



English only / Anglais seulement

HIGH-LEVEL CONFERENCE OF THE MINISTRIES OF JUSTICE AND OF THE INTERIOR

Moscow (Russian Federation)

9 – 10 November 2006

IMPROVING EUROPEAN CO-OPERATION IN THE CRIMINAL JUSTICE FIELD

*Contribution presented by the Ministry of
Justice of*

**"THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA"**

www.coe.int/minint

The legal frame of the international judicial cooperation of the Republic of Macedonia consists of: national criminal legislative, bilateral agreements for international legal cooperation¹ (which the Republic of Macedonia has signed with large number of states) and the ratified international conventions² in this area (which are an integral part of the legal system of the Republic of Macedonia.)

In compliance with the **Constitution of the Republic of Macedonia**, article 18, the international agreements that are ratified in accordance with the Constitution of the Republic of Macedonia, are an integral part of the internal system and cannot be amended according to laws. Hence, Conventions which the Republic of Macedonia has ratified and enforced (implemented), are part of the national legislature and their direct enforcement is possible. In order to make the implementation of the Conventions more efficient, amendments have been made in the national legislature. Therefore, amendments have been made to the Criminal Code and the Law of Criminal Procedure which provided harmonization with the international conventions. The provisions from the European Convention with additional Protocols for International Mutual Legal Help in the field of criminal matters; Convention of the UN Against Trans – national Organized Crime; European Convention for Human Rights etc. and European legal acts as well as the recommendations from the reports on the Republic of Macedonia are entirely incorporated in the Law.

According to the amendments to the **Law on Criminal Procedure** adopted in 2004, the process of giving mutual legal assistance was established (defined) along with the process of transfer of convicted persons and extraditions.

1. International legal assistance

International criminal – legal aid is performed according to the provisions of the Law on Criminal Procedure, except if it is not stated otherwise with the provisions of the European Convention for Mutual Legal Assistance in the criminal field with the protocols, the Convention of the UN on trans – national organized crime and other international agreements ratified in accordance with the Constitution of the Republic of Macedonia.

The applications (requests) for legal aid in criminal cases addressed to and from the courts in the Republic of Macedonia can be submitted in three ways: diplomatic way, through the Ministry of Justice or directly from the competent court, which is a novelty introduced in order to accelerate these procedures.

The assistance mainly consists of: undertaking certain actions in the criminal procedure such as: investigative actions, deprivation of objects, delivery of writs and court verdicts (decisions), hearing of the convicted persons, witnesses, experts, and delivery of excerpts (statements) from the criminal records. In the course of that process, the court to which the application was submitted, decides (judges) according to the national regulations about the way of enforcement of the action and the degree of its permissibility subject to the pleading of the foreign court.

¹ The Republic of Macedonia has concluded bilateral agreements with many countries such as: Croatia, Slovenia, Albania, Turkey, Ukraine, Bulgaria, Romania, Monte Negro and UNMIK. Initiatives have been undertaken for the continuation of the procedure for negotiating the conclusion of Bilateral agreements with the Russian Federation and Italy.

² See Annex I List of signed and ratified Conventions in the field of judicial cooperation in criminal matters by the Republic of Macedonia

In terms of quick, efficient, flexible and prompt realization of the requirements for mutual legal aid submitted to the competent organs of the Republic of Macedonia, the amendments of the Law on Criminal Procedure allowed for an important advancement – the establishing of the possibility for **direct communication** between the competent courts of the Republic of Macedonia and the foreign bodies (article 522).

In emergency cases, when there is a case of mutuality, the requests (applications) for legal aid can be submitted through the **Ministry of the Interior**, which further delivers the application of the foreign body for legal assistance to the Ministry of Justice, and the Ministry itself will deliver the application to the competent court.

With the Law amending the Law on Criminal Procedure, special investigation **measures are introduced**. The introduction of the special investigative measures allow for the establishment of a precise legal framework in order to gather data and evidences necessary for the conduct of the criminal procedure and making the process of search for the offenders easier, especially actions of the organized crime, corruption, money laundering, trafficking of people, weapons, drugs, and other forms of crime. In the cases envisaged by the law, in the pre-investigative procedure, special investigative measures are prescribed by the order of the public prosecutor or the investigative judge, and during the investigation it is prescribed only by the investigative judge.

2. Transfer of accused and convicted persons

Temporary transfer of the arrested persons is permitted in the Republic of Macedonia in accordance with the Law on Criminal Procedure and the European Convention for Mutual Legal Assistance in the criminal matters. Transfer of the detainees is permitted both in cases of hearing witnesses or confrontation, or in the cases of hearing an accused, if the person is a foreign national, if there is a case of endangering of the criminal procedure because of the lack of delivering of the detainee to the country that asks the transfer.

3. Procedure for Extradition of accused and convicted persons

The extradition of the accused or of the convicted persons is requested or is performed in accordance with the provisions of this Law, whether with the European Convention of Extradition with the Protocols and with the other international treaties ratified according to the Constitution of the Republic of Macedonia it is not differently regulated.

