

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.

The Republic of Lithuania cooperates with foreign countries on the basis of international agreements on legal assistance and legal relations. Pursuant to the Code of Criminal Procedure of the Republic of Lithuania (Criminal Procedure Code) the courts and the prosecutor's office send requests for legal assistance through the Ministry of Justice of the Republic of Lithuania or the Prosecutor General's Office of the Republic of Lithuania. In urgent cases, requests from the courts and prosecutor's office of the Republic of Lithuania to other European Union (EU) member states can be sent through the prosecutor of the General Prosecutor's Office of the Republic of Lithuania – the Lithuanian national member of Eurojust (deputy of the Lithuanian national member of Eurojust). In the cases stipulated by the international agreements of the Republic of Lithuania, the Prosecutor's Office of the Republic of Lithuania and the investigative body of the Republic of Lithuania may send the request to institutions of foreign states and international organizations directly. The most effective cooperation is with EU countries. Legal cooperation, investigation in criminal cases between the EU member states is carried out by the institute of legal cooperation – the European investigation warrant (EIO). Legal acts implementing the provisions of Directive 2014/41/EU of the European Parliament and of the Council on the European Investigation Warrant in criminal cases entered into force since June 15, 2017. Republic of Lithuania has the Law “On Mutual Recognition and Enforcement of Decisions of European Union Member States in Criminal Matters”. When investigating cases where the European Prosecutor's Office is appointed as the competent authority, communication with institutions of foreign states and international organizations takes place in accordance with the procedure established by Regulation (EU) 2017/1939, Criminal Procedure Code and other laws.

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?

The court does not play any role at this stage, because only institutions conducting the pre-trial investigation turn to the competent institutions of foreign countries for legal assistance and issue EIO. However, in the event that a criminal case is referred to a court and during its examination it becomes necessary to go to a foreign country, for example for collecting new evidence, interviewing persons, the court, in accordance with the provisions of the mentioned legal acts, turns to foreign countries for help.

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?

See answer to question 1.

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.

Since legal assistance regarding the questioning of witnesses is usually addressed to the EU country or such requests are also made in our country from the EU countries, it is guided by the provisions of the Law of the Republic of Lithuania “On Mutual Recognition and Enforcement of Decisions of the Member States of the European Union in Criminal Matters”, Code of Criminal Procedure and by-laws. Depending on the stage of the process, the EIO is recognized in the Republic of Lithuania by a

district court judge (when the EIO is issued during the trial) or the prosecutor of the District Prosecutor's Office or the General Prosecutor's Office of the Republic of Lithuania (when the EIO is issued during the pre-trial investigation). In court, the EIO is obtained directly or through the Ministry of Justice of the Republic of Lithuania or the General Prosecutor's Office of the Republic of Lithuania, and the European Delegated Prosecutor, when a pre-trial investigation related to the competence of the European Prosecutor's Office is conducted directly. All subsequent correspondence between the court or the prosecutor and the competent authority of another EU member state is conducted directly. After receiving the EIO, the court informs the competent authority of another EU member state about it no later than within 5 working days using the confirmation form of the receipt of the European investigation order approved by the Minister of Justice of the Republic of Lithuania. The decision to recognize or refuse (fully or partially) to recognize the EIO must be taken as soon as possible, but no later than within 30 days after receiving the EIO or within a shorter period specified in the EIO, taking into account the terms of the process, the severity of the criminal act or other circumstances of extreme urgency. Before making a decision on the recognition of the EIO, the court may consult with the institution that submitted the EIO, in order to provide additional information, in case of necessity to remove ambiguities. The grounds for refusal are provided by law, for example, there is a reason to believe that the execution of the EIO would violate basic human rights and/or freedoms; the EIO is incomplete and has not been supplemented or corrected within the deadline set by the court or the prosecutor or is not translated into the required language; the EIO is intended for persons who have immunity from criminal jurisdiction according to international legal norms or the laws of the Republic of Lithuania, or it is impossible to execute the EIO due to the guarantees of protection of the source of information established in the legal acts of the Republic of Lithuania, etc. The judge receiving the EIO must check whether there are grounds for refusing to execute the EIO. The court having passed the decision to refuse (fully or partially) to recognize the EIO, or the prosecutor having adopted the decision to completely or partially refuse to recognize the EIO, no later than within 5 workdays from the adoption of such decision, informs the competent authority of another EU member state in writing about the refusal to fully or partially recognize the EIO and the motives thereof. After making a decision to recognize the EIO, the court executes it by performing or instructing to perform the requested investigative action (examination of a witness). The execution of the EIO is controlled by the authority having recognized it, and if it were a court, then the court controls it. If the EIO was issued for the purpose of interviewing a person by means of remote audio and video transmission, the court agrees with the competent authority of another member state of the EU on the practical procedure of the interrogation and undertakes to summon the person being questioned to the interrogation in accordance with the procedure established by the Code of Criminal Procedure; to verify the identity of the person being questioned. The interrogation is carried out by or under the direction of the competent authority of another member state of the EU and in compliance with the rules set out in its legal acts, if compliance with these rules does not violate the Constitution and laws of the Republic of Lithuania and does not contradict the essential principles of the criminal procedure in the Republic of Lithuania. If a judge believes that the Constitution of the Republic of Lithuania, the laws or the essential principles of the criminal procedure of the Republic of Lithuania are violated during the interrogation, he/she immediately takes the necessary measures to ensure that further interrogation would be carried out in compliance with the Constitution of the Republic of Lithuania, laws or essential principles of the criminal procedure of the Republic of Lithuania. Before starting the interview, the rights and duties of the interviewee determined by the Code of Criminal Procedure are explained to the person, and the competent authority of another EU member state explains to the person his/her rights and duties established in its legal acts. If necessary, the court ensures participation of an interpreter in the interview. Upon completion of the interview, the court shall draw up a confirmation indicating the place and time of the interview and related information. The court requests another EU country to conduct examination of a witness via the EIO only if the examination of a witness is necessary during the trial. When an EU state makes a decision to recognise the EIO, the court communicates directly with the competent authority or central authority of another EU member state on all issues related to the implementation of the EIO and coordinates the practical aspects of the survey. The survey is conducted in accordance with the procedure established by the Code of Criminal Procedure.

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.

It has already been mentioned that, for example, although the interrogation is conducted by or under the direction of the competent authority of another EU member state and in compliance with the rules established in its legal acts, the court must monitor whether compliance with these rules does not violate the Constitution and laws of the Republic of Lithuania and does not contradict the fundamental principles of criminal proceedings in the Republic of Lithuania. If the judge believes that the Constitution of the Republic of Lithuania, the laws or the essential principles of the criminal procedure in the Republic of Lithuania are violated during the interrogation, he/she shall immediately take the necessary measures to ensure that the further interrogation is carried out in accordance with the Constitution of the Republic of Lithuania, the laws or the essential principles of the criminal procedure in the Republic of Lithuania. In order to ensure the rights of individuals, actions performed in accordance with the EIO, for example by means of arrests, can be appealed in accordance with the procedure established by the Criminal Procedure Code.

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.