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"Small" International Criminal Legal Assistance

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Abstract: This paper will study how small international legal assistance is given. Therefore "small" international criminal legal assistance is given according to the legislation of each state that is required for this assistance between the forms of mutual cooperation between states in the fight against criminality. Regarding the prior work, it should be noted that there is little theoretical evidence related to this problem. Despite this, a lot of efforts have been made to provide sufficient theoretical data for this matter. Results show that this assistance is regulated by international conventions and by the internal laws of the states. Implications of the study are for following groups such as academics, legal officials, researchers, ect. The value of this paper lies in the fact that it is one of the few aspects that has touched such an important issue in the field of criminal law.

Keywords: Criminal; Small; Legal; Assistance

1. Introduction

This paper will elaborate on the topic of "minor" international criminal legal assistance and will especially focus on the special forms of providing "minor" international criminal legal assistance. Since the special form of "small" international criminal legal assistance alone would not have given us sufficient knowledge on the basis of this institution of international criminal law, it will first elaborate the notion, division, principles and obstacles of assistance of "small"

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international law and then will focus only on the special form that is also the subject of this paper.

In addition to the principles that exist for providing this assistance, which are the principle of reciprocity and the principle of identity of norms, there are also obstacles that are directly related to the perpetrator of the criminal offense, the type of criminal offense, the protection of state interests and procedural obstacles. In the framework of the "small" legal aid through which the development of the criminal procedure in the other country is helped, three main forms of it were included:

- Traditional form;
- Modern form;
- Special forms.

As a traditional form of "minor" international criminal legal assistance, the following are considered: witness interrogation, expert interrogation, submission of documents, taking of evidence, taking of the defendant's statement, temporary surrender of the person deprived of liberty, submission of data from the evidence of the convicted, etc. As a modern form of "small" criminal legal assistance, the following are considered: interrogation in the form of tele-video of the person found in the other country, formation of joint interstate groups for the purpose of conducting investigations, etc. As a special form of "small" criminal legal assistance, the following are considered: telephone and internet interception, secret recording, control of shipments, etc..

2. Special Actions of "Minor" International Criminal Legal Assistance

Historically states have had rules for small legal assistance, and it has started not only bilaterally between states but also mutually through International Conventions, such as the European Convention on Mutual Assistance in Criminal Matters, which Convention was firstly signed by Italy in 1961 (Mueller, 1962, p. 193). In this context, in all states, almost without distinction, "minor" international criminal legal assistance is granted according to the law of the state from which this assistance is requested (Hajdari, 2014, p. 145). Also, the national law of the states foresees such rules, therefore most of the legal systems, through their internal bodies, exercise this type of assistance according to their rights.

Such solutions are foreseen not only in domestic law, but this solution is also foreseen based on international law, through international agreements, which of course are not bringing a uniformity in these procedures (Sluiter et. al, 2013, p. 7). And rightly so, the expectations would be absurd if it were thought, and even required by a state, to apply foreign law in the case of granting this assistance (Kaprac, 1995, p. 74) and not national law.

Despite the fact that in contemporary national rights, the rule that "small" international criminal legal assistance is given according to domestic rights has been adopted, the necessity of more investment and efficient cooperation has made the negative consequences of this rule to be mitigated, respectively, now in internal rights, the possibility is foreseen that due to the efficiency of rationality, some procedural actions of "small" assistance are undertaken according to the law of the foreign state.

This possibility is foreseen not only in some legislations, but also with new international agreements, but it is not expected to be created an identical criminal procedure for all states, as that it is not possible to be realized (Radzinowicz, 1941, p. 307). This innovation of applying foreign law in this segment of interstate aid is also being supported by the sciences of criminal law. Minor legal-penal assistance is considered the undertaking of some actions by a state, to help the other state for the development of the criminal procedure against the perpetrator of the criminal offense. And there are several forms of minor assistance: questioning of the witness, delivery of documents, collection of evidence, temporary surrender of the person deprived of liberty, surrender of data from the evidence of the convicted, etc..

While contemporary forms of international legal-criminal assistance in the broadest sense are considered:

- Extradition;
- Small legal-criminal assistance;
- Transfer of criminal prosecution to another state and;
- Execution of foreign criminal judgment.

With the notion of "small" legal-penal international assistance, we understand all those forms of mutual cooperation between states in the fight against criminality. The granting of small assistance is a "***sui generis***" procedure which is regulated by international conventions and by the internal laws of the states. The main purpose

of minor assistance is to prevent the perpetrators of criminal offenses from evading from justice.

The number and types of "small" international criminal legal assistance are many and of different natures. The performance of such actions is addressed through submissions. This paper will elaborate on the submissions and forms of realization of this aid.

3. Understanding of Letter Orders (submissions) and Their Delivery

First, we will explain what the letter is and how it is addressed. A letter of request is a request which is drawn up by the judicial authority of the requesting state. That request is addressed to the other state and through the letter is requested to perform on its behalf, whether for an investigation, examination, hearing of a person or sequestration of an item. So, the writer has the judicial mandate, whose existence is necessary since, according to the principle of sovereignty, the requesting judicial authority cannot extend its activity outside its borders and cannot perform actions in another state without its authorization (Hajdari, 2014, p. 146).