In accordance with the Law on Criminal Procedure in the Republic of Macedonia, the Minister of Justice reaches a decision with which he allows the extradition for a given criminal offense only for persons who are not citizens of the Republic of Macedonia. Moreover, the conditions under which extradition is allowed are enumerated but only for a criminal offense for which the extradition has been approved.

4. Other Novelties in the Law on Criminal Procedure

4.1 Investigative Acts

○ Temporary securing and confiscation of objects and property

The investigative judge or the council can determine subject to a decision **temporary securing of the property or assets that are related to the crime action**. The property or the assets that are objects of security are put under the court's surveillance. Temporary security of property and assets includes as well the temporary freezing, confiscation, cessation of funds, bank accounts and financial transactions gained through criminal actions.

Besides the objects that according to the Criminal Code should be confiscated or objects that can serve as evidences during the criminal proceedings, temporary can be confiscated and handed over for keeping to the court or can be secured in some other way. The court can reach a decision to block (cease) those funds, bank accounts etc. for which there is a suspicion that they were gained through criminal actions.

The measures for temporary securing of objects, property and financial means can last until the procedure is finished, while temporary ceasing of the bank accounts can last until the completion of the procedure, and its justification will be examined officially every two months. The securing of the assets is performed by putting a mortgage to the related object. The financial funds are confiscated with a warrant and are kept in a safe, or can be put in a separate bank account with no right of management. The court decision about the cessation of the financial transaction or the bank account is delivered to the bank or other financial institution by the court. No one can claim a right to bank secrecy in order to avoid enforcement of the court decision for temporary ceasure, confiscation or retention of the funds deposited in the bank.

The court can reach upon a request of other state A decision for temporary securing of the objects or assets, in cases determined with international agreements, ratified in accordance with the Constitution of the Republic of Macedonia.

○ Protection of Witnesses, Justice Collaborators and Victims

During the procedure, the public prosecutor or the investigative judge, or the president of the Council take actions for providing an efficient protection of the witnesses, collaborators of justice and of victims in cases where they appear as witnesses during the procedure, when there is a danger for their exposure to intimidation, they receive threats of revenge or when their lives are endangered, their health or their physical integrity or when their protection is needed. The Law for Witness Protection will provide all kinds of protection of witnesses.

According to the **Second additional Protocol for mutual legal help in the crime field**, provisions are implemented that relate to undertaking certain actions during the main search. Telephone hearing can be asked for only if the investigative judge from the Basic court has approved and when it is necessary to trace the offenders. A witness or an expert can be subject to a telephone hearing or via video – conference call when they are on a territory of another state.

Besides the procedural measures for protection of the witnesses, according to the Convention, the following procedural actions are being listed and they can also be subjects to the mutual legal help: **temporary transfer of the persons deprived of their freedom on the territory of the Party – Applicant, temporary transfer of the persons deprived of their freedom on the territory of the Party that is asked for a help, over – border surveillance, controlled delivery, secret investigation and mutual investigative teams.** In that manner, **the requests for mutual legal aid for controlled delivery and secret investigations can be delivered directly to the competent authorities,** stated by Party/ Applicant or Party asked for assistance in the moment of the ratification of the Second Additional Protocol.

4. 2 Alternative measures

Confiscation of property and property interest and deprivation of objects can be submitted to a court decision of the foreign country under conditions stated with an international agreement. National courts, under conditions determined by international agreements, can ask from the foreign bodies to undertake temporary measures in order to secure and perform the confiscation of the assets and deprivation of objects. In cases when it is stated with an international agreement that the confiscated assets should be divided between the Republic of Macedonia and some other state, this kind of suggestion to the pertaining foreign country is submitted by the Ministry of Justice.

**LIST OF TREATIES ON LEGAL CO-OPERATION IN CRIMINAL MATTERS SIGNED
AND RATIFIED BY THE REPUBLIC OF MACEDONIA**

Signed and ratified

1. [European Convention on Extradition](#)
2. European Convention on Mutual Assistance in Criminal Matters
3. European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders
4. European Convention on the Transfer of Proceedings in Criminal Matters
5. Additional Protocol to the European Convention on Extradition
6. European Convention on the International Effects of Deprivation of the Right to Drive a Motor Vehicle
7. European Convention on the Suppression of Terrorism
8. Additional Protocol to the European Convention on Information on Foreign Law
9. Second Additional Protocol to the European Convention on Extradition
10. Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters
11. Convention on the Transfer of Sentenced Persons
12. Additional Protocol to the Convention on the Transfer of Sentenced Persons
13. Criminal Law Convention on Corruption
14. Convention on Cybercrime
15. Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems
16. Protocol amending the European Convention on the Suppression of Terrorism
17. Additional Protocol to the Criminal Law Convention on Corruption

Treaties signed but not ratified

18. Council of Europe Convention on Action against Trafficking in Human Beings
19. Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism
20. Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime – signed