letters rogatory for the delivery of court documents. Article 16, item 7 of the same law also prescribes that the Higher Court performs tasks of international criminal legal assistance in criminal matters concerning letters rogatory for the hearing of individuals, conducting special evidentiary actions, as well as other forms of international criminal legal assistance.

According to the Law on the State Prosecutor's Office ("Official Gazette of Montenegro," No. 11/2015, 42/2015, 80/2017, 10/2018, 76/2020, and 59/2021), in Article 16a, it is stipulated that the State Prosecutor's Office is competent to submit requests for the issuance of European Arrest Warrants and requests for the issuance of European Investigation Orders, in accordance with the law regulating judicial cooperation in criminal matters between Montenegro and the

member states of the European Union. It is noted that this article will be applicable from the day of Montenegro's accession to the European Union.

DATA IN INFORMATION SYSTEMS AND (UN)AVAILABLE ANALYTICS

Among other key tasks in the field of international legal assistance in criminal matters, the Ministry of Justice is also responsible for collecting information in this area and maintaining accurate statistics. This is in line with the obligations arising from the EU negotiation process, the needs of regular reporting to relevant international organizations, and the necessity for a coordinated approach to these activities at the national level. In this context, since 2014, the Ministry of Justice has been developing the project of an electronic registration of international legal assistance cases – LURIS. Thanks to this system, the Ministry can accurately track the number of received and sent requests since 2015, enabling a more thorough analysis of the situation in this area and timely undertaking of necessary activities. During 2022, a total of 988 criminal cases, 594 civil cases, and 179 cases for approval of an international warrant were formed in the electronic system for registration of cases of international legal assistance, based on Article 511 of the Criminal Procedure Code.

Additionally, at the level of the State Prosecutor's Office, the LURIS system became operational in 2016, thereby integrating data from both entities in the field of international legal assistance into one database. The same system is currently implemented at the level of the competent authorities of the Republic of Serbia and North Macedonia, providing an additional opportunity to strengthen regional cooperation in this area if, in the future, the systems are interconnected at the level of all countries where the system becomes fully functional.

In the past 8 years, the information system has not undergone significant technical changes that would result in better management of international legal assistance cases and analytics of the actions of the Ministry of Justice and relevant judicial authorities.

Furthermore, on the national level where practitioners are actively involved on a daily basis, it has been noted that there is a significant need for the improvement of the LURIS information system. This improvement should include its integration with the judicial information system (PRIS) and the use of detailed data by the Ministry of Justice, as the central authority for judicial cooperation. Specifically, there is no recorded instance where the Ministry of Justice has conducted an analysis of its handling of international legal assistance cases, the types of international legal assistance that Montenegro most commonly provides/requests, the classification of criminal offenses, the citizenship of individuals, or its own capacities in the process of international legal assistance, both in criminal and civil matters.

On the strategic level, there is no known timeframe regarding the future integration of LURIS and the new Judiciary Information System (ISP) once it is established. The fact that the working group for the development of the new Judiciary Information System has been unable to create a new system over an extended period, despite international support, reflects on the resolution of this matter. Therefore, taking everything into account, it can be concluded that there are limited capacities within the Ministry of Justice in terms of managing cases, available information with integrity, and analyzing international legal assistance cases, along with the supporting information system. Overall, the establishment of an information system in the judiciary, including the Ministry responsible for judicial affairs, will contribute to transparency, accountability, and the efficiency of the judicial system.

Responding to questions from the questionnaire, the Ministry of Justice stated that it has initiated discussions on enhancing LURIS in terms of expanding and improving its capabilities

and expressed the expectation that “work on LURIS will commence soon.”

On the other hand, it has been noted that higher courts, besides data on the number of cases formed based on letters rogatory for international legal assistance (extracted from PRIS and registration books), do not have detailed information on the form of requested international legal assistance, the status of individuals in the extradition process, the requesting/requested state, or the type of criminal offenses for which extradition is requested, as the most common form of international legal assistance or any other form of international legal assistance. Accordingly, the reports of the Judicial Council (except for data on direct letters rogatory) do not contain such information because PRIS does not support their input. The absence of this data affects inadequate data analytics, the inability to realistically assess the court’s capacity, and strategic planning of judicial activities. The already imposed need for frequent international judicial cooperation dictates the priority of abandoning the concept of traditional data collection (basic data) and focusing on a reliable electronic system that will store data in a qualitative and quantitative sense.

TRAININGS

As part of the Eurol 2 project, in which the Ministry of Justice and judiciary institutions participated, several activities were conducted to enhance the capacity of the Montenegrin judiciary in applying new legal advancements in the field of international judicial cooperation in civil and criminal matters, with a close focus on EU instruments. The project developed a training program that included modules on international judicial cooperation in criminal and civil matters. The training took place from 2018 to April 2020, with the participation of judges and public prosecutors.

It is necessary to continue with the implementation of programs in the field of judicial cooperation, which are expected to enhance the knowledge, effective application of international instruments, and the skills of judges and public prosecutors in carrying out all forms of mutual legal assistance, especially in cases involving extradition requests. The programs should also incorporate standards from the practice of the European Court of Human Rights regarding the interpretation and application of the European Convention on Human Rights and Fundamental Freedoms, as well as relevant decisions of the United Nations Committee Against Torture regarding compliance with the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. It is clear that the goal of such training is to improve existing capacities and reliability in cooperation with European Union member states, as well as to prepare Montenegrin judicial authorities for providing legal assistance in this field when it becomes a full member of the European Union.

After the support for establishing the training concept, the Judiciary Training Center and the Public Prosecutor’s Office continued with the implementation of training. In this regard, it is necessary to continue with the training and emphasize practical work, which includes drafting letters rogatory for mutual legal assistance and recognizing both informal and formal communication. In 2023, the Judiciary Training Center and the Public Prosecutor’s Office has included in its Continuous Training Program a two-day seminar on judicial and police cooperation in criminal matters in the European Union, a one-day seminar on “Cooperation and Provision of International Legal Assistance in Criminal Matters,” and a one-day seminar on “Legally Invalid Evidence (with a special focus on sky and anom applications – national practice and international law standards),” which will take place in September.²

² Continuous Training Program for 2023. Source: <http://cosdt.me/programi-centra/>

CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

The primary function of the European Court of Human Rights is to decide on applications from individuals or states alleging violations of civil and political rights guaranteed by the European Convention on Human Rights. Since 1998, the Court has sat as a full-time court, allowing natural persons to address it directly. The territorial jurisdiction of the Court covers 800 million Europeans from 47 member states of the Council of Europe that have ratified the European Convention on Human Rights. Over its nearly five decades of operation, the European Court of Human Rights has delivered more than 10,000 judgments, which are binding on the states concerned and have a direct impact on improving the legal framework and legal environment of each member state.

Significant case law from the European Court of Human Rights is noted regarding issues related to the application of conventions relevant to international legal assistance in criminal matters. This particularly applies to the following areas of significance for the application of European conventions:

- Extradition;
- Mutual legal assistance in criminal matters,
- Transfer of sentenced persons,
- Recognition of international criminal judgments,
- Surrender of prosecution in criminal matters.

For the purposes of the document, here is presented one example of the case law of the European Court of Human Rights in three cases that are relevant for the application of key conventions related to international legal assistance in criminal matters.³

³ Case Law by the European Court of Human Rights of Relevance for the Application of the European Conventions on International Co-Operation in Criminal Matters, PC-OC(2011)21REV13, EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC), Strasbourg, 24 January 2020

Summary of the case law relevant to the application of the European Convention on Extradition (CETS 024) and its accompanying protocols (CETS 086, 098, 209, and 212)

CASE INFORMATION	SUMMARY
<p>Jabari v. Turkey</p> <p>No.: 40035/98</p> <p>Date of judgment: July 11, 2000</p> <p>Articles: Y: 3, 13</p> <p>Keywords:</p> <ul style="list-style-type: none"> • asylum • deportation • abuse 	<p><i>Circumstances:</i> Deportation from Turkey to Iran of an individual who had been granted refugee status by UNHCR. The asylum request was rejected because the applicant did not submit it within the 5-day period upon arriving in Turkey.</p> <p><i>Relevant Complaint:</i> In Iran, the applicant would face criminal prosecution and be sentenced to a form of inhumane punishment prescribed by Iranian law for adultery (stoning to death, flogging).</p> <p><i>Court's findings:</i> Due to the fact that the applicant failed to fulfill the requirement of a five-day registration according to the 1994 Asylum Regulation, any examination of the factual basis of her fears of being extradited to Iran was denied. The automatic and mechanical application of such a short deadline for filing an asylum request must be considered contrary to the protection of fundamental values established in Article 3 of the Convention. [paragraph 40]</p>

Summary of case law relevant to the application of the Convention on Mutual Assistance in Criminal Matters (CETS 030) and its accompanying protocols (CETS 099 and 182).