The issue of letter orders is regulated by the European Convention on Legal Assistance in Criminal Matters, specifically in Article 3 of this Convention it is about the performance of investigative acts and the exchange of evidence, files and documents[1]. According to the report of this convention, investigative matters mean the hearing of witnesses, experts and defendants, the examination at the scene of the incident, as well as the implementation of controls and the seizure of items.

Letters also have an important role in the field of justice, especially in its administration, although in most cases they are not functional, the reason for this is because they are sent very slowly and the response to the sender is delayed as they take time and a modernization of this instrument is needed. For this method to work more easily, the European Judicial Network was created (1998). Each letter is sent by a judicial authority (courts, prosecutors' offices, judicial police and the Ministry of Justice).

However, according to the European Convention on Legal Assistance in Criminal Matters, there is no need to fulfill any conditions. This is due to the fact that "small" legal assistance manifests much less effects than extradition. An exception

[1] European Convention on Legal Assistance in Criminal Matters, Strasbourg, 20.04.1959, https://rm.coe.int/16800656ce, seen last time: 20/08/2022.

to this in Article 5 paragraph 1 of this Convention is only for letters of inquiry related to control and seizure. Recently, in order to complete this paragraph in order to control and seize items, states may, at their discretion, require one of the following conditions to be met[1]:

1. The offense that is the subject of the letter must be punishable under the law of the requesting state and the requested state.
2. The offense must be such as to justify extradition to the requested country.
3. The letter sent must reflect compliance with the legislation of the requested state.

As it turns out, these conditions have been softened by the Convention on the Implementation of the Schengen Agreement (1990). Article 51 of this convention for authorization of a search and seizure does not require that the offense justify extradition. Now, for this authorization it is necessary to fulfill two conditions.[2]

1. The offense must be punishable by imprisonment of at least 6 months under the legislation of both states or under the law of one of them and
2. That the execution of the authorized action is in accordance with the legislation of the requested state.

Regarding the execution of letter orders, there are three operative rules:

1. According to the first rule, the execution of orders is mandatory for the requested state (Article 3, paragraph 1 of the Convention on Legal Assistance in Criminal Matters). However, the only means of pressure, in cases where the requested state does not implement the orders, is diplomatic pressure . Regardless of this, in accordance with Article 5 of this convention, the requested state can refuse the execution of letters of intent that have the object of control if the matter is, for example, of minor importance, if it is of a fiscal or political nature and if it thinks that the

[1] European Convention on Legal Assistance in Criminal Matters, Strasbourg, 20.04.1959, https://rm.coe.int/16800656ce, seen last time: 20/08/2022.
[2] Convention on the Implementation of the Schengen Agreement (1985), Article 51, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42000A0922(02)&from=EN, seen last time: 20/08/2022.

exercise of this action may to violate sovereignty, security, public order or for other fundamental interests, such as economic ones.[1]

In parallel with the obligation to execute the request on the requested state, there are also 2 other obligations:

2. On the one hand, he must execute the request within a reasonable time frame (as quickly as possible). For this sheet, the European Convention on Human Rights is inspired by the principles of the European Convention on Legal Assistance in Criminal Matters.
3. On the other hand, the requested state is obliged to act without compensation in accordance with the very idea of international cooperation. However, the expenses for expertise incurred in the requested state shall be borne by the requesting state.
4. According to the second rule, the execution is done in the form provided by the legislation of the requested state. This rule is easy to understand because the requested state finds it easier to apply its own law than those of the other state. However, this principle is not absolute.

Thus, according to Article 3 (paragraph 2) of the European Convention on Legal Assistance in Criminal Matters, when the requesting party wants the witnesses to testify, or give their statement under oath, it has the right to request such a thing, while the requesting state will approve such a request if it does not conflict with its legislation.[2] In addition, if the requesting state requires the implementation of a mandatory formality under its law that is not recognized in the requested state, this contravenes the fundamental principles of its law.

According to rule 3, after the execution of the order, the records kept and the seized items are handed over to the requesting party. However, several questions arise in relation to this issue:

4.1. First, what exactly is sent to the requesting state? In principle, only copies are sent, while original documents are sent if the other party requests them and if the requested state accepts to send them (Article 3, paragraph 3). These documents and items are sent to the requesting state as soon as possible, unless the latter waives the undertaking of

[1] European Convention on Legal Assistance in Criminal Matters, Strasbourg, 20.04.1959, https://rm.coe.int/16800656ce, seen last time: 20/08/2022.
[2] European Convention on Legal Assistance in Criminal Matters, Strasbourg, 20.04.1959, https://rm.coe.int/16800656ce, seen last time: 20/08/2022.

such actions (Article 6 paragraph 2). On the other hand, the requested state can postpone the delivery of items and documents if they are needed for a criminal procedure that is in progress in that state (Article 6 paragraph 1).

4.2. Second, the problem of returning items and documents may arise. The legislation of the European Union provides that the requested party, at the request of the other party and without infringing the rights of third parties in good faith, may place at the disposal of the requesting party the illegally obtained items in order to return them to the owner. their legal

The question is often asked whether the requesting state can use the items and documents only for the criminal case that is the subject of the trial or for other cases as well? In principle, the answer to this question should be negative, since these items and objects cannot be used for other matters if we do not have a consent from the requested party.

