

**REGIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS:  
OVERVIEW OF COMPARATIVE PRACTICES OF WESTERN BALKAN COUNTRIES**

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Terms in this publication indicating male gender refer also to male and female gender of parties involved. Content of this publication represents exclusive responsibility of authors and does not necessarily represent opinion of the donor.

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## 1. Forewords



The Konrad Adenauer foundation, through its Rule of Law Programme South East Europe (KAS RLPSEE), supports the consolidation of democratic states founded on the rule of law.

Our activities aim at narrowing the gap between the European of rule of law standards and democracy on the one hand and the current state of things across the region on the other hand. Our programme, which exists since 2006, has intensified its effort in recent years at strengthening the legal order also outside the EU borders, particularly in the Western Balkans. At the same time, KAS RLPSEE continues to support activities meant to overcome the still existing deficiencies in the justice sector and in the fight against corruption in the youngest EU member states.

The promotion of EU core values such as the rule of law, democracy and human rights – as strictly intertwined – is carried out through the implementation of projects, events, training courses, researches designed for lawyers judges and prosecutors, as well as representatives of state authorities as well as of non-governmental organizations working on rule of law matters, to expand their knowledge about EU standards in this field, national legislative and strategic frameworks, as well as practice of European Court of Human Rights.

We see our collaboration with CEDEM in the project “Strengthening regional judiciary cooperation through multi-sectorial approach” therefore as perfectly fitting with our priorities and commitment in the region. Thanks to the coordination of national researchers on the specific topic of judicial cooperation in criminal matters, it has been possible to compare the practices and status of development in this field in different Western Balkans countries. The legal framework both at the international and the national level has been scrutinized, and the procedures of cooperation at the EU level were investigated in the perspective of a successful fight against transnational crime and corruption.

Only the exchange of best practices and an even further strengthened dialogue among legal operators can tackle this challenge.

Through this regional project, the given publication seeks to strengthen not only the knowledge of judicial actors in the field of judicial cooperation, but also the dialogue among judicial stakeholders and civil society organizations. A strong participation of the civil society in the debates on justice issues, in fact, can be truly an asset in driving judicial reforms. The outcome of the project aims at supporting Western Balkan countries in their negotiations with the EU on chapters 23 and 24: a legal order is the core element in any democratic system, as well as the prerequisite for the regional countries’ accession to the European Union.

**Hartmut Rank, director  
Rule of Law Programme South East  
Konrad Adenauer Stiftung**

Center for Democracy and Human Rights (CEDEM) is the first nongovernmental organization in Montenegro to have organized seminars on international and legal standards of the European Union.



Since 1999, more than 2000 lawyers, judges, prosecutors and other civil servants have taken part in our training programmes. The Rule of Law Department develops amendments to existing legislation; organizes round table discussions and seminars for the representatives of judicial authorities; undertakes the

monitoring of judicial proceedings; prepares, publishes and distributes expert publications, the ultimate goal of which is to foster responsible, professional, efficient and transparent judiciary in Montenegro.

The Project entitled “Strengthening Regional Judicial Cooperation Through Multi-sectorial Approach”, supported by Konrad Adenauer foundation through its Rule of Law Programme South East Europe, which has for years been providing support and assuming partnership role in the initiatives undertaken by the CEDEM in the area of rule of law and human rights protection, is quite certainly an additional contribution by both CEDEM and KAS to the raising of awareness of this topic and further development of cooperation among partners from state authorities, international community and civil society organizations, especially when it comes to international (regional) judicial cooperation in criminal matters.

In that sense, efficient international cooperation and mutual legal assistance are prerequisites for speedy and effective proceedings in complex criminal cases, especially when marked by a transnational element. It is evident that criminal groups strive in their activities to make use of the differences among legal systems of various states, benefiting from the lack of efficient coordination among various national services, and very often also the fact that some countries are not ready for certain level of cooperation with other countries.

In order to foster efficient and effective cooperation aimed at reducing the abovementioned differences, this publication, besides offering the overview of national legal frameworks in the six countries and international standards in this field, it also offers the overview of mechanisms for international judicial cooperation in criminal matters, some of which are especially related to extradition, mutual legal assistance, mutual recognition of judicial decisions, freezing or confiscation of assets. Furthermore, the statistical section of the publication provides information on the intensity of cooperation among Western Balkan countries in this field. Finally, sets of recommendations, coming at the end of every individual report, will offer guidelines to all relevant stakeholders in the area of regional judicial cooperation for further strengthening and enhancing the same i.e. empowering the systems of regional judicial cooperation and providing contribution by Western Balkan countries to the international rule of law system.

**Milena Bešić, director  
Center for Democracy and Human Rights (CEDEM)**

# ALBANIA.

## 1. Introduction

With the passing of the years, the international dimension and mobility of the crime have increased significantly. The recent Europol's Serious and Organized Crime Threat Assessment concluded that 7 out of 10 organized crime groups are typically active in more than three countries.<sup>1</sup> Furthermore, the Europol's report concluded that many of the organized crime groups are highly flexible and display great adaptability in the speed with which they adjust their *modus operandi* or whole business models to changes in the environment.

Similar to other countries for over three decades crime in Albania has grown in dimension, level of sophistication and mobility terms able to organize or lead transnational criminal operations. Furthermore, Albania's autarkic brand of communist rule has presented formidable political and social challenges to its democratic transition and to the rise of criminality over the years. After the fall of the Stalinist regime that kept Albania hermetically sealed from the rest of the world for 45 years, the challenges that followed as the weak state, socio-cultural confusion, lack of democratic heritage and economic decline have significantly contributed to the upsurge of crime.<sup>2</sup>

In 2016 there were 5,722 Albanian nationals imprisoned in EU countries, a relatively high number compared with the number of population as countries with far larger populations such as Turkey and Poland ranked behind Albania with 4,798 and 4,449 prisoners respectively.<sup>3</sup> Currently, apart from being considered as a country that produces and exports significant amounts of marijuana - primarily for European use<sup>4</sup> - Albania is also identified as a base of operations for regional organized crime organization and as a transit country for Afghan heroin and cocaine, serving as a key gateway for heroin distribution throughout Europe.<sup>5</sup>

Detection, disruption, and prosecution of cross-border criminal networks effectively and sustainably would require intensive judicial cooperation between the countries of Western Balkans (WB) and internationally. Legal, institutional and policy framework of Albania on judicial cooperation in criminal matters will be explored to assess its compliance with recent developments, challenges faced and future prospects. Notably, the report will focus on Albania's mechanisms

<sup>1</sup> EUROPOL, 'Serious and Organized Crime Threat Assessment (SOCTA)' (2017) <<https://www.europol.europa.eu/activities-services/main-reports/serious-and-organised-crime-threat-assessment>> accessed 27 October 2018

<sup>2</sup> See further: Risk Monitor Foundation, 'Organized Crime and the Balkan Political Context' (2010)

<sup>3</sup> Michael Bird et al., 'Romania and Morocco have most expats in EU prisons' (EUOBSERVER, November 2016) <<https://euobserver.com/investigations/135659>> accessed 27 October 2018

<sup>4</sup> United States Department of State, Bureau of International Narcotics and Law Enforcement Affairs, 'International Narcotics Control Strategy Report: Volume II. Money Laundering' 38 (March 2018) <<https://www.state.gov/documents/organization/278760.pdf>> accessed 27 October 2018

<sup>5</sup> Ibid, 38

on international judicial cooperation in criminal matters, the legal and policy framework and concrete practices on extradition, mutual legal assistance, the transfer of criminal proceedings, recognition of decision of foreign criminal jurisdictions, freezing and seizure of assets, etc. All these aspects will be examined from the angle of improving cooperation, safety, and protection of the citizens, but also from the perspective of creating the basic set of rights and minimum guarantees for people under criminal investigation.

## 2. Methodology of the report

The information provided in this study is primarily based on desk research and based on the legal analysis of the Albanian law from an interpretative point of view supported with data achieved from the practice. Additional data has been collected from annual reports produced by Albanian authorities. While writing this report in the last week of October, a list of questions was sent to Ministry of Justice and General Prosecutors Office under Freedom of Information Law. Both institutions did not provide the requested information<sup>6</sup> and are currently under review by Commissioner on the Right to Information.<sup>7</sup>

## 3. Albania's Legal Framework in the Field of International and Regional Judicial Cooperation in Criminal Matters

Albania belongs to the countries with a civil law system where the main legal principles are codified; however, the legal framework is reinforced by the judicial precedent. The principle of cooperation among states is endorsed in the preamble of the Constitution of Albania stating that “**justice, peace, harmony and cooperation between nations are among the highest values of humanity**”.<sup>8</sup> Additionally, the Constitution has guaranteed core principles of criminal law applicable and important in judicial cooperation – setting of rights and minimum guarantees for people under criminal investigation -

<sup>6</sup> Ministry of Justice did not reply to the request for information, while the General Prosecutors Office in its reply on 27 November stated that due to staff shortage they were not able to provide more information than the ones available on their webpage.

<sup>7</sup> Commissioner on the Rights to Information usually within a deadline obliges the public institutions to provide the requested information if the request is based on and according to the Law on the Rights to Information.

<sup>8</sup> Constitution of the Republic of Albania (Law no. 8417, dated 21 October 1998) <<http://www.eurallus.eu/index.php/en/library/albanian-legislation/send/9-constitution/178-constitution-of-the-republic-of-albania-e>> accessed 27 October 2018

including extradition, double criminality, right to be heard, the presumption of innocence, *ne bis in idem*, and confidentiality.<sup>9</sup>

### 3.1. Multilateral Conventions

The globalization of criminal activities has created a need for strengthened forms of international cooperation. The investigation, prosecution, and control of crime cannot be confined within national boundaries. The international judicial cooperation in criminal matters has a strong base on multilateral agreements which lie out the provisions on legal assistance for judicial authorities of the countries to facilitate cooperation particularly in combating serious organized crime. Furthermore, these multilateral agreements provide the necessary legal and practical information to the judicial authorities of their country as well as to the links and to the local judicial authorities of other countries. In addition, all the international conventions and agreements, after ratification by law, become part of the domestic legal system and prevail over the domestic law in case of conflict or incompatibility.<sup>10</sup>

Albania has signed several important UN Conventions and Resolutions<sup>11</sup> and CoE Conventions and Agreements.<sup>12</sup> The following table displays the multilateral agreement on judicial cooperation in criminal matter to which Albania is part.<sup>13</sup>

<sup>9</sup> Ibid, Articles 29-39

<sup>10</sup> Article 5 of the Constitution of the Republic of Albania

<sup>11</sup> UN, Multilateral Treaties Deposited with the Secretary-General, 'Albania' <[https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?clang=\\_en](https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?clang=_en)> accessed 29 October 2018

<sup>12</sup> CoE, Treaty list of Albania <[https://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/country?coeconventions\\_WAR\\_coeconventionsportlet\\_formDate=1478167383477&coeconventions\\_WAR\\_coeconventionsportlet\\_mode=states\\_coe&coeconventions\\_WAR\\_coeconventionsportlet\\_codePays=ALB&coeconventions\\_WAR\\_coeconventionsportlet\\_codesMatiere=&coeconventions\\_WAR\\_coeconventionsportlet\\_codeSignature=&coeconventions\\_WAR\\_coeconventionsportlet\\_dateStatus=03%2F11%2F2016&coeconventions\\_WAR\\_coeconventionsportlet\\_dateStatusDay=3&coeconventions\\_WAR\\_coeconventionsportlet\\_dateStatusMonth=10&coeconventions\\_WAR\\_coeconventionsportlet\\_dateStatusYear=2016&p\\_auth=o83irmFp](https://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/country?coeconventions_WAR_coeconventionsportlet_formDate=1478167383477&coeconventions_WAR_coeconventionsportlet_mode=states_coe&coeconventions_WAR_coeconventionsportlet_codePays=ALB&coeconventions_WAR_coeconventionsportlet_codesMatiere=&coeconventions_WAR_coeconventionsportlet_codeSignature=&coeconventions_WAR_coeconventionsportlet_dateStatus=03%2F11%2F2016&coeconventions_WAR_coeconventionsportlet_dateStatusDay=3&coeconventions_WAR_coeconventionsportlet_dateStatusMonth=10&coeconventions_WAR_coeconventionsportlet_dateStatusYear=2016&p_auth=o83irmFp)> accessed 29 October 2018

<sup>13</sup> See also a non-comprehensive list in GPO website: <[http://www.pp.gov.al/web/Instrumentet\\_Shumepaleshe\\_622\\_1.php#.W-HuyjNKjIW](http://www.pp.gov.al/web/Instrumentet_Shumepaleshe_622_1.php#.W-HuyjNKjIW)> accessed 29 October 2018



| Multilateral Conventions and Agreements on Judicial Cooperation in Criminal Matters   |      |                               |
|---|------|-------------------------------|
| Convention/Agreement  | Part | Year                          |
| European Convention on Human Rights   | Yes  | 1996                          |
| Stabilisation and Association Agreement with EU   | Yes  | 2009                          |
| European Convention on the Transfer of Proceedings in Criminal Matters  | Yes  | Law no.8497, 1999             |
| European Convention on Mutual Assistance in Criminal Matters and the First and Second Additional Protocols                                | Yes  | Law no.8498, 1999, 2000, 2002 |
| European Convention on the Transfer of Sentenced Persons  | Yes  | Law no.8499, 1999             |
| European Convention on the International Validity of Criminal Judgments   | Yes  | Law no. 8984, 2002            |
| European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders                                     | Yes  | Law no.8724, 2000             |
| European Convention on Extradition  | Yes  | 1998                          |
| European Convention on the Suppression of Terrorism   | Yes  | Law no.8642, 2000             |
| Council of Europe Convention on the Prevention of Terrorism   | Yes  | 2007                          |
| Council of Europe Convention against Trafficking in Human Organs  | Yes  | 2016                          |
| Criminal Law Convention on Corruption and the Additional Protocol   | Yes  | Law no. 8778, 2001            |
| Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism | Yes  | Law no.8646, 2000             |
| European Convention on Cybercrime   | Yes  | 2004                          |
| Council of Europe Convention on Action against Trafficking in Human Beings  | Yes  | 2007                          |

|  |     |                    |
|--|-----|--------------------|
| European Convention on the Punishment of Road Traffic Offences                                   | No  |                    |
| Vienna Convention on the Law of Treaties   | Yes | 2001               |
| Single Convention on Narcotic Drugs  | Yes | Law no. 8723, 2000 |
| United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances  | Yes | Law no. 8722, 2000 |
| Rome Statute of the International Criminal Court   | Yes | Law no. 8984, 2002 |
| International Convention for the Suppression of Terrorist Bombings                               | Yes | 2002               |
| United Nations Convention against Corruption   | Yes | Law no. 9492, 2006 |
| United Nation Convention on the Suppression of the Financing of Terrorism,                       | Yes | Law no. 8865, 2002 |
| United Nations Convention against Transnational Organized Crime and the two Additional Protocols | Yes | Law no. 8920, 2002 |
| Convention on the Prevention of Terrorism  | Yes | Law no. 8865, 2002 |
| European Agreement on the Transmission of Applications for Legal Aid                             | Yes | Law no. 8705, 2000 |
| SECI Agreement on Cooperation to Prevent and Combat Trans-Border Crime                           | Yes | 1999               |

### 3.2. Bilateral Agreements with WB countries

Often concrete efforts are needed in extradition, mutual legal assistance, transfer of sentenced persons and transfer of criminal proceedings. In order to handle complex cases and provide legal assistance timely and effectively, States have concluded bilateral agreements through the arrangement of specific pillars of judicial cooperation. However, with regard to the countries of the region, the Albanian government has signed bilateral agreements on

judicial cooperation in criminal matter only with Kosovo and Macedonia, as shown in the following table. Beyond the region, Albania has signed bilateral agreements on the same topic with several other countries (for example: in 1927 with Great Britain and with the United States of America in 1933.<sup>14</sup>

| Bilateral Agreements with WB Countries   |      |
|--|------|
| Country  | Year |
| Agreement between Council of Ministers of Republic of Albania and former Yugoslav Republic of Macedonia on the fight of terrorism, organized crime, drug trafficking, illegal migration, and other illegal activities. | 2004 |
| Agreement between the Government of Albania and the Government of former Yugoslav Republic of Macedonia n Legal Assistance in Civil and Criminal Matters   | 1998 |
| Agreement between Council of Ministers of Republic of Albania and government of Republic of Kosovo for the transfer of convicted persons   | 2013 |
| Agreement between Council of Ministers of Republic of Albania and government of Republic of Kosovo on extradition  | 2013 |
| Agreement between Council of Ministers of Republic of Albania and government of Republic of Kosovo on mutual legal assistance on criminal matters  | 2013 |

### 3.3. National Laws

On the national level, judicial cooperation in criminal matters is regulated in a couple of laws, the most important ones being the Criminal Code, the Criminal Procedure Code, and the Law on Jurisdictional Relations with Foreign Authorities in Criminal Matters.

The **Criminal Code** recognizes the validity of a criminal decision taken by foreign courts against an Albanian citizen unless provided differently by bilateral or multilateral agreements, and the possibility of granting extradition if provided in international agreements to which Albania is part.

The **Criminal Procedure Code** provides that relationships with foreign authorities in the field of criminal law shall be governed by international agreements, by

<sup>14</sup> For a full list of Albanian's bilateral agreements with other countries in criminal matters please see the list in GPO website: [http://www.pp.gov.al/web/Instrumentet\\_Dypaleshe\\_620\\_1.php#.W-Hlr5NKjIV](http://www.pp.gov.al/web/Instrumentet_Dypaleshe_620_1.php#.W-Hlr5NKjIV)

generally accepted principles and provisions of international law and Albanian law. Additionally, the Criminal Procedure Code regulates rogatory letters from and for abroad, the competent institutions, the witnesses requested by foreign authorities and execution of the foreign criminal decisions.

The **Law on Jurisdictional Relations with Foreign Authorities in Criminal Matters** adopted in 2009 is Albania's *lex specialis* on the field of international judicial cooperation in criminal matters. The law regulates proceedings related to criminal offenses that are in the jurisdiction of the judicial authorities of the requesting state or in Albania, and proceedings that are in the jurisdiction of the European Court of Human Rights or other international courts whose jurisdiction has been accepted by Albania. This Law governs key judicial cooperation pillars as extradition, execution of foreign criminal decisions, transfer of criminal proceedings, transfer of convicted persons, recognition of foreign criminal decisions, and so on. It provides rules for requests based on a treaty and establishes key principles as reciprocity, notification, and confidentiality. Article 42 of this Law establishes the 'principle of specialty' which is a fundamental feature for governing extradition relations between Albania and other states. The principle of specialty provides that a state may only prosecute an extradited individual for the offenses agreed to by the sending state. The article establishes that "the extradited person should not be criminally prosecuted for another criminal offence committed before the extradition". Additionally, article 42 sanctions the right of extradited person tried *in absentia* to review the judicial decision rendered against him. The right to review decisions *in absentia* has taken increased importance in the domestic case law and it has been established by the Constitutional Court as a right to a fair trial under the Constitution and under article 6 of the ECHR.

Nevertheless, regulation of judicial cooperation both in Criminal Procedures Code and on the Law on Jurisdictional Relations has been observed to create ambiguity for application. The coexistence of two sets of rules for mutual legal assistance in criminal matters has created confusion among Albanian authorities and rendered the hierarchy of norms unclear for practitioners.

## 4. Strategic and Institutional Framework in the Field of Judicial Cooperation in Criminal Matters

In recent years the criminal activity – and, in particular, the organized crime – has crossed the national borders becoming more and more a regional and international challenge. In such conditions, the ability to promptly respond to the need for international cooperation is very important, given the nature and

implication of the crimes. States have intensified the judicial cooperation both at a regional and international level in order to be able to effectively challenge the operations of cross-border crimes. Under international conventions and bilateral agreements, States' parties designate central and competent authorities to facilitate international cooperation in criminal matters. These authorities are assigned to coordinate the sending, receiving and processing of requests and execute other request based on mutual legal assistance agreements between states. In Albania, international judicial cooperation in criminal matters is coordinated and facilitated primarily by the Ministry of Justice (MoJ) and General Prosecutor Office (GPO) as the two central institutions with the legal power to act in this field.

#### 4.1. Strategic Framework

In 2011 the Council of Ministers for the first time adopted a policy documents intended to coordinate efforts for improving the justice system in Albania – the *Inter-Sectorial Strategy in Justice and its Action Plan*. The aim of the strategy was to improve the justice system in Albania, increase access to justice, increase public trust in the justice system and overall strengthen the justice sector to support Albania's EU integration bid. Among other strategic objectives, the Strategy foresees as too important the "consolidating the effectiveness of judicial power to be effective, open, and willing to act in accordance with the Constitution, international acts and domestic legislation, guided by the rule of law, as well as the strengthening of international judicial cooperation". Under this strategic objective, the Strategy lies out priorities which include actions guided by the constitution and international law, strengthening of regional and international judicial cooperation, improvement of execution of foreign court decisions, and intensification of capacities of MoJ in the field of judicial cooperation. Additionally, the Action Plan contains specific actions to improve judicial cooperation. Some of the activities include the signing of bilateral agreements on mutual legal assistance with EUROJUST and some specific countries, signing of multilateral agreements, unification of request for legal assistance, creation of an electronic database on international judicial cooperation etc. Nevertheless, in 2013 after the parliamentary elections, there was a rotation of powers and the new government that emerged from elections side-lined this Strategy by undertaking an in-depth reform of justice system in Albania that is currently ongoing.

In 2016, the Albanian government adopted a new strategy on the justice system, the *Inter-Sectorial Strategy on Justice 2017-2020 and its Action Plan*. The 2017 Strategy makes little reference to international judicial cooperation. Without

going into details the strategy states that the government will review provisions regulation on international judicial cooperation based on conventions and agreements signed by Albania in order to bring them in line with the newly adopted justice reform. It also aims to increase capacities of the MoJ on international judicial cooperation; however, no specific details are provided. This year GPO adopted its second *Mid-Term Strategy and its Action Plan* which includes as a third objective 'strengthening the cooperation with international partners'. The GPO has reasoned that the fight against crime, particularly organized crime, requires coordinated international response; therefore, Albania aims to strengthen its cooperation with foreign authorities not only by timely responding to requests, but also at the operational level. The Mid-Term Strategy is composed of three main measures on the field of international judicial cooperation: a) increasing the speed, quality, and effectivity on international judicial cooperation; b) increasing of coordination with international institutions and agencies; and c) increasing of international cooperation to identify, freeze, sequester, and confiscate criminal assets.

