

ESTONIAN ANSWERS

Does your country have any legislation, or regulations, and/or court rules of procedure that are relevant to the topic of our focus this year - mutual cooperation in the investigation of criminal cases and in the presentation of evidence in a criminal proceeding at court? Please explain.

By Estonian Code of Criminal procedure international cooperation in criminal proceedings includes the extradition of persons to foreign States, mutual assistance between states in criminal cases, enforcement of judgments of foreign courts, taking over and transferring criminal proceedings that have been commenced, cooperation with the International Criminal Court and Eurojust and the surrendering of persons to Member States of the European Union.

So there are procedural rules to mutual assistance between states and gathering and presenting evidence in the court.

Gathering evidence in another state is possible under mutual legal assistance (MLA) request (non EU countries), by European investigation order (EIO) (in between EU states), also through Eurojust (national desks or joint investigation teams), there are other possibilities also (EUROPOL). Evidence, gathered in other country is acceptable in Estonian court, if it is obtained legally.

Estonia also provides legal cooperation to other states on the bases of mutual assistance and our criminal procedure law.

In your country, when a crime is being investigated does the judiciary have any role (a) in the request for information from a foreign state and/or (b) in the provision of information to a foreign state?

Answer to the 2 (a) is – No. To be more specific the answer should be No, not directly. If the case is in pre-trial phase, prosecutor and police are the ones who request information from the foreign state, but in case some certain kind of operations should be done (e.g. house search, gathering evidence with surveillance etc) the prosecutor needs pre-trial investigative judge's permission to do so. In case of gathering evidence in foreign state, there should be initial permission from Estonian judge and then consequently from the judge in another state.

Answer to the 2 (b) is the same. In most cases information to the foreign state is provided either by the police or prosecutors office. In case of gathering evidence in the way, which by domestic law needs pre-trial investigative judge's permission, prosecutor must go to the court to get the permission to gather evidence and to provide the information to foreign state.

If your answer to either 2 (a) or 2 (b) is yes, what legislation, regulations or rules of procedure apply to the decision of a judge involved at the investigation stage?

The Code of Criminal Procedure. There are certain procedures, which need permission from pre-trial investigative judge (eg examination of postal or telegraphic item, requiring data from an electronic communications companies, surveillance measures, house searches, taking persons in to custody etc). In this kind of cases there is court involved at the investigation stage.

What is the legislation or court rules that relate to the taking of evidence from a witness in a foreign state, or the giving of evidence from a witness in your country to a court in a foreign country? Please explain these including the role played by a judge in both scenarios.

If we are talking about pre-trial phase of criminal proceedings, then there is no role for the judge in taking evidence from a witness in a foreign state or giving evidence by witness in our state.

But there is one exemption of that rule, deposition of testimony. In pre-trial phase the Prosecutor's office, suspect or defence counsel may apply for a person who is a witness in criminal proceedings to be examined before the pre-trial investigation judge, provided the subject matter of such proceedings is an intentional criminal offence for which at least up to three years' imprisonment is prescribed as the sentence. The court grants the application if circumstances are present which warrant the conclusion that a subsequent examination of the witness at trial may turn out to be impossible or the witness may be induced to give false testimony. In this case the witness is cross-examined before pre-trial phase and this testimony is used in trial.

If we are talking about trial phase of a criminal case, then there is judge present. In foreign state court wants to hear witness who is resident of Estonia, the court can issue MLA request or in EU EIO to ask Estonian courts help to summon the witness to Estonian court and her him via videoconference. In this case Estonian judge has responsibility to summon the person, to prepare the court for hearing, technical support, also to explain the witnesses rights and duties and take a witnesses oath. After that the hearing of the witness starts in the foreign state's court and Estonian judge has a passive role to make sure that the witnesses rights are respected. If Estonian court wants to hear a witness who is in another state, we are issuing MLA or EIO, prepare the courtroom for hearing, invite interpreter if needed and proceeding with the court hearing.

As a judge, if you receive a request for assistance from a foreign country, whether at the investigation stage or in the context of a court proceeding (a hearing or a trial), is it relevant to your determination of whether and how to assist that the basic human rights, principles of natural justice, and/or rules of procedural fairness that exist in your country are respected? Please explain.

As a judge, no matter in which proceeding, it is always relevant to me to follow basic human rights and principles of fair trial. We provide assistance in criminal cases in case the request is in compliance with our own legislation. To say it clearer, if this kind of gathering evidence would be possible and legal in a domestic criminal case.

Describe your own personal experience(s) as a judge that are relevant to the topic of our focus this year

As I am not a pre-trial judge this year, I can not give examples about surrender or extradition hearings. I have lots of experiences with videoconference hearings, enforcement of judgments and summoning documents on request of foreign state courts. With videoconference there are some technical issues, different states use different platforms, e.g. we do not allow some platforms for videohearing for security reasons, it is easier to contact your counterpart prior the trial date to figure out solutions.