

**Third Study Commission Questionnaire 2023  
Taiwan**

**REPLIES OF THE ASSOCIATION OF JUDGES OF THE REPUBLIC OF ARMENIA**

**MUTUAL LEGAL ASSISTANCE WITHIN THE REQUESTED QUESTIONS**

**Domestic regulations regarding the institute of Mutual legal assistance:**

First of all, it is necessary to refer to the question of how domestic legislation regulates the institute of mutual assistance.

According to Article 482 of the RA Criminal Procedure Code of July 1, 2021, this Code shall enter into force on July 1, 2022, except for those provisions for which Article 483 of this Code sets other dates of entry into force.

The Criminal Procedure Code of the Republic of Armenia, adopted on July 1, 1998, with all subsequent amendments and additions, except for the cases provided for by **Article 483 of this Code**, has been repealed since the Code's entry into force.

**According to Clause 26 of the Article 483 of the Criminal Procedure Code of the Republic of Armenia, the provisions of Chapters 54, 54.1, 54.2, 54.3, and 54.4 of the Criminal Procedure Code of the Republic of Armenia, adopted on July 1, 1998 (hereinafter also the Former Criminal Procedure Code) are not repealed.**

In other words, it turns out that issues related to the Mutual legal assistance in the RA are regulated by the regulations of the Former Criminal Procedure Legislation.

*The process of proof:*

According to the Article 474 of the Former Criminal Procedure Code, execution of **interrogation**, examination, seizure, search, expert examination and other procedural actions envisaged in this Code in the territory of a foreign state at the assignment or petition (hereinafter referred to as request) of the courts, the prosecutors, the investigators, the inquest bodies of the Republic of Armenia, as also at the request of the competent bodies and officials of

a foreign state (hereinafter referred to as competent bodies) in the territory of the Republic of Armenia, the execution of procedural actions envisaged in this Code shall be carried out in accordance with the international treaties of the Republic of Armenia, in accordance with the procedure established by those agreements and this Code. At the request of the competent bodies of a foreign state, when performing procedural actions provided for by this Code in the territory of the Republic of Armenia, the court of the Republic of Armenia, the prosecutor, the investigator, the inquest body shall apply the norms of this Code with the exceptions provided by the relevant international treaties.

According to the requests of the competent bodies of the foreign state, when performing procedural actions in the territory of the Republic of Armenia, the court, the prosecutor, the investigator, the inquest body of the Republic of Armenia may apply the norms of the Criminal Procedure legislation of the relevant foreign state, if the application of the latter is provided for by the international treaty with the participation of the Republic of Armenia and the given foreign state.

Requests of the competent bodies of foreign states are made within the terms envisaged by this Code, if no other term is specified by the relevant international treaty.

According to the Article 475 of the Former Criminal Procedure Code, communication on the issue of providing legal assistance in criminal cases under the international treaties of the Republic of Armenia is carried out:

- 1) in relation to making requests for procedural actions on cases in pre-trial proceedings, through the General Prosecutor's Office of the Republic of Armenia;
- 2) procedural actions on cases under court proceedings, including the performance of requests for execution of judgments, through the Ministry of Justice of the Republic of Armenia.

**If it is stipulated by the international treaties of the Republic of Armenia, the communication can also be carried out through diplomatic channels, through diplomatic missions and consular institutions of the Republic of Armenia in foreign countries, which, upon receiving the relevant requests, immediately submit to the competent body provided for in this part for execution.**

If the request to perform procedural actions is given by the court, the prosecutor, the investigator, the inquest body of the Republic of Armenia, then they, in accordance with the international treaties of the Republic of Armenia, present the compiled requests to the competent body defined in the first part of this article in order to transfer it to a competent body of a foreign state for the purpose of its execution.

After the competent bodies of the foreign state execute the request of the court, the prosecutor, the investigator, the inquest body of the Republic of Armenia and after presenting it to the competent body provided for in the first part of the article, the latter shall immediately provide the execution to the court, the prosecutor, the investigator, the inquest body of the Republic of Armenia that made the request.

If the request to perform procedural actions was issued by the competent bodies of a foreign state, and in accordance with the international treaties of the Republic of Armenia it was submitted to the competent body provided for in the first part of this article, then the latter submits the request for execution to the court, the prosecutor, the investigator, the inquest body of the Republic of Armenia, who, in accordance with this Code, are authorized to perform the given request.

The court, the prosecutor, the investigator, the inquest body, after completing the assignment, submit it to the relevant competent body provided for in the first part of this article, which immediately transfers the execution to the competent body of the foreign state.

In the cases provided for by the international treaties of the Republic of Armenia, making a request regarding the execution of procedural actions, delivery of the request and transferring the results of its implementation can be carried out through direct communication between the relevant competent body of a foreign state and the relevant court, the prosecutor, the investigator, the inquest body of the Republic of Armenia.

Moreover, if the execution of the request received from the competent body of a foreign state through direct communication does not fall under the jurisdiction of the court, the prosecutor, the investigator, the inquest body of the Republic of Armenia that received the request, then the request is immediately forwarded to the competent court, prosecutor, investigator, inquest body

of the Republic of Armenia giving notice about that to the relevant competent body of the foreign state that made the request.

