

Third Study Commission Questionnaire 2023

Taiwan

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".

In order to facilitate discussion and to assist us in learning from colleagues, we ask that each country answers the following questions:

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.

In 2010, the legislative body of Georgia adopted the law: "On international cooperation in the field of criminal law", which is related to legal assistance in criminal cases, extradition, criminal case materials, or their duly certified copies for the purpose of further criminal prosecution, international cooperation related to the enforcement of judgments, confiscation of property, and transfer (handover) procedures of those sentenced to imprisonment;

In parallel with the adoption of the mentioned law, Article 283 (Prima) of the Criminal Procedure Code of Georgia; Articles 289 and 290 reflect the legal procedures that are related, in one case, to the resolution of issues raised during the execution of a sentence against a convict subject to extradition in Georgia (Article 283 (prima) of the Criminal Code), and in the other case, to the judgment of a foreign state based on the occurrence of the unpaid part of the sentence imposed on the convicted person in Georgia (Article 289 of the Civil Code) and confirmation of the conformity of the judgment of a foreign court with the crime provided for in the relevant article of the Criminal Code of Georgia (Article 290 of the Civil Code);

In addition, earlier, in 2003, the legislative body of Georgia adopted the law: "On Georgia's Cooperation with the International Criminal Court", which regulates the issues of Georgia's cooperation with the International Criminal Court based on the Statute of the International Criminal Court of July 17, 1998 - the Rome Statute, determines the state body authorized to cooperate with the International Court of Georgia and the forms of legal mutual assistance in cooperation with the International 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?

In accordance with Article 5, Clause 1 of the Law "On International Cooperation in the Field of Criminal Law", if there is a need to conduct a procedural action provided for by the Criminal Procedure Code of Georgia on the territory of a foreign state and, at the same time, there is an appropriate legal basis, the investigator, prosecutor or judge (judicial) is entitled to apply to the Prosecutor's Office of Georgia with an appropriate petition.

Accordingly, it is only with the help of the Prosecutor's Office of Georgia that it is possible for Georgia to receive legal assistance from the relevant bodies of a foreign state, and with the same regime, foreign countries can also receive mutual legal assistance from Georgia.

As for the rules of Georgia's mutual cooperation with the International Court of Justice, according to Article 3 of the Law "On Cooperation of Georgia with the International Criminal Court", the state body authorized to cooperate with the International Court of Justice in Georgia is the Ministry of Justice of Georgia, which ensures the acceptance of the International Court's request for cooperation, the implementation of necessary measures to fulfill the request, if necessary, to coordinate the activities of relevant state bodies of Georgia for the fulfillment of requests.

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?

As mentioned above, in such a case, the law "On International Cooperation in the Field of Criminal Law" and the Code of Criminal Procedure are used by the courts at the national level., And in the case, that the matter concerns the Permanent International Criminal Court of The Hague, the law: "On Cooperation of Georgia with the International Criminal Court " is also applied.

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.

According to Article 9 of the Law "On International Cooperation in the Field of Criminal Law", if there is a relevant legal basis, if necessary, the Prosecutor's Office of Georgia will request information or materials from the competent authorities of a foreign state regarding the criminal case they are conducting.

According to the same article, if there is a relevant legal basis, the Prosecutor's Office of Georgia is entitled, based on a proper petition or on its own initiative, to provide the competent body of a foreign state with the information or materials obtained during the investigation of the criminal case in the proceedings of the competent bodies of

Georgia. In addition, in accordance with Article 113, Part 11 of the Code of Criminal Procedure, the prosecutor or the investigator with the prosecutor's consent is authorized to remotely, using electronic means, question a person in the territory of a foreign state without sending a petition for finding legal aid, if such questioning of a person is allowed in Georgia by an international treaty, by the law of the state of residence of that person and/or by the clearly established practice of that state in addition, it is not allowed to interrogate a person in the manner established by this article, if the person to be interrogated has not expressed direct and clear consent to the interrogation.

According to Article 9 Prima of the Law "On International Cooperation in the Field of Criminal Law", on the basis of the petition of the competent body of a foreign state on the discovery of legal aid, it is possible to question/interrogate a witness, an expert or a victim on the territory of Georgia using audio or video means. In the territory of Georgia, the person to be interrogated using audio or video means is summoned according to the procedure established by the legislation of Georgia. The mentioned procedure is carried out at the investigation stage with the participation of the magistrate judge, the prosecutor, the questioned person, the interpreter, and, if necessary, the defender. According to Article 11 of the same law, if there is a relevant legal basis, the Prosecutor's Office of Georgia ensures the execution of the foreign state's request for legal assistance on the territory of Georgia. The petition for the discovery of legal aid received from a foreign state is completed in accordance with the legislation of Georgia. The materials obtained as a result of the discovery of legal aid are sent to a foreign state through the Prosecutor's Office of Georgia.

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.

In the scope of any legal aid, the judge is guided both by the standards established by national legislation and by the rules stipulated by international agreements and treaties, which, in turn, are based on the protection of basic human rights and principles of freedom, humanity, justice and legality.

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.

While presiding over the extradition court session, first of all, the judge checks whether there is an official document according to which the person is wanted internationally through Interpol. In the second stage, it is checked whether the arrest warrant was issued by the competent authority of the foreign state and whether the articles of criminal law reflected in this order are fully consistent with the articles contained in the indictment of the person in addition, the court checks whether the extradition materials were provided by the competent authorities within the time limit set by the law. All the above-mentioned procedures are carried out within the framework of the law "On international cooperation in the field of criminal law", criminal procedure and substantive criminal law code.

In addition, according to the current legislation of Georgia, it is not allowed to transfer to another state a person who has committed a crime, who is being persecuted for his political beliefs, as well as someone who has committed an act that is not considered a crime according to the legislation of Georgia, or if the crime committed is punishable by death in the state that requires the extradition. The issue of criminal liability of such persons will be resolved in accordance with international law. The above-mentioned court session is held in the presence of a judge, prosecutor, interpreter, person subject to extradition and his lawyer.