#### 4.2. The Institutional Framework

##### Ministry of Justice

MoJ is Albania's central institution that handles international judicial cooperation cases in criminal matters. MoJ follows international cooperation in criminal and civil matters based on the international treaties where Albania is part, follows jurisdictional relations with foreign competent authorities and international organizations.<sup>15</sup> According to the Criminal Procedure Code and Law on Jurisdictional Relations, MoJ is responsible for issues relating to international judicial cooperation in criminal matters including rogatory letters, translation of acts, transfer of detained persons, coordination of request for extraditions, coordination of request for sequestration, recognition of decisions of foreign courts, transfer of sentenced persons, sharing of information with foreign judicial authorities etc.

<sup>15</sup> Article 6 of the Law no. 8678/2001, "On the Organization and Functioning of the Ministry of Justice"



## The General Prosecution Office

After the MoJ, the GPO is the key player on the issues of international judicial cooperation on criminal matters which usually acts in cooperation or based on the acts and request sent through MoJ.<sup>16</sup> The Directorate on External Jurisdictional Relations at the GPO is the institutional link and at the same time specialized unit for international cooperation, providing specific assistance in the harmonization of national, transboundary and international law enforcement chains in the fight against criminal activity in general and organized crime in particular.<sup>17</sup> Based on its operational framework this unit in GPO has an important role in international jurisdictional cooperation in general and implementation of the regional and global objective in the fight of criminal activity. In addition, GPO, MoJ, Ministry of Finance and Ministry of Interior jointly have signed a memorandum of understanding in the framework of international coordination of actions for the enforcement of the law.<sup>18</sup> The aim of Memorandum is to intensify the cooperation among parties for a better international coordination and information sharing to fight crime and undertake an international investigation.

<sup>16</sup> GPO competences on judicial cooperation and its cooperation with MoJ are primarily regulated in the Law on Jurisdictional Relations with Foreign Authorities in Criminal Matters.

<sup>17</sup> GPO 'Judicial cooperation with foreign authorities' < [http://www.pp.gov.al/web/Marredhenie\\_Juridiksionale\\_me\\_Jashte\\_619\\_1.php#.W91gfpNKjIV](http://www.pp.gov.al/web/Marredhenie_Juridiksionale_me_Jashte_619_1.php#.W91gfpNKjIV) > accessed 30 October 2018

<sup>18</sup> Memorandum of Understanding in the Framework of International Coordination for the enforcement of the law < [http://www.pp.gov.al/web/memorandum\\_2010\\_422.pdf](http://www.pp.gov.al/web/memorandum_2010_422.pdf) > accessed 1 November 2018

## Obstacles identified

International judicial cooperation in criminal matters is a dynamic field and so are measures and efforts of states designed to fight cross-border criminality. However, the increasing number of international acts in which Albania participates to has created difficulties particularly with regard to professional knowledge of the staff in the MoJ.<sup>19</sup> Furthermore, other studies have concluded that MoJ is often challenged by long-lasting procedures and work overload,<sup>20</sup> which has an impact in the timely proceeding of the important request. Finally, a recent case - that received high public attention due to its political sensitivity and involvement of Albanian former minister of interior currently under investigation for drug trafficking - demonstrates how the lack of cooperation within GPO and between MoJ and the police lead to an illegal extradition of an Albanian citizen to Italy.<sup>21</sup>

## Cooperation in EU Level

Albania is partner of different institutions in international and regional level that play an important role in the field of judicial cooperation in criminal matters. Albania is part of Interpol since 1991<sup>22</sup>, partner of European Judicial Network<sup>23</sup>, since 2013 has signed a strategic cooperation agreement with Europol<sup>24</sup>, and last month signed a strategic judicial cooperation agreement with Eurojust.<sup>25</sup> Furthermore, Albania is part of other important regional networks as Prosecutor's Networks of the Western Balkans<sup>26</sup>, Southeast European Prosecutor Advisory Groups<sup>27</sup>, Southeast European Law Enforcement Centre<sup>28</sup>,

<sup>19</sup> The Inter-Sectorial Strategy in Justice and its Action Plan' (July 2011)

<sup>20</sup> Prosecutor's Network of the Western Balkans, 'Assessment report on Mutual Legal Assistance in Criminal Matters in Albania' (IPA Project, 2016) < <http://www.prosecutorsnetwork.org/uimages/MLA%20REPORT%20ALBANIA.pdf> > accessed 30 October 2018

<sup>21</sup> Ekstradimi/Zbardhet vendimi i Gjykates: Prokuroria nuk u koordinua per 'financierin' e Habilajve (Panorama, 30 January 2018) < <http://www.panorama.com.al/ekstradimi-zbardhet-vendimi-i-gjykates-prokuroria-nuk-u-koordinua-per-financierin-e-habilajve/> > accessed 1 November 2018; Ekstradimi i financierit të 'Habilajve', Prokuroria konstaton shkelje: Masa për përgjegjësit (BalkanWeb, 26 January 2018) < <https://www.balkanweb.com/ekstradimi-i-financierit-te-habilajve-prokuroria-konstaton-shkelje-masa-per-pergjegjesit/> > accessed 1 November 2018

<sup>22</sup> Law no. 8427/1998

<sup>23</sup> [https://www.ejn-crimjust.europa.eu/ejn/EJN\\_InfoAbout.aspx?Id=215](https://www.ejn-crimjust.europa.eu/ejn/EJN_InfoAbout.aspx?Id=215)

<sup>24</sup> Agreement on Operational and Strategic Co-operation between The Republic of Albania and Europol (2013) < [https://www.europol.europa.eu/sites/default/files/documents/agreement\\_on\\_operational\\_and\\_strategic\\_co-operation\\_between\\_the\\_republic\\_of\\_albania\\_and\\_the\\_european\\_police\\_office.pdf](https://www.europol.europa.eu/sites/default/files/documents/agreement_on_operational_and_strategic_co-operation_between_the_republic_of_albania_and_the_european_police_office.pdf) > accessed 1 November 2018

<sup>25</sup> Eurojust and Albania take a major step to strengthen the fight against cross-border organised crime < <http://www.eurojust.europa.eu/press/PressReleases/Pages/2018/2018-10-05.aspx> > accessed 1 November 2018

<sup>26</sup> <http://www.prosecutorsnetwork.org/>

<sup>27</sup> <http://www.seepag.info/index.php?section=about&id=3>

<sup>28</sup> <http://www.selec.org/m106/About+SELEC>

and IPA 2017 project aiming at the countering of serious crimes in Western Balkans.<sup>29</sup> Finally, the EU technical assistance project “Consolidation of Law Enforcement Agencies - Support to the Ministry of Internal Affairs, Albanian State Police and Prosecutor Offices (PAMECA V)<sup>30</sup>” aiming to assist key Albanian law enforcement agencies to bring their performance closer to EU standards that started in 2017 is planned to continue until 2020.

## 5. Key Achievements and Statistical Data on International Judicial Cooperation in Criminal Matters

Albania achieved Schengen visa-free access in 2010 a measure that facilitated considerably the free movement of many Albanian citizens toward EU countries, but also made it easier for criminal groups to operate transnationally. International judicial cooperation in criminal matters has assisted Albanian authorities, particularly, in the field of illegal trafficking (including women, child and drug trafficking), organized crime, terrorism, and other serious crimes.<sup>31</sup> In the field of drug trafficking, Serious Crimes Prosecution Office has organized joint meetings and investigation with other countries as with Italy, Germany, Greece, and Macedonia.<sup>32</sup> The Serious Crimes Prosecution Office is continuing its investigations in the framework of several proceedings for structured criminal groups operating also outside of Albania referred mainly by the General Directorate of Police.<sup>33</sup> The following of statistics provides a general overview of concrete actions and the specific cases in Albania on regional and international judicial cooperation for the years 2016 and 2017.<sup>34</sup>

<sup>29</sup> <https://cscwb.info/#home>

<sup>30</sup> PAMECA V < [http://pameca.org.al/wp-content/uploads/2017/09/Leaflet\\_-Pameca-V.pdf](http://pameca.org.al/wp-content/uploads/2017/09/Leaflet_-Pameca-V.pdf)> accessed 03 November 2019

<sup>31</sup> Annual Report of GPO on the Situation of Criminality for 2016 (March 2017) 17 < [http://www.pp.gov.al/web/raporti\\_pp\\_2016\\_07\\_03\\_2017\\_1160.pdf](http://www.pp.gov.al/web/raporti_pp_2016_07_03_2017_1160.pdf)> accessed 3 November 2018

<sup>32</sup> Annual Report of GPO on the Situation of Criminality for 2017 (March 2018) 10 < [http://www.pp.gov.al/web/raporti\\_vjetor\\_2017\\_1350.pdf](http://www.pp.gov.al/web/raporti_vjetor_2017_1350.pdf)> accessed 2 November 2018

<sup>33</sup> Ibid

<sup>34</sup> The statistic presented are taken from the Annual Report of GPO on the Situation of Criminality for 2017 (March 2018) < [http://www.pp.gov.al/web/raporti\\_vjetor\\_2017\\_1350.pdf](http://www.pp.gov.al/web/raporti_vjetor_2017_1350.pdf)> accessed 2 November 2018

### 5.1. Extraditions

#### *Extraditions from Abroad*

During 2017, Albania has sent 194 requests for extraditions of Albanians or foreign citizens that have been arrested or localized by law enforcement agencies of foreign states after an arrest warrant is issued by a court with a final penal decision or a decision that assigns a personal security measure with “imprisonment” given by an Albanian court.

| Number of Extradition Requests | 2016 | 2017 |
|--------------------------------|------|------|
|                                | 132  | 194  |

The highest number of persons extradited come from Greece, Italy and Germany.

| Extraditions from Foreign Countries |           |            |
|-------------------------------------|-----------|------------|
| State                               | 2016      | 2017       |
| Italy                               | 24        | 38         |
| Greece                              | 30        | 55         |
| Germany                             | 25        | 27         |
| France                              | 4         | 3          |
| Kosovo                              | 4         | 5          |
| Switzerland                         | 1         | 9          |
| England                             | 0         | 6          |
| <b>Total</b>                        | <b>88</b> | <b>143</b> |

#### *Extraditions Abroad*

From the statistical data it results that during 2017, 145 persons Albanian or foreign were arrested in the territory of the Republic of Albania with the purpose of extradition to other states, an indicator which results in a significant increase by 46.4% compared to 2016.

| Number of persons extradited to foreign countries | 2016 | 2017 |
|---|------|------|
|   | 99   | 145  |

During 2017 the highest number of extradition requests for Albanian or foreign citizens arrested in the territory of the Republic of Albania was submitted by Italy with 91 cases.

| Number of persons extradited to foreign countries |           |            |
|---|-----------|------------|
| State   | 2016      | 2017       |
| Italy   | 66        | 91         |
| Germany   | 4         | 6          |
| Serbia  | 2         | 4          |
| Kosovo  | 6         | 5          |
| Switzerland                                       | 3         | 4          |
| Macedonia   | 6         | 7          |
| <b>Total</b>                                      | <b>87</b> | <b>117</b> |

In the framework of requests sent by foreign authorities for extradition from Albania toward the requesting states, the Directorate on External Jurisdictional Relations during 2017 has requested the Prosecution in 33 cases to apply security measures against the property.<sup>35</sup>

## 5.2. Rogatory Letters

### *Rogatory Letters from Abroad*

In 2017 Albania received 735 requests for legal assistance in criminal cases, an indicator which increased by 40.3% compared to 2016. The highest number of legal assistance request comes from neighbouring countries such as Greece, Kosovo or Macedonia.

| Rogatory Letters from Abroad | 2016 | 2017 |
|------------------------------|------|------|
|                              | 524  | 735  |

<sup>35</sup> Annual Report of GPO on the Situation of Criminality for 2017 (March 2018) 247 <[http://www.pp.gov.al/web/raporti\\_vjetor\\_2017\\_1350.pdf](http://www.pp.gov.al/web/raporti_vjetor_2017_1350.pdf)> accessed 2 November 2018

| Rogatory Letters from Abroad |      |      |
|------------------------------|------|------|
| State                        | 2016 | 2017 |
| Greece                       | 164  | 210  |
| Kosovo                       | 96   | 103  |
| Macedonia                    | 34   | 63   |
| Hungary                      | 32   | 30   |
| Italia                       | 31   | 49   |
| Turkey                       | 28   | 33   |
| Montenegro                   | 20   | 26   |
| Croatia                      | 17   | 17   |
| Portugal                     | 15   | 6    |
| Switzerland                  | 10   | 5    |
| Slovenia                     | 10   | 5    |
| Germany                      | 9    | 40   |
| France                       | 9    | 13   |

## 5.3. Recognition of Penal Decision

### *Recognition of Foreign Penal Decisions*

In 2017 foreign judicial authorities have submitted a total of 58 requests for recognition of their penal decisions given to the Albanian nationals, an indicator which results in an increase of 23% compared to 2016. The majority of the requests are submitted by neighbouring countries.

| Recognition of Foreign Penal Decisions | 2016 | 2017 |
|--|------|------|
|  | 47   | 58   |

| Recognition of Foreign Penal Decisions |      |      |
|--|------|------|
| State                                  | 2016 | 2017 |
| Kosovo                                 | 6    | 5    |
| Italy                                  | 22   | 42   |
| Greece                                 | 15   | 4    |

### Recognition of Albanian Penal Decisions Abroad

In 2017 Albanian judicial authorities have submitted 19 requests for the recognition of Albanian penal decisions by other countries, where the majority is directed to Kosovo.

| Recognition of Albanian Penal Decisions Abroad | 2016 | 2017 |
|--|------|------|
|  | 30   | 19   |

| Recognition of Albanian Penal Decisions Abroad |      |      |
|--|------|------|
| State  | 2016 | 2017 |
| Kosovo   | 20   | 12   |
| Italy  | 1    | 0    |
| Germany  | 1    | 2    |
| Macedonia                                      | 1    | 1    |
| Equatorial Guinea                              | 2    | 0    |

### 5.4. Transfer of Criminal Proceedings

|  | 2016 | 2017 |
|--|------|------|
| Transfer of Criminal Proceedings from Abroad | 5    | 13   |
| Transfer for Abroad                          | 5    | 2    |

### 5.5. Transfer of Sentenced Persons

During 2017, 9 requests were submitted for the transfer of convicted persons from abroad, specifically 4 requests from England, Austria, Belgium, Italy, Montenegro, and Macedonia respectively 1 request.

|   | 2016 | 2017 |
|---|------|------|
| Transfer of Sentenced Persons from Abroad | 33   | 9    |
| Transfer for Abroad                       | 14   | 9    |

### 5.6. International Arrest Warrants

During 2017, Albania has issued 260 international arrest warrants for Albanians or foreign citizens that have been convicted with a final penal decision or a decision that assigns a personal security measure with "imprisonment" given by an Albanian court.

| International Arrest Warrants Issued by Albanian Prosecution | 2016 | 2017 |
|--|------|------|
|  | 377  | 260  |

## 6. Conclusions and Recommendations

On its road to EU integration, Albania would have to strengthen the sectors that affect the rule of law in the country. Negotiations of Chapter 23 – Judiciary and Fundamental Rights and Chapter 24 – Justice, Freedom, and Security would require Albania to adopt necessary legislation, review the existing one, strengthen the institutional framework and establish a solid track record of implementation.

It goes without saying that strengthening of judicial cooperation in criminal matters would be essential for strengthening the rule of law in Albania and increase the efficiency in the fight against organized crime. International judicial cooperation in criminal matters is a dynamic field and therefore increased efforts and measures need to be adapted to be able to counter the cross-border criminality. As a democracy in consolidation, Albania suffers from the implication of crime and its adverse effect in security, the prosperity of the country, impact in the political domain and, above all, it impedes country's road toward EU integration. Increased mobility of crime and its international dimension signals the need for judicial authorities to increase cooperation and efficiency in criminal matters.

Despite minor flaws, Albania has already a solid legal framework regarding international judicial cooperation in criminal matters. Remains for the authorities to strengthen implementation and strengthen judicial practice in the field of international judicial cooperation. Not so optimistic is the situation regarding the institutional framework where more actions are required to strengthen their independence, efficiency, and accountability. Currently, Albania is implementing a thorough and comprehensive justice reform that has already brought its first effects and is expected to strengthen justice organs in Albania.

Based on this study the following recommendations can be drawn<sup>36</sup>.

- The legislative overlap/ambiguity between Criminal Procedural Code and Law on Jurisdictional Relations with Foreign Authorities in Criminal Matters that confuses practitioners should be addressed by bringing the regulation in one consolidated piece of legislation;
- Albanian authorities should include the international judicial cooperation in criminal matters in their Justice Strategy. A policy approach would help authorities to better identify and address the common threats in the region and will help to enhance their technical and analytical capacities;
- Measures should be taken to address the work overload and increase the professional knowledge of the staff working in departments dealing with international judicial cooperation. Inability to provide the requested information for this study shows that there is a need for more personnel which should do better record keeping and data analysis;
- The case law until now has demonstrated that there is a lack of cooperation between institutions involved in judicial cooperation. Authorities should take measures to put in place mechanism that will prevent violation of the legal provisions due to lack of institutional cooperation.

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<sup>36</sup> Additional more in-depth recommendation have been give previously in two other studies regarding judicial cooperation in criminal matters. Please see: André Klip, 'Facilitating Mutual Legal Assistance in the Western Balkans: Towards removing obstacles in international cooperation in criminal matters' (March 2014); Prosecutor's Network of the Western Balkans, 'Assessment report on Mutual Legal Assistance in Criminal Matters in Albania' (IPA Project, 2016)



## **A system modeled against best international standards**

### **1. Introduction**

International legal assistance in criminal matters includes all actions of the authorized body of the foreign country undertaken upon the request of the domestic authorized body and vice versa, procedures of extradition, transfer of the convicted persons, transfer of the criminal procedure from one country to another and other procedures established by special International Conventions and Agreements. Bosnia and Herzegovina (hereinafter BiH) legal system shares the continental/civil law tradition and values. Judiciary reflects the complexity of the constitutional setting and shared competences between the state, entities and Brčko District. This resulted in complex layers of judiciary consisting of 77 courts (including three constitutional courts, 6 commercial courts and 68 regular courts and 20 prosecutors' offices that are acting pursuant to four separate criminal codes, criminal procedure codes, civil procedure codes and other. In Bosnia and Herzegovina, there are more than one legal instrument (international and domestic) governing the different forms of international judicial cooperation in criminal matters, such as: extradition, letter rogatory, service of procedural documents abroad, international transfer of sentenced persons, recognition and enforcement of foreign criminal judgments, etc.

### **2. Methodology of the report**

This paper explores the extent to which the national legal system of Bosnia and Herzegovina is based on the international standards in the area of legal assistance, the status of multilateral and bilateral treaties regulating international legal assistance, potential contradictions between the national and international legal framework, the role and impact of the institutional framework, strategic priorities in this area and based on the assessment of the statistics and examples of the case law. It concludes with a set of findings and recommendations for future advocacy and reforms. In the process of analysis following research methods were used: primary research, primary legal gap analysis, secondary research, semi-structured interviews with stakeholders and collection and analysis of statistical analysis and case law.

# **BOSNIA AND HERZEGOVINA.**

### 3. National legal framework

Regardless of the fact that Bosnia and Herzegovina has a complex criminal justice system, international legal assistance, is primarily defined with one piece of legislation the Law on International Legal Assistance in Criminal Matters<sup>1</sup>. This is recognized as such by all authorities in BiH, including by the two entities, namely: the Federation of BiH and Republika Srpska, and by the Brcko District as well<sup>2</sup>.

This Law was adopted in 2009 and was further improved with amendments in 2013. According to the explanatory memorandum<sup>3</sup>, the main aim of the 2013 amendments was to further align the Law with international conventions and in particular with the conventions of the Council of Europe<sup>4</sup>. The EU assesses that the international judicial cooperation legislative framework is in place and functional but not always efficient<sup>5</sup>.

The Law governs the manner and procedure of international legal assistance in criminal matters, unless otherwise provided by an international treaty or if no international treaty exists<sup>6</sup> (existence of reciprocity). As a result this Law establishes direct application of international treaties (bilateral and multilateral) in BiH and the legal system of BiH (including this very same Law) is subsidiary to them. This principle applies to any other law in BiH that might have anything to do with international judicial cooperation in criminal matters is subsidiary to international instruments.

As a result of this principle, the primary legal ground for the provision of international legal assistance in criminal matters are international multilateral treaties, bilateral treaties that BiH signed with other countries, as well as international treaties that BiH succeeded to from the former SFR of Yugoslavia by means of the Notification of Succession of International Treaties. As a result, in case of conflict between any applicable international treaty in the area of international judicial cooperation in criminal matters and the law in

<sup>1</sup> Law on International Legal Assistance in Criminal Matters ("Official Gazette of Bosnia and Herzegovina", Nos. 53/09 and 58/13)

<sup>2</sup> Assessment report on Mutual Legal Assistance in Criminal Matters in Bosnia and Herzegovina, IPA 2014 project "International Cooperation in Criminal Justice: Prosecutors' Network of the Western Balkans" 2016, Anton Girginov Plovdiv University "Paisii Hilendarski"

<sup>3</sup> Draft of Amendments of the Law on International Legal Aid in Criminal Matters, available here: [http://static.parlament.ba/doc/22306\\_Bosanski.pdf](http://static.parlament.ba/doc/22306_Bosanski.pdf)

<sup>4</sup> Conventions explicitly mentioned in the explanatory memorandum are: the European Convention on Extradition (13 December 1957, Paris), the Convention on the Transfer of Sentenced Persons (21 March 1983, Strasbourg), the European Convention on the Transfer of Proceedings in Criminal Matters (15 March 1972, Strasbourg) and the European Convention on Mutual Assistance in Criminal Matters (20 April 1959, Strasbourg)

<sup>5</sup> See the 2018 EU Progress report, page 28, available here <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-bosnia-and-herzegovina-report.pdf>

<sup>6</sup> Article 1 (1), in particular, „This Law shall govern the manner and procedure of mutual legal assistance in criminal matters (hereinafter: mutual legal assistance), unless otherwise provided by an international treaty or if no international treaty exists“.

