

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

Answers of the Association of Judges of the Republic of Moldova

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, such rules exist.

In general, according to art. 2.1 of the CPP (Criminal Procedure Code) criminal procedural norms/rules (implicitly also those that refer to international legal cooperation) can exist in the Constitution of the Republic of Moldova, in the international treaties to which the Republic of Moldova is a party and in the CPP.

Art. 7.2 of the CPP and 4.2 of the Constitution establish that in case there are inconsistencies between the provisions of international treaties in the field of fundamental human rights and freedoms to which the Republic of Moldova is a party and the provisions of this code, international regulations take precedence

In the CPP there is a whole chapter (Chap. IX - Chapter IX) which includes a series of regulations on International Legal Assistance in Criminal Matters. The respective chapter includes 28 articles (from 531 CPP to 559 CPP), which regulate various fields of International Legal Assistance.

The norms of Chapter IX are systematized in 6 sections, namely:

Section 1 (art. 531-535 CPP) - General provisions regarding international legal assistance in criminal matters.

Section 1/1 (art. 536 – 540/1 CPP) - Application for power of attorney

Section 1/2 (art. 540/2 CPP) - Joint investigation teams

Section 2 (art. 541-549/1, 549/1 – 549/3, 550 CPC) - Extradition

Section 3 (art. 551-557 CPP) – Transfer of convicted persons

Section 4 – (art. 558-559 CPP) Recognition of criminal decisions of foreign courts

At art. 531 it is mentioned that relations with foreign countries or international courts, specialized bodies and agencies of the European Union regarding legal assistance in criminal matters are regulated by this chapter and the provisions of Law no. 371/2006 regarding international legal assistance in criminal matters.

The same article establishes the primacy of the provisions of the international treaties to which the Republic of Moldova is a party over the national rules, in the field of international legal assistance.

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?

There is no single answer. The court's involvement depends on the nature of the request and the stage of the investigation.

The general rule (art. 7.1 of law no. 371/2006 and art. 532 CPP) is that requests for legal assistance are addressed through the central authorities, which are the Ministry of Justice and the General Prosecutor's Office. Through the Ministry of Justice, requests for legal assistance formulated in the trial and execution phases of the sentence are sent, and through the General Prosecutor's Office, those formulated in the criminal investigation phase. Requests for legal assistance can be submitted either directly, by foreign authorities, or through diplomatic channels or through the International Criminal Police Organization (Interpol).

Thus, if the case is at the Criminal Prosecution stage, the request will be made by the prosecutor or the UP Officer, and if the case is at the trial stage, the request will be made by the court.

Special rule/cases of court intervention depending on the subject of the request.

The involvement of the court is determined by the seriousness of the interference with the fundamental rights of the person.

(art. 540/1 CPP) The rogatory commissions by which the search is requested, the collection or delivery of objects or documents, as well as the seizure or confiscation are executed in accordance with the legislation of the Republic of Moldova (the legislation of the Republic of Moldova requires the involvement of the court - the investigating judge or the common law judge).

The respective rules apply similarly both in the case of requests addressed to a foreign state and in the case of the execution of requests made by the authorities of another state.

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?

National legislation applies. But if the foreign authorities expressly request that certain provisions of the law of the requesting state be applied, they can be applied, to the extent that they do not contravene (concur) with the national legislation (art. 24.2 and art. 25.2 of law 371, as well as art. 540.4 CPP).

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 judge participates in the hearing of the witness in a request for international legal assistance only if, in the requesting state, the case is at the trial stage. (in this case, the request reaches the Ministry of Justice, which already forwards it to the court within the radius of which its seat is located, subsequently the appointed judge proceeds to summon the witness and to hear him according to the object of the request).

N/A The judge participates in the teleconference hearing procedure of the witness on the request for international legal assistance.

If the case is at the stage of criminal prosecution (ie it has not yet been sent to court) the request is executed by a prosecutor or the OUP (the central authority being the General Prosecutor's Office).

The applicable rules are (art. 539 para. 2 CPP):

a) Rules applicable to cases where the witness is summoned to appear before the court in a foreign state:

- The witness is summoned by the prosecutor, OUP / court.
- The witness/expert will not be able to be brought under compulsion (art. 539.1 CPP)
- If the witness has been summoned through a request for international legal assistance to appear before the national court, he can neither be prosecuted, nor detained, nor subject to any other limitation of individual freedom on the territory of the Republic of Moldova for acts or convictions prior to the crossing the state border of the Republic of Moldova (art. 539.4 CPP).

- The aforementioned immunity ceases if the cited person has not left the territory of the Republic of Moldova within 15 days from the date on which the respective body summoned him and informed him that his presence is no longer necessary or has subsequently returned to the Republic of Moldova (art. 539.5 CPP).