CASE INFORMATION	SUMMARY
<p>F. C. B. v. Italy</p> <p>No. : 12151/86</p> <p>Date of judgement: August 28, 1991</p> <p>Articles: Y: 6§1, 6§3(c)</p> <p>Keywords:</p> <ul style="list-style-type: none"> • fair trial • in absentia • mutual assistance 	<p><i>Circumstances:</i> An Italian citizen was convicted in Italy in absentia while in detention in the Netherlands.</p> <p><i>Relevant Complaint:</i> The applicant did not know when the trial was scheduled before the Milan Court of Appeals because he was in solitary confinement in detention in the Netherlands.</p> <p><i>Court's findings:</i> The Milan Court learned from identical sources (Mr. F. C.'s lawyer B. and two co-defendants) that the applicant was apparently in detention in the Netherlands. The court did not postpone the trial or further investigate whether the applicant had indeed decided not to attend the trial in Milan; the court only stated that it did not receive evidence that the person was unable to attend.</p> <p>It should also be noted that the Dutch authorities requested cooperation from the Italian authorities, informing them that the applicant was in prison in the Netherlands. Still, Italian authorities did not draw the necessary conclusions regarding the ongoing proceedings against Mr. F. C. B. in Milan. Such behavior was hardly compatible with the diligence that contracting states must have and achieve to ensure the effective enjoyment of the rights guaranteed by Article 6 of the Convention. [para. 33]</p>

Summary of case law relevant to the application of the Convention on Mutual Assistance in Criminal Matters (CETS 030) and its accompanying protocols (CETS 099 and 182).

CASE INFORMATION	SUMMARY
<p>J Drozd i Janousek v. France and Spain</p> <p>No. : 12747/87</p> <p>Date of judgement: June 26, 1992</p> <p>Articles: N: 5§1, 6</p> <p>Keywords:</p> <ul style="list-style-type: none"> • fair trial • transfer of convicted persons 	<p><i>Circumstances:</i> Serving a prison sentence imposed in Andorra, France, or Spain.</p> <p><i>Relevant complaint:</i> The applicants claimed that their detention was contrary to the French public order (ordre public), which is part of the Convention; French courts did not conduct any review of the judgments of the Andorran court whose composition and procedure did not comply with the requirements of Article 6 of the Convention.</p> <p><i>Court's findings:</i> Since the Convention does not require contracting parties to impose its standards on third countries or territories, France was not obliged to verify whether the proceedings resulting in the conviction complied with all the requirements of Article 6 of the Convention. Demanding such a review of how a non-Convention-bound court applied the principles contained in Article 6 of the Convention would also hinder the current trend of strengthening international cooperation in the administration of justice, a trend that is generally in the interest of the individuals concerned. Contracting states are, however, obligated to refuse their cooperation if it is shown that the conviction resulted from a flagrant denial of justice. [Para. 110]</p>

OVERVIEW OF THE INTERNATIONAL LEGAL ASSISTANCE SYSTEM OF OTHER COUNTRIES - EXAMPLES IN THE REGION AND EU

For the purposes of this document, the basic elements of the system of international legal assistance of specific countries in the region and members of the European Union are presented below. The primary purpose is to provide an overview of the systems in the specified area and thereby enable users of the document to gain insight into the degree of alignment of Montenegro's legal system with the systems of international legal assistance in the region and the European Union as a key foreign policy priority for the country.

The states for which an overview of the international legal assistance system is presented below are divided into two groups:

Bosnia and Herzegovina and the Republic of Serbia, taking into account legal-historical heritage, regional position, and the level of progress in negotiations for European Union membership.

The Republic of Croatia and the Republic of Slovenia, for the abovementioned reasons, but also as neighboring countries to Montenegro that are members of the European Union.

BOSNIA AND HERZEGOVINA

GENERAL OVERVIEW

Bosnia and Herzegovina is characterized by a complex judicial system, which is also the case with international legal assistance in criminal matters. However, this has not prevented the country from organizing an adequate system at the state level on both institutional and legal levels, allowing for continuous improvement in a functional context.

An analysis of international instruments and bilateral cooperation shows that Bosnia and Herzegovina has accepted key international instruments for international legal assistance in criminal matters. Through the signing and ratification of bilateral agreements, it has created a suitable legal framework for direct cooperation with countries in the region, EU member states, and the Council of Europe to achieve legal assistance in criminal matters. The national legal framework is regulated by the systemic Law on International Legal Assistance in Criminal Matters, as well as a series of substantive laws, both at the state level and in each entity and district individually. The institutional framework, although extensively structured, indicates that an organizational structure has been established for internal coordination of activities and communication in this area, with the Ministry of Justice of Bosnia and Herzegovina having central authority and role.

INTERNATIONAL STANDARDS

Like Montenegro, Bosnia and Herzegovina is a signatory to several multilateral and bilateral agreements in the field of international legal assistance in criminal matters. Similar to the Montenegrin legal system, ratified international treaties in Bosnia and Herzegovina take precedence over national law, allowing for the direct application of the provisions of the ratified documents.

Bosnia and Herzegovina has ratified all major international instruments in this field: the European Convention on Mutual Assistance in Criminal Matters, the European Convention on the Transfer of Proceedings in Criminal Matters, the European Convention on Extradition with its three additional protocols, and the European Convention on Mutual Assistance in Criminal Matters and its Second Additional Protocol. Bosnia and Herzegovina has also signed several bilateral agreements and, through the succession process from the former Yugoslavia, inherited 18 bilateral agreements in the field of international legal assistance in criminal matters. With countries where there is no bilateral agreement or where the ratified international treaty is not applied, Bosnia and Herzegovina follows the principle of reciprocity.

From its neighboring countries, Bosnia and Herzegovina has signed bilateral agreements with all regional states: Montenegro, the Republic of Croatia, and the Republic of Serbia. Regarding cooperation with Eurojust, Bosnia and Herzegovina has not yet signed a Cooperation Agreement but has established a certain level of collaboration through the designation of a contact point for communication.

LEGAL FRAMEWORK

At the level of Bosnia and Herzegovina, there is a single, systemic Law on International Legal Assistance in Criminal Matters that applies throughout the country, including both entities and the district.

The law stipulates the manner and procedure for conducting procedures of international legal assistance in criminal matters, except in cases where these issues are regulated by ratified multilateral or bilateral international agreements, in which case the national legal framework is subsidiary.

The Law on International Legal Assistance in Criminal Matters establishes substantive, procedural, and institutional provisions that regulate general provisions (letters rogatory, communication channels, urgency of procedures, admissibility and course of proceedings, refusal of letters rogatory, reciprocity), and general aspects of mutual legal assistance. Additionally, the law regulates specific areas, including the extradition of suspects, accused, and convicted foreigners from Bosnia and Herzegovina, the procedure for extradition requests sent from Bosnia and Herzegovina to a foreign country, transit of foreigners through the territory of Bosnia and Herzegovina, the transfer of convicted individuals from a foreign country to Bosnia and Herzegovina, the transfer of convicted individuals from Bosnia and Herzegovina to a foreign country, and the transfer and assumption of criminal prosecution.

In addition to the systemic law, all criminal procedure codes at the levels of Bosnia and Herzegovina, entities, and the district contain provisions relevant to international legal assistance in criminal matters. These codes specifically include procedural provisions regarding the communication process based on requests for legal assistance and procedural actions following the acceptance of requests. Furthermore, certain substantive laws also lay down provisions in the field of international legal assistance, particularly in the area of seizure of assets derived from criminal activities.

INSTITUTIONAL FRAMEWORK

The central coordinating and communication body for activities related to international legal assistance in criminal matters is the Ministry of Justice of Bosnia and Herzegovina. Article 4 of the Law on International Legal Assistance in Criminal Matters stipulates that

requests from foreign judicial authorities for international legal assistance in criminal matters are transmitted through the Ministry of Justice of Bosnia and Herzegovina unless otherwise provided by an international treaty. Within the Ministry, the Sector for International and Inter-entity Legal Assistance and Cooperation is responsible for issues of mutual legal assistance in criminal matters. Additionally, the jurisdiction of the Ministry of Justice is further specified by the Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, 5/03, 42/03, 26/04, 42/04, 45/06, 88/07, 35/09, 59/09, and 103/09).

In accordance with ratified international treaties, direct communication between competent authorities of Bosnia and Herzegovina and another country is facilitated at the level of Bosnia and Herzegovina. If direct communication is not provided for in international treaties, the principle of reciprocity is applied. In some cases, direct communication through diplomatic channels is possible, after which the request is further distributed at the national level through the Ministry of Internal Affairs of Bosnia and Herzegovina. However, if there is no direct communication between competent authorities, the request is transmitted through the Ministry of Justice of Bosnia and Herzegovina.