BiH, international treaty shall apply directly.

The Law on International Legal Assistance in Criminal Matters contains substantive, procedural and institutional provisions regulating general provisions (Letter rogatory, channels of communications, urgency of proceedings, admissibility and course of action, denying the requests, reciprocity), general aspects of affording mutual legal assistance, extradition of suspects, accused and sentenced aliens from BiH, procedure upon extradition request BiH to the foreign country, transit of an alien through the territory of BiH, transfer of sentenced persons from a foreign country to BiH, transfer of sentenced persons from BiH to a foreign country, transfer and takeover of criminal prosecution and final provision of the Law.

In addition to this, all **criminal procedure codes** in BiH<sup>7</sup> prescribe provisions related to international mutual assistance and those provision shall be rendered under the provisions criminal procedure codes, unless otherwise is already prescribed by the legislation of BiH or an international agreement. Criminal procedure codes in BiH prescribe provisions related to communication of a request for legal aid, actions following the request of foreign authorities, execution of the verdict rendered by foreign court, centralization of data, relinquishing criminal prosecution to a foreign state and taking charge of the criminal prosecution by a foreign state.

International legal assistance in criminal matter can be grouped in two clusters:

1. General aspects of legal assistance which includes the execution of certain procedural actions (*service of summons to all parties to the criminal proceedings; the transmission of documents, written materials and other items related to the criminal proceedings in the requesting state; temporary seizure of items; handing over the temporarily seized items to the requesting state; the hearing of the defendant, witness and expert witness; on-site investigation, search of premises and persons; confiscation and control of shipment; exchange of other information and notifications, as well as other actions which could emerge during the criminal proceedings*)
2. Special aspects of legal assistance (*extradition of suspects, accused and sentenced persons, transfer and takeover of criminal prosecution, recognition and enforcement of foreign judicial decisions*).

<sup>7</sup> The Criminal Procedure Code of BiH (Official Gazette of BiH, 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09, 72/13), the Criminal Procedure Code of the FBiH (Official Gazette of FBiH, 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10, 8/13 and 59/14), the Criminal Procedure Code of the RS, (Official Gazette of RS, 53/12) and the Criminal Procedure Code of the BDBiH (Official Gazette of BDBiH, 48/04, 6/05, 14/07, 19/07, 21/07, 2/08, 17/09, 9/13)

A request for mutual legal assistance will be transmitted in the form of a letter rogatory. The letter rogatory of a foreign judicial authority and the attached documentation must be supported by the translation into one of the official languages of BiH verified by a certified interpreter. Letters rogatory by a national judicial authority and the attached documentation must be translated into the official language of the requested state.

According to the procedure for recognition and enforcement of foreign judicial decisions governed by Chapter VI, Articles 62-76, foreign judicial decisions in criminal matters are recognized and enforced when the following criteria are met:

- a) the judgment is final and enforceable and issued by a competent judicial authority in the sentencing State;
- b) the acts or omissions constitute offences according to the law Bosnia and Herzegovina;
- c) the sentenced person still has at least six months of the sentence to serve at the time of submission of the request;
- d) the sentenced person has given consent;
- e) a final judgment against the sentenced person in respect of the same acts has not been delivered in Bosnia and Herzegovina or criminal proceedings against the sentenced person in respect of the same acts has not been pending in Bosnia and Herzegovina or he has not been acquitted of the charges;
- f) under the laws of the sentencing State and Bosnia and Herzegovina, the enforcement is not barred by time limitations.

The analysis of these requirements leads to the conclusion that the principle of dual criminality applies on the procedure for recognition and enforcement of foreign judicial decisions. This principle applies to all forms of legal assistance in criminal matters. Thereby, the legal name or type of crime is not important, but it is important that the factual description indicates that it is an offence, or that the acts of committing are sanctioned as offences.

In BiH, additionally, some special laws related to a criminal procedure regulate international mutual assistance. For example, FBiH and BD special laws on seizure and confiscation of illegally obtained assets provide that the Agency (Office) for management of confiscated asset will provide all necessary support in such cases and will be in charge of management of assets confiscated/seized in execution of decisions of BiH institutions, as needed. The RS special law provides that the provisions of international agreements shall be applicable in international assets recovery. In case that there is no such agreement, provisions

of this Law shall be applicable.<sup>8</sup> This law regulates the procedure for seizure and confiscation in more detail, regulating the competent institutions, format of the request for cooperation, criteria for decision, execution of seizure and confiscation decisions.

## 4. International and regional treaties

BiH is a signatory to a number of international multilateral and bilateral treaties governing international legal assistance. As already indicated, in case of conflict between any applicable international treaty in the area of international judicial cooperation in criminal matters and the law in BiH, international treaty shall apply directly making the Law subsidiary to them.

As for multilateral conventions on international judicial cooperation, BiH has signed all major treaties. There are a number of international treaties as the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, [succession by BiH on 1/09/1993] and the UN Convention against transnational Organized Crime [ratif. by BiH], as well as regional (European) treaties as the European Convention on Mutual Assistance in Criminal Matters, the European Convention on the Transfer of Proceeding in Criminal Matters, the European Convention on Extradition and the three Additional Protocols to it, the European Convention on Mutual Assistance in Criminal Matters and Second Additional Protocol. BiH has signed a total of 40 agreements on judicial co-operation with 13 countries<sup>9</sup> some of which have not yet entered into force. Additionally, by means of the Notification of Succession of International Treaties, BiH took over from the SFR of Yugoslavia another 18 bilateral agreements<sup>10</sup>. For the countries with whom there are no bilateral treaty concluded or those that are not signatories to international conventions in the area of criminal law the principles of reciprocity applies.

Bosnia and Herzegovina has signed agreements with all countries in the region:

### MONTENEGRO

1) Treaty between BiH and Montenegro on Legal Assistance in Civil and Criminal Matters of 9 July 2010. (Official Gazette of BiH – International Treaties, 7/11), entered into force on 7 November 2011.

<sup>8</sup> Articles 48-49, Law on Seizure of Illegally Acquired Property through Crime (Official Gazette of RS, No: 66/18)

<sup>9</sup> Algeria, Montenegro, Croatia, India, Iran, Macedonia, Morocco, Moldova, China, Slovenia, Serbia, Turkey,

<sup>10</sup> Albania, Austria, Belgium, Bulgaria, Czech Republic, France, Greece, Netherlands, Italy, Hungary, Mongolia, Germany, Poland, Romania, Russia, Spain, Switzerland and Great Britain

## REPUBLIC OF CROATIA

1) Treaty between the Government of BiH, the Government of the FBiH and the Government of the Republic of Croatia on Legal Assistance in Civil and Criminal Matters, of 26 February 1996. (Official Gazette of R BiH – International Treaties, 1/96), provisional application from the date of signing, entered into force on 20 December 1996.

2) Treaty between BiH and the Republic of Croatia on Amendment to the Treaty between the Government of BiH, the Government of the FBiH and the Government of the Republic of Croatia on Legal Assistance in Civil and Criminal Matters of 17 June 2002. Official Gazette of BiH – International Treaties, 11/05), application from the date of signing, entered into force on 8 February 2006.

## REPUBLIC OF SERBIA

1) Treaty between BiH, Serbia and Montenegro on Legal Assistance in Civil and Criminal Matters of 24 February 2005. (Official Gazette of BiH - International Treaties, 11/05), entered into force on 9 February 2006.

2) Treaty between BiH and the Republic of Serbia on Amendments to the Treaty between BiH and Serbia and Montenegro on Legal Assistance in Civil and Criminal Matters of 26 February 2010. (Official Gazette of BiH - International Treaties, 8/10), entered into force on 10 February 2011.

According to Article 4 (paragraph 3 and 4) in urgent cases, when such a communication is provided in an international treaty, letters rogatory may be transmitted also through the International Criminal Police Organisation – INTERPOL and EUROJUST.

Despite the fact that Bosnia and Herzegovina has regulated by Law that letters rogatory may be transmitted also through EUROJUST, the cooperation agreement was not signed. This has not prevented national authorities to establish cooperation with EUROJUST and with member states of EUROJUST to this date. According to EUROJUST, Bosnian contact points for Eurojust were first established in March 2014 to initiate negotiations for the conclusion of a cooperation agreement<sup>11</sup>. Since January 2015, Bosnia and Herzegovina (BiH) was requested for assistance in a total of 35 cases<sup>12</sup> whereas 7 cases were subject to cooperation through EUROJUST in 2017<sup>13</sup>. BiH was involved in two JITs and participated in eight coordination meetings. At the same time, BiH and all EU Members are Parties to the European Convention on Mutual Assistance in Criminal Matters; most of them are also Parties to the Second Additional

<sup>11</sup> Q & A Eurojust's cooperation with Albania and the Western Balkans, available at: [http://www.eurojust.europa.eu/press/Documents/2018-10-05\\_Eurojust-cooperation-with-Albania-and-Western-Balkan\\_QA.pdf](http://www.eurojust.europa.eu/press/Documents/2018-10-05_Eurojust-cooperation-with-Albania-and-Western-Balkan_QA.pdf)

<sup>12</sup> Ibid

<sup>13</sup> Eurojust Annual Report 2017, Eurojust 2018, available at: [http://eurojust.europa.eu/doclibrary/corporate/eurojust%20Annual%20Reports/Annual%20Report%202017/AR2017\\_EN.pdf](http://eurojust.europa.eu/doclibrary/corporate/eurojust%20Annual%20Reports/Annual%20Report%202017/AR2017_EN.pdf)

Protocol to this Convention as well. As a result these instruments - which according to BiH Law directly apply - define communication between Bosnia and Herzegovina to all EU member states.

In addition to the Law, bilateral and multilateral agreements, there were **several agreements signed directly between judicial institutions in the region**<sup>14</sup>. These documents supplement the signed bilateral and multilateral agreements and defines operational aspects of cooperation of prosecutor offices in investigation of most complex crimes such as **organized crime, illicit trade in narcotics, smuggling people, trade in weapons, corruption, money laundering, international terrorism and war crimes**. In addition specific documents were signed in relation to prosecution of war crimes with countries in the region which relate only to war crimes<sup>15</sup>. Moreover, in April 2015, under the auspices of the UN, the State Prosecutors of Croatia, Bosnia and Herzegovina and Serbia signed the Guidelines for enhancing regional cooperation in war crimes processing, in the search for missing persons and in the establishment of a coordination mechanism.

## 5. Institutional framework and strategic priorities

The Ministry of Justice of Bosnia and Herzegovina is the central authority for communication with other countries regarding the providing of international legal assistance in criminal and civil matters. This is defined by the Law on Ministries and other Administrative Bodies of BiH (Official Gazette of BiH, 5/03, 42/03, 26/04, 42/04, 45/06, 88/07, 35/09, 59/09 and 103/09), and confirmed in the Article 4 of the Law on International Legal Assistance in Criminal Letters, which defines that the letters rogatory of foreign judicial authorities for international legal assistance in criminal matters will be transmitted through

<sup>14</sup> Protocol on Agreement in Achievement and Improvement of Mutual Cooperation Fighting All Forms of Organised Crime, Illicit Trade in Narcotics, Smuggling People, Trade in Weapons, Corruption, Money Laundering, International Terrorism, War Crimes and Similar Matters of Mutual Interest Between the State Attorney's Office of the Republic of Croatia and the Prosecutor's Office of Bosnia and Herzegovina" signed in January 2005; Protocol on Agreement in Achievement and Improvement of Mutual Cooperation Fighting All Forms of Organised Crime, Illicit Trade in Narcotics, Smuggling People, Trade in Weapons, Corruption, Money Laundering, International Terrorism, War Crimes and Similar Matters of Mutual Interest Between the Supreme State Prosecutor of the Republic of Monte Negro and the Prosecutor's Office of Bosnia and Herzegovina" signed in May 2005; Protocol on Agreement in Achievement and Improvement of Mutual Cooperation Fighting All Forms of Organised Crime, Illicit Trade in Narcotics, Smuggling People, Trade in Weapons, Corruption, Money Laundering, International Terrorism, War Crimes and Similar Matters of Mutual Interest Between the Prosecutor's Office of the Republic of Serbia and the Prosecutor's Office of Bosnia and Herzegovina" signed in July 2005; Protocol on Agreement in Achievement and Improvement of Mutual Cooperation Fighting All Forms of Grave Crimes signed between the Office of the Public Prosecutor of the Republic of Macedonia and the Prosecutor's Office of Bosnia and Herzegovina" signed in March 2005.

<sup>15</sup> Protocol of the Prosecutor's Office of Bosnia and Herzegovina and the Office of the War Crimes Prosecutor of the Republic of Serbia on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide Protocol of the State Attorney's Office of the Republic of Croatia and the Prosecutor's Office of Bosnia and Herzegovina on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide Protocol of the Supreme State Prosecutor's Office of Montenegro and the Prosecutor's Office of Bosnia and Herzegovina on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide

the Ministry of Justice of BiH, unless otherwise provided by an international treaty. Within the Ministry, the Sector for International and Inter-Entity Legal Assistance and Cooperation is responsible for the matters of mutual legal assistance in criminal matters.

The EU has criticized the functionality of the current capacities of the Ministry of Justice in relation to judicial cooperation. According to the Progress Report for 2018<sup>16</sup> institutional set-up and the capacities of the current structures need to be reformed. According to this Progress Report the Ministry of Justice is understaffed and the report suggested that the legislation on international legal assistance and bilateral regional cooperation agreements need to be amended to introduce direct court-to-court cooperation. The EU has also criticized the inconsistent interpretation and implementation of international standards.

Under Article 4 (paragraph 2) of the Law, direct communications with foreign judicial authorities (incl. between prosecutors) are possible only if provided for in international agreements with the respective foreign countries. However, direct communications with foreign judicial authorities (incl. between prosecutors) is based on the principle of reciprocity, especially with those countries whose domestic law on international judicial cooperation defines that such direct contacts without an agreement are possible. Foreign judicial authorities may directly address the letter rogatory to national judicial authorities, when such a communication is provided in an international treaty. In cases when no international treaty exists and when an international treaty explicitly provides for the use of diplomatic channels of communication, the letters rogatory will be transmitted through the Ministry of Internal Affairs of BiH.

If the assistance is not direct, it needs to be transmitted from the Ministry of Justice to a relevant institution in the country. In the national context this means that the Ministry of Justice of BiH needs to analyse the content of the letter to identify the correct institution in the country. In the complex structure of the judiciary the letter will be forwarded to either to the Court of BiH or the relevant entity Ministry of Justice (RS or FBiH), or the Judicial Commission of the BDBiH. If the request is under jurisdiction of the courts in the Entities, the Entity Ministries of Justice must, upon receipt, transmit the letter and the supporting documents to the competent court. If the court of competent jurisdiction finds that the request is not accompanied by the documents required under the international treaty or under the Law on International Legal Assistance in Criminal Matters, the court may directly ask the Ministry of Justice of BiH to

<sup>16</sup> See the 2018 EU Progress report, page 28, available here <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-bosnia-and-herzegovina-report.pdf>

inquire from relevant judicial authorities of the requesting state for supporting documents. If the sentencing state fails to provide additional documents within three months, the request and the supporting documents will be sent back. If the court to which the documents were transmitted finds to be lacking in jurisdiction, it will without delay forward the referenced documents to the court having subject matter and territorial jurisdiction in the relevant criminal matter and notify of that the Ministry of Justice of BiH.

This Ministry is tasked to follow up on each specific case to examine if international legal assistance is provided in keeping with commitments arising from bilateral and multilateral treaties and national legislation. The actual oversight over the enforcement of judicial cooperation is performed by the immediate superior authority to the one handling the letter rogatory. The Ministry of Justice of BiH performs oversight over enforcement of judicial cooperation in civil and criminal matters in such a way that all deficiencies and irregularities in relation to handling letters rogatory for international legal assistance made by national and foreign bodies are placed on record and forwarded to the responsible authority with a recommendation to eliminate them.

Over the years the Ministry of Justice of BiH reports that it has focused on development of its capacity for following up on the number and processing of international judicial cooperation requests, i.e. following up on the number of received and executed requests for international legal assistance. Currently this is done through the DMS system (*Document Management System*), an electronic database.

The Justice Sector Reform Strategy for the period of Bosnia and Herzegovina 2014-2018<sup>17</sup> recognised that it is necessary to improve the system of international legal assistance and has identified 7 issues, 5 of which directly relate to international assistance in criminal matters<sup>18</sup>. Based on these issues following outcomes were planned:

*"1) additionally strengthened capacity of BiH judicial institutions to deal with ILA cases and increased awareness of ILA obligations leading to better cooperation in civil and criminal matters,*

<sup>17</sup> The Justice Sector Reform Strategy for the period of Bosnia and Herzegovina 2014-2018, available here: [http://www.mpr.gov.ba/organizacija\\_nadleznosti/planiranja\\_koordinacija/strateska\\_planiranja/strategija/13%204%20SRSP%20u%20BiH%20-%20EJ.pdf](http://www.mpr.gov.ba/organizacija_nadleznosti/planiranja_koordinacija/strateska_planiranja/strategija/13%204%20SRSP%20u%20BiH%20-%20EJ.pdf)

<sup>18</sup> Conduct an analysis of challenges and needs in the area of international legal assistance (ILA), which will serve as a basis for further action and planning in this area; improve performance of courts in ILA cases with the aim of harmonization, which can be achieved by better coordination and implementation of ILA trainings; Improve of the way of recording BiH nationals sentenced abroad or in BiH, but born outside BiH, by enacting implementation regulations by the Ministry of Security; Establish and further improvement of systems of informing, keeping the electronic registry office (database), collecting and monitoring statistics in the area of ILA by all competent bodies has been set up as an urgent need conditioned by EU requirements; Improve the IDDEEA's cooperation and information exchange with the competent institutions in the area of ILA, in order to harmonize IDDEEA's by-laws with the adopted amendments to the Law on International Legal Assistance in Criminal Matters.

2) increased quality of implemented European and other international obligations, especially, Council of Europe conventions and improved cooperation with other countries,

3) consistent and equal application of the laws regulating international legal aid and cooperation in all BiH courts and clearer and more streamlined functions and responsibilities among all actors in the network of BiH judicial institutions.

According to the last available report on the implementation of the Strategy<sup>19</sup> it is difficult to measure the progress achieved in relation to the outcomes planned. What can be concluded is that draft amendments of the Law on International Legal Assistance in Criminal Matters were prepared but not adopted in the Parliamentary Assembly of BiH; that the major focus is on training of judges and prosecutors; and that the Ministry of Justice has improved its database. However, to which extent these measures have contributed to the efficiency and quality of international legal assistance is difficult to measure.

## 6. Overview of international legal assistance

The Ministry of Justice reports that it keeps a reliable database of international assistance data. However, this database has its limits. According to the Ministry of Justice<sup>20</sup> the data presented in this database is based on cases which are subject to assistance and are not based on types of assistance provided. This means that different types of legal assistance could have been provided in a single case but would be recorded as only one number in the database. According to the same source, for example in the case of Paravinja all types of international legal assistance was provided; however, there is only one record of the case in the database. The table below outlines the statistical data on international legal assistance.

| Type of assistance | Number of cases |      |      |            |
|--------------------|-----------------|------|------|------------|
|                    | 2015            | 2016 | 2017 | 30/11/2018 |
| Extradition        | 154             | 210  | 151  | 137        |
| Other actions      | 2790            | 1747 | 2376 | 2100       |

<sup>19</sup> Report on implementation of the Justice Sector Reform Strategy for the period January – June 2018, available at: [http://mpr.gov.ba/organizacija\\_nadleznosti/planiranja\\_koordinacija/strateska\\_planiranja/strategija/?id=8415](http://mpr.gov.ba/organizacija_nadleznosti/planiranja_koordinacija/strateska_planiranja/strategija/?id=8415)

<sup>20</sup> Interview conducted on November 19 2018

|   |     |     |     |     |
|---|-----|-----|-----|-----|
| Hearing of witnesses or accused   | 328 | 285 | 466 | 385 |
| Transfers of convicted persons and execution of sentences over a convicted person | 109 | 65  | 90  | 57  |
| Transfer of proceedings   | 321 | 192 | 234 | 183 |
| Requests related to freezing, temporary confiscation and confiscation of assets   | -   | -   | 7   | 2   |

As it is visible, the Ministry of Justice deals with 3000 cases of international legal assistance. The database cannot indicate how many request are made to BiH or how many by BiH authorities. According to the Ministry of Justice, it is estimated that approximately half of all cases relate to international legal assistance in the region. That is why the focus of their priority is to strengthen the cooperation with relevant institutions in the region. The Ministry is considering amending the Law to facilitate dealing with requests related to freezing, temporary confiscation and confiscation of assets as one of the novelties. However, the data provided manifests that such cases did exist in 2017 and 2018.

There were a number of remaining challenges and achievements of Multilateral and Bilateral Agreements on Judicial Cooperation. The analysis of the EU Progress Report and the Justice Sector Reform Strategy makes it clear that Bosnia and Herzegovina was able to set-up a legal framework that in the complex structure of the country allows for clear lines for international cooperation in criminal matters. However, the main obstacle remains the capacities of the local stakeholders to fully use the existing framework. According to a paper<sup>21</sup> published by the assistant minister for international criminal assistance in criminal matters at the Ministry of Justice of BiH, even in cases where direct court-to-court communication is allowed only 50% of such cases are communicated directly and the other half is communicated through this Ministry. According to this paper the main issue are the capacities of national judicial institutions which don't have a specialized officer for such cooperation. This issue is confirmed by the Justice Sector Reform Strategy and the measure which aims to strengthen the "capacity of BiH judicial institutions to deal with ILA cases".