The second question that can be asked, which is still more delicate, is the one related to the taking of evidence in an irregular manner. In relation to this issue, 3 situations can be presented:

1. The first rule situation exists in both legislations and it has been violated by the requested state. In these cases, the court of the requesting state will annul such action if the legislation of that state provides rules for annulment. Otherwise, it will cancel the action.
2. Second situation, the rule exists only in the legislation of the requested state. The requesting state punishes a person on the basis of electronic interceptions carried out in accordance with the law of the requested state. In this case, evidence obtained in a regular manner in the requested state can be used by the requesting state.
3. Third situation, the rule exists only in the legislation of the requesting state, ex. a Dutch judge sends a French colleague a letter asking him to interrogate a suspect. The Dutch legislation, unlike the French one, provides for the notification of the right to remain silent. This announcement is not made by the French authorities. But the Dutch judge will not annul the evidence based on the fact that the action was taken in accordance with the law of the French state.

The third question that can be asked is the one related to the ownership of the execution documents. These documents belong to the requesting state. The requested state cannot use them as it wishes. The only thing that this state can do is to return and request that the requesting state direct a request regarding the events that occurred in its territory.

The Law on International Legal Cooperation in Criminal Matters in Article 91 specifies that any assets as well as original documents submitted in the execution of the writer shall be returned to Kosovo by the requesting state as soon as possible unless the Ministry of Justice waives their return. Delivery of property, court materials or requested documents may be delayed if such materials are needed in the Republic of Kosovo in connection with pending criminal proceedings. As can be seen, this law clearly defines that ownership of items belongs to Kosovo.[1]

4. Submission of Documents and Court Decisions

Undoubtedly, the submission of documents and court decisions is one of the most frequent forms of "small" international criminal legal assistance (Hajdari, 2014, p. 151). According to Salihu this form of assistance on the continent of Europe has been practiced since the middle of the 19th century through the submission of documents as a faster and more economical form (Salihu, 2011, p. 229), which greatly helps the administration of evidence and in general the development of criminal proceedings in the other country.

This form of "minor" criminal legal assistance helps in the delivery of all official documents and court decisions that have been taken from a criminal procedure developed such as: minutes, detention decision, verdict, etc., that are related to the person which is located in the state where this assistance is requested. In these cases, the court from which assistance was requested from the other state must provide the documents according to official duty and deliver them to the other state.

Today, according to some internal rules and international agreements, the state can hand over all types of documents of that procedure to the requesting state for a more efficient development of the criminal case, which issue the EU has been tackling more than a decade through the Directive for the European Investigative

[1] Law no. 04/L-213 on International Legal Cooperation in Criminal Matters (G.Z. no. 33, dated 02.09.2013), https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=8871, last seen on: 20/08/2022.

Order (Zimmerman, 2011, p. 56). However, in some countries, the delivery of the criminal verdict is prohibited, so according to domestic laws and international agreements, those decisions ordering the convicted person to start serving the sentence are not delivered. Regarding the submission of documents, in accordance with the European Convention on Legal Aid in the Criminal Field, it is required to respect these rules.[1]

1. First, the requested state has the obligation to deliver to the interested persons the documents that were submitted by the other state.

2. Second, if the requesting State makes no record, service may be effected by simple delivery. If the requesting state expressly requests, the requested state must send the documents in a form provided for in its legislation, or in a special form that suits this legislation.

3. Thirdly, in the context of the submission of acts, two possibilities are foreseen:

3.1. The first is the case when the delivery has been made and the proof of this is either the receipt with the date of receipt and signed by the recipient or a state declaration confirming the delivery and the date of delivery.

3.2. The second is the case when delivery could not be carried out either due to negligence or because the interested person could not be found. The requested State must immediately notify the requesting State of the reason for non-delivery of the summons.

4. Fourthly, the document must be submitted within the set deadline, which cannot be longer than 50 days (Article 7 paragraph 3).

5. Interrogation of the Witness, the Defendant and the Expert

Hajdari emphasize that for the provision of "minor" criminal legal assistance, the questioning of the witness, the defendant and the expert constitutes the typical and relatively frequent forms of providing international "minor" criminal legal assistance (Hajdari, 2014, p. 153).

[1] European Convention on Legal Assistance in Criminal Matters, Strasbourg, 20.04.1959, https://rm.coe.int/16800656ce, seen last time: 20/08/2022.

5.1 Interrogation of the Witness

The questioning of the witness represents an important role in the framework of "small" international criminal legal assistance. There are some older forms of this assistance, but this type of assistance must be practiced according to the legislation of the state where the witness is located.

In some countries, it is being practiced that the taking of the testimony of the witness is done according to the legislation of the state that requires this international criminal legal assistance. In international agreements as well as in some domestic laws, it is foreseen that the requests of the foreign state regarding the special form of questioning the witness will be taken into account and to the greatest extent possible (Cryer et. Al., 2010, p. 163), except in cases where the form of requested is in direct conflict with the legislation of the state from which this assistance was requested (Krapac, 2006, p. 75).