Further distribution of the request and information is sent to the Court of Bosnia and Herzegovina or the competent ministries of justice in the entities of the Republic of Srpska or the Federation of Bosnia and Herzegovina, or to the Brčko District of Bosnia and Herzegovina Judicial Commission. If the request for international legal assistance falls under the jurisdiction of the ministries of justice of the entities, the receiving ministry, upon receipt, further distributes it to the competent court. If the competent court deems the documentation incomplete, it can establish direct communication with the requesting country through the Ministry of Justice of Bosnia and Herzegovina. In this case, the request and submitted documentation will be returned if the requesting country does not provide the requested information within three months. On the other hand, if the court to which the documentation has been submitted determines that it is not competent for the given case, the court is obligated to refer the case to the competent court in terms of jurisdiction and venue, informing the Ministry of Justice of Bosnia and Herzegovina accordingly.

The Ministry of Justice of Bosnia and Herzegovina, as the central coordinating body, is also responsible for supervising the implementation of international legal assistance in criminal matters by recording and forwarding relevant and necessary information and monitoring their execution. For the purpose of more efficient implementation, the Ministry of Justice of Bosnia and Herzegovina currently uses a Document Management System (DMS) for electronic document management.

THE REPUBLIC OF SERBIA

GENERAL OVERVIEW

As it is the case with the system in Bosnia and Herzegovina, the system of the Republic of Serbia in the field of international legal assistance in criminal matters is very similarly established as in Montenegro. This is primarily conditioned by a shared legal tradition and institutional legacy from the time of the former Yugoslavia, as well as the individual aspirations of each country for membership in the European Union. A certain impetus for a high level of complementarity in the systems is also provided by the case law of the European Court of Human Rights, which encourages the improvement of legal systems of states and their

mutual alignment as members of the Council of Europe.

Institutionally, the central body for coordinating activities in the field of international legal assistance in criminal matters is the Ministry of Justice, with roles also played by the courts and the prosecution. The legal framework is adequately established, primarily determined by ratified international multilateral and bilateral agreements, the systemic Law on International Legal Assistance in Criminal Matters, and a series of substantive laws.

INTERNATIONAL STANDARDS

The Republic of Serbia has ratified key international treaties in the field of international legal assistance in criminal matters, such as:

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
- United Nations Convention against Transnational Organized Crime;
- European Convention on Mutual Assistance in Criminal Matters;
- European Convention on the Transfer of Proceedings in Criminal Matters;
- European Convention on Extradition and its three additional protocols;
- European Convention on Mutual Assistance in Criminal Matters and its Second Additional Protocol.

Like Montenegro and Bosnia and Herzegovina, the Republic of Serbia has succeeded to and taken over 18 bilateral agreements in this field from the former Socialist Federal Republic of Yugoslavia (SFRJ).

Regarding bilateral cooperation with countries in the region, the Republic of Serbia has signed agreements in the field of international legal assistance with Montenegro, the Republic of Croatia, and Bosnia and Herzegovina, as well as several other countries. Additionally, there is a significant number of signed memoranda with regional countries that more precisely define collaboration procedures. Furthermore, the courts of the Republic of Serbia have developed direct cooperation with the courts of almost all countries in the region: Bosnia and Herzegovina, North Macedonia, Montenegro, and Slovenia. The Republic of Serbia has an open issue regarding cooperation with Kosovo, considering the overall political context and relations between these two states. However, there is still some level of cooperation with Kosovo, both through direct contact and through the engagement of international forces present in Kosovo.

Concerning cooperation with relevant agencies of the European Union, Serbia has signed and ratified the Cooperation Agreement with EUROJUST. Additionally, cooperation in this area is maintained through communication with EUROPOL.

LEGAL FRAMEWORK

Like Montenegro and Bosnia and Herzegovina, in the Republic of Serbia, the field of international legal assistance in criminal matters is defined by a comprehensive Law on International Legal Assistance in Criminal Matters. However, similarly to other systems, ratified international multilateral and bilateral agreements take precedence over national legislation.

The Law on International Legal Assistance in Criminal Matters stipulates procedural and

substantive provisions governing specific issues such as letters rogatory, communication channels, urgency of proceedings, admissibility and course of proceedings, refusal of requests, reciprocity, language, and procedure costs. The law also specifies provisions of importance for handling available information. The institutional segment of the law defines general aspects of providing mutual legal assistance, extradition of suspects, accused, and sentenced foreigners from Serbia, the procedure after an extradition request that Serbia can send to a foreign country, transit of individuals across the territory of Serbia, transfer of convicted individuals from a foreign country to Serbia, transfer of convicted individuals from Serbia to a foreign country, and transfer and assumption of criminal prosecution.

In addition to the systemic law, matters of significance for international legal assistance in criminal matters are regulated at the level of elaborating procedural and related issues through various other laws. The Criminal Procedure Code lays down provisions related to communication of requests for legal assistance, procedures after requests from foreign authorities, execution of judgments rendered by a foreign court, data centralization, transfer of criminal prosecution to a foreign country, and acceptance of criminal prosecution by a foreign country. Additionally, several substantive laws contain provisions of importance for international legal assistance. Notably, the law on seizure and confiscation of the proceeds from crime, which specifically regulates the procedures for seizure and permanent confiscation, outlining competent institutions, the format of requests for cooperation, decision criteria, and the execution of decisions for seizure and permanent confiscation.

INSTITUTIONAL FRAMEWORK

The central body of the Republic of Serbia for international legal assistance in criminal matters is the Ministry of Justice. Article 9 of the Law on Ministries prescribes that the Ministry of Justice has competence in the field of mutual judicial assistance and extradition. Additionally, Article 4 of the Law on International Legal Assistance in Criminal Matters further stipulates that, besides the Ministry of Justice, national courts and prosecutor's offices specified by law also have competence for the implementation of mutual assistance.

Moreover, in certain proceedings, the Ministry of Foreign Affairs, through diplomatic and consular representations, as well as the Ministry of Internal Affairs, can also play a role. According to the law, all requests for legal assistance are transmitted to the competent state authorities of the Republic of Serbia through the Ministry of Justice unless otherwise specified by a ratified international treaty.

Similar to Montenegro, with the assistance of the Kingdom of the Netherlands, the Ministry of Justice of the Republic of Serbia operates a system for registering cases of international legal assistance – LURIS.

THE REPUBLIC OF CROATIA

LEGAL FRAMEWORK

The area of judicial cooperation in criminal matters between the Republic of Croatia and the member states of the European Union is regulated by national legislation, through which legal acts of the European Union in this area are transposed into domestic law. The systemic law of the Republic of Croatia that regulates this matter is the Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union.

This Law regulates forms of judicial cooperation stipulated by community law, with a special focus on the following issues:

- European Arrest Warrant and surrender procedure,
- European Investigation Order,
- Freezing order,
- Recognition and enforcement of confiscation orders,
- Recognition and enforcement of financial penalty decisions,
- Recognition and enforcement of judgments imposing imprisonment or measures involving deprivation of liberty,
- Recognition and enforcement of judgments and decisions imposing probation measures and alternative sanctions,
- Recognition and enforcement of precautionary measures, and
- European Protection Order.

The process of aligning the legislation of the Republic of Croatia with the legal framework of the European Union began during the accession negotiations and continued in accordance with the obligations undertaken by the signing of the Accession Treaty to the European Union. For these reasons, the Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union has been amended several times since its enactment, in line with the development of European Union directives. Before the enactment of this law, judicial cooperation of the Republic of Croatia in criminal matters with other countries (including the Member States of the European Union) was regulated by the Law on International Legal Assistance in Criminal Matters.

Croatia is a signatory to a number of multilateral international agreements that provide for mutual legal assistance in criminal matters, including the European Convention on Mutual Assistance in Criminal Matters, the United Nations Convention against Corruption, and the United Nations Convention against Transnational Organized Crime. Additionally, Croatia is a signatory to several bilateral international agreements on legal assistance in criminal matters, with a particular focus on agreements with our neighboring countries: Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia, and Slovenia.

In the absence of an international treaty, international legal assistance, such as in the case of extradition, can be granted on the basis of reciprocity. Criminal offenses that are subject to extradition are those for which a prison sentence of at least one year or a more severe penalty is prescribed.

INSTITUTIONAL FRAMEWORK

The central authority for communication and coordination of activities in the field of international legal assistance in criminal matters, as well as the receipt and transmission of requests, is the Ministry of Justice of the Republic of Croatia.

Certainly, judicial authorities may also directly send requests for international legal assistance in exceptional cases, and they are obligated to inform the Ministry of Justice about such cases. Additionally, some activities in international cooperation in this field can be conducted through Interpol, EU agencies such as Europol and Eurojust, as well as through diplomatic and consular representations.

THE REPUBLIC OF SLOVENIA

LEGAL FRAMEWORK

Judicial cooperation in criminal matters between the Republic of Slovenia and the member states of the European Union is regulated by the Cooperation in Criminal Matters with the Member States of the European Union Act of 2013. This Act transposed and is continuously transposing EU directives in the field of judicial cooperation in criminal matters.

Slovenia has ratified the Convention established by the Council in accordance with Article 34 of the Act on European Union on Mutual Assistance in Criminal Matters between the Member States of the European Union of 2000, along with the accompanying Protocol from 2001. These instruments are directly applicable within the Slovenian legal system.