<sup>21</sup> N.Sladoje, Current problems in the area of international criminal assistance, *Pravna misao*, pages 107-118, 2017, Sarajevo

## 7. Examples of international legal assistance

As already indicated, the impact of international legal assistance is not monitored and only anecdotal evidence can be collected to illustrate the success. Following cases were identified as part of the secondary research conducted for the purpose of this paper.

According to the Trafficking in Persons, State Department Report for 2017<sup>22</sup> in 2016 a joint investigative team was established between Bosnia and Herzegovina, Serbia and Germany which resulted in synchronized raids and arrest of 11 members of an organized crime group which were engaged in trafficking and recruiting young women and girls from Bosnia and Herzegovina and Serbia for exploitation in Germany. According to the same report, in another case the State prosecutor office assisted respective authorities of Netherlands and Austria in a joint investigation of a Bosnian and Croatian married couple forcing six Roma children to pickpocket in the Netherlands.

Good cooperation seems to exist with several countries in Europe and the US who were ready to cooperate in investigations and have extradited a number of BiH nationals charged for crimes and vice versa. Such were the cases of cooperation with the US in relation to a number of war crimes suspects and suspects with ties to terrorism, extradition of war criminals from Switzerland, France, Spain to name a few. Where agreements were not signed Bosnian authorities refused to extradite suspects such was the case of Elvir Sarac, who the judge said is accused by Tunisia of “instigating terrorist acts and of membership of a terrorist organization, as well as of harming public order and international security”.

At the same time there are no data available on the direct legal assistance where it is possible as such assistance is dealt by judicial institutions. That is why the data will be presented anecdotal to identify current challenges and success in this area. The State Prosecutor Office reported success<sup>23</sup> of cooperation with the Office of the War Crimes Prosecutor of the Republic of Serbia when a police operation was conducted simultaneously in the territories of the two respective states and several suspects were deprived of liberty; ten (10) suspects were arrested in Bosnia and Herzegovina, whereas five (5) suspects were arrested in the Republic of Serbia. These persons were charged for

war crimes in Štrpci and Višegrad, when at least twenty (20) victims, citizens of Serbia and Montenegro of Bosniak ethnicity, one person of Croat ethnicity and one victim of Afro-Asian origin, were abducted from the train operating from Belgrade to Bar and later killed in the territory of Bosnia and Herzegovina. However, the State Prosecutor Office has since reported<sup>24</sup> on a decreased level of cooperation in the area of war crimes prosecution a concern also noted by the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council<sup>25</sup>. This lack of cooperation is additionally highlighted in cases of war crimes where most problems can be noted. The Balkan Investigative Reporting Network reported<sup>26</sup> on the case of Novak Djukic who on the eve of the verdict in 2014 that convicted him of war crimes for ordering an artillery strike on the town of Tuzla that killed 71 people, fled to Serbia. The Bosnian state court sentenced Djukic to 20 years in prison, but he is still living freely in Serbia, where the authorities have so far not agreed to take over the enforcement of the verdict. A warrant for Djukic was issued in October 2014, but the Higher Court in Belgrade has postponed - several times - a hearing at which the takeover of responsibility for his imprisonment was due to be discussed. Similarly, according to another report<sup>27</sup> at least nine Serbs suspected of genocide and other crimes in Srebrenica have fled Bosnia to enjoy refuge from prosecution in Serbia, where they remain free despite alleged involvement in the massacres of thousands of Bosniaks.

The issue with these cases and an increasing number of other cases is the dual citizenship of two or more countries in the region a number of persons have and is not directly linked (only) to war crimes. Recently, a court in Bosnia-Herzegovina refused to extradite the former head of the Dinamo Zagreb soccer club to Croatia, where he had been convicted on tax-evasion and embezzlement charges, as it found that Zdravko Mamic is a citizen of Bosnia and Herzegovina and that the extradition agreement between the republic of Croatia and Bosnia-Herzegovina does not provide for extradition in this case. Similarly, a former judge, Lejla Fazlagic who is suspected of having issued rulings transferring the ownership of some 70 abandoned properties, whose true owners were either dead or out of the country has fled to Croatia in 2016 and is still not extradited.

At the same time in some other case extradition requests were successful. Such is the case of a Former Minister of Internal Affairs of the Republic of Bosnia and

<sup>24</sup> See e.g. the Information on work for 2016, page 28, Prosecutors Office of BiH, 2017

<sup>25</sup> Assessment and progress report of the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron, for the period from 16 May to 15 November 2017, United Nations Security Council, S/2017/971

<sup>26</sup> <http://www.balkaninsight.com/en/article/poor-cooperation-leaves-balkan-war-crime-suspects-at-large-09-26-2018>

<sup>27</sup> <http://www.balkaninsight.com/en/article/srebrenica-suspects-find-safe-haven-in-serbia-07-04-2018>

<sup>22</sup> Bosnia and Herzegovina, Office to monitor and combat trafficking in persons, 2017 Trafficking in Persons Report

<sup>23</sup> Suspects of war crimes in Štrpci and Višegrad arrested, Great success of the regional cooperation of the Prosecutor's Offices in BiH and Serbia, 05.12.2014., available at: <http://www.tuzilastvobih.gov.ba/?id=2747&jezik=e>

Herzegovina Alija Delimustafić, who was arrested in Croatia on the international warrant issued by the Cantonal Court in Sarajevo for charges of organized crime, abuse of office, violation of the law of judges, money laundering, and fraud was extradited to the judicial bodies of Bosnia and Herzegovina under a month after the request was made.

Achievements in cooperation in relation to organized crime and trafficking in narcotics can be also identified. Bosnian authorities have cooperated with Croatia in investigations "MASK" in 2015 and "SOLINJANKA" in 2018 and recently more often on issues of illegal immigration.

## 8. Conclusions and recommendations

Bosnia and Herzegovina has made a significant progress in relation to establishing a good framework which allows for clear lines and responsibilities for international cooperation in criminal matters. Most importantly in the complex judicial system when international legal assistance is concerned a single piece of legislation exists which is the Law on International Legal Assistance in Criminal Matters. This Law and the entire regulatory framework in Bosnia and Herzegovina is modeled against best international standards. According to the main principles, this law applies on the manner that the primary legal ground for the provision of international legal assistance in criminal matters are international multilateral treaties and bilateral treaties that BiH signed with other countries. Bosnia and Herzegovina has signed almost all major multilateral agreements and has a number of bilateral agreements. Moreover, the institutional framework is well placed and has the relevant experience to continue improving the regional and international legal assistance. The Ministry of Justice of Bosnia and Herzegovina has manifested willingness and the required expertise to take over new standards in relation to new form of international assistance.

In the region of former Yugoslavia, Bosnia and Herzegovina has signed bilateral agreements with all countries, and prosecutor offices have signed additional protocols which define operational issues relating to major crimes including war crimes. Regional cooperation seems not to be always efficient. It appears that major issues exist in the area of war crimes and in regards to persons which have two or more regional citizenships.

According to the data collected and analyzed it is clear that further improvements in this system are needed and they have been recognized as a priority by the

government. This was also noted by the EU which concluded that the international judicial cooperation legislative framework is in place and functional but not always efficient. Following key recommendations can be made:

- The capacities of the relevant sector of the Ministry of Justice of BiH should be increased to respond to its liaison role and data collection;
- Capacities of judicial institutions should be increased to facilitate direct communication and coordination where it is allowed;
- Continuous training should be organized to increase the lack of consistency of case law throughout the country, and consequent consistent interpretation and implementation of international standards;
- Training should focus on new developments in international cooperation such is the asset seizure and asset recovery and other specific issues arising from the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the UN Convention against Transnational Organized Crime and the UN Convention against Corruption;
- Regional cooperation issues should be identified and resolved, and in particular in relation to war crimes and dual citizenships;
- Given the complex structure of the judiciary, international judicial cooperation units should be organized at different levels of the judiciary to support of investigations and which would have specialized prosecutors working exclusively on the matters of international judicial cooperation;
- Agreement with EUROJUST should be signed to support enhanced cooperation with this agency;
- Support for enhanced regional cooperation should be sought through available financial instruments and in particular in relation to Organized Crime, Illicit Trade in Narcotics, Smuggling People, Trade in Weapons, Corruption, Money Laundering, International Terrorism and War Crime as these crimes have in most cases and international and regional element.



## **1. Introduction**

The pace of globalization that we have witnessed in the last decades has not only changed how we interact in economic and social terms, it has also spurred new forms of criminality. Rarely has there been a bigger necessity of states to cooperate with one another in order to investigate and prosecute crimes and their perpetrators.

The Western Balkans are no exception to such developments. Their situation, however, is peculiar; aiming to become European Union members, most of their systems are undergoing significant reforms, from aligning the legal framework with that of the Union to institutional changes. This report looks into the judicial cooperation practice of the Republic of Kosovo. To do so, it analyzes the legal and institutional framework. Moreover, by scrutinizing strategic documents, it evaluates how high the field of judicial cooperation is in the to-do list of the institutions. Afterwards, it puts judicial cooperation in the perspective of a newly independent country that is not part of international organizations yet. Lastly, it looks into the practice of the institutions in the period from 2016-2018.

## **2. Methodology used for the analysis**

The research utilized a qualitative and quantitative methodology. It analyzed the legal framework, strategic documents and yearly reports of the main institutions looking whether they had incorporated international legal cooperation in them, and if so, in what form. Moreover, it analyzed all the bilateral agreements that the Republic of Kosovo has concluded with other countries and the purview of international projects related to criminal cooperation in Kosovo. In addition, semi structured interviews with officials from the Department of International Legal Cooperation in the Ministry of Justice were conducted. From a quantitative perspective, the report analyzed the 2016-2018 data that Ministry of Justice has compiled. It used the data to discern specific patterns related to the prevalent types of crimes and the frequency of cooperation in specific fields of judicial cooperation.



**KOSOVO.**

### 3. Untangling the legal framework in international judicial cooperation in Kosovo

#### 3.1. General remarks

The Republic of Kosovo's (hereafter: Kosovo) legal framework for international judicial cooperation in criminal matters is regulated by the Law NO. 04/L-213 – promulgated on 31<sup>st</sup> of July 2013 (hereafter: the law)<sup>1</sup> – and by certain aspects of the criminal code and criminal procedure code.<sup>2</sup> The law has the status of a *Lex specialis* and it foresees the procedures and conditions in the field of international cooperation in criminal matters taking place between Kosovo and other states, or international organizations.<sup>3</sup> Initially the law lays down some of the main principles, like the applicability of Kosovo's criminal procedure in these processes; supremacy of national laws of Kosovo; reciprocity where interstate agreements are lacking; limits of cooperation in order to protect Kosovo's national interest and so forth.<sup>4</sup>

Two avenues remain open for states or international organization to make requests for international cooperation with the Republic of Kosovo: through the ministry of Justice and, when needed, by diplomatic channels. Exceptionally, assistance of Kosovar institutions can be granted when the request is made directly by Interpol or other written form, however, the original request has to be sent within 30 days and through the official channels.<sup>5</sup> Confidentiality can be assured, if that is requested, and official documents can be in one of the three official languages: Albanian, Serbian or English.<sup>6</sup>

The law is organized into seven chapters, including the aforementioned general provisions, and the transitional and final provisions. The main chapters that lay the legal framework of extradition, transfer of criminal proceedings,

recognition of judgements and legal assistance – are expounded in a twofold manner. Namely, from the prisms of procedures that other states have to follow when they request legal assistance from Kosovo in the given fields, and vice-versa when Kosovar authorities request legal assistance from other states. Kosovo's constitution has incorporated an array of international human rights instruments and treaties that are applicable directly and have supremacy over Kosovar laws.<sup>7</sup> Such an approach to the supremacy of human rights has also been fittingly reflected throughout the law.

#### 3.2. Extradition: requirements and procedure

Extradition can be granted only if certain criteria are fulfilled. As a start, some categories of persons cannot be extradited, for example Kosovar citizens (unless provided by an international agreement), people granted political asylum, or persons that enjoy immunity from the jurisdiction of Kosovo.<sup>8</sup> Moreover, extradition does not apply when crimes have been fully or partially committed in Kosovo.<sup>9</sup> However, within the purview of international agreements, persons can be temporarily surrendered only on the condition that they be returned to Kosovo to serve their sentences.<sup>10</sup> In addition, the law foresees the principle of double criminality that is in order to extradite a person, the offence that has been committed has to be punishable by the law of the requesting state and by Kosovo national law.<sup>11</sup> The criminal offence has to be punishable by deprivation of liberty for at least a year and the statutory limitation period of prosecution should not have expired. There must be reasonable suspicion that the crime has been committed by the given person and, under the *ne bis in idem* principle, extradition is not allowed if a final judgment has been passed by national judicial authorities on the crime that the request has been based.<sup>12</sup> In line with international human rights standards, extradition cannot be permitted for political and military offences, and in cases when the criminal offence for which extradition is requested would be punishable by death sentence or lifelong imprisonment. Similarly, if there is reasonable suspicion that by extradition an individual is going to be prosecuted or punished because of his/her *“race, religion, gender, nationality, political opinions, ethnicity, language,*

<sup>1</sup> Law No. 04/L-213 On International Legal Cooperation in Criminal Matters; Promulgated by Decree No.DL-047-2013, dated 19.08.2013, President of the Republic of Kosovo Atifete Jahjaga (hereafter: the Law)

<sup>2</sup> Code No. 06/L-074 Criminal Code of the Republic of Kosovo; Promulgated by Decree No.DL-065-2018, dated 13.12.2018, President of the Republic of Kosovo Hashim Thaçj and Criminal No. 04/L-123 Procedure Code; Promulgated by Decree No.DL-057-2012, dated 21.12.2012, President of the Republic of Kosovo Atifete Jahjaga

<sup>3</sup> The Law, Chapter I – General Provisions, Article 1

<sup>4</sup> Ibid. Article 2

<sup>5</sup> Ibid. Article 4

<sup>6</sup> Ibid. Article 5

<sup>7</sup> Constitution of the Republic of Kosovo, Entered into force and effect on 15 June 2008, Chapter II – Fundamental Rights and Freedoms, Article 22 – Direct applicability of International Agreements and Instruments and Article 53 interpretation of Human Rights Provisions

<sup>8</sup> The Law, Chapter II Extradition, Article 6

<sup>9</sup> Ibid. Article 8

<sup>10</sup> Ibid. Article 7

<sup>11</sup> Ibid. Article 9

<sup>12</sup> Ibid. Article 10, 12 and 13

*disability, sexual orientation, association in any social group, or if the person's position in society may be prejudiced for any of these reasons"* – the individual is protected from extradition.<sup>13</sup> The same applies if there is a reason to believe that the person may be subject of torture or cruel treatment. The rights of the individual are further highlighted by the fact that extradition is not permitted if minimum guarantees of a fair trial, foreseen in Kosovo's Constitution, are not ensured in the requesting country.<sup>14</sup>

As per the procedural requirements, the procedure is initiated by a written request that contains the necessary information like general information as is the name, nationality, offence being sought for and the arrest warrant.<sup>15</sup> If all these requirements are fulfilled, the Ministry forwards the request to the competent basic court.<sup>16</sup> The basic courts treat the case according to the criminal procedure code. A person can be arrested or detained for a maximum of 40 days – based on a provisional arrest request, Interpol notification or European Arrest Warrant.<sup>17</sup> The measure is executed by the prosecutor and has to be confirmed by the competent pre-trial judge. Afterwards, the request has to be confirmed by a panel of three judges at the basic court, and only if the final decision permits extradition, can the Minister of Justice decide on the matter.<sup>18</sup> The latter has wide discretion and can require different conditions to be fulfilled before granting the request. Even then, the Minister's decision can be appealed, as an administrative conflict.<sup>19</sup>

Vice-versa, Prosecution in Kosovo can also ask the Ministry of Justice that they require the extradition of a person. The same conditions foreseen in the law apply for Kosovar national authorities.

### 3.3. Transfer of criminal proceedings

Chapter III of the law regulates the transfer of criminal proceedings. If certain conditions are fulfilled Kosovo can consider accepting the transfer of criminal proceeding from another country. Similar to extradition, the double criminality principle applies, and the person has to have a link to Kosovo. To name a few,

<sup>13</sup> Ibid. Articles 14 to 17

<sup>14</sup> Id.

<sup>15</sup> Ibid, Article 18

<sup>16</sup> Ibid. Article 20

<sup>17</sup> Ibid. Article 22

<sup>18</sup> Ibid. Article 23

<sup>19</sup> Ibid. Article 30

the link can be manifested in different ways, for example the person against whom a procedure is ongoing in another country is a Kosovar citizen, resides in Kosovo, or criminal proceeding pertaining to the same offence are initiated in Kosovo as well.<sup>20</sup> The request has to be submitted to the Ministry of Justice that in turn forwards the request to the State prosecutor that has to consider it in accordance with Kosovo's criminal procedure law.<sup>21</sup> Acts undertaken in the requesting state, shall have the same validity as if they were taken in Kosovo, if they comply with Kosovo's law.<sup>22</sup>

National judicial authorities can also request that criminal proceedings are transferred to another state.<sup>23</sup> If conditions in the law on the importance of the criminal transfer are met, the Prosecutor of the case can require to transfer the proceedings and temporarily suspend it; afterwards the request is submitted to the courts and finally sent to the ministry.<sup>24</sup> If the state, for whatever reasons, does not accept the request to transfer the proceeding, the Prosecution has to continue to undertake the necessary steps.<sup>25</sup>

### 3.4. Transfer of sentenced persons

Transfer of sentenced persons is also possible. The person in question has to be a national of the administering state and the latter has to agree to the transfer; moreover, the person has to be sentenced with a final judgment and has to consent to the transfer.<sup>26</sup> Alike to extradition, the transfer cannot be made if there is a risk that the person will be subject to torture or cruel and inhuman treatment or be discriminated in the other state.<sup>27</sup> However, an exception to the principle of consent applies when there is a deportation, expulsion or any other order that does not permit to the person to stay in Kosovo. Nonetheless, even if that is the case, the Ministry is bound to hear the opinion of the person.<sup>28</sup>

<sup>20</sup> The Law, Chapter III – Transfer of Criminal Proceedings, Article 42

<sup>21</sup> Ibid. Article 45

<sup>22</sup> Ibid. Article 48

<sup>23</sup> Ibid. Article 50

<sup>24</sup> Ibid. Articles from 51 to 53

<sup>25</sup> Ibid. Article 54

<sup>26</sup> The Law, Chapter IV – Transfer of Sentenced Persons, Article 56

<sup>27</sup> Id.

<sup>28</sup> Ibid. Article 60

The ministry can also grant the transfer of a sentenced person to Kosovo, upon the fulfillment of the same conditions set out above. For the sentences to be continued, the other state has to be an EU member otherwise Kosovo has to have an agreement on that issue.<sup>29</sup> If these conditions are not fulfilled, the sentences shall be converted – and the enforcement procedures are decided from the Basic Court. When the sentence is incompatible with national law, the Court has to convert it, however, to certain limitations, for example, the punishment of imprisonment cannot be converted to a fine.<sup>30</sup> Moreover, when a citizen of Kosovo who has been sentenced in another state flees to Kosovo in order not to have to serve his sentence, the other state can request Kosovo's Ministry to take over the enforcement of the sentence. In this procedure the consent of the person is not required.<sup>31</sup>

### 3.5. Enforcement and recognition of foreign judgments and mutual legal assistance

The law also foresees the enforcement and recognition of foreign judgments, if the courts of other states have issued final judgments on Kosovar citizens or permanent residents. The request has to be submitted to the ministry together with a copy of the decision and is afterwards forwarded to the competent Basic Court. The Court can refuse the recognition if it is contrary to fundamental principles of the legal system in Kosovo, is based on a political or military offence or was discriminatory.<sup>32</sup> The Court decides in a panel of three and has to hear the opinion of the person and the Prosecutor, and lastly the sanction to be imposed has to be in accordance with national law. Its decision can be appealed by the state prosecutor or the sentenced person.<sup>33</sup>

Lastly, in chapter 6, the law stipulates the rules and procedures regulating mutual legal assistance. Judicial authorities of another state may request assistance although the offences for which they require assistance are within their national jurisdiction. The law defines assistance as “any type of support given to foreign authorities regardless of whether the foreign proceedings are conducted by a court or by a prosecution office”, without excluding provisional measures to preserve evidence or maintain a legal situation.<sup>34</sup> The authority

<sup>29</sup> Ibid. Article 63

<sup>30</sup> Ibid. Article 65

<sup>31</sup> Ibid. Article 66

<sup>32</sup> The Law, Chapter V – Recognition and enforcement of judgments, Article 71 and 72

<sup>33</sup> Ibid. Article 73

<sup>34</sup> The Law, Chapter VI - Mutual Legal Assistance – Article 80

to submit such a request rests with the Prosecutor who is handling the case and the same rules that are laid down in the Kosovar criminal procedure code have to be followed when asking for legal assistance, whereas the Ministry contacts its counterpart with the full documentation.

## 4. Institutional and Strategic Framework in international judicial cooperation

As it was clarified by the legislative framework, the field of judicial cooperation in criminal matters falls within the purview of a number of institutions in Kosovo, with the main ones being: the ministry of justice, the department for international legal cooperation to be more precise, courts, and the state prosecutor's office. Although diplomatic channels can be utilized to initiate a judicial cooperation request, the law foresees the ministry of justice to firstly receive such a request.