5.2 Interrogation of the Expert

The questioning of the expert is a type of international criminal legal aid and is exercised according to the legislation of the country where the expert is located, but the questioning of the expert can also be done according to the legislation of the country that requests the help (Dormann et. Al., 2005, p. 495-568).

5.3 Interrogation of the Defendant

The European Convention on legal assistance in the criminal field, in Article 13 paragraph 1, expressly states that the state may ask another state regarding a criminal case to receive the defendant's statement and any other data related to the defendant. However, these data should not be confused with these documents:[1]

1. Providing the defendant's statement with the notices on the convictions of a person, which are sent to the ordering state as soon as he is convicted, in order to create the criminal court file of that person;

2. The giving of the defendant's statement with the exchange of notices on the certain punishments. This is because the defendant's statement is made in relation to a certain issue, while the exchange of information is done automatically at least once a year.

[1] European Convention on Legal Assistance in Criminal Matters, Article 13 paragraph 1, Strasbourg, 20.04.1959, https://rm.coe.int/16800656ce, seen last time: 20/08/2022.

6. Rules for Questioning Witnesses and Experts

In principle, the person who is summoned as a witness or expert by the requesting state is not obliged to accept the summons and for this he cannot be subjected to any punishment or coercive measures (Hajdari, 2014, p. 154). This rule of principle brings limitation but also expansion of freedom:

The limitation appears when the witness or expert goes to the requesting state later of his own free will or when his arrival is forced by violence for which he can be punished if he does not agree to give his testimony. If we are dealing with expansion then when his appearance is particularly necessary and the requesting state notes this in the summons, however, the witness and the expert are free to appear before the requested party.

The Interested Party has only two obligations:

1.1 It invites the interested person to appear and

2.2. Notifies the requesting state of the response provided by it.

This is based on the fact that according to the general opinion the invitation made by the requested state is nothing more than a simple recommendation.

According to (Article 9) The compensations that will be paid, in addition to travel and accommodation expenses that the requesting party must reimburse in favor of the witness or expert, must be calculated from their place of residence and will be liquidated in the same amount that is provided by the tariffs and regulations in force in the country where they are requested.

7. The Rules of Interrogation of the Accused Person

There are several international rules of interrogation of the accused person. Which provide for the possibility of transferring detainees from the requested state to one of the prisons of the requesting state (Hajdari, 2014, p. 155/56). But this principle is not absolute. According to Article 11 (paragraph 1), four exceptions to this principle are foreseen:

1. When the defendant does not accept;

2. When his presence is necessary in connection with the criminal procedure that is underway in the territory of the requested state;

3. When the transfer may result in the extension of its prohibition period and,

4. When other circumstances that are considered urgent conflict with his transfer to the requesting country.

The transfer can be rejected by the defendant as well as the witness and the expert, but in relation to the defendant the difference has to do with the fact that the requested state can oppose the transfer using as an argument other undefined circumstances.

The request for transfer is made between the Ministries of Justice and if the defendant has to move between a transit country, then the Ministry of Justice must submit a request attaching all accompanying documents to the Ministry of Justice of that country and anyway it is in the jurisdiction of the transit country to accept or reject the request for transit (Krapac, 2006, p. 148).

8. Common Rules for Witnesses, Experts and Defendants - Criminal Immunity

There are some common rules for witnesses, experts and defendants. All persons called as witnesses, experts or defendants, regardless of their nationality, enjoy criminal immunity (Fyfe & Sheptycki, 2006, 319-355). According to the European Convention on legal assistance in the criminal field in article 12 paragraph 1 provides that any witness, expert or defendant may not be imprisoned or restricted in any way in the territory of the requesting state for criminal offenses committed before leaving the territory of to the requested state, so the call for transfer is made only for issues for which assistance has been requested.[1]

According to the recommendations of the Committee of Ministers of the Council of Europe on the procedural immunity of witnesses, governments are recommended to act in such a way that the validity of the permit provided for in Article 12 (paragraph 1) is clearly written in the subpoena that is delivered to the witness abroad and to be repeated at the moment when the witness is informed by the requesting state about his rights and obligations (Krapac, 2006, 149).

Criminal immunity is time-limited and ceases if the person voluntarily does not leave the country that has invited him within the period set according to the international agreement after the need to provide assistance has ceased. The European Convention on Legal Assistance in Criminal Matters states that the

[1] European Convention on Legal Assistance in Criminal Matters, Strasbourg, 20.04.1959, https://rm.coe.int/16800656ce, seen last time: 20/08/2022.

immunity of the witness or the expert lasts 15 days. Even in Article 12 para. 3 of this Convention it is stated that immunity does not protect any of the latter from criminal prosecution for the criminal offense committed during their stay in the other country.

According to Article 95 (paragraph 13) of the LBJNCP, the witness, expert or defendant who appears before the judicial bodies of Kosovo regardless of his nationality has criminal immunity and will not be prosecuted or arrested in connection with the offenses or punishment before leaving the territory of Kosovo, and this immunity ceases if the same after the period of 15 days where his presence was no longer required by the judicial bodies, he has not left the territory of Kosovo and has not left or returned again[1].