With the EU member states that have implemented the aforementioned EU Convention on International legal assistance, all communication between competent judicial authorities in matters of international legal assistance is generally direct. Requests for extracts from judicial records still need to be forwarded to the Ministry of Justice as the central communication body. Furthermore, the Ministry of Justice continues to assist competent authorities in establishing organization, provides recommendations and legal interpretations, and supports the establishment of communication with competent authorities of other states.

Judicial cooperation in criminal matters with third countries is primarily regulated by the Criminal Procedure Act of the Republic of Slovenia. Other laws that are also applied in procedures of international legal assistance include: the Criminal Code, Misdemeanor Law, General Administrative Procedure Act, Act on Courts, Rules of Procedure of the Constitutional court, Enforcement of Penal Sanctions Act, and the Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity.

INSTITUTIONAL FRAMEWORK

Central authority for communication and coordination activities in the field of international legal assistance in criminal matters is the Ministry of Justice of the Republic of Slovenia.

According to Article 50 of the Law on Cooperation in Criminal Matters with the Member States of the European Union, in addition to the Ministry of Justice, competent bodies for communication are the courts, public prosecutor's offices, or administrative bodies, with whom the authorities of the EU Member States have direct communication.

Competent bodies for international legal assistance are district courts in the area where the act or measure is to be executed. If multiple courts have jurisdiction, the court responsible for the first execution of the action or measure specified in the request is locally competent. If it is not possible to determine the locally competent court, the District Court in Ljubljana has jurisdiction.

If a letter rogatory for legal assistance pertains to a misdemeanor procedure, the local court in the area where the act or measure is to be executed has jurisdiction over legal assistance. If the request for legal assistance involves determining measures or executing actions for which different bodies are competent under the law of the Republic of Slovenia, the request is forwarded to the locally competent public prosecutor's office. The public prosecutor's office will determine the measure or carry out the actions for which it is competent under the legal framework of the Republic of Slovenia and propose the determination of the measure or execution of actions to the competent court.

Requests from domestic courts for legal assistance in criminal matters are delivered to the authorities of other countries through diplomatic channels. Foreign requests for legal assistance to domestic courts are also delivered in the same way. In practice, requests for international legal assistance are generally sent through the Ministry of Justice, designated as the central authority for international legal assistance in criminal matters by relevant multilateral instruments. If there is reciprocity or if it is specified in an international treaty, international legal assistance in criminal matters can be exchanged directly between domestic and foreign bodies involved in the proceedings. Modern technical means, especially computer networks and devices for the transmission of images, voice, and electronic impulses, can be used in this process.

In urgent cases and under the condition of reciprocity, requests for legal assistance can be sent through the ministry responsible for internal affairs. In cases of money laundering offenses or offenses related to money laundering, requests can be directly sent to the authority responsible for preventing money laundering.

INTERNATIONAL LEGAL ASSISTANCE IN CASE LAW

According to the Annual Report of the Judicial Council and the overall state of the judiciary for the year 2022, Montenegrin courts directly submitted 36 requests in criminal matters, with 31 of them being granted. Additionally, they directly received 56 requests, out of which 49 were granted. In 2021, the courts directly submitted 46 requests, with 36 being granted, and they directly received 57 requests, with 49 being granted. In 2020 (the year of the beginning of the Covid pandemic), Montenegrin courts directly submitted 58 requests, with 47 being granted. During that year, they received the highest number of requests, a total of 116, out of which 108 were granted. Annual reports on the work of the Judicial Council and the overall state of the judiciary do not contain more detailed information on the requests submitted (the form of international cooperation, the criminal offense, the number of persons involved, etc.). Methodologically, it is not known why the Annual Report only includes data on directly submitted requests in criminal and civil matters, and not on requests received through the Ministry of Justice.

QUESTIONNAIRES - ANSWERS AND COMMENTS

1. In which court do you perform your judicial function?
2. Is there specialization in the court regarding the provision of international legal assistance in criminal matters?
3. How long have you been handling cases related to international legal assistance in criminal matters?
4. Based on which national regulations do you carry out tasks related to international legal assistance in criminal matters?
5. Based on which international instruments do you carry out tasks related to international legal assistance in criminal matters?
6. Have you had the opportunity to apply the practice of the European Court of Human Rights in your previous experience?
7. How do you assess the process of international legal assistance in criminal matters from the court's jurisdiction? What do you see as potential obstacles in the proceedings? Is the process sufficiently efficient?
8. In your opinion, are there points of contention regarding the application of the Law on International Legal Assistance in Criminal Matters at the national level? Is the procedure of courts and public prosecutors clearly defined?
9. How often does the court act on requests directly submitted by the requesting state?
10. What forms of international legal assistance in criminal matters are most commonly encountered in practice?
11. Can you provide an interesting example from practice related to an extradition request?
12. Have you observed in practice that the principle of specialty has been an obstacle to the execution of certain requests?
13. Can you give a positive example where the court acted on a request from the requesting state regarding the confiscation of assets acquired through criminal activity?
14. Do you believe that training in the field of international legal assistance in criminal matters is necessary for your role?
15. If the answer is "yes," please suggest specific topics for training.

Authors have developed a specific questionnaire aimed at screening the current state of international legal assistance in criminal matters, from the perspective of judges handling cases in that department. It is important to note that judges responsible for the provision of international legal assistance in criminal matters are those handling investigations in higher courts.

In response to questions under the jurisdiction of the Ministry of Justice, the Director-General of the Directorate for International Judicial Cooperation highlighted that, in the last two and a half years, only a trilateral agreement between Montenegro, the Republic of Serbia, and North Macedonia on data exchange for the purpose of verifying statements about the assets of public officials has been signed, and it needs to be ratified. Regarding legislative changes, they pointed out numerous obligations: it is necessary to amend the Law on International Legal Assistance in Criminal Matters, the Law on Judicial Cooperation in Criminal Matters with EU Member States, which needs to be harmonized with new EU directives; ratify two Hague Conventions, one on the recognition and enforcement of foreign judgments in civil and commercial matters and the other on the international protection of adults; and consider the ratification of the 3rd and 4th Additional Protocols to the European Convention on Extradition. Also, it is necessary to ratify the 2nd Additional Protocol to the Convention on Cybercrime. In their responses, the Ministry of Justice concluded that there are many obligations ahead, but due to political reasons, progress is slow.

The President of the Higher Court in Bijelo Polje provided information that in that court, in the period from 2021 to 2023, a total of 27 cases were processed.

According to information provided by the Higher Court in Podgorica, the number of cases is significantly higher: 2021 - 177; 2022 - 162, totaling 339 cases during the same period. Considering the evidently broader field of experience in this area in the Higher Court in Podgorica, judges from that court were requested to provide answers to the questions, which we carefully analyzed in this section of the publication.

Judges unanimously agree that there is specialization in handling cases of international legal assistance in criminal matters, considering that only investigating magistrates deal with these cases. Regarding the application of regulations, judges apply the Law on International Legal Assistance in Criminal Matters, the European Convention on Mutual Assistance in Criminal Matters, concluded bilateral agreements, as well as the European Convention on Extradition when it comes to executing extradition orders and international warrants. In addition, judges believe that the process of providing international legal assistance by the judicial authorities of Montenegro is at a satisfactory level, and there are no specific points of contention in the application of that law. According to the judges, the provisions of that law are clear enough, and the actions of the courts and the public prosecutor's office are well-explained.

Judges believe that the Ministry of Justice plays a crucial role in the process of providing international legal assistance, and in their experience, the Ministry has performed its duties at a satisfactory level. Considering that Montenegro has signed numerous bilateral agreements with other countries, which serve as a legal basis for direct action in providing international legal assistance, the court often acts on requests that are directly submitted.

It is recognized that in practice, the most common form of providing international legal assistance in criminal matters is the execution of arrest warrants or international warrants seeking the extradition of citizens to their respective home countries. Additionally, cases involving letters rogatory for the confiscation of assets acquired through criminal activity, submitted by requesting states such as the Swiss Confederation and the Federal Republic of Germany, are also prevalent in practice.

Regarding the application of the European Court of Human Rights' practice in this field, it cannot be conclusively determined from the questionnaire whether judges have explicitly referred to the Strasbourg Court's practice. The responses indicate that judges from the criminal department and investigating judges regularly apply the practice of the European Court of Human Rights, especially concerning the determination and extension of detention.