The department for judicial cooperation within the Ministry has a crucial role in international legal cooperation in criminal matters – especially on a policy level. The department has a wide mandate that, inter alia, foresees to: draft, negotiate and arrive at bilateral agreements on behalf of Kosovo; propose and prepare the signature of different conventions in the field of judicial cooperation; serve as a point of contact between the different institutions involved in judicial cooperation, like embassies, courts, prosecution and international organizations like Interpol; prepare different memoranda and advises the minister of justice on extradition requests.<sup>35</sup>

Additional aspects that may be lacking and have to be addressed in the field of international cooperation are regularly included in strategies of the Ministry of Justice. For example, the 2016-2019 Strategy for Assistance in the Rule of Law Sector has emphasized the need to address different loopholes that are to be found in the international judicial cooperation, and foreseen a project in worth 0.8 Million euros to be implemented in a timeframe of three years 2016 to 2018.<sup>36</sup> The department for international legal cooperation was directly involved in compiling the strategy by giving comments on the strategy and contributing by proposing specific projects.<sup>37</sup>

<sup>35</sup> Mandate of the Department for International Judicial Cooperation, Ministry of Justice, available at: <https://md.rks-gov.net/page.aspx?id=1,16>

<sup>36</sup> 2016-2019 Strategy for Assistance in the Rule of Law Sector, Ministry of Justice, May 2014, p.76

<sup>37</sup> Interviews with the officials of the Department

Other institutions of importance are that of the State Prosecutor and the Courts. The institutional framework within the prosecutorial and judicial system has to be approached in a twofold manner, from the perspective of their representative bodies, and from that of the branches. The judicial and prosecutorial systems are represented by their respective councils, the Kosovar Judicial Council and the Kosovar Prosecutorial Council.<sup>38</sup> The Councils ensure the independence of the institutions that they represent but also evaluate the judges and prosecutors, manage the overall budget, and implement different strategies.<sup>39</sup> International cooperation has been approached by appointing specific judges within the branches that serve as coordinators. Moreover, the Chief State Prosecutor has appointed one of the Prosecutors from his office as the Coordinator on Judicial Cooperation. The prosecution is regarded as the weaker link in international judicial cooperation as many requests for international cooperation are not taken swiftly into consideration. However, these shortcomings are not solely related to international cooperation in criminal matters but are more of a general nature. Some of the main weaknesses are that, for example, English language proficiency within the system is still low and prosecutors are not as familiar with international arrest warrant.<sup>40</sup> Moreover, international cooperation has, as per law, certain deadlines that have to be kept, which is a huge burden to the system because it already faces a great backlog. Unfortunately, the Councils have not mentioned international judicial cooperation in their yearly reports, with two minor exceptions, one in the KPC report of 2017, where the Prosecutorial Council highlighted the decision of the Chief State Prosecutor to oblige all Chief Prosecutors of the branches in Kosovo to appoint a prosecutor that will handle cases that require international judicial cooperation,<sup>41</sup> and the other one in the Memoranda of Understanding of the Judicial Council with local CSO's and the Legal Centre for International Cooperation.<sup>42</sup>

<sup>38</sup> The Constitution, Article 108 and 110

<sup>39</sup> Id.

<sup>40</sup> Interviews with the Department's officials

<sup>41</sup> Kosovo Prosecutorial Council, 2017 Report, p.57

<sup>42</sup> Kosovo Judicial Council, 2017 Report, p.30

## 5. The role of international organizations, projects and civil society organizations

The institutional framework in this field is admittedly more complex due to the fact that Kosovo is yet to become a member of important international organizations as are the United Nation and Interpol. Because of the missing membership in Interpol, Kosovo does not have a National Central Bureau that would serve as point of contact with the Interpol headquarters. Such information is then intermediated with the office in the United Nation Mission in Kosovo (UNMIK) that hosts the Bureau.<sup>43</sup> UNMIK's staff has been continuously decreased, with an even faster pace after Kosovo's declaration of independence, but it remains the intermediary between Kosovo and Interpol channels. Another hurdle in the Kosovar institutional framework, is represented by the group of non-recognizing European Union countries, namely Slovakia, Greece, Romania, Spain and Cyprus. Contact with them is established through the European Union Office in Kosovo. Before that, the EU Rule of Law Mission, EULEX, served as the mediator of information sharing between Kosovo institutions and non-recognizing countries.<sup>44</sup> The same applied for Serbia too. However, as it will be discussed in the next part, the Moj Department on international legal cooperation has recently worked to establish direct contacts with their counterparts in some of these non-recognizing countries as well, that in turn has resulted in great successes.

In addition to these international organizations, a significant role in the strategic framework in Kosovo is played by international projects, implemented by international organizations like GIZ and USAID. One of them that is still contributing to the work of the institutions is the IPA project on Countering Serious Crime in the Western Balkans.<sup>45</sup> The aim of the project is to *"raise the effectiveness of and the cooperation among regional and national institutions in fighting serious and organized crime"*.<sup>46</sup> To do so, the project supported the countries by providing the necessary human capacities to advise the prosecutors and police department for an exchange of best EU practices and, moreover, helped increase communication between the countries in the region and establish new cooperation agreements. The role of the project was highlighted by the stakeholders as effective and helpful to the overall improvement of international judicial cooperation in Kosovo.<sup>47</sup>

<sup>43</sup> Shpend Kursani, Kosovar Centre for Security Studies, "Police cooperation between Kosovo and Serbia", 2015, pp.4-5

<sup>44</sup> Ibid. p.6

<sup>45</sup> See website of the project, available at: <https://cscwb.info>

<sup>46</sup> Id.

<sup>47</sup> Interviews with official from the Department

The civil society plays an influential role in the Kosovar society too, particularly within the rule of law sector. Since the end of the war in 1999, a great number of civil society organizations has dealt with transitional justice issues and advocated that rights of the conflict's victims be respected. CSO's in Kosovo became part of wider, regional ones, like the youth initiatives for human rights and Balkan investigative network, and the humanitarian law centers. In this way, shedding light on past human rights abuses and bringing perpetrators of war crimes before justice is a prevalent topic, that still occupies the attention of the CSO community. The organizations have maintained that each country rise to their duties and prosecute criminals at home. Recent proposals to change the criminal procedure law – affecting international cooperation in criminal matters – sparked controversies within the CSO's in Kosovo. The proposal of one of the political parties in Kosovo is to amend the criminal procedure law to include the possibility of “trials in absentia”.<sup>48</sup> Regional organizations feel that trials *in absentia* would be to the detriment of transitional justice efforts, and maintain that such trials are not in compliance with international human rights norms.<sup>49</sup> Consequently, the proposal is still being discussed in the Parliamentary Committee. Another relevant aspect is that, due to the fact that this amendment was presented to address the impunity of supposed war perpetrators – most of which are now living in Serbia –, the effects of such a law are difficult to be implemented in practice, because Kosovo and Serbia do not have direct official cooperation on criminal matters. The role of CSO's is felt in the institutional and strategic framework as they advocate for changes in the laws and practices of the institutions, holding them accountable for misdeeds, and requiring a higher degree of efficiency.

## 6. Bilateral achievements and multilateral difficulties

Again, the scope of Kosovo's bilateral and multilateral agreements on judicial cooperation are reflective of the country's efforts to fully consolidate its statehood and gain membership into international organizations. At this time, Kosovo has created a framework of interstate cooperation only, by concluding nine bilateral agreements with different countries. However, as it will be explained below, it does not belong to any multilateral agreement yet.

<sup>48</sup> Die Morina, Balkan Insight, 'Kosovo Mulls Allowing War Crime Trials in Absentia', July 26 2018, available at: <https://balkaninsight.com/2018/07/26/kosovo-planning-amendments-for-trying-war-suspects-in-absentia-07-25-2018/>

<sup>49</sup> Humanitarian Law Centre Kosovo, Press release, The motion to introduce trials in absentia demands a professional rather than a political debate, 12 October 2018, available at: <http://www.hlc-kosovo.org/the-motion-to-introduce-trials-in-absentia-demands-a-professional-rather-than-a-political-debate/>

Kosovo current bilateral agreements can be grouped into three types: extradition, judicial assistance in criminal matters, and transfer of sentenced persons. In a geographic sense, the agreements in force are with neighboring countries – with the exception of Serbia – and other countries that have a significant Kosovar diaspora, like Germany and Switzerland.<sup>50</sup> Moreover, in general, Kosovo has agreements with countries that have been supportive of its statehood internationally.

In cases when the Department for International Legal Cooperation is faced with the lack of a bilateral agreement with a country that it has interest to do so – or, vice-versa, a country that reaches the Kosovar authorities – the department's work is based on the principle of reciprocity.<sup>51</sup>

Among the most successful bilateral agreement are the ones with Germany and Croatia, who lead in terms of the judicial cooperation that Kosovo has with other countries.<sup>52</sup> For example, the year 2018 has the highest number of extraditions with eighty-eight, out of which thirty-three were with Germany. The agreement with the Federal Republic of Germany on Judicial Cooperation in Criminal matters was signed on July 2015 and it foresaw extraditions as one of the main alternatives of cooperation. Similarly, Croatia (that has signed a bilateral agreement on cooperation in 2012) is one of the countries that cooperates the most with Kosovo. Ironically, one of the key achievements in judicial cooperation for Kosovo is the arrest of one of the biggest criminal fugitives in Slovakia, Baki Sadiki. Although the Slovakian representatives were arguing that there is nothing stopping the extradition of Baki Sadiki, a Kosovar citizen, who had been sentenced *in absentia* for drug production, the fact that Slovakia was vehemently opposing Kosovo's independence could have complicated his extradition from Kosovo's side.<sup>53</sup> However, the Court in Gjilan decided that Baki Sadiki could be extradited to Slovakia and the decision was also endorsed by the then Minister of Justice in Kosovo.<sup>54</sup>

Kosovo lacks of membership in international organizations, with a special emphasis in the Council of Europe is to the detriment of judicial cooperation. The CoE has a number of decade old conventions that lay down the international cooperation in criminal matters between its members, that have been duly

<sup>50</sup> At this time, Kosovo has bilateral agreements with nine states: Turkey, Macedonia, Belgium, Switzerland, Croatia, Albania, Hungary, Italy and Germany. Available in the website of the Ministry of Justice: <https://md.rks-gov.net/page.aspx?id=1,16>

<sup>51</sup> The principle of reciprocity is foreseen in the Law

<sup>52</sup> Ministry of Justice, Department of International Cooperation Statistics for 2016-2018

<sup>53</sup> The Slovak Spectator, "Kosovo will extradite Baki Sadiki to Slovakia", 3 Dec 2012, available at: <https://spectator.sme.sk/c/20045442/kosovo-will-extradite-baki-sadiki-to-slovakia.html>

<sup>54</sup> Id.

updated with additional protocols and new conventions that treat new forms of criminal matters like cyber-crimes. However, due to lack of membership Kosovo cannot become a party to these instruments and it would be futile to unilaterally incorporate them into national law because it would not affect the cooperation anyhow. The Department on Judicial Cooperation assesses the necessity of bilateral agreements based on the frequency of cases that it has with different countries. At this time, the Department is discussing the conclusion of other bilateral agreements.<sup>55</sup> Also, many agreements will have to be amended by novel forms of crimes and to include additional forms of cooperating.

## 7. International Judicial Cooperation: A numerical perspective

The department for judicial cooperation records and categorizes the yearly data on international judicial cooperation in Kosovo. The data is firstly divided into two tables based on the requests that Kosovo receives and the data of the request that Kosovo sends out.<sup>56</sup> The cooperating countries are in an alphabetical order and the types of the cooperation are categorized into groups that are also depicted in the law, like judicial assistance, extradition, international arrest warrants, service of writs and record of judicial documents transfer of criminal procedures and sentenced persons. Afterwards, the request are sub- categorized based on the type of criminal conduct that the request has been based on. Here, the subcategories are diverse and reflect the forms of criminal conducts stipulated in Kosovo's criminal code – as the law on judicial cooperation foresees the principle of double criminality. Unfortunately, the yearly reports of the Department are not as specific and there are no reports that identify patterns, circumstances that alone affect international judicial cooperation in Kosovo. Below we will analyze the praxis based on the aforementioned categories.

Judicial cooperation in criminal matters achieved its peak in 2016, with Kosovo's institutions recording 5964 requests and answers. Request based on new cases amounted for 2162, whereas new requests based on cases that were in process totaled at 1736. Numbers in judicial cooperation fell to 5196 in 2017, out of which requests based on new cases were at 1319 and new request for cases already in process at 1306. The total of the answered requests from

<sup>55</sup> Supra note 52

<sup>56</sup> Supra note 52

Kosovo was 2571. In 2018, judicial cooperation was again up to 5955. Similar to the previous year, 1361 requests on new cases were made, while 1734 on cases already in process. The proportions of requests and answers are roughly equal to one another, slightly higher for the requests that Kosovo receives, proving a mainly positive track record of Kosovar institutions. The Ministry has explained that delays from Kosovar institutions come mainly from the main branch of the Prosecution and Courts in the Kosovo's capital, Prishtina.<sup>57</sup>

Service of writs and records of judicial documents amount for the most frequent forms of cooperation as they also serve as a prerequisite of other actions that have to be taken. Although generally there is no pattern or indicator to explain the overall efficacy in terms of request and answers, a clear pattern can be discerned in some fields: that is extradition.

The number of extraditions from and to Kosovo was 39 in 2016, 44 in 2017 and it went up to a record high of 82 by mid-December 2018, a number that went higher (but that will be included in the Department's 2019 report) and was regarded as a big success in terms of cooperation. The extradition processes area is evened out between the countries with which it occurred. Macedonia, Albania, Switzerland, Germany and France are the countries with which Kosovo has the most extraditions. Germany is considered the main partner in extradition processes wherein out of the 82 extraditions in 2018, 44 were with Germany.

Similarly transfer of sentenced persons went from 2 in 2017 to 5 in 2018. Request for transfer are also mainly made from and to Albania and Switzerland. Transfer of procedures was also similarly uneven, with higher frequency in 2016 that went down in 2017. Finally, the frequency of international arrest warrants was continuously increasing within the period that we are analyzing.

As far as the frequency of the types of crimes that are subject to international cooperation is concerned, there is a pattern of some types that are more prevalent. Fraud, forgery and piracy of products, traffic offences, together with cases of theft and homicides are among the most frequent types of crimes to be found. Afterwards, organized crime, narcotics and unauthorized border crossing. Less frequent but still of significance for the report is cooperation in cybercrimes and war crimes.

<sup>57</sup> Supra note 52

## 8. Summary and Recommendations

Given the circumstances that it operates in, international legal cooperation in Kosovo is quite successful. While there are issues that stem from lack of membership in international organizations, the responsibility to tackle them is not of the institutions involved in legal cooperation. Still, there are hurdles that can and will have to be addressed in order to increase efficacy within the current legal and institutional framework.

The legal framework respects international human rights norms and foresees other guarantees that ensure proper procedures. At times, however, the law stipulates unnecessary guarantees that actually may unreasonably delay cooperation, as is the case in extradition: even though the law says that the decision of the Minister of Justice is final, it can still be appealed in an administrative court.

Discrepancies are also present within the institutional framework. While the Department for legal cooperation overcomes the many burdens it faces in cooperating with non-recognizing countries, and its human capacities will be strengthened in the near future, the main institutional players and the prosecutorial and court system require improvements. Therefore, the following recommendations are advisable:

- Judges and prosecutors need to be more thoroughly informed on the new bilateral agreements in this field, but also on novelties surrounding new crimes and forms of cooperation in general. Preferably the Ministry of Justice should prepare handbooks for the Judges and Prosecutors;
- In order to have a higher language proficiency as the sector does not have enough translators available, the academy of justice has to organize language courses and increase number of translators;
- International legal cooperation has to be specifically addressed in the Judicial and Prosecutorial Council's yearly reports;
- The Ministry should continue its endeavor to have more bilateral agreements with other countries and exchanges of practices and make use of international projects regarding the western Balkans;
- It is important that the data collected by the Ministry is also properly organized. Undoubtedly there are specific patterns in international cooperation that can be identified and then used to have better and more informed policies in place.



# MONTENEGRO.

## 1. Introduction

The inevitability of judicial cooperation in criminal matters on regional level can be designated as typical of Montenegro. As a country with small territory and proportionately small size population, Montenegro faces the fact that every, even least serious form of crime, spreads its assumptions and effects beyond the state borders. Historical links with the countries in the region emphasize to an even greater extent the regional aspect of the crime which originates in, or is related to Montenegro. On the other hand, Montenegro, as a distinctly tourist country, accommodates annually a large number of foreign citizens coming from the region, from Europe and beyond. This state of affairs assumes regional judicial cooperation as a *condicio sine qua non* for the fight against organized crime. Naturally, the greatest degree of cooperation refers to the bordering countries, and only in the recent years there has been increasing percentage of judicial cooperation with the EU member states.

Montenegro's EU accession process provides additional impact to the improvement of the conditions and capacities of Montenegrin institutions in the field of the fight against organized crime through judicial and police cooperation, having the region in its focus. In that sense, there has been obvious progress in terms of legislation through the signing of bilateral agreements, but also through the establishment of standards of contemporary judicial cooperation, high percentage of enforced letters rogatory by Montenegrin judicial authorities. There is also a clear need for further improvement of capacities and gradual shift from the traditional international legal assistance to the system of judicial cooperation, in relation to the EU member states, only primarily with the countries of the Western Balkans. The analysis itself focuses on presenting, as exactly as possible, current state of affairs in this area, and on issuing recommendations which will be the basis for determining priorities for further improvement of regional cooperation in the first place, followed by the cooperation with the EU member states. In this respect, the analysis does not intend to address all the challenges of contemporary regional judicial cooperation; it will instead try to determine the directions of further improvement, by means of which judicial authorities in the region will trace their more efficient and more effective cooperation in the fight against organized crime.

## 2. Methodology used for the analysis

The analysis presented here is based on the studying of the existing legislation of Montenegro, interviews with the civil servants in charge of the tasks

of international legal assistance in relevant authorities – Directorate for International Judicial Cooperation and Projects, Ministry of Justice, Supreme State Prosecution Office, Special State Prosecution Office, High Court. Relevant additional strategic documents and the most recent European Commission Progress Report for Montenegro have been considered, as well as the findings/experiences of experts and NGOs. Finally, the analysis of statistical data on international legal assistance/judicial cooperation has been prepared for the period 2016-2018, as registered through judicial cooperation case-management system of the Ministry of Justice of Montenegro - LURIS.

### 3. Normative framework

#### 3.1. National legal framework

International legal assistance in criminal matters is provided on the basis of multilateral and bilateral agreements, and in the absence of international agreements, or if certain issues are not regulated by the agreements, national legislation shall apply. The most important legislation related to judicial cooperation in criminal matters are the following ones: Law on International Legal Assistance in Criminal Matters, Criminal Procedure Code, Law on Preventing Money Laundering and Financing Terrorism, Witness Protection Law, Law on Liability of Legal Entities for Criminal Offences, Law on Seizure and Confiscation of the Proceeds from Crime, Law on Courts, Law on State Prosecution Service and Law on Special Prosecution Service.

The negotiation process with the EU (Action plans for the Chapters 23 and 24), reforms of judiciary and anticorruption efforts have resulted in the adoption and the amendments to the majority of laws related to the fight against organized crime, corruption and international legal assistance for the past five years. The most important laws that have been adopted or amended are the following ones: Law on International Legal Assistance in Criminal Matters, Criminal Procedure Code, Law on the Prevention of Money Laundering and Financing terrorism, Law on the Liability of Legal Entities for Criminal Offences, Law on Seizure and Confiscation of the Proceeds of Crime, Law on Internal Affairs and Law on Courts, Law on State Prosecution Service and Law on Special Prosecution Service.

**The Law on International Legal Assistance in Criminal matters**<sup>1</sup> lays down the conditions and procedures for the provision of international legal assistance in criminal matters. The Law lays down the rules and procedures for handling Montenegrin requests and sending letters rogatory for international legal assistance submitted to a foreign country by Montenegro, subject to the existence of international agreement. The Law is of general nature and it deals with extradition, transfer of criminal proceedings (assigning and undertaking criminal prosecution), recognition and execution of criminal judgements and other judicial decisions, as well as other forms of international legal assistance. The Law restricts the use of “personal data” for the purpose of information seeking procedures, by means of which, amongst other things, standards are met that are necessary for the cooperation with EUROJUST. Joint investigation teams and delivery of banking data were provided as a special form of international legal assistance, which is in accordance with the provisions of the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters. Controlled delivery and secret investigations are not particularly foreseen by the Law on International Legal Assistance in Criminal Matters as a special form of international legal assistance since they, according to the provisions of the **Criminal Procedure Code (CPC)**<sup>2</sup>, belong to secret surveillance measures entitled “tracing the transport and delivery of the subject matter of the offence” and “hiring undercover agents and associates”. Also, transitional and closing provisions of the Law refer to the application of the Criminal Procedure Code, which has indirect effect on the process of the provision of mutual legal assistance.

The amendments to the CPC from the year 2015, introduced the provisions that were supposed to contribute to more efficient and more effective international judicial cooperation. Taking into consideration the data on the number of fugitives and in order to increase the possibility of securing the presence of the persons who in certain ways avoid trials and serving prison sentences, by amending the Article 157 it was made possible for certain secret surveillance measure to be ordered against a person who is a subject of an international warrant of arrest, or against a third person for whom there are grounds for suspicion of him/her being in direct contact with the former (paragraph 7). New article 257b, prescribes that in case of the existence of grounds for suspicion that certain person has committed, commits or is getting ready to commit criminal offences which are prosecuted ex officio, upon the proposal of a state prosecutor, a judge for preliminary proceedings may issue a binding decision for a bank to submit, within certain deadline, the data on bank

<sup>1</sup> Law on International Legal Assistance in Criminal Matters, “Official Gazette of Montenegro”, nos. 4/2008 and 36/2013.

<sup>2</sup> Criminal Procedure Code, “Official Gazette of MNE”, no. 57/2009, 49/2010, 47/2014 – Decision of the Constitutional Court of Montenegro, 2/2015 - Decision of the Constitutional Court of Montenegro, 35/2015 (art. 88-91 are not in the consolidated text), 58/2015 – other laws and 28/2018 - Decision of the Constitutional Court of Montenegro.

accounts and transactions of such person, for the purpose of discovering the perpetrator and collecting evidence, or for the purpose of locating, identifying and searching for an absconding person, or a person who is a subject of an international warrant of arrest (paragraph 1).