According to international agreements, if the presence of a person who is in custody or serving a sentence in another country is required, that person can be temporarily handed over to the other country to testify or even to face the defendant or other witnesses. This handover is otherwise called temporary extradition and can only be done if the person in question gives his consent. This person continues to be under the sovereignty of his state and does not fall under the sovereignty of the requesting state, which must return this person to the state from which he was surrendered (Moore, 1896, pp. 749-762).

9. Delivery of Items

By the notion of delivery of items, we understand the delivery of all items that serve as evidence in a criminal case, as items we consider all those tools with which a criminal offense was committed or as it is called "*corpus delicti*" and other items that can serve as evidence of the commission of a criminal offense, such as: papillary fingerprints, written statements as well as other documents that are important and thus the administration of evidence in criminal proceedings is done through cooperation between states.

The procedure for securing and handing over items is regulated according to internal rules for which some items have certain items that can be handed over to

[1] Law no. 04/L-213 on International Legal Cooperation in Criminal Matters (G.Z. no. 33, dated 02.09.2013), https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=8871, last seen on: 20/08/2022.

the other country. LBJNCP does not talk about the delivery of items and this issue is considered a legal deficiency and should be avoided[1].

10. Exchange of Data from the Records of the Convicted

Even the exchange of data from the records of the convicted represents a type of "small" international criminal legal assistance. This assistance can be realized on the basis of bilateral agreements on judicial assistance for each specific case or in general for all cases for citizens of one country convicted in the other country and for reasons of efficiency in the procedure the most preferred is the bilateral agreement with which this aid is regulated for all cases of convicted persons (Kambovski, 1998, p. 234).

All these data are related to the criminal legislation, which includes the final verdicts as well as those acts related to punishments such as: the act of pardon, amnesty, parole, etc., while the data from the evidence of the punished are done periodically and systematically. LBJNCP in article 101 stipulates that the Ministry of Justice will inform the foreign country about all criminal penalties and supplementary measures regarding the citizen of that country, and if the person in question is a citizen of two or more countries, the information will be given to all states.[2] While in article 100 the law determines that the competent judicial body without prior request of the foreign state may forward to their body the information provided when it considers that the disclosure of such information will help the other state in carrying out investigations[3].

For forms of criminality such as money laundering, computer criminality, there is a tendency to expand mutual assistance with complementary forms of cooperation. Where the following forms of cooperation are specifically considered: location and identification of persons, questioning of witnesses, access to bank documents and documents of legal entities, ascertainment of the authenticity of documents, engagement of persons in providing evidence and assistance in investigations,

[1] Law no. 04/L-213 on International Legal Cooperation in Criminal Matters (G.Z. no. 33, dated 02.09.2013), https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=8871, last seen on: 20/08/2022.
[2] Law no. 04/L-213 on International Legal Cooperation in Criminal Matters (G.Z. no. 33, dated 02.09.2013), Article 101, https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=8871, last seen on: 20/08/2022.
[3] Law no. 04/L-213 on International Legal Cooperation in Criminal Matters (G.Z. no. 33, dated 02.09.2013), Article 101, https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=8871, Article 100, last seen on: 20/08/2022.

investigation, localization , the blocking and confiscation of the property gain and the means by means of which the criminal offense was committed and the items which are the result of the criminal offense (Salihu, 2011, p. 234). The legal basis for these forms of international cooperation is the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime[1].

11. Legal Assistance through the Consul

Legal assistance through the consul is exercised outside the concrete criminal procedure. The office of a consul is called a consulate and is usually subordinate to the main representation of the state in that foreign country. A consul is an official representative of the government of one country in the territory of another, normally acting to assist and protect the citizens of the consul's country and to facilitate trade and friendship between the people of the two countries (Quigley et. Al., 2009, p. 307).

In practice, there are cases where judges ask the consul of their country that is accredited in the other country for help in questioning the witness or expert in handing over the documents to the citizens of their country (Gruda, 2003, p. 233). The consul performs his duties according to the internal rules of his country and he can only provide any kind of assistance if authorized by his country, by international agreement or even by customary law. Without a doubt, he must carry out his duties responsibly if he is authorized, otherwise, if he is not authorized, he will have political and legal responsibilities.

Article 66 of the Criminal Procedure Code of the Republic of Kosovo, which with no doubt also our criminal legislation in its provisions in Article 66 foresees the obligation of public bodies to assist the state prosecutor. Where it expressly states that, all public bodies are obliged to the state prosecutor, courts and other competent bodies that participate in criminal procedure to give them the necessary assistance, especially for issues related to the investigation of criminal offenses or the location of the perpetrators.[2]

The conventions of several different countries have foreseen the possibility for the consul to interrogate their own citizens, either in the capacity of a witness or an

[1] Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, https://rm.coe.int/168007bd23, last seen on: 20/08/2022.
[2] Code of Criminal Procedure of the Republic of Kosovo, Article 66, https://md.rks-gov.net/desk/inc/media/A5713395-507E-4538-BED6-2FA2510F3FCD.pdf, last seen on: 20/08/2022.

expert in their country, and to hand over all the documents of the procedure they have developed to the requested country. This possibility is provided for in the criminal legislation of Albania in the code of criminal procedure.