One judge specifically highlighted cases from practice where individuals whose extradition is requested by a request submit asylum requests to the competent authorities in Montenegro. In these cases, it is necessary to harmonize the procedures of the authorities in the extradition process and the process prescribed by the Law on International and Temporary Protection of Foreigners. When the court receives a case where an arrest warrant or an international warrant has been issued, it usually orders extradition detention after a hearing. According to Article 16, paragraph 4, of the Law on International Legal Assistance in Criminal Matters, extradition detention can last until the decision on extradition is enforced at the latest but no longer than six months. Paragraph 5 stipulates that, upon a reasoned request from the requesting state, the Chamber of the competent court may extend the duration of detention referred to in paragraph 3 above in justified cases for additional two months. However, if an asylum application process is initiated after detention is ordered, which typically lasts longer than the detention period, the court will have to release the detained person after the legally prescribed deadlines and before the extradition process is completed. This is because, according to Article 12 of the Law on International and Temporary Protection of Foreigners, the asylum approval process prevents extradition or surrender of a foreigner seeking international protection for whom an international warrant has been issued, and for whom a decision on extradition or surrender to the country of origin has been made, until the decision on the request for international protection becomes final. As a rule, asylum applications are typically submitted by citizens of the Russian Federation and the Republic of Turkey.

Finally, the judges emphasized the need for continuous training in this field. One judge suggested organizing training sessions where the instructors would be judges with experience in this field, including retired judges with relevant experience, and that representatives of the Ministry of Justice should also have a role in these trainings. One judge mentioned that they do not need training.

ANALYSIS OF CASES FROM CASE LAW

The authors have analyzed 5 (five) cases⁴, 4 of which come with extensive documentation, made available by the Higher Court in Podgorica for inspection of CeMI observers. Court records were analyzed to gain a closer insight into the court's handling within the jurisdiction defined by the Law on International Legal Assistance in Criminal Matters when deciding on requests from requesting states for the extradition of accused or convicted individuals. Understanding the principles outlined in the European Convention on Human Rights and Fundamental Freedoms⁵, the European Convention on Extradition, and the European Convention on Mutual Assistance in Legal assistance in Criminal Matters and national Law is of crucial importance for the respect of human rights and fundamental freedoms of accused

⁴ The cases A, B, C, D, and E.

⁵ The Convention does not contain provisions regarding the circumstances under which extradition can be granted, nor does it outline the procedure to be followed before extradition is approved. Assuming that it is the result of cooperation between the interested states and provided that there is a legal basis for issuing a warrant for the arrest of a fugitive issued by the competent authorities of the state from which the fugitive originates, even non-typical or covert extradition cannot be considered contrary to the Convention - *Oclan v. Turkey*, ECHR, Grand Chamber judgment of May 12, 2005, Application No. 46221/99, para. 86.

persons, as well as for gaining trust, authority, and integrity in the international community.

Legal cases have been initiated in relation to the extradition of five individuals – citizens of Albania, the Russian Federation (2), Montenegro and Denmark, the Republic of Slovenia, and the Republic of Kosovo, based on requests from requesting states - the Republic of Greece, the Russian Federation (2), the Kingdom of Denmark, and Belgium, during the period from 2021 to 2023.

Out of a total of 5 cases, extradition in an expedited procedure was allowed in one case, while regular procedures were conducted in the remaining cases. The court decided that conditions for issuing resolutions on extradition have been met in three cases, and in one case, the extradition request for a citizen of Montenegro, made at the request of the Kingdom of Denmark, was denied.

The extradition requests made to the State of Montenegro were for the purpose of serving a prison sentence (1 case) and conducting criminal proceedings (4 cases). The extradition of accused persons were sought for criminal offenses such as importing into a correctional facility and possessing narcotic substances under Article 20, paragraph 1, item C of the Criminal Code of Greece, violent sexual acts against a minor from Chapter 4, Article 132 of the Criminal Code of Russia, an offense under Article 192a, paragraph 3, in connection with paragraph 1, item 1 of the Criminal Code of the Kingdom of Denmark, drug abuse (cultivation of drugs) and money laundering under sections 2bis of the narcotics act, sections 423 and 595 of the Criminal Code of Belgium, and the criminal offense of causing serious bodily harm endangering human life resulting in the death of the victim due to negligence under Article 111, paragraph 4 of the Criminal Code of the Russian Federation.

It is important to note that extensive case files were analyzed, including a substantial number of translated supporting documents from police case files, decisions on the determination and extension of extradition detention, and council of judges' resolutions assessing the fulfillment of conditions for the extradition of the accused persons.

- **In case A**, initiated upon the request of the Republic of Greece for the extradition of a citizen of the Republic of Albania, the court, in the regular procedure, issued a decision establishing that the legal prerequisites for extradition for the purpose of serving an 8 (eight)-year prison sentence, as per the judgment of the Court of Appeals in Thessaloniki, have been met. The charges relate to the criminal offenses of importing into a correctional facility and possessing narcotic substances under Article 20, paragraph 1, item C of the Greek Criminal Code. Based on the international warrant issued by NCB Interpol, pursuant to the European Arrest Warrant, the extradition detention was ordered by the investigating judge on March 12, 2021. According to this decision, the detention can last until extradition, up to a maximum of 6 months, and can be extended for an additional two months thereafter. The decision on ordering extradition detention stated that it was based on Article 175, paragraph 1, item 1 of the Criminal Procedure Code and the European Convention on Extradition, due to the reasonable suspicion that the accused committed a criminal offense and there are circumstances indicating a flight risk, stemming from the fact that an international warrant has been issued against the accused, who is a citizen of the Republic of Albania with no justified interest in remaining in Montenegro. The extradition request was submitted on April 5, 2021, stating, among other things, that the person whose extradition is sought for the purpose of serving a prison sentence was convicted for introducing 0.7 grams of heroin into the General Correctional Facility in Thessaloniki, where he was an inmate. The record of the accused's hearing indicates that

a court interpreter was present during the hearing.

- The Council of Judges issued a decision on May 20, 2021, establishing that the legal prerequisites for the extradition of the citizen of the Republic of Albania have been met. The council assessed that the conditions outlined in the European Convention on Extradition and Article 11 of the Law on International Legal Assistance in Criminal Matters of Montenegro have been fulfilled. Additionally, the council considered that the criminal offense in question is also prescribed as the offense of unauthorized production, possession, and trafficking of narcotics under Article 300, paragraph 4 of the Criminal Code of Montenegro according to our legislation.
- From the analysis of the case files, it can be determined that the proceedings before the court lasted for 2 months and 8 days.
- By the decision of the Ministry of Justice, Human and Minority Rights dated July 2, 2021, the extradition was approved.
- However, on August 21, 2021, the Police Administration informed the court that the assumption of the person was not executed due to technical issues, specifically the disapproval by the airline to allow the monitored person to board the scheduled flight. As a result, the execution of extradition was postponed until a new date. On the same day, the court ordered the re-placement of the extradited person in the detention unit of the Institute for the Execution of Criminal Sanctions (UIKS), referring to Article 22 of the European Convention on Extradition and Article 25, paragraph 1 of the Law on International Legal Assistance in Criminal Matters. There is no information in the case files about the final realization of the delivery of the extradited person.
- **In case B**, initiated upon the request of the Russian Federation for the extradition of a citizen of the Russian Federation, the court, in the regular procedure, issued a decision establishing that the legal prerequisites for extradition for the purpose of conducting a criminal proceeding before the competent court of the requesting state are met. The charges are related to the criminal offense of violent sexual acts against a minor from Chapter 4, Article 132 of the Criminal Code of Russia. Based on the international warrant issued by NCB Interpol, pursuant to the arrest warrant, the extradition detention was ordered by the investigating judge on November 1, 2021, which can last for a maximum of six months and can be extended for an additional two months thereafter. The decision on ordering extradition detention stated that there are reasons under Article 175, paragraph 1, item 1 of the Criminal Procedure Code. The extradition request was submitted on November 25, 2021.
- The Council of Judges issued a decision on February 14, 2022, determining that the legal prerequisites for the extradition of the accused are met. It was noted, among other things, that the criminal offense in question is also prescribed as the offense of sexual intercourse with a child under Article 206, paragraph 1 of the Criminal Code of Montenegro. Against this decision, the defender of the accused filed an appeal, which the Court of Appeals of Montenegro rejected as unfounded. The Court of Appeals considered that the first-instance court correctly established that the legal prerequisites for the extradition of the accused were met, applying Article 11 of the Law on International Legal Assistance in Criminal Matters.
- Subsequently, by a decision dated April 29, 2022, the Council of Judges extended the

extradition detention for an additional two months for the accused, which was to last until June 30, 2022. This decision was made in response to a request from the General Prosecutor's Office of the Russian Federation, which was submitted to the court on December 13, 2021. The legal proceedings before the court effectively lasted for 3 months and 14 days, while the extradition detention lasted for a total of 8 months.