Montenegro adopted the **Law on the Prevention of Money Laundering and Financing Terrorism**<sup>3</sup>, the provisions of which regulate the procedure for the submission of personal data to the authorities competent for the fight against money laundering and terrorism in a foreign country. Also, the Law allows for direct communication among competent administrative bodies which might request information, data and documents necessary for the detection and prevention of money laundering or financing terrorism. Also, a competent administrative body, upon its own initiative, may submit the data, documentation and information about the buyers or transactions for which there are justified grounds for suspicion of money laundering or financing terrorism, which were collected or kept in accordance with this law, to the competent authorities of a foreign country authorized for the prevention and detection of money laundering and terrorism financing, under the condition of reciprocity.

**Witness Protection Law**<sup>4</sup> regulates the procedure of submitting a request to foreign country for the reception of a protected person, as well as the procedure following a request of a foreign country for the reception of a protected person and the application of protection measures. International cooperation within the meaning of the **Law on the Seizure and Confiscation of the Proceeds of Crime**<sup>5</sup> includes tracing of the proceeds of crime, imposition of interim measures for the preservation of assets, seizure/confiscation of moveable assets, seizure/confiscation of the proceeds of crime and managing the seized/confiscated assets. International cooperation aimed at seizing/confiscating and managing the seized/confiscated proceeds of crime is exercised in accordance with international treaty. In case there is no international treaty or if certain issues are not regulated by an international treaty, international cooperation is exercised in accordance with this law, providing there is reciprocity or it can be expected for a foreign country to execute a letter rogatory for international legal assistance of a national judicial authority. The provisions of the law regulating international legal assistance in criminal matter shall apply accordingly to the issues of international cooperation that are not regulated by this law.

<sup>3</sup> Law on the Prevention of Money Laundering and Financing Terrorism, "Official Gazette of MNE" no. 033/14 dated 4<sup>th</sup> August 2014, 044/18 dated 6<sup>th</sup> July 2018

<sup>4</sup> Witness Protection Law, "OG RMNE", no. 65/2004 and "OG MNE" no. 31/2014.

<sup>5</sup> Law on the Seizure and Confiscation of the Proceeds of Crime, "OG MNE", no. 58/2015 dated 9<sup>th</sup> October 2015, came into force on 9<sup>th</sup> November 2015.

Law on the Seizure and Confiscation of the Proceeds of Crime also provides for the possibility of dividing the confiscated proceeds of crime with other countries, which can be regulated by an international treaty.

Competence to act upon requests in accordance with the Council Decision 2007/845/JNA dated 6<sup>th</sup> December 2007, was assigned to the organizational unit of the Police in charge of financial investigations.

**Law on Courts**<sup>6</sup> introduces new competence of basic courts to act in the cases of international criminal-law assistance in criminal matters upon letters rogatory for the delivery of writs. High courts have remained for the procedures of the provision of every other international legal assistance in criminal matters.

**Law on State Prosecution Service**<sup>7</sup> regulates the actions of the state prosecution service in line with the Constitution, laws and ratified international agreements, and it also provides for the possibility of direct cooperation with foreign prosecutors within the framework of international agreements and other international documents. In accordance with the **Law on Special Prosecution Service**<sup>8</sup>, Special Prosecution Office has got a department for international cooperation. The Department performs the tasks of cooperation with competent authorities and bodies of other states and international organizations, appoints members to the joint investigation team which is established on the basis of the international treaty for the purpose of criminal prosecution for the offences from the competence of the Special State Prosecution Service.

According to the existing organizational regulations in the area of judiciary, all judicial authorities before which criminal proceedings are conducted can request the provision of legal assistance by means of letters.

From the horizontal standpoint of the existing legal framework for mutual legal assistance in criminal matters it can be concluded that Montenegro, as a country which is in the process of gradual accession to the European Union, has all the necessary legal conditions for efficient and continuous exercise of judicial cooperation in criminal matters.

### 3.2. International legal framework

Montenegro is a party to a number of multilateral conventions in the area of international legal assistance in criminal matters. The most important among these are the following Council of Europe conventions: European convention on mutual legal assistance in criminal matters and its two additional protocols, European convention on extradition and its two additional protocols, European

<sup>6</sup> Law on Courts, "OG MNE", no. 11/2015 dated 12<sup>th</sup> March 2015, came into force on 20<sup>th</sup> March 2015.

<sup>7</sup> Law on State Prosecution Service, "OG MNE", nos. 11/2015, 42/2015, 80/2017 and 10/2018.

<sup>8</sup> Law on Special Prosecution Service, "OG MNE", no. 10/2015 and 53/2016.

convention on transfer of convicted persons and its additional protocol, European convention on transfer of proceedings in criminal matters. With a view to better and more precise regulating and simplifying, as well as speeding up the process of providing international legal assistance in criminal matters, Montenegro signed a series of bilateral agreements with the countries in the region, which it has most frequent judicial cooperation with or which it expects to have increased level of cooperation with, like Serbia, Bosnia and Herzegovina, Croatia, Italy, Macedonia.

For the purpose of creating bilateral conditions for stronger, binding and more efficient cooperation with the countries in the region in the area of the fight against all forms of crime, organized crime and corruption in particular, Montenegro has signed the agreements with Serbia, Croatia, Macedonia and Bosnia and Herzegovina, which ensure the possibility for the extradition of their citizens. Common trait of all these agreements is that own citizens may be extradited solely for the criminal offences of organized crime, corruption and money laundering, for the purpose of conducting criminal proceedings for the offences punishable by prison sentences of four or more years, or for serving the prison sentence of at least two years for the abovementioned offences. The specificity of the agreement with Serbia is to additionally secure the possibility for the extradition of the own citizens for the crimes against humanity and other properties safeguarded by the international law, as well as for other serious crimes or grave forms of criminal offences punishable by the prison term of no less than five years. The additional bilateral agreement between Montenegro and Italy on the issue of the European Extradition Convention envisages that the citizens can be extradited for the purpose of conducting criminal proceedings for a criminal offence which, according to the regulations of both states, is punishable by imprisonment term lasting five or more years.

### 3.3. Ongoing legislative reform

Besides the already completed legislative reform in the area of the provision of international legal assistance, both through the adoption of national laws and through the ratification of multilateral and bilateral agreements, while having in mind the needs being imposed with the strengthening of the cooperation with the countries in the region, as well as with the EU member states, the Ministry of Justice of Montenegro has been continuously improving the legislative framework of the country.

The Ministry of Justice of Montenegro is currently negotiating with the ministries of justice in Albania and Kosovo striving to define the provisions and subsequent signing of respective bilateral agreements, following the models of the already signed ones with other countries in the region.

The Bill on regulating judicial cooperation in criminal matters among competent judicial bodies of Montenegro and those of the EU member states has entered into the parliamentary procedure. In line with strategic documents and, according to the stage of the enactment procedure for the Bill, it is to be expected that it will be adopted at the plenary session to be held by the end of 2018. After the enactment, the Law will be published in the Official Gazette only to come into force on the day of Montenegrin accession to the European Union. It can be expected that the Law will suffer certain amendments due to the need for alignment with new EU directives that will ensue, but one has to emphasize the importance of such a piece of legislation, which has already transposed 16 instruments of the EU in the area of judicial cooperation into the national system. The importance is also reflected in the perspective of this law becoming the basis for the improvement of other related pieces of legislation. Along these lines, the Ministry of Justice planned to adopt the Law amending the Law on International Legal Assistance in Criminal Matters in the fourth quarter of 2019.

## 4. Institutional framework

### 4.1. Ministry justice – competences and tasks in the area of international legal cooperation

As a central authority for the area of international legal assistance, the Ministry considers all incoming legal requests. The consideration is done on the basis of formal admissibility of international legal assistance and international criminal law. The execution is possible solely if the Ministry holds the original letter rogatory, which the official seal/stamp of the Ministry is affixed on upon judicial review of substantive admissibility.

Pursuant to the Second Additional Protocol to the European Convention on International Assistance in Criminal Matters, direct contact among judicial authorities is allowed and possible. Also, while this protocol remains in force, requests are sent to the Ministry in the form of notifications.

Copies of outgoing letters rogatory are submitted to the Ministry where the necessary checking is done. However, courts and prosecution offices do not always submit their copies.

The Ministry is also responsible for collecting information on International legal assistance for statistical reasons. The EU sends out periodical requests

for information to be provided (Negotiation chapter 24 – Regular annual reports in the area of judicial cooperation in civil and criminal matters, Council of Europe, Moneyval – Regular annual reports).

The Ministry of Justice has established a system of 24-hour duty by appointing a contact person who is available for both international cooperation and international legal assistance 24/7.

#### **4.2. State prosecution service – competences and tasks in the area of international legal assistance**

According to the existing organizational regulations in the area of judiciary, all state prosecution offices, before which there are ongoing criminal proceedings, may request the provision of legal assistance by means of letters rogatory. On the other hand, in the cases where letters rogatory sent by foreign judicial authorities are subject to the Law on international legal assistance in criminal matters, state prosecution offices are competent solely in terms of undertaking criminal prosecution.

From the perspective of the CPC, which introduced prosecutorial investigation in 2009 and state prosecutor's competences in conducting investigative/evidential actions, state prosecutor's role should be expanded. The competence for the provision of international legal assistance should be harmonized with the CPC in such a way so as to position state prosecutor in line with the position of the same in the CPC. This is mainly related to other forms of international legal assistance, and not in the area of extradition of the accused and sentenced persons and the enforcement of foreign criminal decisions. This harmonization is of big relevance if we take into consideration the need for direct and efficient cooperation of state prosecution offices in the region as the authorities competent for investigation in their respective countries. These legislative shortcomings are not limiting factors where international agreement is directly applied. The data collected from the state prosecution office and interviews with judges and prosecutors point out to the practice of state prosecutors of using their competences laid down in the CPC and providing varied legal assistance like submitting information, documentation and evidence, as well as conducting certain evidential actions.

State prosecution offices, through their standard organization of work with 24-hour duty, have also got the possibility of speedy provision of international legal assistance if there is direct communication. However, given the practice of using communication channels of the Ministry, this possibility cannot be considered an advantage.

#### **4.3. Court – competences and tasks in the area of international legal assistance.**

In line with the Law on Courts and the Law on International Legal Assistance in Criminal Matters, two high courts are competent to provide international legal assistance with one exception, introduced by the new law on courts, which cancelled their exclusive competence related to international legal assistance in criminal matters where there are requests for submitting writs, which is now assigned to the competence of basic courts. According to the functional competence of high courts, two preliminary investigation judges of the High Court Podgorica and High Court Bijelo Polje are responsible for the provision of international legal assistance.

The Law on International Legal Assistance in Criminal Matters regulates the competence for the provision of international legal assistance focusing on courts, and in practice majority of letters rogatory are executed by courts. It is solely in the case of transfer of criminal prosecution, prior to the confirmation of an indictment, that the competent prosecutor delivers a decision.

As regards the competences for "small scale" international legal assistance in accordance with Article 3 paragraph 2 of the Law on International Legal Assistance in Criminal Matters, admissibility and method of executing the procedure which is the subject matter of letter rogatory of a foreign judicial authority are decided upon by the court in accordance with national law and international agreement. The execution of the request may be transferred to prosecution service if the procedure falls under its jurisdiction.

### **5. Membership in relevant international associations/bodies/organizations**

In this area, Montenegro has made exceptional progress. The representatives of the Ministry of Justice and judicial authorities are members of numerous Council of Europe committees (CEPEJ, CDCJ, CDPC, PC-OC, CCJE, CCPE, CODEXTER, MONEYVAL, GRECO, GRETA), UN committees (UNCAC, UNODC, HRC, CAT). The following have achieved observer status in the EU bodies: Supreme Court in the Association of the Councils of State and Supreme Administrative Jurisdictions, European Network of Councils for the Judiciary and Network of the Presidents of the Supreme Courts of the European Union, Supreme State Prosecution Office in the Network of Prosecutors General at Supreme Courts of the EU, Judicial Training Centre in the Network for the Training of Judges, Ministry of Justice in the Network for Legislative Cooperation Among the Ministries of

Justice of EU Member States. The Supreme State Prosecution Service and the Ministry of Justice have appointed contact points for the cooperation with the European Judicial Network. Montenegro is a SEEPAG member. After signing the Memorandum on Understanding in September 2018, Montenegro is currently taking part in the EU Programme called 'Judiciary'.

By signing the Cooperation Agreement with Eurojust in May 2016 and by adopting the Law on Ratification of the Agreement Between Montenegro and Eurojust in December 2016, the possibility was established for the improvement of judicial cooperation in criminal matters between Montenegro and Eurojust, with the purpose of more efficient coordination of investigations and criminal prosecution in the territory of Montenegro and one or several EU member states. In September 2017, the Supreme State Prosecution appointed a state prosecutor to liaise with Eurojust, which meant formal commencement of the implementation of statutory provisions of the ratified Cooperation Agreement, and, what is even more important, specific judicial cooperation with the EU member states established and improved. In the year one of the operation of the liaison state prosecutor, 16 cases were completed using the Eurojust communication channels and support. Also, cooperation was established with the jurisdictions whose level of judicial cooperation had not been on a satisfactory level. As a requesting country, Montenegrin liaison prosecutor opened and registered five operative cases in Eurojust, while as a requested country Montenegro took part in 11 cases (ten operative and one general case registered by the Eurojust Collegium).

Montenegro is the first Western Balkan country to appoint a state prosecutor to liaise with Eurojust with the idea of extending support to the neighbouring countries in the process of signing the agreement and appointing liaison prosecutors, with sole intention for regional and judicial cooperation in Europe to be improved and strengthened.

## 6. Cooperation with international organizations, projects and NGOs.

Support to strengthening capacities and to the improvement of judicial cooperation by international organizations, projects and NGOs used to be indirect and sporadic during certain period of time, and it was being implemented through the support to the strengthening of judiciary as a whole and through the organization of training sessions. One should emphasize the lack of support to the State Prosecution Office, which as an institution was not in the focus despite being key entity for the area of international and regional

judicial cooperation. The European Commission conducted several peer review missions and through negotiation Chapter 24 pointed out to the directions in which judicial cooperation was to be developed. Exceptional contribution of the European Commission to the strengthening of judicial cooperation and fight against organized crime in the region and towards the European Union, was made through the implementation of projects focused on judicial cooperation and on the strengthening of capacities of the state prosecution service in this area. One example of such project, as a third in a row, is the "IPA 2017 Fight against serious crime in the Western Balkans",<sup>9</sup> This is a regional project which, according to the title covers 6 Western Balkan countries - Albania, Bosnia and Herzegovina, Macedonia, Kosovo, Montenegro, Serbia.

With a view to better coordinating reform activities of all foreign countries and international organizations, the European Union and Western Balkan countries have jointly decided to make a single coordination mechanism entitled **Integrative Internal Security Governance (IISG)**. This project is a part of this framework, as well as of the EU enlargement strategy for 2018. The Project beneficiaries and partner institutions are the following ones: state prosecution offices, ministries of justice, ministries of interior and police services of the countries in the region.

The objective of this project is the improvement of efficiency of the cooperation among regional and national institutions in the fight against serious and organized crime. The fight against smuggling illegal migrants and seizure/confiscation of the proceeds of crime are two examples which this project is going to be focusing on.

The implementation of the Project, the activity of which is also the preparation of this analysis, points out to the positive trend of the support to institutions and to nongovernmental organizations focusing on judicial cooperation, which, as such, is the basis for the fight against any serious form of organized crime in Montenegro and the region.

## 7. European Commission 'non-paper' on the state of affairs in the Chapters 23 and 24 in Montenegro<sup>10</sup>

This unofficial working document ('non-paper') focuses on the developments related to the Chapters 23 and 24 of the accession negotiations for Montenegro.

<sup>9</sup> The Project is implemented by the following: (GIZ), Ministry of Interior of Italy and Centre for International Legal Cooperation (CILC) of the Netherlands - funded by the European Union and German Government

<sup>10</sup> European Commission 'non-paper' on the state of affairs in the Chapters 23 and 24 in Montenegro, file:///C:/Users/HP/Downloads/Radni%20dokument%20EK%20o%20stanju%20u%20poglavljima%2023%20i%2024%20u%20Crnoj%20Gori.pdf

Its purpose is to present the overview of progress and of remaining challenges in the area of the rule of law, on the basis of the European Commission Report for Montenegro for 2018. As this is the most recent progress report for Montenegro, the European Commission has taken the Chapters 23 and 24 as a reference for the assessment of the state of affairs in these areas.

The 'non-paper' is based on Montenegrin reports on the implementation of action plans for the first half of 2018 and supplemented by the pieces of information presented at the meeting of the Sub-Committee for Justice, Freedom and Security held in September 2018. Additionally, a series of other sources were used, including expert missions, expert reports within the framework of the EU funded projects and monitoring reports of international organizations and civil society.

The findings of this document, in the area of judicial cooperation in criminal matters, underline the progress in the area of transposition of the EU instrument through Draft Law on Judicial Cooperation in Criminal Matters with EU Member States, cooperation of Montenegrin State Prosecution Service with EU member states through the implementation of the Eurojust Agreement. It is also emphasized that Luris, electronic case management system for judicial cooperation, which was installed in the Ministry of Justice in 2015, operates as a means for monitoring trends in the area of judicial cooperation. Just as in the findings of this analysis, it is emphasized that Montenegrin judicial cooperation in criminal and civil matters is directed primarily towards Western Balkan countries and EU member states. In the area of criminal matters, Montenegro receives majority of requests from the Western Balkan countries (326 requests in 2017). These are mainly extradition requests and those for the transfer of criminal proceedings.

## 8. Analysis of judicial cooperation of Montenegrin judicial authorities with Western Balkan countries

Subject analysis was prepared in relation to five Western Balkan countries, which Montenegro borders with: Albania, Bosnia and Herzegovina, Kosovo, Macedonia and Serbia. The Analysis covers the period 2016, 2017 and 2018, inclusive of 7<sup>th</sup> November, therefore three full years. Statistical data were processed of incoming and outgoing cases of international legal assistance that were recorded in the database of the Ministry of Justice of Montenegro. Within the framework of the abovementioned criteria, additional analysis was made related to the status of the cases, i.e. if they are archived or still pending, and when it comes to the archived ones, what is the number of

the approved vs. not approved letters rogatory of/from foreign authorities. Specially illustrated is statistical processing by the type of international legal assistance in relation to the cases with the EU member states and Western Balkan states, which is compiled for the needs of reporting to the European Commission. It should be mentioned that there are statistical illustrations of letters rogatory received or sent during a processed year, without statistical calculation of the pending cases.

When we observe statistical data presented in the tables, we come to the obvious conclusion that Montenegrin judicial authorities, headed by the Ministry of Justice, had in the observed period **intensive judicial cooperation with Western Balkan countries**. An interesting fact that stands out is that *Montenegrin judicial authorities were requesting international legal assistance from its neighbours at a significantly higher percentage than it was receiving such requests from them*, thus this percentage at the annual level for the past 3 years was by 33.4% in favour of the outgoing cases and/or letters rogatory which Montenegro had sent to the countries in the region. Identical situation exists when we observe statistical data at the level of cooperation with individual countries: in all observed years Montenegro was sending more letters rogatory as compared to the received ones, with the exception of the year 2018 in its cooperation with Albania in which Albania sent by 50% more letters rogatory. Montenegro has balanced cooperation with Macedonia in terms of the number of incoming and outgoing cases. The stated indicators point out to the orientation of Montenegrin judicial authorities towards international judicial cooperation and the character of criminal proceedings of which international elements are more represented. This need implies further enhancement of cooperation with Western Balkan countries.

Concerning the aspect of **the quantity of judicial cooperation with certain regional countries**, perhaps even not so surprising is the fact that the cooperation with Serbia is emphasized making almost 50% of the overall cooperation with the countries of the region. This is related both to the incoming and to the outgoing cases processed by the Ministry of Justice. Considering this aspect of cooperation, Bosnia and Herzegovina is ranked second, followed by Albania, Kosovo and lastly Makedonija, with almost an insignificant level of cooperation. It should be emphasized that this statistical aspect presents solely the extent of cooperation in relation to the number of cases, but it does not point out to the relevance of these cases from the aspect of the results achieved in the fight against organized crime.

Based on the statistical data presented in the tables, it is also possible to draw a conclusion on the extent of the **efficiency of Montenegrin judicial authorities** and their colleagues in the region in providing international legal assistance. Since from the point of view of statistics it is not possible to perceive

the complexity of all specific cases processed during the period concerned, the efficiency conclusion is drawn in a relative sense, i.e. according to the number of archived cases, by the year and by the direction of letters rogatory. Overall number of archived incoming and outgoing cases in relation to the pending ones is considerably higher: therefore it can be concluded that the efficiency of judicial cooperation in the region is on a high quality level. However, there is a noticeable difference in the efficiency of Montenegrin judicial authorities when acting upon letters rogatory from the region and the acting of judicial authorities from the countries in the region upon letters rogatory submitted by Montenegro. Thus Montenegrin judicial authorities acted in 78.3% of letters rogatory for the period of 2016, 2017 and 2018, while for the same period of time, the countries in the region acted upon letters rogatory sent by Montenegrin judicial authorities in 57.77% of the cases, the remaining cases at the end of the observed year remained pending. Therefore, Montenegrin judicial authorities have demonstrated high degree of efficiency. On the other hand, there is a noticeable drop in efficiency during the observed period, of both Montenegrin judicial authorities and those in the region. In fact, according to statistical data, the percentage of archived cases in the countries of the region, upon letters rogatory sent by Montenegrin judicial authorities in 2016 reached 73% of the total number of letters rogatory; in 2017 this percentage was 64.3%, and in 2018 (inclusive of 7<sup>th</sup> November) only 36%. In acting upon the letters rogatory coming from the countries in the region, Montenegrin judicial authorities have also recorded a drop in efficiency in the observed period, although to a lesser extent, thus the percentage of archived cases dropped from 91.8% in 2016 to 78.9% in 2017, only for the percentage of archived cases in 2018 (inclusive of 7<sup>th</sup> November) to reach the level of 64.2%.

The fall in the number of archived cases in 2018 can be characterized as worrying if it is correlated with the fact that in 2018, for example, Montenegrin judicial authorities sent 50% less letters rogatory as compared to the year 2017.