- The cited witness or expert is entitled to request compensation for the expenses for transport, accommodation and per diem, incurred in connection with the justified absence from work.

- The witness heard according to the provisions of this article benefits, as the case may be, from protection, under the law.

b) Rules applicable to cases where the witness is heard in another state, based on a request for international legal assistance (art. 540 CPP):

- The criminal investigation body or the court executes the commission rogatory requested (for the hearing of the witness) by the respective bodies abroad based on the international treaties to which the Republic of Moldova and the applicant country are parties or under conditions of reciprocity confirmed according to the provisions of art. 536 para. 2) CPP.

- Representatives of the foreign state or of the international court may assist in the execution of the rogatory commission if this is provided for by the respective international treaty or by a written obligation under conditions of reciprocity. In such a case, at the request of the requesting party, the body responsible for the execution of the rogatory commission

informs the requesting party about the time, place and term of the execution of the rogatory commission in order for the interested party to be able to assist.

- If the address of the person in respect of whom the execution of the rogatory commission is requested is wrongly indicated, the body responsible for the execution takes the respective measures in order to establish the address. If it is not possible to establish the address, the requesting party is notified of this.

- (art. 28 of law 371) If a person who is on the territory of the Republic of Moldova must be heard as a witness or expert by the criminal investigation bodies or the courts of a foreign state, or by an international court and it is inconvenient or impossible for that person to appear in person on the territory of that state, the foreign state may request that the hearing take place by teleconference, according to the provisions of law 371.

c) Rules applicable to the teleconference hearing of the witness in the Republic of Moldova, by the authorities of another state.

- the hearing takes place in the presence of a competent investigating judge, assisted, as the case may be, by an interpreter; the investigating judge verifies the identity of the person interviewed and is obliged to ensure compliance with the fundamental principles of the national procedural-criminal legislation. If a violation of these principles is found, the investigating judge immediately takes measures to ensure the conduct of the hearing in accordance with the legislation of the Republic of Moldova;

- the competent central authorities of the Republic of Moldova and those of the requesting state agree, as the case may be, on the protection measures of the witness or expert;

- the hearing is carried out directly by the competent authority of the requesting state or under its coordination, in accordance with national legislation;

- the witness or expert has the right to be assisted, as the case may be, by an interpreter, according to the legislation of the Republic of Moldova;

- the person called as a witness or expert may invoke the right not to testify, conferred by the legislation of the Republic of Moldova or the legislation of the requested state.

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.

As a judge, we have an obligation to ensure that requests for international legal assistance do not affect fundamental human rights.

The law (art. 534 of the CPC and art. 4 of law 371) establishes the possibility to refuse the execution of the request for international legal assistance if:

- the request refers to crimes considered in the Republic of Moldova as political crimes or crimes related to such crimes. Refusal is not accepted if the person is suspected, accused or has been convicted of committing acts provided for by art. 5-8 of the Rome Statute of the International Criminal Court;

- the request refers to an act that constitutes exclusively a violation of military discipline;
- the criminal investigation body or court requested to grant legal assistance considers that its execution is likely to harm the sovereignty, security or public order of the state;
- there are reasonable grounds to believe that the suspect is being prosecuted or criminally punished for reasons of race, religion, citizenship, association with a certain group or for sharing certain political beliefs, or if his situation will worsen even more for one of the listed reasons ;
- it is proven that in the requesting state the person will not have access to a fair trial;
- the act in question is punishable by death according to the legislation of the requesting state, and the requesting state does not offer any guarantee in order not to apply or not execute the capital punishment;
- according to the Criminal Code of the Republic of Moldova, the fact or facts invoked in the request do not constitute a crime;
- according to national legislation, the person cannot be held criminally liable.
- the criminal procedure in the requesting state does not fulfill or does not respect the conditions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, concluded in Rome on November 4, 1950, or of any other relevant international treaty in the field ratified by the Republic of Moldova;
- the request for legal assistance is made in a case before extraordinary courts, other than those established by the relevant international treaties, or in order to execute a sentence imposed by such a court;
- the deed that motivates the request for legal assistance is the subject of an ongoing procedure or this deed must or may also be the subject of a criminal investigation under the jurisdiction of the criminal prosecution bodies of the Republic of Moldova;
- accepting the request for legal assistance may have serious consequences for the person concerned due to age, health or any other personal reason.

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.

In my recent experience, I had a case in which I refused to execute a request for international legal assistance (hearing the person as a suspect) on the grounds that the act he was accused of had no counterpart (was not criminalized) in the criminal code of the Republic of Moldova.