- The defense of the accused argued that the conditions for the extradition to the competent authorities of the Russian Federation were not met because the accused is ill, and it would not be humane to extradite him, considering that the conditions in Russian prisons would negatively impact his health. The defender of the accused submitted a proposal to the Higher Court in Podgorica to revoke the detention order, suggesting that the detention be replaced with one of the surveillance measures. This was based on the fact that the accused constantly resides in an apartment in B., and due to his weak health and serious heart problems, doctors recommended that he stay by the sea after the installation of a stent. The investigating judge rejected the proposal as unfounded, stating that the accused has the right to receive medical care within the Institute for Execution of Criminal Sanctions (UIKS) and in any health institution outside the UIKS. This stance was supported by the Council of Judges when deciding on the appeal filed by the defender of the accused.
- The Court of Appeals of Montenegro, as the court of second instance, handling the appeal filed by the defense against the decision establishing the fulfillment of legal prerequisites for the extradition of the accused and against the decision on the extension of extradition detention, found that the claims regarding the poor health of the accused were not substantiated by any evidence. There was no evidence in the case files that would indicate such a condition. Consequently, the appellate court agreed with the first-instance court's decision.
- The Court of Appeals also determined that issues related to the accused's health fall within the jurisdiction of the competent minister, as stipulated in Article 22, paragraph 3 of the Law on International Legal Assistance in Criminal Matters. In this regard, the court provided a clear interpretation of the court's jurisdiction in the extradition process: *"The jurisdiction of the court in the extradition process is to establish facts related to the fulfillment of conditions regarding extradition, as explicitly stipulated by the Law on International Legal Assistance in Criminal Matters and the European Convention on Extradition."* Claims about the accused's poor health were considered in the appeal process against the decision to extend extradition detention for an additional two months. The appellate court established that the mere fact that the detention was extended does not mean that the accused cannot access healthcare within the Institute for Execution of Criminal Sanctions (UIKS). In a situation where adequate healthcare cannot be provided within the UIKS, the accused has the right to seek protection in appropriate healthcare institutions through a legally prescribed procedure. Therefore, the extension of detention did not violate the accused's human rights regarding medical treatment.
- From the hearing record of the accused, it was determined that a court interpreter was present during the hearing.
- The Minister of Justice issued an extradition permit on June 16, 2022. Upon reviewing the decision, it was found that the Minister of Justice did not address the claims regarding the poor health of the accused, as required by Article 22 of the Law on International Legal Assistance in Criminal Matters, as pointed out by the court.

- **In case C**, initiated upon the request of the Russian Federation dated April 13, 2021, the court, in the regular procedure, issued a decision establishing that the legal prerequisites for the extradition of a citizen of the Russian Federation for the purpose of conducting a criminal proceeding due to the unintentional criminal offense of causing serious bodily harm endangering human life resulting in the death of the victim (the accused's father) have been met. Based on the international warrant issued by NCB Interpol, pursuant to the arrest warrant, the extradition detention was ordered by the investigating judge on April 5, 2021, which can last for a maximum of six months and can be extended for an additional two months thereafter. The decision on ordering extradition detention stated that there are reasons under Article 175, paragraph 1, item 1 of the Criminal Procedure Code. It was noted from the record of the accused's hearing that a court interpreter was present during the hearing.
- The Council of Judges, by its decision dated June 10, 2021, determined that the conditions for the extradition of the accused are met. Additionally, it was noted that the criminal offense in question corresponds to the criminal offense of causing serious bodily harm under Article 151, paragraph 3 in conjunction with paragraph 2 of the Criminal Code of Montenegro.
- On October 5, 2021, the General Prosecutor's Office of the Russian Federation, through the Ministry of Justice, Human and Minority Rights of Montenegro, submitted a request to the council for the extension of extradition detention for the accused for an additional two months. Subsequently, the council issued a decision to extend the detention for the accused, which lasted until December 5, 2021.
- The extradition proceedings took longer before the court compared to other cases because the accused submitted a request for obtaining international protection in Montenegro, in accordance with the Law on International and Temporary Protection of Foreigners. The Criminal Council extended the detention for the accused for an additional two months, with the detention set to last until February 5, 2022.
- In accordance with Article 16, paragraphs 6 and 7 of the Law on Amendments to the Law on International Legal Assistance in Criminal Matters (*which stipulates that if a person in detention has submitted a request for international protection, the detention can be extended, after the expiration of the deadlines specified in paragraphs 4 and 5 of this article, until the final decision on the request for international protection or until the execution of the extradition decision, but no longer than six months*), the court, by its decision dated February 9, 2022, revoked the detention for the accused. The court found that the accused had withdrawn the asylum application on November 20, 2021, and the competent authority of the Ministry of Interior subsequently terminated the proceedings initiated upon the accused's request, noting that no complaint had been filed against that decision with the Administrative Court. However, as the Ministry of Justice, Human and Minority Rights had not issued a decision on the extradition of the accused, the council concluded that there were no longer legitimate reasons for the continued detention of the accused, which had been ordered as a measure for the unimpeded conduct of the extradition proceedings.
- The Minister of Justice granted the extradition of the accused only on April 28, 2023. Taking this into account, it is concluded that the extradition proceedings before the court lasted about ten months, which can be considered a lengthy process compared to the other analyzed cases.

- **In case D**, the court, through an expedited procedure, issued a decision on March 2, 2022, permitting the extradition of a citizen of the Republic of Slovenia and the Republic of Kosovo, upon the request of Belgium, for the purpose of conducting a criminal proceeding related to the offenses of drug cultivation and money laundering.
- In this case, the public prosecutor and the defense counsel for the accused both stated that the conditions for extradition were met.
- The investigating judge issued a decision on extradition detention on December 30, 2021, based on the international warrant from Interpol Belgium, issued on the basis of a European Arrest Warrant, for the purpose of conducting a criminal proceeding. The detention was ordered in accordance with Article 17 of the Law on International Legal Assistance in Criminal Matters, Article 16 of the European Convention on Extradition, and Article 175, paragraph 1, item 1 of the Criminal Procedure Code.
- According to the provision of Article 29 of the Law on International Legal Assistance in Criminal Matters, when the conditions for extradition prescribed by this law are met, the person whose extradition is sought may be extradited through an expedited procedure with their consent.
- In the hearing record before the investigating judge on January 20, 2022, the accused voluntarily gave consent to be extradited to the state of Belgium through an expedited procedure. It was also noted in the hearing record that a court interpreter was present during the interrogation of the accused.
- The court proceedings lasted for 2 months and 2 days. In the justification of the decision permitting the extradition of the accused, the legally prescribed elements for assessing the fulfillment of conditions, as per Articles 11, 12, and 13 of the Law on International Legal Assistance in Criminal Matters, were included. The court also considered the fact that criminal proceedings had been initiated against the accused in Montenegro for the criminal offense of illegal border crossing and human trafficking under Article 405, paragraph 2 of the Criminal Code of Montenegro. Additionally, it was noted that the accused had been convicted to a prison sentence of 3 months through a final judgment, which she had served.
- **In case E**, the council issued a decision on December 27, 2021, rejecting the extradition request for a citizen of Montenegro and the Kingdom of Denmark, upon the request of the Kingdom of Denmark and the submission of a European Arrest Warrant, for the purpose of conducting a criminal proceeding related to an offense under the Criminal Code of the Kingdom of Denmark. The requesting state accuses the Montenegrin citizen of being in possession, during a specific period, of a sawed-off shotgun for hunting, with two sharp lead pellets, without police permission and under particularly severe circumstances, in collaboration with unidentified co-perpetrators. The accused became a citizen of Denmark in 2001, at which time he also changed his name and surname. The council of judges found that the first condition for extradition, according to Article 11 of the Law on International Legal Assistance in Criminal Matters, was not met, namely that the person whose extradition is sought is not a citizen of Montenegro. Considering that Montenegro does not have a bilateral extradition agreement with the Kingdom of Denmark regarding its own citizens, the extradition request was rejected as unfounded.
- The investigating judge, in their statement, recommended to the judicial council to issue a decision rejecting the extradition request for the citizen of Montenegro and the Kingdom

of Denmark. This recommendation took into account that Montenegro does not have a concluded bilateral extradition agreement with the Kingdom of Denmark for its own citizens. Therefore, the conditions specified in Article 11 of the Law on International Legal Assistance in Criminal Matters are not met to comply with the extradition request.

- The accused person, who was interrogated before the investigating judge on October 25, 2021, was not subjected to extradition detention as the conditions for the extradition of the accused were not met, given that the person is a citizen of Montenegro.
- According to the information from the State Prosecutor's Office, it was determined that a case had been formed against this accused person for the criminal offense of unauthorized possession of weapons and explosive materials under Article 403, paragraph 2, of the Criminal Code of Montenegro. The Basic Court in Kotor rendered a verdict finding the accused guilty and sentenced him to 8 (eight) months of imprisonment.
- Additionally, the state prosecutor expressed the opinion that the conditions for the extradition of the citizen of Montenegro and the Kingdom of Denmark are not fulfilled.
- The decision of the Higher Court Council in Podgorica, officially delivered directly to the higher court, was confirmed by the decision of the Court of Appeals of Montenegro on December 31, 2021. The legal proceedings before the courts lasted for 2 months and 6 days.