The reasons for such statistical curve in the area of efficiency of acting on the part of judicial authorities can be varied, and the presented statistical data can be a remainder that possible reasons need to be ascertained and eliminated in the period to come. One of the seemingly obvious reasons is staffing policy (frequently caused by inadequate funds, spatial and technical capacities), which fails to fill sufficient number of positions in judicial cooperation directorates, as well as the lack of personnel permanence at the positions they are specialized for in the judicial cooperation directorates.

The indicators of judicial cooperation in the region of Western Balkans elaborated above point out to its quality only partially. In order to have a complete picture and to draw proper conclusion, it is also necessary to analyse the **readiness to comply with letters rogatory, and/or the quality of the referred letters**

**rogatory.** This aspect can be perceived through percentage of letters rogatory which judicial authorities responded positively to and complied with either fully or partially. If we believe in the statistical data presented in the tables below, we can be satisfied with the readiness demonstrated by Montenegrin authorities in complying with letters rogatory coming from the countries in the region, but also vice versa. In the last three years there has been a noticeable constant in this respect. From the aspect of the Ministry of Justice, on average 82.4% of letters rogatory referred to judicial authorities of the countries in the region, within the level of the observed period, were fully or partially complied with. At the level of individual years, that percentage had upward trend, thus in 2016 it was 79.2%, in 2017 – 81.9% and in 2018 – 86.2%. Montenegrin judicial authorities also expressed readiness for cooperation and trust in relation to letters rogatory served by the countries in the region to be acted upon, therefore the percentage of letters rogatory that were complied with in this period was on average 86.7%, i.e. by year as follows: 87.2%, 89.5% and 83.3% for 2016, 2017 and 2018. At the level of judicial cooperation with the countries in the region, individually there is no deviation from the general percentage of letters rogatory that were complied with in both directions.

We have already mentioned the importance of **direct cooperation of judicial authorities** and of the duty to notify respective ministries of justice as central authorities on initiated or completed judicial cooperation by submitting copies. The insight into the records related to international legal assistance kept by the Ministry presents dilemmas with regards to specific cases because from their content it might be concluded that there is a letter rogatory sent directly by the prosecution service, without submitting a copy to the Ministry. Such conclusion is made based on the fact that letters rogatory sent by foreign judicial authorities were complied with, without it being forwarded via the Ministry, or without copies being sent to the Ministry. However, in the majority of cases, from the statistics held by the Ministry it is clear that a case was registered as sent or received through direct communication of judicial authorities and that the Ministry was notified by means of a copy received from a given authority. In this sense, the system of notifications has to be observed, which is a statutory duty in the first place, or improved, as it has already been proposed, by networking and linking the data from the Ministry and Prosecution Service using the LURIS system. In this way, in case a letter rogatory is either sent or received directly, the Ministry will automatically be notified, with the implied confidentiality of the procedure and personal data. Direct delivery is by far most present in the communication with the state authorities of the Republic of Serbia, and in some cases also with the authorities of Bosnia and Herzegovina.



Table 1. Letters rogatory for judicial cooperation sent from Montenegro in 2016

| State        | Outgoing   | Status     |           | Outcome                  |                   |
|--------------|------------|------------|-----------|--------------------------|-------------------|
|              |            | Archived   | Pending   | Complied with/ partially | Not complied with |
| Albania      | 44         | 32         | 12        | 25                       | 7                 |
| B&H          | 100        | 76         | 24        | 53                       | 17                |
| Kosovo       | 36         | 30         | 6         | 23                       | 7                 |
| Macedonia    | 11         | 9          | 2         | 9                        | 0                 |
| Serbia       | 260        | 208        | 52        | 171                      | 37                |
| <b>Total</b> | <b>451</b> | <b>355</b> | <b>96</b> | <b>281</b>               | <b>68</b>         |

Table 2. Letters rogatory for judicial cooperation sent from Montenegro in 2017

| State        | Outgoing   | Status     |            | Outcome                  |                   |
|--------------|------------|------------|------------|--------------------------|-------------------|
|              |            | Archived   | Pending    | Complied with/ partially | Not complied with |
| Albania      | 53         | 26         | 27         | 25                       | 2                 |
| B&H          | 136        | 105        | 31         | 84                       | 21                |
| Kosovo       | 38         | 22         | 16         | 20                       | 2                 |
| Macedonia    | 12         | 8          | 4          | 7                        | 1                 |
| Serbia       | 277        | 171        | 106        | 136                      | 35                |
| <b>Total</b> | <b>516</b> | <b>332</b> | <b>184</b> | <b>272</b>               | <b>61</b>         |

Table 3. Letters rogatory for judicial cooperation sent from Montenegro in 2018, (up to 7th Nov. 2018)

| State        | Outgoing   | Status    |            | Outcome                  |                   |
|--------------|------------|-----------|------------|--------------------------|-------------------|
|              |            | Archived  | Pending    | Complied with/ partially | Not complied with |
| Albania      | 22         | 4         | 18         | 4                        | 0                 |
| B&H          | 48         | 23        | 25         | 19                       | 4                 |
| Kosovo       | 32         | 14        | 18         | 13                       | 1                 |
| Macedonia    | 6          | 2         | 4          | 2                        | 0                 |
| Serbia       | 150        | 51        | 99         | 43                       | 8                 |
| <b>Total</b> | <b>258</b> | <b>94</b> | <b>164</b> | <b>81</b>                | <b>13</b>         |

Table 4. Letters rogatory received by Montenegro in 2016

| State        | Outgoing   | Status     |           | Outcome                  |                   |
|--------------|------------|------------|-----------|--------------------------|-------------------|
|              |            | Archived   | Pending   | Complied with/ partially | Not complied with |
| Albania      | 15         | 12         | 3         | 9                        | 3                 |
| B&H          | 85         | 80         | 5         | 72                       | 8                 |
| Kosovo       | 20         | 19         | 1         | 16                       | 3                 |
| Macedonia    | 11         | 11         | 0         | 9                        | 2                 |
| Serbia       | 200        | 182        | 18        | 159                      | 23                |
| <b>Total</b> | <b>331</b> | <b>304</b> | <b>27</b> | <b>265</b>               | <b>39</b>         |

Table 5. Letters rogatory received by Montenegro in 2017

| State        | Outgoing   | Status     |           | Outcome                  |                   |
|--------------|------------|------------|-----------|--------------------------|-------------------|
|              |            | Archived   | Pending   | Complied with/ partially | Not complied with |
| Albania      | 26         | 23         | 3         | 21                       | 2                 |
| B&H          | 78         | 63         | 15        | 57                       | 6                 |
| Kosovo       | 13         | 10         | 3         | 7                        | 3                 |
| Macedonia    | 7          | 6          | 1         | 5                        | 1                 |
| Serbia       | 118        | 89         | 29        | 81                       | 8                 |
| <b>Total</b> | <b>242</b> | <b>191</b> | <b>51</b> | <b>171</b>               | <b>20</b>         |

Table 6. Letters rogatory received by Montenegro in 2018 (up to 7th Nov. 2018)

| State        | Outgoing   | Status     |           | Outcome                  |                   |
|--------------|------------|------------|-----------|--------------------------|-------------------|
|              |            | Archived   | Pending   | Complied with/ partially | Not complied with |
| Albania      | 40         | 26         | 14        | 24                       | 2                 |
| B&H          | 65         | 48         | 17        | 45                       | 3                 |
| Kosovo       | 17         | 9          | 8         | 6                        | 3                 |
| Macedonia    | 9          | 5          | 4         | 4                        | 1                 |
| Serbia       | 112        | 68         | 44        | 51                       | 17                |
| <b>Total</b> | <b>243</b> | <b>156</b> | <b>87</b> | <b>130</b>               | <b>26</b>         |

The Ministry of Justice of Montenegro produces special reports for the needs of the European Commission and in that sense even the LURIS system generates methodologically partially different data. These data are presented in the tables 7 and 8. According to these data, it is possible to compare the scope of cooperation among Montenegrin judicial authorities and the EU member states, Western Balkan countries and other countries. There is considerably greater scope of cooperation between Montenegro and Western Balkan countries rather than it is the case with EU or other (third) countries. What stands out from the usual trends, when it comes to the scope of judicial cooperation, is the fact that Montenegro sent greater number of letters rogatory to the EU member states than it received from them. This *ratio* is contrary to the *ratio*

between the sent and received letters rogatory in the cooperation with Western Balkan countries, but also with the third countries.

From the aspect of the types of international legal assistance, it was expected for the most represented to be "other" international assistance, while Montenegrin State Prosecution Service in a large number of cases proposed delegation of criminal prosecution, with the emphasis on the Western Balkan countries. It is interesting to notice that Montenegro sent more letters rogatory for extradition to the EU than it was the case with the Western Balkan countries.

The efficiency of judicial cooperation with the member states is at approximately the same level as with the Western Balkan countries.

Table 7. Requests for judicial cooperation sent by Montenegro in the period 1st January 2016 to 7th November 2017

| Type of legal assistance                 | New        |             |            | Complied with |            |           | Not complied with |            |           | Pending    |            |            |
|--|------------|-------------|------------|---------------|------------|-----------|-------------------|------------|-----------|------------|------------|------------|
|  | EU         | WB          | others     | EU            | WB         | others    | EU                | WB         | others    | EU         | WB         | others     |
| Extradition                              | 87         | 52          | 12         | 53            | 35         | 5         | 16                | 3          | 2         | 29         | 22         | 9          |
| Transit                                  | 13         | 2           | 1          | 9             | 2          | 0         | 1                 | 0          | 0         | 3          | 0          | 1          |
| Transcript from criminal records         | 29         | 218         | 5          | 24            | 178        | 4         | 4                 | 15         | 0         | 6          | 55         | 3          |
| Hearing                                  | 56         | 139         | 37         | 38            | 94         | 16        | 7                 | 19         | 10        | 18         | 41         | 20         |
| Transfer of convicted person             | 8          | 31          | 0          | 5             | 15         | 0         | 1                 | 6          | 0         | 3          | 12         | 0          |
| Transfer of criminal proceedings         | 37         | 307         | 37         | 8             | 113        | 3         | 9                 | 42         | 7         | 32         | 233        | 35         |
| Recognition of foreign judicial decision | 4          | 82          | 1          | 0             | 39         | 0         | 3                 | 32         | 1         | 1          | 26         | 0          |
| Other international legal assistance     | 117        | 340         | 93         | 115           | 201        | 44        | 32                | 87         | 25        | 56         | 109        | 44         |
|  | <b>411</b> | <b>1171</b> | <b>186</b> | <b>252</b>    | <b>677</b> | <b>72</b> | <b>73</b>         | <b>204</b> | <b>45</b> | <b>148</b> | <b>498</b> | <b>112</b> |

Table 8. Requests for judicial cooperation received by Montenegro in the period from 1st January 2016 to 7th November 2017

| Type of legal assistance                 | New |     |        | Complied with |     |        | Not complied with |     |        | Pending |     |        |
|--|-----|-----|--------|---------------|-----|--------|-------------------|-----|--------|---------|-----|--------|
|  | EU  | WB  | others | EU            | WB  | others | EU                | WB  | others | EU      | WB  | others |
| Extradition                              | 78  | 90  | 25     | 69            | 67  | 23     | 12                | 7   | 4      | 15      | 26  | 5      |
| Transit                                  | 2   | 3   | 0      | 2             | 3   | 0      | 0                 | 0   | 0      | 0       | 0   | 0      |
| Transcript from criminal records         | 42  | 156 | 4      | 44            | 154 | 3      | 0                 | 2   | 0      | 1       | 7   | 1      |
| Hearing                                  | 59  | 102 | 17     | 37            | 70  | 13     | 6                 | 20  | 2      | 20      | 18  | 3      |
| Transfer of convicted person             | 22  | 26  | 9      | 6             | 28  | 0      | 7                 | 3   | 4      | 13      | 4   | 5      |
| Transfer of criminal proceedings         | 9   | 84  | 3      | 6             | 39  | 1      | 1                 | 15  | 0      | 5       | 53  | 2      |
| Recognition of foreign judicial decision | 3   | 35  | 1      | 1             | 14  | 0      | 0                 | 17  | 1      | 2       | 10  | 0      |
| Other international legal assistance     | 224 | 280 | 41     | 168           | 200 | 31     | 37                | 44  | 3      | 34      | 66  | 11     |
|  | 439 | 776 | 100    | 333           | 575 | 71     | 63                | 108 | 14     | 90      | 184 | 27     |

## 9. Case registration – case management system (LURIS)

Recognizing efficient judicial cooperation in criminal matters as one of the key challenges in the efforts for preventing and suppressing criminal activities as much as it is possible, in 2014 the Ministry of Justice launched the project of introduction of the case recording system for international legal assistance – LURIS, with the support of the Dutch Government. The system enables precise monitoring of the number of received and sent letters rogatory, improvement

of the mechanism of statistical reporting in the area of international legal assistance in civil and criminal matters.

The introduction of electronic case management in the area of international legal assistance enabled enhanced timeliness of the records, high quality statistical reporting in the European Union and other international organizations. Reporting is possible by the type of legal assistance, by criminal offence, by requesting country, by competent authority, as well as by all other parameters which are necessary for precise monitoring of the procedures for the provision of international legal assistance and of the efficiency of work of the employed with the Ministry.

This system can be adjusted and expanded according to the needs of the Ministry, depending on the existing judicial information system, and in the later stages of the implementation it can be used for data exchange in the area of international legal assistance with relevant international organizations, like EUROJUST.

The LURIS system has been fully developed since 1<sup>st</sup> January 2015 as well as sufficiently improved in order to have better functionalities in the area of reporting on international legal assistance.

The same case management system was implemented in the State Prosecution Service and became operative at the beginning of 2016. These two systems offer the possibility of merging data of both authorities in one database, as well as the possibility of electronic communication and delivering documents in electronic formats. This will improve the communication between the Ministry and State Prosecution Service, as well as the efficiency in providing international legal assistance.

Courts, on the other hand, continued using PRIS as a system which can be used as a register and closed system. According to the objectives of the ICT Strategy, PRIS will be replaced by a new case management system which will be compatible with LURIS.

LURIS, as well as the records in all the state prosecution offices fully meet the EUROJUST standards in the area of the protection of personal data.

Concerning the aspect of regional cooperation, it is essential to emphasize the perspective of LURIS system which is currently implemented in Montenegro, Serbia and Macedonia (in the Ministry of Justice with the intention of being introduced in Prosecution Service), but with keen interest of the Ministry of Justice and Prosecution Service of Kosovo for this system to be recognized as a system to be used in their country to manage international legal cooperation cases. The networking of these systems would enable direct cooperation using electronic systems for submitting letters rogatory and accompanying documentation. Having in mind that even on the national level this system has not materialized to the extent of electronic exchange of cases and documentation

delivery – although there are plans for its development – so far it is hard to expect for such regional system to be established soon. At any rate, regional cooperation should be further strengthened from this aspect and in this form.

## 10. Conclusion and Recommendations

The intention to compile the subject analysis was not to give the answers to all outstanding issues of regional judicial cooperation, but to present the current state of affairs as the basis for further strengthening and improvement of the same.

From the aspect of Montenegro, it can be concluded that there has been a constant improvement and raising of the standard of judicial cooperation on all levels, which is a consequence of greater need for efficient and reliable cooperation with Western Balkan countries, but also of the inertia of harmonizing legislation with the European Union *acquis*.

From the regional aspect, having in mind its characteristics, it is obvious that Montenegro represents an important factor of regional judicial cooperation as a country with the highest percentage of judicial cooperation in the region.

According to all the findings presented in this analysis, the following recommendations stand out:

- Besides the fact that legislative reform was significant in the preceding period, especially in the area of judiciary, it is recommended to continue with the reform in the area of IC. Besides the process of continuous transposition of the EU instrument and parallel to this process, legislative framework for international legal assistance with ‘third countries’ should be improved by amending the existing Law on Mutual Legal Assistance in Criminal Matters. In this way, the Law should be aligned with the new concept of criminal procedure and the increasing need for the application of certain international legal assistance mechanisms, such as joint investigation teams and seizure/confiscation of the proceeds of crime;
- The Ministry of Justice should insist on the initiatives of drafting the missing bilateral agreements on the provision of international legal assistance, with the countries which whom these have not been signed yet;
- Having in mind the fact that the introduction of new legal concepts in the area of judicial cooperation will increase the scope of legal assistance on the occasion of Montenegrin EU accession, it is necessary to have a plan for the increase in the number of civil servants to deal with these cases;

- It is necessary to encourage judicial authorities to use direct communication among judicial authorities in the procedures of international legal assistance – where this is envisaged by the Agreement – or to establish the principle of reciprocity;
- Expecting that fundamental principle of communication in the area of international legal assistance by means of direct contacts among judicial authorities to become a common practice in Montenegro and in the countries in the region, the idea of International Centre for Expertize in the Ministry of Justice may be worth consideration;
- International criminal law training with the emphasis on practical experiences and mandatory regional aspect – as well as foreign language courses – must be a part of permanent education in the Ministry of Justice and in judicial authorities;
- Implementation of LURIS as a uniform case management system in the area of international legal assistance in all state authorities involved and their networking. In addition to the Ministry of Justice and State Prosecution Service, LURIS or a system compatible to it should be introduced in Montenegrin courts, too. The idea of networking with the already existing systems in the countries in the region should be further developed.

# REPUBLIC OF NORTH MACEDONIA

## 1. Introduction

The globalization of criminal activities has created a need for strengthened forms of international cooperation. The investigation, prosecution and control of crime cannot be confined within national boundaries. To deal with contemporary forms of crime, including transnational organized crime, corruption and terrorism, we need improved mechanisms for cooperation between countries. Most often different legal systems restrict states in achieving effective co-operation. However, in order to prevent transnational crime there has been a clear trend in the past years in the European countries towards simplifying and speeding up of the mutual assistance by eliminating conditions and grounds for refusals. In the **fight against organized crime** for the Republic of North Macedonia (in further text: Republic of Macedonia or Macedonia) it is also important to further develop the cooperation with neighboring EU countries and in certain situations to simplify the conditions for cooperation in the area of international legal assistance in criminal matters. In order to further determine the conditions for cooperation, the Republic of Macedonia has concluded a number of bilateral and multilateral agreements with neighboring countries and its legislation is almost completely harmonized with the *EU acquis* in this part. However the full alignment with the EU regulations applicable has still to be achieved, which is pending due to the process regarding the membership to the EU.

## 2. Methodology of the report

For the preparation of this report, a combined methodology for data and information collecting has been used, i.e. collecting of qualitative and quantitative data. This report is based on: 1.) analysis of the relevant Macedonian legislation for international legal assistance in criminal matters (legal analysis of legislation); 2.) Analysis of the available reports, assessments, documents, online available data and other articles on international legal assistance; 3.) Review of multilateral and bilateral agreement on the subject matter; 4.) Conducted interviews with representatives from the Ministry of justice and 5.) Official information acquired as a result of submitted request for free access to information sent to the courts in Macedonia and the Ministry of justice. Subject of this analysis is the period for 2016, 2017 and 2018. Finally, the report will provide an overview of the Macedonian legal system on international legal assistance, the degree of usage of the cooperation in criminal matter in the Balkan region and other countries and how does the information exchange system function in practice. This report will also detect the weaknesses in the functioning of the

international legal assistance system in the Republic of Macedonia and will provide recommendation for further improvements.

### 3. Legal framework in the field of international and regional judicial cooperation

#### National Legal framework

The national legal framework shaping the international cooperation in criminal matters is based on several directly applicable laws, as it is the practice in most countries. **The Law on international cooperation in criminal matters (MLA)**<sup>1</sup> and the Law on criminal procedure (LCP)<sup>2</sup> are the cornerstone of the national legal framework for mutual legal assistance in criminal matters. More specific, the Law on international cooperation in criminal matters is a *lex specialis* regulating the conditions and the proceedings for international cooperation and it combines multiple ways of international cooperation. It deals with both incoming and outgoing requests and provides rules for requests based on a treaty and no treaty circumstances. *Article 6* of the Law on International Cooperation in Criminal Matters specifies the rules regarding the ways of communication. In *case of emergency* the letter rogatory or the request is sent through the channels of the international police cooperation, while a copy of the letter rogatory or the request is sent to the Ministry. If an international agreement does not exist or if under the international agreement a diplomatic way of communication is not provided, the Ministry shall send the letter rogatory or the request using the *diplomatic channels*. It is important to note that even when direct communication or INTERPOL is used as a channel, the Ministry of Justice is promptly or subsequently informed and all the documents further are transmitted through the Ministry of Justice (MoJ). The Law on MLA prescribes four types of international cooperation: mutual legal assistance; taking and relinquishing of criminal prosecution; extradition and enforcement of criminal judgments; the transfer of sentenced persons. The new developed criminal legislation in 2007 by the Ministry of Justice which was into a substantially different direction had also influenced the issue of international cooperation. With the adoption of the new **Criminal procedure**

<sup>1</sup> Official Gazette no.124/2010

<sup>2</sup> Official Gazette no.150/2010

**code** an adversarial system was introduced and the lead of investigation was transferred to the prosecutor. It stipulated the establishment of investigative centers within the Public Prosecutor's Office (PPO), introduced a separate stage for assessment of the act of indictment, changed the concept of the main hearing, redefined the procedural role and powers of the court, of the parties and of the defense attorney, and the concept of settlement regarding the criminal sanction was also accepted. Both of these laws (*Criminal procedure code and Law on international cooperation in criminal matters*) have been drafted in 2010 and were enforced in December 2013. Consequently, the practice is still missing and forthcoming amendments and changes as well as alignments among these laws and other relevant legal acts are expected in the near future.

**Law on courts**<sup>3</sup> in Article 31, paragraph 31 line 5 regulates the jurisdiction of Courts of first instance of extended competence to decide on proceedings related to international legal assistance specified by law. Article 83 regulates the scope of work of the Ministry of Justice as a main judicial administration body which among other issues shall include carrying out work in international legal assistance. For an effective international cooperation between the judicial bodies of countries, the constant cooperation between Ministry of Justice and the President of the respective court must be maintained.

**Law on the management of the court cases**<sup>4</sup> regulates the management of cases. More specifically it is written that the President of the court is obliged to monitor the situation with the management of the movement of cases through the court system including the cases for providing international legal cooperation.