The competent court, the prosecutor, the investigator, the inquest body of the Republic of Armenia which received the request in the forwarding procedure, execute the request and transfer it to the competent body of the foreign state in the manner provided for in this part, while notifying the relevant body of the Republic of Armenia provided for in the first part of this article about the request and its execution.

In the cases provided for in this part, the relevant court, the prosecutor, the investigator, the inquest body of the Republic of Armenia shall notify the relevant competent body mentioned in the first part of this article about each request made mutually by direct communication, its receipt and execution, briefly stating the name of the body that made the request (the name of the official and the position), the content of the request, the executing body or the official, the content of the execution, the deadlines for issuing and executing the request.

If, in accordance with the international treaties of the Republic of Armenia, the execution of the request received from the competent body of a foreign state is impossible or does not follow from the given international agreement, the relevant body of the foreign state shall notify the impossibility of the execution of the request and the reasons thereof in accordance with the procedure established by this article.

**In the context of the above, it can be noted that if in the case of mutual assistance, the execution of a judicial assignment is requested in the territory of another state, for example, to transfer a judicial act issued by a court of the Russian Federation to a citizen of the Republic of Armenia, then in this case the Russian Federation applies to the competent body, the Judicial Department of the Republic of Armenia, which reserves the execution of the given judicial order to any judge of the relevant court of the RA Criminal Court. The judge, assuming the duty of the Court executing the judicial assignment, takes measures to provide mutual legal assistance (for example, he tries to find the mentioned citizen of RA, to provide him with the judicial act addressed to him). The process is carried out using state levers, for example, a notification, finding out the registration address, a request to mobile operators, a request to the person's BEMI card**

office, or, for example, establishing contact with the latter through the relevant police department.

The issue is different when a witness of a foreign nationality is involved in the case, who, for example, returns to his country after being interrogated at the stage of the preliminary investigation and giving evidence against the accused. In this case arises a complicated court case on the provision of confrontation. In addition, very often that testimony can be the only and decisive one for the proceedings.

According to the rules of Former Criminal Procedure Code, people acting as witnesses, victims, civil defendants, civil plaintiffs, their representatives, experts or specialists in a criminal case conducted in the territory of the Republic of Armenia, who are located outside the borders of the Republic of Armenia, in accordance with the procedure and conditions established by the international treaties of the Republic of Armenia, may be called to the Republic of Armenia in order to perform the necessary investigative or procedural actions with their participation by the court, the prosecutor, the investigator, the inquest body conducting the relevant criminal case proceedings.

During investigative or procedural actions with the participation of the mentioned people, the rules of this Code are applied, with the exceptions provided by the relevant international treaties.

**In essence, it turns out that for such cases, the court conducting the proceedings should contact the representative of the consulate of the relevant person's place of residence, so that through the latter it is possible to organize the process of giving testimony of the person and the process of ensuring the right of confrontation.**

When drawing up a request to provide legal assistance on the basis of reciprocity and sending it to the competent body of a foreign state, the court, the prosecutor, the investigator, the inquest body of the Republic of Armenia observe the requirements for the form of the request and its presentation provided by the law of the given foreign state, and in the absence of the law of the foreign state, the request is drawn up and is sent to the competent body of a foreign state

in accordance with the form and procedure defined by Articles 483 and 489 of the Former Criminal Procedure Code.

During the execution of the request of the court, the prosecutor, the investigator, the inquest body of the Republic of Armenia by the competent body of the given foreign state, the provision of additional documents, materials, including evidence, objects by the court, the prosecutor, the investigator, the inquest body of the Republic of Armenia is carried out in accordance with the agreements reached with the relevant body of a foreign state and the provisions of this chapter of the Former Criminal Procedure Code.

The court, the prosecutor, the investigator, the inquest body of the Republic of Armenia shall use the documents, objects, materials, including evidence, received in connection with the execution of the request by the competent body of the foreign state in accordance with this Code.

If the competent body of a foreign state has requested the return of the documents, materials or objects provided by it, it is carried out in accordance with the agreements reached with it.

At the request of the competent body of a foreign state, when providing necessary information in a criminal case conducted by it, handing over people, transferring criminal instruments or items, the court, the prosecutor, the investigator, the inquest body must draw the attention of the competent body of the foreign state to the relevant rules of this chapter regarding the execution of the relevant actions by them.

In accordance with the agreements on providing legal assistance in criminal cases in a reciprocal manner, on the basis of the request, people acting as witnesses, victims, civil defendants, civil plaintiffs, their representatives, experts, specialists (hereinafter referred to as other people) may be summoned to the Republic of Armenia in a criminal case under the proceedings of the court, the prosecutor, the investigator, the inquest body of the Republic of Armenia, who, being outside the borders of the Republic of Armenia, are known to be in the territory of the foreign country to whose competent authorities a corresponding request is sent.