Article 520 of the Criminal Procedure Code of the Republic of Albania

Court decision

1. Before requesting the execution of a decision abroad, the Ministry of Justice sends the documents to the prosecutor, who makes a request to the court.

2. The consent of the convicted must be given before the Albanian court. If he is located abroad, consent can be given before the Albanian consular authority or before the court of the foreign country[1]

The LBJNCP does not explicitly see the possibility of providing "minor" international legal assistance through the consul, but considering the solution given in Article 97 (paragraph 1), Kosovo can start applying this form of "minor" legal assistance international criminal cases, based on the fact that Kosovo in some countries has consular representatives in addition to diplomatic representatives.[2]

12. The Procedure for Granting "Minor" Assistance in the Criminal Field

There are several rules for "minor" assistance in the criminal field between states. These rules are of two types, rules which are attributed to the requesting state and those which refer to the requested state (Hajdari, 2014, pp. 161-63).

Provisions relating to "small" international assistance relating to the requesting state, in this context, issues related to:

• Compilation of the request for "small" assistance;

• The language used in the request for "small" assistance and

• Sending requests for "small" help.

[1] Criminal Procedure Code of the Republic of Albania, Article 520, https://euralius.eu/index.php/en/library/albanian-legislation?task=download.send&id=172&catid=11&m=0, last seen on 20/08/2022.
[2] Law no. 04/L-213 on International Legal Cooperation in Criminal Matters (G.Z. no. 33, dated 02.09.2013), Article 97, paragraph 1, https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=8871, last seen on: 20/08/2022.

13. Compilation of the Request for "Minor" International Criminal Legal Assistance

In order to request "minor" international criminal legal assistance, a condition must be fulfilled without a doubt, through which the addressing of assistance begins, which is related to the fulfillment of the request for "minor" international criminal legal assistance. The request for "minor" criminal legal assistance must contain the following information:

1. The name of the authority that issued the request;

2. Object and reason for issuing the request;

3. If possible, the identity and nationality of the person for whom the request was made and

4. Name, surname and address of the recipient, if known.

Some authors of criminal law think that the list of data that must be contained in requests for "small" assistance, in many cases, is not enough. Therefore, they suggest increasing their number. Thus, if, according to them, an inspection is requested, the place where the inspection will be carried out and the items to be seized, etc., must be noted (Pradel, 2010, p. 150).

The request for "small" international criminal legal assistance, as a rule, must be drawn up in written form, however, in accordance with the European Convention on Combating Money Laundering (1990), the possibility of using modern means of telecommunication, such as fax.

14. The Language Used in the Request for "Minor" International Criminal Legal Assistance

Any request for "minor" international criminal legal assistance must be sent in the language of the requesting state. The European Convention on Legal Assistance in Criminal Matters (Article 16, Paragraph 1) provides that the translation of requests and documents attached to it is not mandatory. Notwithstanding this, in accordance with the rules laid down in this Convention, any State may request that requests and accompanying documents be submitted also translated into its own language or into one of the official languages of the Council of Europe, or into any other

language that that country wants.[1] In these cases, if it happens that the request and the documents attached to it have not been translated, this may lead to a delay in providing the answer or disapproval of the request. If the requesting state has difficulties in translating the documents to be sent into the language of the requested country, it may ask the requested state to undertake their translation and pay the costs (Pradel, 2010, p. 150-51).

15. Sending the Request for "Minor" International Criminal Legal Assistance

According to the European Convention on Legal Aid in the Criminal Field, some rules of principle have been defined which relate to the way of sending requests for "small" criminal legal aid. But first of all, it should be clarified that each type of request has its own special rules. Thus, letters are sent in writing by the Ministry of Justice of the requesting state to the address of the Ministry of Justice of the requested state. The European Convention on Legal Assistance in Criminal Matters, on its article 15, depending on the nature of the case and other modalities that characterize it, foresees several ways of sending requests for "minor" criminal legal assistance.[2]

Thus:

1. Requests for the loan of detained persons, as well as those for the temporary transfer of a prisoner to the territory of the requested state, are always sent by the Ministry of Justice of the requesting state to the Ministry of Justice of the requested state.

2. The request for surrender for secret investigations (performed by agents acting under a false authority) is carried out directly between the competent authorities, without the intervention of the ministries of justice.

3. Requests for copies of decisions are sent to the competent authorities, including the secretariat of the body where the decision was taken, etc.

Article 15 of the European Convention on Legal Aid in Criminal Matters provides three common rules for sending requests that apply to all cases

[1] European Convention on Legal Assistance in Criminal Matters, Article 16 paragraph 1, Strasbourg, 20.04.1959, https://rm.coe.int/16800656ce, seen last time: 20/08/2022.
[2] European Convention on Legal Assistance in Criminal Matters, Article 15,Strasbourg, 20.04.1959, https://rm.coe.int/16800656ce, seen last time: 20/08/2022.

Thus:

1. If the case is urgent and if direct delivery is allowed, it should be done through Interpol.

2. In order to facilitate the procedures of sending the request as much as possible, compliance with one of the following conditions may be required:

2.1 A copy of the request must be addressed to a designated central authority.

2.2 The original request must be addressed to the central authority, except in urgent cases.

2.3 In case of direct delivery for urgent reasons, a copy of the request is sent at the same time to the Ministry of Justice.

