

## **Third Study Commission Questionnaire IAJ 2023 (Taiwan)**

### **answered by the Liechtenstein Association of Judges (VLR)**

*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 the Principality of Liechtenstein exists a separate statute on the mutual legal assistance in criminal matters ("Rechtshilfegesetz" [RHG]). Nevertheless this is only a so-called subsidiary legislation as the international cooperation in criminal matters by Liechtenstein is based primarily on bilateral (e.g. with the USA) and multilateral (CoE and UN) agreements. A distinction is made between extradition from and to Liechtenstein, the transit of persons through the territory of Liechtenstein, the performance of acts of legal assistance for foreign authorities (ancillary legal assistance), the taking over of prosecution and the monitoring and enforcement of sentences passed abroad. It has to be mentioned, that Liechtenstein is only a member of the European Economic Area (EEA) but not of the EU, so that the European arrest warrant cannot claim validity here. However, Liechtenstein is associated to the Schengen Convention.

*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?*

Yes, both is true.

*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?*

Besides of international agreements the already mentioned RHG is applicable. Pursuant to Article 54a RHG the Court is entitled to deliver information to a foreign authority even without request under certain conditions (spontaneous mutual legal assistance).

*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.*

In the first scenario the Princely Court of Justice (“Fürstliches Landgericht”), that means the investigating judge, is requesting the competent foreign authority, which can be a court or a public prosecutor, for legal assistance via the Government in the diplomatic way. In the second scenario the foreign authority has to submit a letter of request that presents the relevant facts and the legal basis, whereby the principle of trust is applicable as long the request is conclusive and without contradictions. In any case the principles of dual criminality and reciprocity must be respected. If this is the case, the witness is interrogated by a judge.

*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.*

Pursuant to article 19 (extradition) and article 51 RHG (coercive measures like search and seizure as well as confiscation and forfeiture etc) legal assistance by Liechtenstein is not permissible if it would not be in accordance with the articles 3 and 6 of the ECHR. The same is true if the requested legal assistance contradicts the so-called ordre public of the Principality of Liechtenstein.

*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 general my personal experience in matters of legal assistance is that of a presiding judge of the Princely Court of Appeal (“Fürstliches Obergericht”). Here I’d like to focus on extradition from Liechtenstein, because pursuant to article 33 RHG for the decision on the admissibility of extradition the Court of Appeal is competent as first instance with the exception of the related detention (“Auslieferungshaft”), for which the Princely Court of Justice (“Fürstliches Landgericht”) is competent in the first instance. If the person concerned demands it the Court of Appeal has to conduct a trial with an oral hearing before deciding on extradition. Only two examples shall be provided here: In one case we had to decide on the extradition of a Brazilian citizen who was prosecuted in his home country for commissioned murder and was allegedly in fear of retaliation in case of extradition to Brazil, but our court denied a hardship according to article 22 RHG. In the other case Austria requested the extradition of a German citizen who was accused of founding and leading an anti-state-connection (“staatsfeindliche Verbindung”) and furthermore charged with other “ordinary” offences. Although the first crime was even seen by the requesting Austrian authority as of political nature according to article 3 para. 1 of the insofar applicable European Convention on Extradition, extradition was declared admissible for the ordinary offences like serious fraud, attempted extortion and so on. In both cases our extradition decision was upheld by the Supreme Court (“Fürstlicher Oberster Gerichtshof”).

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On behalf of the Liechtenstein Association of Judges (VLR)