

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.*

There is a special section XIII provided in Polish Code of Criminal Procedure concerning criminal procedure involving international matters. It covers: diplomatic and consular immunities (Chapter 61, Articles 578 – 584), legal aid and postal service in criminal matters (Chapter 62, Articles 585-589f), requesting a member state of the European Union to enforce a decision to seize evidence or to preserve property (Chapter 62a, Articles 589g-589ka), requesting a Member State of the European Union to carry out investigative measures on the basis of a European Investigation Order (Chapter 62c, Articles 589w-589zd), request from a Member State of the European Union to carry out investigative measures on the basis of a European Investigation Order (Chapter 62d, Articles 589ze-589zt), takeover and transfer of criminal prosecution (Chapter 63, Articles 590-592f), requesting the surrender or transport of persons prosecuted or sentenced abroad and the surrender of objects (Chapter 64, Articles 593-601), surrender and transport of persons prosecuted or sentenced or surrender of objects at the request of foreign States (Chapter 65, Articles 602-607), requesting an EU Member State to surrender a person prosecuted on the basis of an EAW (Chapter 65a, Articles 607a-607j), request from an EU Member State for the surrender of a person wanted under the EAW (Chapter 65b, Articles 607b-607ze), requesting the EU Member State to enforce the precautionary measure (Chapter 65c, Articles 607zd-607zg), an application by an EU Member State for enforcement of a judgment given to ensure the correct

course of proceedings (Chapter 65d, Articles 607zb607zn), taking over and transmission of decisions for enforcement (Chapter 66, Articles 608-611f), applying to a member state of the EU for enforcement of a decision relating to a fine, a restitution order, a pecuniary benefit or a decision ordering the offender to pay legal costs (Chapter 66a), request from a member state of the EU for enforcement of a decision relating to a fine, a restitution order, a pecuniary benefit or a decision ordering the offender to pay legal costs (Chapter 66b), requesting a member state of the EU to enforce a decision of forfeiture (Chapter 66c), request from a member state of the EU to enforce a decision of forfeiture (Chapter 66d), cooperation with the International Criminal Court (Chapter 66e), requesting a member state of the EU to enforce an imprisonment sentence (Chapter 66f), request from a member state of the EU to enforce an imprisonment sentence (Chapter 66g), applying to a member state of the EU for enforcement of a suspended sentence of imprisonment, restricted sentence, self-imposed penalty measure, as well as a decision on conditional release from prison and conditional discontinuance of criminal proceedings (Chapter 66h), request of a member state of the EU for implementation of a criminal order concerning probation of offenders (Chapter 66i), requesting a member state of the EU to enforce a European Protection Order (Chapter 66k).

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

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?*

Article 589g

§ 1. In the event that it is established that items which may constitute evidence in the case, correspondence, parcels, lists of telephone calls or other transmissions of information or data stored in a computer system or on a carrier, including correspondence sent by electronic mail, or property subject to seizure in order to secure the execution of a forfeiture order are located in the territory of another Member State of the European Union, the **court having jurisdiction over the case** or the public

prosecutor may apply for the execution of the order for their seizure or securing directly to the competent judicial authority of that State.

§ 2 When forwarding a decision on the seizure of evidence for execution, **the competent court** or public prosecutor shall at the same time apply to the competent judicial body of the state of execution of the decision for their surrender.

Article 589l [Enforcement of order].

§ 1. **The locally competent district court** or public prosecutor shall immediately execute a ruling issued by a competent judicial authority of another Member State of the European Union on the seizure of objects, correspondence, dispatches, telephone lists or other communications or data stored in a computer system or on a carrier, including correspondence sent by electronic mail, which may constitute evidence in the case, or a ruling on the seizure of property in order to secure the execution of a decision on forfeiture, if these objects, correspondence, dispatches, lists, data or property are located or stored in the territory of the Republic of Poland.

§ 2. If **the court** or public prosecutor to whom the decision has been addressed is not competent to give effect to it, it shall forward it to the competent authority and notify the competent judicial authority of the Member State of the European Union which made the decision.

Article 589w [Competence to issue an EIO].

§ 1 Where it is necessary to carry out or obtain evidence which is or may be carried out in the territory of another Member State of the European Union, referred to in this Chapter as the "State of enforcement", **the court before which the case is pending** or the public prosecutor conducting the pre-trial proceedings may issue, ex officio or on application by a party, defence counsel or attorney, a European Investigation Order, unless the EIO is not applicable in that State.

Article 589ze

§ 1. If a Member State of the European Union, referred to in this Chapter as the "issuing State", applies for the execution of a European Investigation Order, referred to in this Chapter as the "EIO", the order for its execution shall be issued by the public prosecutor or **the district court in whose district the evidence is or may be taken.**

- § 2. If the admission, obtaining or taking of evidence is reserved to the jurisdiction of a court or is subject to the order of that court, the order referred to in paragraph 1 shall be issued by that court.
- § 3. The regional court shall have jurisdiction to issue an order for the execution of an EAW concerning the temporary surrender of a person deprived of his or her liberty to the issuing State for the purpose of carrying out an investigative measure in that State. The person concerned by the END must be heard before the order is made.
- § 4. A district court shall have jurisdiction to issue an order for the execution of an END concerning the temporary surrender of a person deprived of liberty to the Republic of Poland for the purpose of carrying out an investigative measure.
- § 5. If the court or public prosecutor to whom the EIO has been addressed is not competent to enforce the EIO, it shall forward the EIO to the competent court or public prosecutor and notify the competent court or other authority of the issuing state, referred to in this Chapter as the "EIO issuing authority".