THE PROCEDURE FOR INTERNATIONAL PROTECTION OF FOREIGNERS

Article 48 of the Law on International and Temporary Protection of Foreigners stipulates that requests for international protection, for which a decision granting international protection can be made based on available evidence, should be processed with priority. A lawsuit against the decision rejecting the request for international protection can be filed with the Administrative Court within 15 days from the date of the decision. Although the law does not explicitly stipulate this, the nature of the matter suggests that the Administrative Court should handle cases involving such lawsuits on an expedited basis.

Article 50 of the same law provides that the Ministry shall make a decision on the request for international protection within six months from the date of submitting the request, or from the date of the decision on the admissibility of a subsequent request for international protection. However, the same provision also allows for the extension of this period (for an additional 9 months, or 3 months after the expiration of that period) under certain conditions. Considering the norms of the law, it is clear that this administrative procedure directly affects the process of providing international legal assistance, and in the case of a positive outcome for the asylum application, it will pose an absolute obstacle to extradition. Namely, in cases where the Ministry of Interior approves international protection and asylum in Montenegro for a person whose extradition is sought, the reasons for further extradition proceedings cease immediately, and the individual must be released.

It is necessary to point out that in such a legal matter, in addition to the obvious need for greater expeditiousness in light of the fact that criminal proceedings are running concurrently, the administrative procedure for approving asylum must still have a certain (limited) level of transparency, even though the law stipulates that the public is excluded from the process of granting international protection.

In the European Commission's report on Montenegro (2022), it is noted that the duration of the asylum application decision-making process, which had previously often exceeded 6 months and sometimes even an exceptional limit of 21 months, has been reduced, thus complying with recommendations from the 2021 report. Additionally, the Administrative Court received 25 lawsuits against decisions of the defendant authority – the Asylum Directorate, and in 4 cases, it annulled the defendant's decision. In 2021, 272 individuals submitted asylum applications, a 50% decrease compared to 2020. However, the structure of applicants does not specify the number of individuals sought for extradition, and decisions on these requests are unknown. The public is mostly informed through the media about decisions on asylum applications submitted by individuals subject to extradition, considering the public interest in these cases.

OBSERVATIONS BASED ON THE ANALYZED CASE LAW

In the analyzed four cases, investigating judges believed that conditions were met to issue decisions stating that extradition requirements were fulfilled, providing appropriate explanations in the documents sent to the judicial councils. The councils made decisions that were in line with the opinions of the investigating judges, and there were no deviations regarding crucial facts about meeting the requirements. The same situation occurred when a request for the extradition of an individual was denied.

From the case files, it cannot be determined that there were communication deficiencies between the competent authorities of Montenegro and the competent authorities of the requesting states.

In the analyzed case files, there were no observed conflicting opinions between the public prosecutors and the court regarding the fulfillment of conditions for extradition.

In regular proceedings, the duration of the process ranged from two to ten months. Extradition detentions were within the legally prescribed time frames.

Upon reviewing one decision, it was found that the Minister of Justice did not respond to the allegations regarding the poor health of the accused, as stipulated in Article 22 of the Law on International Legal Assistance in Criminal Matters, as pointed out by the court. Additionally, in one case, the Minister of Justice did not make a decision on granting extradition, leading the court to lift the extradition detention for the accused individual.

Generally speaking, it can be concluded that the court decisions are adequately reasoned. In the analyzed court decisions, there is no indication that judges applied the practice of the European Court of Human Rights or standards from the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. On the other hand, there is no evidence that the defense of the individual whose extradition is sought argued that the accused had been subjected to torture in the requesting state, which would necessitate an appropriate response from the court.

Evidence obtained through international legal assistance and its assessment in light of the issue of protected communications

In the fight against organized criminal groups by national authorities in Montenegro, Serbia, Bosnia and Herzegovina, Albania, and Slovenia, hundreds of individuals have been detained as a result of evidence obtained through Sky ECC communications, collected by France

and the Netherlands, for various criminal offenses, including drug trafficking, murders, and kidnappings.

At the current moment, there is a debate regarding the admissibility of evidence that Montenegro has received through international police and judicial cooperation. Considering the significance of the raised question, the authors find it justified to provide a preliminary overview of the developments, without delving into the merits. It should be emphasized at the outset that proceedings are ongoing before the competent court, and in a certain number of cases, the main trial is pending since several indictments have passed the initial test before the court, having been confirmed for criminal offenses related to organized crime.

According to the principles in law, particularly in the fight against all forms of crime, especially organized crime, there is an urgent need for effective cooperation between law enforcement and judicial authorities, provided that the common goal is to ensure that investigations and legal proceedings are conducted properly. However, to truly achieve this goal, it is essential to ensure the legal validity of all evidence obtained through mutual cooperation. The existence of international bodies facilitating communication through contact points represents a positive trend that will continue to evolve in the future. The Montenegrin judicial system, through the relevant directorate in the Ministry of Justice, must closely monitor the processes of cooperation through international bodies and participate in a timely manner, while designated contact persons must possess a perfect understanding of the field of international legal assistance in criminal matters and appropriate communication skills, including proficiency in foreign languages. The Montenegrin legal framework provides an adequate basis for taking such steps, and the fact that Montenegro aspires to become the next member of the European Union further obliges it to be proactive.

When the French Gendarmerie, Dutch police, and the British National Crime Agency (NCA) infiltrated the EncroChat encrypted phone network in the summer of 2020, organized crime groups worldwide decided to switch to a new provider. That provider was Sky ECC, now the largest supplier of crypto communications worldwide, with 70,000 customers. However, in a reenactment of last year's French and Dutch operation against the encrypted phone network EncroChat, Belgian and Dutch police managed to infiltrate the platform and collect hundreds of thousands of allegedly unbreakable messages.

The material they intercepted was shared with a "large number" of foreign intelligence agencies after reading the encrypted traffic "live." Sky ECC referred to itself as the "safest messaging platform you can buy" and was so confident in the invincibility of its systems that it offered a tempting reward for anyone who could break the encryption of one of its phones. News of the attack emerged on March 9, 2021, causing panic among users of encrypted phones worldwide, as the Dutch police took down and seized the Sky ECC server. More than 1,600 Belgian police officers, in some cases accompanied by Belgian special forces, participated in simultaneous raids at 200 homes, detaining 48 suspects. Approximately 1.2 million euros, diamonds, valuable jewelry, eight luxury cars, 14 firearms, three cash payout machines, and police uniforms were seized. The Belgian federal prosecutor's office described the operation, overseen by an investigative judge in the city of Mechelen, as the largest police investigation ever undertaken in the country. The Belgian police announced that they took action after criminal groups increasingly used crypto phones. Last year, Belgian prosecutors approved the operation against Sky ECC after two and a half years of planning. The attack mirrored the French and Dutch infiltration of EncroChat last year, conducting a two-step attack on the network. In the first phase, the police intercepted and stored encrypted communications from the Sky ECC network while experts worked to decrypt them. In the second phase, which

lasted three weeks, the police were able to read data “live” sent over the Sky ECC network.⁶

Courts in several countries have made decision on the admissibility of these pieces of evidence at various stages of criminal proceedings. The Regional Court in Berlin, which had earlier declared EncroChat evidence inadmissible, recently sought a preliminary ruling from the Court of Justice of the European Union (CJEU) on 14 critical questions related to another EncroChat case. In addition, two British detainees have lodged petitions with the European Court of Human Rights (ECHR)⁷.

Currently, the only cases related to encrypted applications are those against Turkey, specifically concerning the detention of individuals for using the ByLock application. In the case of *Üçdağ v. Turkey*, the European Court of Human Rights ruled that the mere existence of the installed ByLock application is not sufficient for reasonable suspicion to justify detention. There must be additional specific evidence to establish a valid basis for suspicion⁸.

Today, it is unknown whether Montenegrin courts will accept evidence obtained through protected communications, which Montenegro has received from partner states through international legal assistance. According to the assessment of the council of judges of the Higher Court in Podgorica, expressed in multiple decisions in the proceedings for the indictment control by the Special State Prosecutor’s Office, this evidence will be evaluated at the main trial by a three-member council. It is important to note that the mentioned position is not unusual from a case law perspective, considering that the council at the main trial, in previous practice, has excluded certain pieces of evidence upon the defense’s objection, while the pre-trial council has allowed the admissibility of indictments to facilitate the consideration of specific evidence in an adversarial procedure. Another reason for such a court decision may be the fact that the investigation timelines are too short to thoroughly evaluate the legality of evidence (provided information), which includes data from protected communications and is, in fact, crucial evidence in most initiated proceedings.

On the other hand, it is known that defense attorneys in these cases have raised several substantive objections that national courts cannot ignore. They must provide reasoned responses (*ECHR, Stojković v. Belgium and France: there is an obligation to consider and respond to defense objections in the context of Article 6*), primarily related to the manner of obtaining communications, their authenticity (whether compromised), nature, and the legality of obtained evidence through international legal assistance.

The court may also face the necessity of direct or indirect international legal assistance in these criminal matters, implying a longer duration of the proceedings before the court.

