

**IAJ/UIM  
Third Study Commission 2023**

**Answers from the Dutch (The Netherlands) Association of Judges (NVvR)**

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

*Rules and agreements from treaties for international cooperation in criminal cases are elaborated in Dutch laws, such as the extradition law, the surrender law, the law for the transfer of criminal sentences and the code of criminal procedure (book 5, article 5.1.1 and further). Including in these laws the international cooperation in criminal cases is being regulated. The code of criminal procedure regulates the investigation in criminal cases as well as the presentation of evidence in court.*

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?

- a. *In the Netherlands each district prosecutors office has a so called International Legal Assistance Centre (IRC). Also there is one national IRC. These IRC offices deal with all incoming and outgoing requests for legal assistance. The competent prosecutor will undertake all actions to fulfill the request, for this the prosecutor can request the judge of investigation to question a witness of expert.*
- b. *The aforementioned IRC's will provide the collected information to the foreign authorities. Within the EU this can be done via direct contact with the foreign authorities. For third countries the IRC's will provide the information to the Ministry of Justice and Security to pass it on to the foreign authorities.*

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?

*This is regulated in the code of criminal procedure.*

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 hearing of a witness in a foreign state and the hearing in The Netherlands on request of a foreign country is regulated in the code of criminal procedure.*

a. *Taking evidence from a witness in a foreign state.*

*On the basis of the code of criminal procedure it's possible to request the foreign state for the hearing of a witness per video conference by the judge of investigation.*

*If the executing state doesn't have the technical resources, these can be made available after consultation. (art. 5.1.3a)*

*If a video conference is not possible, than a request for the hearing of the witness will be issued. A questionnaire with relevant questions will be enclosed. The hearing will be executed by the foreign authorities.*

*The prosecutor, the judge of investigation and the judge dealing with the case in court are competent to issue a request to hear a witness.*

b. *Giving evidence from a witness in our country.*

*The judge of investigation can, at the request of the prosecutor, execute the request of the foreign authorities for a video conference. The video conference will be held under the supervision of the judge of investigation. The hearing will be executed according to the rules of the code of criminal procedure (art. 5.1.9). It's also possible that the judge of investigation will hear the witness, when a video conference is not requested or is not possible.*

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.

*The interstate principle of trust applies for international cooperation in criminal cases.*

*Decisions of foreign authorities are being respected and it is assumed that the investigation abroad has been done lawfully. The judge is only obliged to investigate the reliability of the results if there are concrete indications to the contrary.*

*(High Council, 09-05-2023, nr. 23/00011 and ECLI:NL:PHR:2023:478)*

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.

Some experiences of international cooperation:

- The quality of received request differs a lot, sometimes a description of the criminal facts lacks or is not complete, sometimes there's no translation
- In general direct contacts improve the international cooperation.
- Eurojust can contribute to the international cooperation with advise and coordination meetings, also with the third countries
- Most of the EU instruments are working well, like the EAW, EIO and ECRIS. For the transfer of sentences within the EU the EU- Framework Decisions 214, 909 and 947 are still not very much known and for this reason probably not much used yet. For some of these instruments it can take a long time to get a reaction.
- The website of the European Judicial Network is a very useful tool with a lot of practical information, in particular about EU law. Also you can find contactpoints, which can be very useful in cooperating with another country.