

2023 Questionnaire of the 3rd Study Commission Questionnaire IAJ-UIM

“Mutual cooperation in the investigation of criminal cases and in the presentation of evidence”

Answers from Iceland

For 2023, the Third Study Commission, which focuses on Criminal Law, decided to study "Mutual cooperation in the investigation of criminal cases and in the presentation of evidence".

- 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.**

Iceland's mutual assistance system is governed by the Act on Extradition of Criminals and Other Assistance in Criminal Proceedings no. 13/1984 (based on EU Directives) and also the Act on arrest and delivery of persons to and from Iceland for criminal offences on the basis of an arrest warrant no. 51/2016 which relates to a Nordic treaty on arrest warrant and the European Arrest Warrant, based on the Framework Decision of the Council of the European Union.

- 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?**

In such cases it is the role of the Prosecutor General in Iceland and the Police to handle such matters and bring it to the courts when necessary in relation to the information that is requested. It is the court's role to ensure that the requirements of Icelandic law are met in such decisions and that the requested actions are not contrary to constitutionally guaranteed rights of the person or persons involved or international treaties acceded by the Icelandic state, for example the European Convention on Human Rights.

- 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?**

First and foremost the above mentioned Act on Extradition of Criminals and Other Assistance in Criminal Proceedings no. 13/1984 and the Code of Criminal Procedure no. 88/2008 which contains procedural rules in criminal cases, among others, cases that are brought by the prosecution before the court to request application of punitive sanctions, such as preventive detention and other preventive measures.

- 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 rules which apply in these scenarios are the ones that are included in the Code of Criminal Procedure no. 88/2008 which are the main Procedural law in Iceland in that regard. The court's role is to ensure that the person or persons to be questioned do not have their basic rights violated, for example the right to have an interpreter present if necessary.

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.**

A request from a foreign country would be brought before the court by the Prosecutor General. To be processed before an Icelandic court the request must meet the necessary criteria in relation to human rights which are protected in the Icelandic Constitution and the European Convention on Human Rights. If these criteria are not met the request would be dismissed.

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.**

As a judge I have first and foremost presided over cases regarding extradition of persons on the basis of an European Arrest Warrant. Even though the legislation stipulates that such an extradition request from another European Country, on the basis of the forementioned arrest warrant, must be followed without further examination, I, as a judge, am obliged to ensure that the extradition request is in accordance with the rule of law and basic human rights. But as the Prosecutor General, as a rule, prepares his requests very well and doesn't, also as a rule, put forward requests that do not meet the constitutionally rights guaranteed to the person or persons involved, I have almost never dismissed such requests.