Regarding the international nature of obtaining evidence, Krešimir Kamber, Jurisconsult at the Registry of the European Court of Human Rights, stated the following in the legal journal “Legal Chronicle”: “When it comes to obtaining evidence abroad, in my opinion, it is necessary to consider the legality of their acquisition in the national system. So, there should be appropriate unified rules. When I say ‘legality,’ I mean not only the existence of a legal

⁶ “The police have dismantled the world’s largest crypto-phone network while criminals are switching from EncroChat to Sky ECC”; Source: <https://www.computerweekly.com/news/252497565/Police-crack-worlds-largest-cryptophone-network-as-criminals-swap-EncroChat-for-Sky-NCC>

⁷ More detailed assessments of the courts in France, Germany, the UK, and Italy can be found in the report available at the following link: [https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/739268/EPRS_ATA\(2022\)739268_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/739268/EPRS_ATA(2022)739268_EN.pdf)

⁸ Legal chronicle, The Aire Centre London, December 2022

norm but also the quality of the legal norm, which must be predictable, clear, and accessible. Therefore, there must be legality in collecting that evidence in the national system, and once it is established in the national system, we come to the problem regarding the principle of *locus regit actum* or *forum regit actum*. Will the national system take the position that legality should be directed towards the laws of the state where the action was taken – which would be the principle of *locus regit actum* – and in that case, in the national system where the procedure is conducted, only a general legality check would be carried out, more in terms of public order. For example, in the case of the public order in Bosnia and Herzegovina, basic values of the public order of Bosnia and Herzegovina, such as protection, individual rights, rule of law, etc., would be considered. Therefore, finer details, such as whether the order lasted three or five days, or whether it should have been issued by one or another body, whether it should have been well-justified, etc., would not be examined by the national court conducting the procedure, under the *locus regit actum* principle."

"The European Convention of the Council of Europe on Mutual Legal Assistance proclaims *locus regit actum*. Whether it is outdated or not, we can leave that aside for now. What is interesting is that this Convention anticipates *locus regit actum*, meaning that it is assessed based on the legality of the state in which the action was taken. It even takes precedence over bilateral agreements that states may have. This means that international cooperation is conducted based on this Convention, through which evidence is obtained. It is interesting to note that even those who, in theory, strongly support *forum regit actum* say that in a situation where a state spontaneously receives information from another state, as is the case here, and the matter is already concluded, it cannot retroactively demand that evidence be obtained according to the rules of the state where the proceedings are conducted (*forum regit actum*). Essentially, it must be accepted that the information is now available, and the best must be extracted from it as much as possible. In such situations, national courts should consider legality at a general level, in the sense that this evidence was not genuinely obtained in a way that undermines the public order of the state in which the proceedings are taking place."⁹

According to the provision of Article 45 of the Law on International Legal Assistance in Criminal Matters, it is stipulated that a procedural action taken by a foreign judicial authority in accordance with its law shall be deemed equivalent to the corresponding procedural action taken by a domestic judicial authority in criminal proceedings, unless it is contrary to the principles of the domestic legal system and generally accepted rules of international law.

Article 11 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001), which regulates direct information, provides that the competent authorities of one contracting party may, without prejudicing their own investigations or proceedings and without a prior request, provide the competent authorities of another contracting party with information obtained in the course of their own investigations if they believe that such information would assist the recipient in initiating or conducting an investigation or proceedings, or could lead to a request by that state, in accordance with the provisions of this convention or its additional protocols. Additionally, the contracting party providing the information may, in accordance with its legislation, specify the conditions under which the recipient may use the provided information, while the contracting party receiving the information undertakes to respect the set conditions.

Therefore, analyzing the preliminary opinions expressed in the professional community and the provisions of national laws and international treaties, and considering the fact that it

⁹ Legal chronicle, The Aire Centre London, December 2022: Interview with Krešimir Kamber.

is still unknown whether law enforcement agencies have derived substantial benefits from accessing materials obtained through protected communications, it is expected that national judicial authorities will follow the views expressed in decisions of the European Court of Human Rights and the Court of Justice of the European Union, which hold authority in the Montenegrin legal system. In the meantime, it is anticipated that the courts will consult the practices of courts in the region regarding the admissibility of evidence.

CONCLUSIONS

We can conclude, with satisfaction, that in the reports of the European Commission, international judicial cooperation in criminal matters is not generally presented as a problematic issue. On the contrary, after establishing cooperation between Montenegro and Eurojust, assessments have been further improved.

Montenegro faces the task of fulfilling several obligations in the area of amending national legislation and acceding to the ratification of international instruments, concerning the entire system of international legal assistance in both civil and criminal matters. Two Hague Conventions are of particular significance in this context.

The Ministry of Justice faces limited capacity in terms of case management, available information with integrity, and the analysis of international legal assistance cases, including the supporting information system. Overall, the establishment of an information system in the judiciary, including the Ministry responsible for judicial affairs, will contribute to the transparency, accountability, and efficiency of the judicial system.

Over the past eight years, this information system has not undergone significant technical changes that would result in better management of international legal assistance cases and analytics of the Ministry of Justice and relevant judicial authorities.

The already apparent need for frequent international judicial cooperation necessitates a priority shift away from the concept of traditional (basic) data collection towards a reliable electronic system that will store data in a qualitative and quantitative sense.

The authors have analyzed five cases, accompanied by extensive documentation, which the Higher Court in Podgorica made available for inspection of CEMI observers. Court records were examined to gain a closer insight into the court's handling within the jurisdiction prescribed by the Law on International Legal Assistance in Criminal Matters when deciding on requests from requesting states for the extradition of accused or convicted individuals.

In the analyzed four cases, the investigating judges considered that the conditions for issuing decisions on the fulfillment of extradition requirements had been met, and they provided appropriate reasoning in the acts submitted to the judicial councils in this regard. The councils made decisions that were in line with the opinion of the investigating judges, and there were no deviations regarding the decisive facts about the fulfillment of conditions. The same situation occurred when a request for extradition of an individual was denied.

From the case files, it cannot be determined that there were shortcomings in communication between the competent authorities of Montenegro and the competent authorities of the requesting states.

Generally speaking, it can be concluded that the court decisions are sufficiently justified. In the analyzed court decisions, there were no indications that judges applied the practice of the European Court of Human Rights or the standards from the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. On the other hand, it was not observed that the defense of the individual whose extradition was sought claimed that the accused person had been subjected to torture in the requesting state, which would

require an appropriate response from the court.

After considering the preliminary opinions expressed in the professional community and analyzing the provisions of national laws and international treaties, and considering the fact that it is still unknown whether law enforcement authorities have derived substantial benefits from accessing materials obtained through protected communications, it is expected that national judicial authorities will follow the views expressed in decisions of the European Court of Human Rights and the Court of Justice of the European Union, which hold authority in the Montenegrin legal system. In the meantime, it is anticipated that the courts will consult the practices of courts in the region regarding the admissibility of evidence.

RECOMMENDATIONS

Considering that the alignment of the Law on Judicial Cooperation in Criminal Matters is planned from the day of Montenegro's accession to the European Union, as outlined in the Accession Program for the period 2022-2023, for the third quarter of 2022, it is necessary to expedite the alignment of this law with EU directives. This should be done as soon as possible, regardless of the fact that the law's application will commence after Montenegro's accession to the European Union.

Furthermore, it is recommended to accelerate activities to fulfill the remaining obligations in amending the Law on International Legal Assistance in Criminal Matters and proceed with the ratification of two Hague Conventions (Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters and on International Protection of Adults). Additionally, consider the ratification of the 3rd and 4th Additional Protocols to the European Convention on Extradition. It is also necessary to ratify the 2nd Additional Protocol to the Convention on Cybercrime.

The need for frequent international judicial cooperation requires a prioritized shift away from the concept of traditional (basic) data collection towards a reliable electronic system that stores data in both qualitative and quantitative terms. Therefore, it is strongly recommended to prioritize the enhancement of the Ministry of Justice's application system for case records related to international legal assistance (Luris). This enhancement should focus on qualitative improvement of data. In the next phase, there should be an integration of Luris with the new information system of the judiciary.

Continuing with the implementation of programs in the field of judicial cooperation is necessary. These programs are expected to improve the knowledge, effective application of international instruments, and the skills of judges and public prosecutors in implementing all forms of mutual legal assistance, especially in cases involving extradition requests. In this regard, it is recommended to continue thematic training and emphasize practical work, including the drafting of requests for international legal assistance, and recognize both informal and formal communication channels.

It is necessary to emphasize that in procedures for the international protection of foreigners, alongside the obvious need for greater expeditiousness given the parallel criminal court proceedings, the administrative procedure for granting asylum must still maintain a certain (limited) level of transparency. This is despite the legal provision that excludes the public from the international protection approval process.

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Legal Chronicle, The Aire Centre London, December 2022

ISBN 978-9911-556-06-6



9 789911 556066 >

CIP - Каталогизација у публикацији
Национална библиотека Црне Горе, Цетиње

ISBN 978-9911-556-06-6
COBISS.CG-ID 27920644

