

**2023 Questionnaire of the 3rd Study Commission IAJ-UIM****Answers of the German Judges Association**

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?

In the Federal Republic of Germany, these issues are regulated in Parts 10 to 12 of the IRG for the EU and in Part 5 for the other states. In addition, regulations may result from international treaties with the respective states concerned. Further details can be found in the Guidelines for International Relations in Criminal Matters (Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten, RiVAST).

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 the Federal Republic of Germany, the public prosecutor's office is responsible for criminal investigations pursuant to section 160 of the Code of Criminal Procedure. It is responsible for requesting and transmitting information to a foreign state for use in criminal investigations and court proceedings. In addition, upon indictment, the court then dealing with the proceedings is responsible for this.

Section 61a IRG furthermore regulates the transmission of personal data from criminal investigations to public authorities of other states as well as inter- and supranational authorities by German courts and public prosecutors' offices without a request for mutual legal assistance.

Section 92b IRG regulates the use of information, including personal data, transmitted to a German police authority under EU Framework Decision 2006/960/JHA. It may only be used as evidence in judicial proceedings if the transmitting state has given its consent. Conditions imposed by the transmitting state for the use of the data must be observed.

Section 92c IRG regulates the transmission of data in the case of a suspected criminal offence by German authorities without a request for mutual legal assistance.

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 sections 60, 61 IRG for requests received from outside the EU and in section 91a following IRG for mutual legal assistance within the EU.

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.

If the witness is abroad during the questioning or if a witness testifies in Germany in foreign proceedings, the question today concerns the conduct of video questioning. These are regulated in §§ 59, 77 IRG as well as for the EU area in §§ 91c para. 1, 91h para. 3 IRG and § 247a StPO.

If the question is to be understood as meaning that the witness is to be heard without video examination, a corresponding request for legal assistance would have to be filed, as in the case of video examination. The examination of a witness in Germany will usually take place as a judicial examination according to section 162 of the Code of Criminal Procedure. The same applies to the examination of a witness in Germany in foreign proceedings. In this case, the examination is conducted by the German court. In the case of a hearing of a witness abroad, the jurisdiction for the hearing is incumbent on the court there. The execution of such a request can, however, be carried out by the public prosecutor's office.

In any case, the provisions of the German Code of Criminal Procedure (§§ 48f, 239 f.) must be applied.

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 natural justice, and/or rules of procedural fairness that exist in your country are respected?

Yes, we have to respect them and have to get guarantees from the applicant state that they would respect them as well.

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 the past years, I participated in proceedings in which witnesses in EU Member States in particular were heard by means of video transmission. The experience, apart from minor technical problems, was good. The cooperation between the courts functioned smoothly.

In cases of extradition, on the other hand, there were occasional delays. In some cases, the conditions of detention in other countries may prevent extradition or transfer from Germany.