Finally, requests may be sent by means of electronic means of communication, provided that the requesting party is able to send, if requested, a written evidence that proves the sending of the request as well as a copy of its original (Pradel, 2010, p. 152).

16. Provisions related to "small" international assistance that relate to the requested country

When "minor" criminal legal assistance is requested, there are usually several questions that must be answered, which are related to:

1. The first question concerns the issue of payments. Where according to the European Convention on Legal Aid in Criminal Matters, Protocol I (2001), it is possible for the requested party to request reimbursement of expenses,[1] As reimbursement of expenses, they provide for those expenses related to the experts who went to their territory, the expenses related to the transfer of imprisoned persons, the temporary transfer of prisoners, the personal appearance of convicted and transferred persons, expenses of great and extraordinary value and those expenses related to telephone, video connections, interpreters' fees and witness travel expenses.
2. The second question concerns whether various obstacles can be presented to the requested party who cannot immediately respond to their request.

[1] European Convention on Legal Assistance in Criminal Matters, Protocol I, Strasbourg, 2001, https://rm.coe.int/16800656ce, seen last time: 20/08/2022.

> This answer to this question is provided in accordance with Article 7 of the Protocol of 2001, which states that there may be cases when the requested party cannot immediately respond to the request due to the negative impact that this may have on a proceeding or investigation undertaken by its authorities into the acts related to the request, in which case the requested party must, as a rule, consult with the requesting party and may decide not to respond to the request, giving reasons for its decision[1].

Also, in cases where the authorities of the requested state do not have the competence to respond to the request made to them, they formally request the request to the competent authority of their country. If the request was sent directly, this authority informs the requesting party in the same way, however, direct sending is not authorized in cases where the request was sent through the Ministry of Justice, because in this case the requesting party is not interested in directly finding the competent authority in the requested country.

We must emphasize the fact that if the request for "minor" legal assistance is rejected by the state, it must be justified, for which the requesting state cannot do anything.

17. "Minor" Direct International Criminal Legal Aid

The European Convention on the International Validity of Punishment Judgments (1970) has regulated the issue of "minor" criminal legal aid. This Convention has foreseen that the courts can take into account the previous decisions given by the courts of the other European Union state. In fact, this can be considered as an indirect form of giving assistance to a foreign state, whose decisions are taken into account by the courts of the state dealing with the case[2].

In accordance with Article 56 of this Convention, all signatory states shall take appropriate legislative measures to enable their courts to take into account at the time of decision all repressive European repressive decisions previously taken in relation to other offences, in order to attach to the decision, partially or fully, the effects foreseen by the law of each state for the decisions taken in its territory. In these cases, practically there is talk of recidivism and parole.

[1] European Convention on Legal Assistance in Criminal Matters, Article 7, Protocol I, Strasbourg, 2001, https://rm.coe.int/16800656ce, seen last time: 20/08/2022.
[2] European Convention on the International Validity of Repressive Judgments, (1970), https://rm.coe.int/1680072d3b, last seen on 21/08/2022.

The previous decision of a foreign court may prompt the court of the other country to increase the sentence or not to accept the suspended sentence. The provision provided in Article 56 is necessary for the reason that in principle, the rule of independence and sovereignty pushes the courts of a state not to take into account the decisions previously determined by the courts of other states (Pradel, 2010, p. 153).

The legislations of many countries now contain provisions that allow their courts to take into account foreign decisions, although it is not emphasized that these decisions must necessarily be of the member states of the Council of Europe. Thus, Article 12 of the Italian Criminal Code provides that a foreign criminal judgment may be taken into account to decide whether the defendant is a recidivist or not.[1]

Also, the Criminal Code of France (2005) in articles 132, 16 and 6 provides that the punishments determined by the criminal jurisdictions of one of the member states of the European Union are taken into account in relation to recidivism.[2] In fact, nothing prevents a court from taking into account a decision made abroad in applying the principle of individualization.

With the LBJNÇP (Article 64, paragraph 1) it is foreseen that "The local court can act according to the request of the foreign state for the execution of the criminal judgment obtained by the foreign court against a citizen or resident of Kosovo, if the decision foresees a prison sentence, punishment with a fine, confiscation of property or prohibition of the exercise of the profession, activities or duty.[3]

According to this legal provision (although it is not explicitly stated, it is estimated that the competent courts in Kosovo can not only execute the decisions of foreign courts, but also apply other forms of international criminal legal assistance and that in the context of assistance of "small" direct criminal law (delivery of various documents), but always under the condition of reciprocity. Of course, this form of legal assistance can also be applied in cases where this is foreseen by international agreement.

[1] Italian Criminal Code, Article 12, https://www.imolin.org/doc/amlid/Italy/penal_code.pdf, last seen on 21/08/2022.
[2] Criminal Code of France, https://www.equalrightstrust.org/ertdocumentbank/french_penal_code_33.pdf, last seen on 21/08/2022.
[3] Law no. 04/L-213 on International Legal Cooperation in Criminal Matters (G.Z. no. 33, dated 02.09.2013), Article 64, paragraph 1, https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=8871, last seen on: 21/08/2022.