If other people present themselves to the Republic of Armenia with their consent and will, the court, the prosecutor, the investigator, the inquest body conducting the prosecution in the

corresponding criminal case shall perform the relevant procedural actions with their participation in the manner prescribed by this Code, with the following reservations: if the other person represented is a citizen of a foreign state or a stateless person residing in its territory, in accordance with the laws of that state, then it is prohibited to apply judicial actions to take him/her into custody, to impose a monetary penalty, as well as to bring him/her to criminal responsibility for refusing or avoiding to give a testimony or to give an obvious false testimony or conclusion.

Other people may be called to the Republic of Armenia and present themselves with the expression of their free will also in the absence of agreements on reciprocity between the state of their residence and the Republic of Armenia.

The rules provided for in the part 2 of this Article also apply to other people provided for in this part who have come to the Republic of Armenia.

In the sense of the Former Criminal Procedure Code, international bodies are considered to be courts established by international treaties or other such bodies, whose powers include the performance of certain procedural actions in criminal cases and assisting, facilitating, supporting the efforts of states in the fight against crime, as well as imposing criminal penalties and their submission of execution.

The court, the prosecutor, the investigator, the inquest body of the Republic of Armenia implement the relations with the international bodies in accordance with the international treaties on the foundation (creation) of these bodies and defining their powers, to which the Republic of Armenia is a party.

If the Republic of Armenia is not a party to the foundation of the international body and the international treaties arising from it, which regulate the issues of relations in criminal cases, then the court, the prosecutor, the investigator, the inquest body of the Republic of Armenia communicate with those bodies in accordance with the international agreement on cooperation or assistance in criminal cases concluded between the given international body and the Republic of Armenia.

If the Republic of Armenia is a party to the establishment of the given international body or not all of the several international treaties defining its powers, then the provisions of the other treaty (treaties) to which the Republic of Armenia is not a party, the court, the prosecutor, the investigator, the inquest body of the Republic of Armenia may apply when performing the relevant procedural actions, if they do not contradict the requirements of this Code and other laws containing norms of criminal procedure. The court, the prosecutor, the investigator, the inquest body of the Republic of Armenia shall receive their application and legal assistance or support with requests for legal assistance or recommendations on issues arising from the jurisdiction of international bodies in accordance with the procedure and conditions established by the agreements provided for in Article 499 of this Code.

Moreover, when submitting a relevant request to a given international body, the courts of the Republic of Armenia carry it out through the Ministry of Justice of the Republic of Armenia, and the prosecutor, the investigator, the inquest body through the General Prosecutor's Office of the Republic of Armenia, if no other order of legal assistance in criminal cases is defined by the relevant international treaty.

In the case of the participation of a judge, prosecutor, investigator, inquest body (his representative) of the Republic of Armenia in providing legal assistance or support in criminal cases by an international body, the latter are obliged to fulfill the obligations arising from this Code and other laws during their stay in the given body, with exceptions arising from relevant international agreements. The requests of the international body are carried out by the court, the prosecutor, the investigator, the inquest body of the Republic of Armenia in accordance with the rules provided by this Code, with exceptions arising from the international agreement.

If, according to the requests of the international body, the competent official of the international body appears in the Republic of Armenia to participate in the proceedings to be performed in the Republic of Armenia, then the order and conditions of communication with him/her in the Republic of Armenia are determined by the international agreement related to the powers of that body, and in the event that terms and conditions are not defined by that contract, the following rules apply:



1) In relation to the proceedings related to the courts of the Republic of Armenia, the official of the international body presents to the Minister of Justice of the Republic of Armenia the case and the range of issues related to it, which are subject to clarification or resolution in the courts of the Republic of Armenia.

The Minister of Justice of the Republic of Armenia decides the court or courts of the Republic of Armenia to be involved in the clarification or resolution of issues presented by an official of an international body, in accordance with the requirements of this Code.

2) In relation to the procedural actions related to the criminal case in pre-trial proceedings, the official of the international body presents to the Prosecutor General of the Republic of Armenia the case and the range of issues related to it, which are subject to clarification and resolution by the inquest bodies or preliminary investigation bodies of the Republic of Armenia.

The Prosecutor General of the Republic of Armenia determines the preliminary investigation or inquest body(s) of the Republic of Armenia responsible for clarifying or solving the issues presented by the official of the international body, in accordance with the requirements of this Code.

After the completion of the relevant procedural actions, no later than within a three-day period, the court, the prosecutor, the investigator, the inquest body of the Republic of Armenia respectively notify the Minister of Justice or the Prosecutor General of the Republic of Armenia in writing about the completed procedural actions.

The Minister of Justice of the Republic of Armenia, the Prosecutor General of the Republic of Armenia within their powers coordinate the actions of the bodies and officials of the Republic of Armenia involved in the execution of relevant procedural actions, involving, if necessary, the officials of other competent state bodies.

As a reference, it should be noted that, in addition to the Former Criminal Procedure Code, mutual legal assistance in RA is regulated by two other acts, which are:

1. Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases, adopted in Minsk in 1993 <https://www.arlis.am/DocumentView.aspx?docID=79371>

2. European Convention on Extradition adopted in 1957

<https://www.arlis.am/documentview.aspx?docID=81171>.