Article 607a [European arrest warrant] In the event of a suspicion that a person prosecuted for an offence within the jurisdiction of Polish criminal courts may be present on the territory of a Member State of the European Union, **the locally competent regional court**, at the request of the public prosecutor, and in judicial and executive proceedings - ex officio or at the request of the competent district court, may issue a European arrest warrant.

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.*

This matter is regulated in chapter 62 of Criminal Procedure Code

CHAPTER 62. LEGAL AID AND DELIVERY IN CRIMINAL CASES.

Article 585 [Scope of Assistance] Necessary acts of criminal proceedings may be performed by way of legal assistance, in particular:

- 1) delivery of letters to persons residing abroad or to institutions located abroad;
- 2) interrogation of persons as defendants, witnesses or experts;

- 3) inspecting and searching rooms, other places and persons, seizing objects and delivering such objects abroad;
- 4) summoning persons abroad to appear in person voluntarily before a court or prosecutor for the purpose of questioning a witness or confrontation, as well as bringing persons deprived of liberty for this purpose;
- 5) providing access to files and documents and information on the criminal records of defendants;
- 6) providing information on the law.

Article 586 [Service to a Polish citizen].

§ 1. The court or prosecutor shall apply to the Polish diplomatic representation or consular office for service of a letter on a person abroad who has Polish citizenship, or for questioning of such a person as an accused, witness or expert.

§ 2. If it is not possible to perform actions in the manner specified in § 1, the court, prosecutor's office or other competent authority of a foreign state may be requested to perform such actions. In the case of a search, seizure and surrender of an object, the request shall be accompanied by a copy of the decision of the court or prosecutor ordering the performance of such action in the case.

Article 587 [Reading of protocols] The protocols of inspection, interrogation of persons as defendants, witnesses, experts, or protocols of other evidential actions performed by courts or prosecutors of foreign countries or bodies acting under their supervision, prepared at the request of a Polish court or prosecutor, may be read at the trial under the rules set forth in Articles 389, 391 and 393, if the manner in which the action was performed is not inconsistent with the principles of legal order in the Republic of Poland.

Article 588 [Providing assistance].

§ 1. Courts and prosecutors shall provide legal assistance at the request of courts and prosecutors of foreign countries.

§ 2. The court and prosecutor shall refuse to provide legal assistance and shall communicate the refusal to the competent authorities of the foreign state if the requested action would be contrary to the principles of the legal order of the Republic of Poland or would violate its sovereignty.

§ 3. The court and prosecutor may refuse to provide legal assistance if:

- 1) the performance of the requested action is not within the scope of the court's or prosecutor's activity under Polish law;
- 2) the state from which the application for legal aid originates does not ensure reciprocity in this respect;
- 3) the request concerns an act that is not a crime under Polish law.

§ 4. Polish laws shall apply to procedural actions performed at the request of a court or prosecutor of a foreign state. However, it is necessary to comply with the wish of these authorities that a special mode of procedure or a special form be applied in the performance of the action, if this is not contrary to the principles of the legal order of the Republic of Poland.

§ 5. The costs of providing legal aid shall be determined in accordance with Articles 616-619.

Article 589 [Quasi-safe conduct].

§ 1. A witness or expert witness who is not a Polish citizen and who appears voluntarily before the court, summoned from abroad, may neither be prosecuted nor detained nor temporarily arrested on account of the crime which is the subject of the criminal proceedings in question and any other crime committed before crossing the Polish national border. Nor may the punishment imposed on him for such a crime be executed.

§ 2. A witness or expert loses the protection provided for in § 1 if he does not leave the territory of the Republic of Poland, although he could have done so, within 7 days from the time the court announced to him that his presence had become unnecessary.

§ 3. A summoned witness or expert shall be entitled to reimbursement of travel and subsistence expenses and reimbursement of lost earnings, and an expert shall be entitled to remuneration for the preparation of an opinion.

§ 4. A summons served on a witness or expert permanently residing abroad shall contain an instruction on the content of the provisions of § 1-3. However, a threat of coercive measures for failure to appear shall not be included.

Article 589a [Interrogation of a person deprived of liberty in another country].

§ 1. With respect to a person deprived of liberty on the territory of a foreign country, temporarily released to testify as a witness or to perform with his participation another procedural act before a Polish court or prosecutor, the district court of the place where the act is performed shall order that the person released be placed in a Polish penal institution or detention centre for the duration of his stay on the territory of the

Republic of Poland, not exceeding, however, the period of deprivation of liberty specified in the issuing state.

§ 2. There shall be no complaint against the court's decision.

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.*

For me as a Polish judge there's an assumption that in EU countries there's no doubt that the basic human rights, principles and rules of procedural fairness are fulfilled. As far as other countries are concerned I'd rely on common knowledge, common sense or guidelines provided by the Ministry of Foreign Affairs in order to assess how/if the foreign request shall be performed. It should be noted that the mutual legal assistance to countries that are not members of the EU is usually regulated by bilateral agreements or international treaties.

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.*

I have given assistance to a Romanian court in performing online trial with the participation of an accused person in the Romanian case who was a Polish citizen serving a prison sentence in Poland.

I have also given assistance to German and Austrian courts concerning establishing the addresses of Polish citizens and serving court documents.