18. Collection and Separation of Data for Serious Criminal Offences

In order for the "small" international criminal legal aid to have a better function in the fight against international criminality, there should also be a need for the collection and separation of data for serious criminal offenses, this issue is regulated by the states with the legislation of their internal affairs, but as serious criminal offenses they consider those offenses related to the counterfeiting of money, illegal production and smuggling of drugs, human trafficking, etc.

And at the same time, they are considered among the most current works in contemporary society. For these criminal acts, in accordance with the recommendations that come from the respective international conventions, the contemporary states in their legislations have foreseen the concrete provisions that address the obligations for the competent bodies to collect and separate the data for them. The purpose of this is to, through accurate evidence, be able to assess, on a global level, what is the degree of presence of these criminal offenses in a given period of time, and on the basis of the needs to determine the most efficient ways to fight them (in terms of their reduction and elimination) to offer the relevant recommendations (Hajdari, 2014, pp. 168-9).

Even the legislation in force in Kosovo deals with the issue of separating data for some criminal offenses which are considered dangerous for all states. In fact, for criminal offenses related to counterfeiting and circulation of money, illegal production , processing and sale of narcotics and poisons, human trafficking, production and distribution of pornographic materials, as well as other criminal offenses for which the centralization of data is foreseen by international convention, the data must be collected and sent to the competent body[1].

Such data is collected by the body that conducts the criminal procedure and it sends it to the Ministry of Internal Affairs. Within this data for these criminal offenses, the data on the perpetrator and the type of criminal offense are included.

[1] Criminal Code of the Republic of Kosovo, December 13, 2012, https://md.rks-gov.net/desk/inc/media/A5713395-507E-4538-BED6-2FA2510F3FCD.pdf, last seen on 21/08/2022.

19. Conclusions

Based on what was elaborated above, we have come to a conclusion that "small" international criminal legal assistance is given according to the legislation of each state that is required for this assistance between the forms of mutual cooperation between states in the fight against criminality. This assistance is also regulated by international conventions and by the internal laws of the states. As contemporary forms of international legal-criminal assistance in the broadest sense are considered: Extradition, Small legal-criminal assistance, Transfer of criminal prosecution to another state and Execution of foreign criminal judgment.

While in the framework of these forms, in the above case, it was elaborated on "minor" juridical-penal aid, where we understand that aid which is related to undertaking some actions of a state, to help the other state for the development of the criminal procedure against the perpetrator of the criminal offense. The main forms of "minor" assistance are: witness interrogation, submission of documents, collection of evidence, temporary surrender of the person deprived of liberty, submission of data from the evidence of the convicted.

This paper has elaborated the submissions and forms of realization of this assistance, and among our special importance are the letter orders, the submission of documents and court decisions, the questioning of the defendant, the witness and the expert, the rules of the questioning of witnesses and experts, the rules of interrogation of the accused person, the common rules for witnesses, experts and defendants - criminal immunity, delivery of items, exchange of data from the evidence of the convicted and legal assistance through the consul. In the European Convention on Legal Assistance in Criminal Matters, specifically in its article 3, it is about the performance of investigative acts and the exchange of evidence, files and documents.

According to the report of this convention, investigative matters mean the hearing of witnesses, experts and defendants, the examination at the scene of the incident as well as the implementation of controls and the seizure of items. Another conclusion of this paper concerns that there are some rules for "small" assistance in the criminal field between states. These rules are of two types, the rules which are attributed to the requesting state and those which refer to the requested state.

The provisions on international "minor" assistance relating to the requesting state address those issues relating to the drafting of the request for "minor" assistance, the language used in the request for "minor" assistance and the sending of requests.

for the “little” help. Whereas, the provisions related to the “small” international aid that are related to the requested state deal with those issues that are related to the issue of payments of the requested state regarding the expenses related to the experts who went to the territory theirs, the expenses related to the transfer of imprisoned persons, the temporary transfer of prisoners, the personal appearance of convicted and transferred persons, the expenses of large and extraordinary values and those expenses related to telephone connections, with video, for translators' fees and witness travel expenses, with the issue of “small” direct international criminal legal assistance.

Likewise, the European Convention on the International Validity of Repressive Judgments (1970) has regulated the issue of “minor” criminal legal aid. This Convention has foreseen that the courts can take into account the previous decisions given by the courts of the other European Union state. In fact, this can be considered as an indirect form of giving assistance to a foreign state, whose decisions are taken into account by the courts dealing with the case.

The other issue is related to the collection and separation of data on serious criminal offences, which foresees how serious criminal offenses are considered those offenses related to counterfeiting of money, illegal production and smuggling of drugs, trafficking in people etc. And at the same time, they are considered among the most current works in contemporary society. Even the legislation in force in Kosovo deals with the issue of separating data for some criminal offenses which are considered dangerous for all states. In fact, for criminal offenses related to counterfeiting and circulation of money, illegal production , processing and sale of narcotics and poisons, human trafficking, production and distribution of pornographic materials, as well as other criminal offenses for which the international convention stipulates that data must be collected and sent to the competent body.

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