

**IAJ/UIM**  
**Third Study Commission 2023**

"Mutual cooperation in the investigation of criminal cases and in the presentation of the evidence". Latvia

1. 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.

*Yes, it does.*

*Part C of the Criminal Procedure Law has the Rules of Procedure for International Cooperation, in particular:*

*1) in the extradition of a person for criminal prosecution, trial, or the execution of a judgment, or for the determination of compulsory measures of a medical nature;*

*2) in the transfer of criminal proceedings;*

*3) in the execution of procedural actions;*

*4) in other cases provided for in international treaties.*

*Evidence that has been acquired as a result of criminal-legal cooperation and in accordance with the criminal procedure specified in a foreign country shall be made equivalent to the evidence acquired in accordance with the procedures provided for in this Law.*

2. 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?

*No, Pre-trial investigations are carried by the police, prosecutors Office.*

*International cooperation at this phase takes place through the State Police, Prosecutor Generals Offices.*

3. 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?

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4. 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.

*The Criminal Procedure Law has the Rules of Procedure:*

*1. For execution of the Request of a Foreign Country ( Section 849)*

(1) An investigating institution, the Office of the Prosecutor or a court shall execute the request of a foreign country under the assignment of the competent authority.

(2) The institution executing the request of a foreign country shall, in a timely manner, inform the foreign country, on the basis of an order of the competent authority, regarding the time and place of the performance of a procedural action. The competent authority shall send to the foreign country the materials obtained as a result of the execution of the request.

(3) If a procedural action has not been performed or has been performed partially, a foreign country shall be notified regarding the reasons for the non-execution of a request.

(4) If, in executing the request of a foreign country, facts are acquired for the further examination of which the conduct of other emergency procedural actions is necessary, the executor of the request is entitled, in accordance with the procedures laid down in this Law, to perform such activities, notifying the initiator of the request thereof.

(5) The executor of the request of a foreign country, having determined during the execution of the request objects and documents, the circulation is prohibited by law and removal of which is not justified in the request, shall remove such objects and documents, and write a separate protocol on such removal.

*2. For performance of an Investigative Action by Using Technical Means ( Section 851).*

(1) A procedural action may be performed by using technical means upon the request of a foreign country or upon a proposal of the institution fulfilling the request and with the consent of a foreign country. A person who has the right to defence may be examined by using technical means provided that the person agrees with it.

(2) A competent official of the country that submitted a request shall perform, in accordance with the procedures of such country, a procedural action using technical means. If necessary, an interpreter shall participate in the performance of such procedural action in Latvia or a foreign country.

(3) A representative of the institution that fulfils a request shall certify the identity of involved persons and ensure the progress of a procedural action in Latvia and the conformity thereof to the basic principles of Latvian criminal procedure.

(4) If, in performing a procedural action, the basic principles of Latvian criminal procedure are violated, a representative of the institution fulfilling a request shall immediately take measures in order for such operation to continue in accordance with the referred to principles.

(5) A person who has been summoned to provide testimony has the right to not provide testimony also in a case where such non-provision of testimony arises from the laws of the country that submitted the request.

*The Criminal Procedure Law contains a special section about recognition and execution of a European Investigation Order ( Chapter 82.-1)*

*If a court carries out an examination of a witness located in a foreign country, the judge plays an active role in cross-examination the witness on the circumstances of the case.*

*If the witness is cross-examined by a foreign court, the judge has a more passive role. The judge may declare violations of fundamental human rights, procedural rights, for example the right of a person not to testify against himself.*

5. 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.

*According to the Law the execution of the request of a foreign country may be refused, if:*

*1) the request is related to a political offence, except when the request applies to terrorism or financing of terrorism;*

*2) the execution of the request may harm the sovereignty, security, social order, or other substantial interests of the State of Latvia;*

*3) sufficient information has not been submitted and the acquisition of additional information is not possible.*

*Recognition and execution of a European Investigation Order may be refused if:*

*1) the immunity from criminal proceedings referred to in Chapter 8 of this Law or the criminal procedural procedures in relation to freedom of press and expression exist that make execution of the European Investigation Order impossible;*

*2) the execution in a particular case would harm substantial national security interests, jeopardise a source of information or would be related with disclosure of such information which substantially harms criminal proceedings or operational activities;*

3) *it has been issued for the offence which in accordance with the Criminal Law is not criminal, except for the cases when it is included in Annex 2 to this Law and in the European Union Member State which has issued the European Investigation Order, for which the custodial sentence the maximum limit of which is not less than three years is provided for;*

4) *the principle of inadmissibility of double jeopardy (ne bis in idem) would be infringed;*

5) *there are significant reasons that cause basis for assumption that excessive intervention in the life of a person would occur;*

6) *the procedural action would not be admissible in criminal proceedings taking place in Latvia regarding the same offence.*

*The statutory framework allows the judge to control respect for fundamental human rights, procedural rights*

6. Describe your own personal experience(s) as a judge that are relevant to the topic of our focus this year, whether it be presiding over an extradition hearing (a request to extradite an accused person to another country in order to be prosecuted in that other country), or receiving evidence in a court proceeding in your country from a witness who is testifying from another country and with the help of court officials in that other country, or helping to arrange for a witness in a court proceeding in another country to testify from a place in your own country, or responding to a request for assistance from an international court such as The Hague, or something else. These are just examples of things that you may have experienced; they are not meant to be exhaustive.

*Following an informal survey of part of Latvian judges, it can be concluded, that The European Investigation Order as instrument of international judicial cooperation works successfully, especially in questioning, cross-examination of persons, involved in criminal proceedings.*

*If a person cannot attend a hearing in Latvia, he or she shall be explained regarding the possibility of attending a hearing from court in his/her location, if it is possible to use videoconferencing.*

*We have a positive experience in cooperation with Lithuania, Estonia.*

*Judges point out that important role in international cooperation plays Eurojust.*

*More problematic cooperation ( long deadlines, no answers, refusals) is with non - EU countries ( for ex. Switzerland, United Kingdom).*

*The issue is - can be used European Investigation Order only to obtain evidence, to interrogate witnesses? The court of Latvia has requested the preliminary ruling of the Court of Justice of the European Union on the interpretation of rules of European*

*Investigation Order, due to Germany's refusal to secure the participation of the accused person in the hearing.*

*Another problem in international cooperation is that not all countries accept electronic documents, electronic signature.*