**Law on public prosecution**<sup>5</sup> regulates the competency, establishment, termination, organization and the operation of the Public Prosecution Office and other competences of the Public Prosecution Office as regulated in law. As mentioned before, the new Law on Criminal Procedure provides more competences of the public prosecutors and the overall pre-investigative and investigative procedure is entrusted to public prosecutors. In this regard, The Public Prosecution Office of the Republic of Macedonia, within the framework of the international agreements can establish more often direct cooperation with the Public Prosecution Offices in other countries, especially in the field of prevention and prosecution of organized crime and other serious types of crime, through direct exchange of data<sup>6</sup>.

The Public Prosecutor's Office for prosecuting criminal offences related to and arising from the content of the illegally intercepted communication, known as The Special Prosecutor's Office, was established with the **Law on the Public**

<sup>3</sup>Official Gazette no 150/07, 111/08 и 198/18

<sup>4</sup>Official Gazette no 171/2010 од 30.12.2010

<sup>5</sup> Official Gazette no 150/07, 111/08 и 198/18

<sup>6</sup>Official Gazette no 150/07, 111/08 и 198/18 (Article 36)

**Prosecutor's Office for Prosecuting Criminal Offence Related to and Arising from the Content of the Illegally Intercepted Communication**<sup>7</sup>.

The release of the conversations of the illegal interception of communication in 2015, which uncovered systemic problems in the rule of law confirmed by the Priebe Report<sup>8</sup> and the Urgent Reform Priorities created the need for establishment of this Public Prosecutor's Office. In Article 12, this law provides the possibility to seek international legal assistance and cooperation on issues that are in his /her own competence independently, in accordance with the law and ratified international documents.

**Law on witness protection**<sup>9</sup> regulates the procedure and conditions for providing witness protection and assistance to the witnesses, defines the measures for protection and establishes Council for witness protection and Department for witness protection. There is a separate article in the law<sup>10</sup> which prescribed that international cooperation could be accomplished in the field of protection of witnesses, collaborators of justice, victims which appear in capacity of witnesses, and their close persons on the base of international agreements, ratified in accordance with the Constitution of Republic of Macedonia, or based on a mutual reciprocity. Under conditions from paragraph 1 of Article 40 the Department for protection of witnesses could: direct an application to the other country for accepting the protected person and implementing the measures for protection stipulated in this law; deal with the applications from other countries for accepting protected persons and applying measures for protection in Republic of Macedonia.

**Law on money laundering prevention and other criminal proceeds and financing terrorism**<sup>11</sup> regulates the measures and actions for detection and prevention of money laundering and other criminal proceeds and financing terrorism. The new law has entered in force in 2018 and contains specific provisions related to possibilities of international cooperation, the procedures for exchange of data, information and documentation of the Financial Intelligence Office as special body within the Ministry of finance with the Financial Intelligence Unit of another state. The law also regulate the possibility for the Financial Intelligence Office to conclude agreements for co-operation, and to exchange data and information with authorized bodies from third countries.

<sup>7</sup> Official Gazette no 159/2015

<sup>8</sup> Priebe Report, 14 September 2017, Brussel [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14\\_seg\\_report\\_on\\_systemic\\_rol\\_issues\\_for\\_publication.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14_seg_report_on_systemic_rol_issues_for_publication.pdf)

<sup>9</sup> Official Gazette no 38/05, 58/05 и 71/18

<sup>10</sup> Official Gazette no 38/05, 58/05 и 71/18 (Article 40)

<sup>11</sup> Official Gazette No. 120/2018

**Law on prevention of corruption**<sup>12</sup> regulates measures and activities for prevention of corruption, and in this regard the law prescribes the opportunity for the *State Commission for Prevention of Corruption* to cooperate with corresponding national bodies of other states and with international organizations active in the field of prevention of corruption (Article 55).

## 4. International legal framework

All the relevant international instruments in the area of international judicial cooperation and international legal assistance – together with their additional protocols – have been signed and ratified. Particularly, the following CoE Conventions and Protocols have been signed and ratified by Macedonia<sup>13</sup>:

- *European Convention on Mutual Assistance in Criminal Matters; Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters; Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.*
- *European Convention on Extradition and Additional Protocol to the European Convention on Extradition, Second Additional Protocol to the European Convention on Extradition, Third Additional Protocol to the European Convention on Extradition;*
- *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and trans-border data flows;*
- *European Convention on the Transfer of Proceedings in Criminal Matters;*
- *Convention on the Transfer of Sentenced Persons, Additional Protocol to the Convention on the Transfer of Sentenced Persons;*
- *Criminal Law Convention on Corruption, Additional Protocol to the Criminal Law Convention on Corruption;*
- *Council of Europe Convention on Action against Trafficking in Human Beings*

Since 2008, Eurojust has established an increasingly strong framework for structural judicial cooperation in the fight against serious cross-border crime between EU Member States and the Western Balkan States. Cooperation agreements, which unlock the possibility of safe and efficient exchange of

<sup>12</sup> Official Gazette No. 10/08, 161/08, 145/10, 97/15 and 148/15

<sup>13</sup> Threaty list of signatories and ratifications, status as of 09.12.2018 [https://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/country/TFY/RATIFIED?p\\_auth=ydo7dORg](https://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/country/TFY/RATIFIED?p_auth=ydo7dORg)

judicial information and sharing of evidence, have been concluded with Albania, Montenegro and Macedonia<sup>14</sup>.

Also, Macedonia is a party to the Police Cooperation Convention for South East Europe which is a unique convention as it combines various law enforcement aspects at the police level. It relates to border control, security issues, as well as to regular investigation into ordinary crime. This convention creates the legal basis for cooperation (predominantly exchange of information) at a very early stage of the prevention and investigation into criminal offences, and has therefore a great potential as to its impact on efficiency of police cooperation. In order to regulate in details the cooperation between the two countries in providing MLA and for the purpose of establishing of more efficient cooperation, Macedonia has signed a number of bilateral agreements with the other countries as: *Serbia, Albania, Bosna and Herzegovina, Montenegro, Croatia, Kosovo, Romania, Ukraine, Slovenia, Turkey and other counties*.<sup>15</sup> Some of these contracts are agreements taken as national regulations in accordance with Article 5 of the Law on the Implementation of the Constitution of the Republic of Macedonia and all the bilateral agreements concluded since Macedonia's declaration of independence. In the field of **bilateral cooperation**, we can conclude that the Republic of Macedonia leads a very active policy. Some of these agreements contain provisions that enable direct communication between the competent authorities involved in international legal cooperation, in practice proved as very effective provision to expedite the proceedings. Bilateral agreements are only a way for adding and precisely defining certain issues in international cooperation, especially like extradition, transfer of proceedings, enforcement of criminal judgments as well transfer of sentenced persons. In addition, also a range of Memoranda of Understanding and Agreements for Cooperation are existent, which add the purpose of facilitating and specifying international legal cooperation.

## 5. European Commission assessment on international legal assistance

The Republic of Macedonia is a candidate country to EU since 2005 and it has not started accession negotiations with the European Union yet. The European Commission's latest progress report for Macedonia (released in April 2018)

<sup>14</sup> Agreement between EUROJUST and Macedonia [http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/agreements/Agreement%20on%20cooperation%20between%20Eurojust%20and%20the%20former%20Yugoslav%20Republic%20of%20Macedonia%20\(2008\)/Eurojust-fyROM-2008-11-28-EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/agreements/Agreement%20on%20cooperation%20between%20Eurojust%20and%20the%20former%20Yugoslav%20Republic%20of%20Macedonia%20(2008)/Eurojust-fyROM-2008-11-28-EN.pdf)

<sup>15</sup> List of bilateral agreements signed between Macedonia and other countries <http://www.pravda.gov.mk/mpd-bilateral>

evaluates its overall progress of implementation of the necessary standards and harmonization of the directives with the EU. Relevant for MLA in criminal matters is the report in chapter 24: it assesses the efficiency of the institutions of Macedonia in fighting the organized crime as well as its performance with regard to international legal assistance in criminal and civil matters. The EU has identified that the country has achieved some progress in fight against the organized crime. Even though the legislation is broadly in line with EU regulations and standards, yet the country must put additional efforts to be more efficient and produce results on operational level. The European commission emphasizes that the cooperation between the neighboring countries is on satisfactory levels. The Border agreements with all neighboring countries are being implemented smoothly. The joint border patrols and contact centers with Albania, Bulgaria, Kosovo, and Serbia have continued to operate and are functioning properly.

In terms of judicial cooperation in criminal matters, no issues have been raised in the progress report. Yet, on the issue of judicial cooperation in civil matters, the report states that Macedonia has not accepted the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children. Macedonia has not acceded to the 2007 Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance.

With regard to the MLA, it is emphasized that in 2017 Macedonia has issued or received 3 851 requests for international legal assistance in civil and criminal matters. The country has issued 125 extradition requests and received 21. Macedonia issued 21 requests for transfer of sentenced nationals back to the country and 12 new requests for the transfer of sentenced foreign nationals to their respective countries of origin.<sup>16</sup>

<sup>16</sup> Commission staff working document The former Yugoslav Republic of Macedonia 2018 Report: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-the-former-yugoslav-republic-of-macedonia-report.pdf>



## 6. Institutional and strategic framework on international cooperation in criminal matters

### 6.1. The Ministry of Justice

The Ministry of justice is the central authority for the transmission of outgoing and incoming MLA cases with the decisive powers. Other relevant institutions for international cooperation in criminal matters are the public prosecution office and the courts, i.e. judicial authorities as indicated in the law for international cooperation and the supporting law enforcement agencies.<sup>17</sup>

The Ministry of justice is the key authority for international cooperation in criminal matters and processing of formal legal assistance in criminal matters in the Republic of Macedonia. The Ministry of justice formally reviews all incoming requests for MLA in criminal matters and decides if they qualify for execution under international criminal law. It is the filtering body for incoming and outgoing requests for international legal assistance. Through this central role the Ministry of Justice is the contact authority for linking the appropriate institutions. It is the formal link between the national institutions when it comes to the issues of extradition and transfer of convicted persons. The ministry of justice is considered also as the communication and information link for nationals and foreigners who are serving imprisonment sentences in the country or abroad, for detained foreigners, for detained nationals abroad and for approving visits.

The ministry of justice does not play a decisive role in criminal proceedings in national context. Even though a direct communication and information exchange between the relevant competent authorities exists, in practice the direct way of communication is very rarely used. Still, the law on international cooperation in criminal matters prescribes the obligation for copies of the request for MLA to be sent to the Ministry of justice, as it is responsible to collect information on international cooperation cases and data processing for statistical purposes. In cases of extradition, the Ministry of justice must possess all the documents that are crucial for extradition. The Ministry of justice in these cases has the discretion and the final word to approve or disapprove extradition in cases of international legal assistance<sup>18</sup>. In practice the Ministry of justice always follows the decisions of the courts in extradition cases and due date preventing extradition has been used only once. Nevertheless, the decision was brought

based on assessment of the facts that some of the legal requirements were not met in order to allow the extraditions. Up until now, the Ministry of justice has never used its powers and authorization in cases of international legal cooperation to prevent extradition cases for political reasons<sup>19</sup>.

Within its organization, the Ministry of justice has a designated department for MLA that performs the tasks and duties on behalf of the Ministry of Justice. The department for MLA is responsible for legal assistance both in criminal and in civil matters, for the preparation of bilateral agreements in this segment, and for extraditions and transfers of sentenced persons. The department for international legal assistance is composed of two sectors<sup>20</sup>: sector 1 for extradition and transfer, and sector 2 for request in criminal and civil matters. The **sector for extradition and transfer** is responsible for extradition activities, transfer of convicted Macedonians and foreigners serving sentences, informing about detained foreigners in Macedonia, cooperation with MoI, Penitentiary Institutions, INTERPOL, collecting statistics on extradition and transfer of convicted persons, and so on.

The **sector for request in criminal and civil matters** is responsible – among the others – for the processing of MLA requests of the courts, for examination, interrogation, enforcement of court decisions, delivery, alimony claims, issues regarding the reciprocity, statistics on civil matters.

In terms of human resources, according to the Act for systematization of the working positions within the Ministry of justice<sup>21</sup> the department for international legal assistance prescribes employment of 17 persons with the following profile: 1 state advisor for international legal assistance; 1 head of department for international legal assistance; 2 heads of sectors, one for sector for extradition and transfer and one for sector for request in criminal and civil matters; 1 advisor for extradition and 1 advisor for transfer; 1 senior associate for extradition and transfer; 3 junior associates for extradition and transfer; 2 advisors for request in criminal and civil matters; 1 senior associate for request in criminal and civil matters; 1 associate for request in criminal and civil matters; 3 junior associates for request in criminal and civil matters. Yet, currently this department is understaffed as it is equipped with 12 persons. The remaining positions foreseen with the Act on systematization of working places are vacant. At the same time, the position of the head of department for international legal assistance, which is also vacant, is covered with assigned employee on temporary basis. The current number of staff, as well as material and budgetary resources are insufficient to meet the MLA requirements and should be adjusted according to the dynamics and today's needs for MLA.

<sup>19</sup> Meeting and conversation with representative from the Ministry of justice, 1 November 2018

<sup>20</sup> Rulebook on the internal organization of the Ministry of Justice of the RM, June 2015, article 9

<sup>21</sup> Consolidated text of the Act for systematization of working positions within the Ministry of justice - reviewed in 2015, 2016 and 2017

<sup>17</sup> Law on international cooperation in criminal matters, official Gazette of Republic of Macedonia No.124/2010

<sup>18</sup> Ibid, article 66-71

The department for MLA is equipped with software for electronic management of cases (LURIS) which allows collecting of information and data related to the registration of type of cases, scanning of documents, collection of statistical data related to MLA, movement of MLA cases to the department, data on completion of MLA cases, timeframe needed for completion of particular MLA cases, contact point for particular MLA cases, data about the outcome of the MLA, etc. The system was introduced for the first time on 1<sup>st</sup> January 2018 within the Ministry of justice. LURIS system is equipped in order to produce statistical data using different parameters depending on the needs of the institutions. Having in mind that LURIS system is new in Macedonia, the Department for MLA was not able to provide more information to have a clear picture of the actual situation regarding the number of cases pending, cases completed, outgoing and incoming requests and the time involved in executing the requests<sup>22</sup>.

The communication related to international legal assistance although is performed online, via email communication. In order to be able to respond to a request or submit a request to the foreign country, a formal mailing with the proper documentation must be sent/received regardless the complexity of the MLA case. All mailings are received and sent through the archive of the Ministry of justice. Depending from the issue, the case is sent to the proper unit for resolution which takes the necessary activities and forward the case to the relevant enforcement or judicial authority.

## 6.2. Public Prosecutors Office (PPO)

The key framework of the public prosecution is the Law on public prosecution<sup>23</sup> and the Law on public prosecutor`s council.<sup>24</sup> The Public Prosecution of Republic of Macedonia with seat in Skopje is on top of the hierarchy.<sup>25</sup> The current role of the public prosecution for investigation is resumed from the investigative judges with the adoption of law on criminal procedure. The public prosecutor is solely leading the criminal investigation and is assisted by the judicial police composed out of experts. In terms of international, regional and bilateral cooperation, the Public Prosecution Office has signed specific Memorandum of understanding or cooperation with other prosecution offices in order to allow easier and more specific related international cooperation in criminal matters. In practice for the execution of certain incoming requests, the Public Prosecution

<sup>22</sup> Meeting and conversation with representative from the Ministry of justice, 1 November 2018

<sup>23</sup> Official Gazette of RM 150/2007, 111/2008

<sup>24</sup> Official Gazette of RM

<sup>25</sup> Law on public prosecution, Article 12

Office (PPO) is obliged to obtain the permission from the court. In the context of international legal assistance they cooperate with the designated preliminary procedure judge. The cases of extraditions, transfers of proceedings and executions of sentences are processed through the Ministry of justice. However, in any case the Ministry of justice must always be informed and sent a copy of international legal assistance request.

The PPO for organized crime and corruption has the most dynamic international cooperation experience. The cooperation with the Balkan states is most frequently performed. The prosecutors in the PPO on organized crime use direct contacts with their colleagues abroad, when such a communication is prescribed by legal means or in cases when urgency in undertaking activities is required. When these specific type of cases are subject to international cooperation, the communication is performed via phone contact or email. Yet later on, everything must be formalized through the Ministry of justice by sending the necessary documents through official channels. On other hand, the PPO with extended jurisdiction acts only on very few cases for international legal assistance and in practice they do not communicate with their colleagues from other countries, but rather they rely on formal requests for international legal assistance through the Ministry of justice.

## 6.3. The Courts

The judicial power in Republic of Macedonia is exercised by the Basic Courts, Courts of appeal, the Administrative Court, the High Administrative Court, and the Supreme Court<sup>26</sup>. There are 27 Basic courts out of which 11 courts are with extended jurisdiction. The courts with extended jurisdiction have the responsibilities to deal with requests on international legal cooperation and can decide on extradition cases and other international cooperation specified by the law.

In the Basic Court Skopje 1, as the largest court in the country, there is a special department for organized crime and corruption, as well as a department for international legal assistance (letter rogatory for international legal assistance or a request for international cooperation in criminal matters). Although, in practical terms the department for international legal assistance is not justifying the objectives of its establishment.

According to MLA law (Articles 15-41), the judges are involved in deciding upon the so called "small" legal assistance cases (transfer of documents, hearing of accused, witness or damaged parties, etc.), extradition, transfer of convicts, and enforcement of foreign judgements. The Courts accept requests for

<sup>26</sup> Law on courts

MLA of foreign courts only if they are submitted through official channels. They use exclusively the Ministry of justice as the communication link with foreign countries. The courts in Macedonia take into consideration only the documents that are written in Macedonian language. The legal assistance is provided only in the way it is prescribed by national legislation. Nevertheless, foreign court requests for certain action may also be executed in the manner they were requested by the foreign court if such procedure does not conflict the national law.

## 7. Membership and cooperation with international organization, networks and initiatives

For the purpose of strengthening and deepening the cooperation and fight against transnational crime, the institutions from the Republic of Macedonia are members of distinctive European and international organizations. Depending from the subject, the Republic of Macedonia is an active member in the Council of Europe bodies, such as GRECO, GRETA, CODEXTER, CCPE, PC-OC, etc. Macedonia has also signed a cooperation agreement with EUROPOL. In addition, among the others, the country is a member of INTERPOL, ILECU, SELEC/SEEPAG and other regional networks and bodies like the Prosecutors Network of the Western Balkans (WBPN), the PCC convention, the RCC.

As of 2003, the Republic of Macedonia is also a member of SEEPAG, established to facilitate judicial cooperation in significant trans-border crime investigations and cases. SEEPAG as a network of experienced prosecutors is tasked to assist the SELEC in operational matters and facilitate the rapid exchange of information and evidence in trans-border investigations and provide guidance, assistance and recommendations to policymakers in the region on justice and law enforcement issues.

The Republic of Macedonia is the first country from the Western Balkans that has signed operational and strategic agreement with **EUROJUST** in 2008 for the purpose of information exchange, facilitation and coordination of investigations and participation at strategic and operational meetings. The Ministry of justice has designated contact persons for communication with EUROJUST. On the basis of the signed agreement with EUROJUST, Macedonia has appointed contact persons from the Ministry of justice, from the Basic public prosecution on organized crime, from the Basic court and from the Special Public Prosecution. With the latter, Macedonia became the second country to have appointed a liaison prosecutor at EUROJUST from the Special

Prosecution Office in November 2018, after previously Montenegro appointed its prosecutor to this body<sup>27</sup>.

**The Integrative Internal Security Governance (IISG)** is a Western Balkans network focused at improving the governance efficiency of internal security cooperation in this region. Over the years the IISG has implemented a different set of activities to enhance the regional cooperation in criminal matters through education activities, conferences and social inclusiveness of judicial authorities and law enforcement authorities.

**Regional Cooperation Council (RCC)** is another network established in 2008 for the purpose of intensifying the cooperation in the region of South East Europe in areas of common interest, and also as to improve the connectivity, increase mobility, improve the rule of law and strengthen the security in the region. With regard to international legal assistance, in its strategy the RCC is dedicated to support the existing mechanism and already established platforms in the Balkan region (SELEC, SEEPAG, SEPCA, and PCC SEE) and to address emerging security challenges in the region.

The Republic of Macedonia is also a member of the **Western Balkans prosecutorial network (WBPN) since 2006**. WBPN is an initiative supported by GIZ and Center for international legal cooperation (CILC) through the IPA Regional Program for countering and fighting serious organized crime and corruption in the Western Balkans (Bosnia and Herzegovina, Macedonia, Montenegro, Serbia and Kosovo). The aim of the project is to raise the effectiveness of and cooperation among the WB region in tackling forms of serious organized crimes and in fighting against illegal migrant smuggling. The activities are focused on strengthening operational building of law enforcement and judicial agencies for cross border cooperation, investigation, information and data exchange, cooperation through utilizing the regional initiatives, prepare precondition for conclusion of cooperation agreements as well as building the skills and capacities of the law enforcement agencies and thus increasing their efficiency.

## 8. Assessment of Macedonian cooperation on MLA with other countries

The preparation of this analysis is written based on the information received upon the submission of requests for free access to information to the Ministry of justice, 27 basic courts, 4 courts of appeal and the Supreme court of the Republic of Macedonia. The statistical and essential data which were

<sup>27</sup> Press Release, Major step against organized crime in Western Balkans, accessed on December 4, 2018, available at: <http://www.eurojust.europa.eu/press/PressReleases/Pages/2018/2018-11-20.aspx>

demanded from the institutions refer to the period 2016-2018 that is the subject of this analysis. It should be emphasized that not all of the institutions to which requests were submitted were responsive. At the end, partial data and information were received from the institutions. At the same time some of the data were not provided in the required manner. The response of the judicial institutions were not carried out in a unified template and they were often missing particular required data. Among the 32 requests for free access to the information of public character sent to 27 primary courts, 4 Appellate Courts and to the Supreme Court, information was received from 20 courts. From the received answers, 16 courts provided statistical information about the MLA cases while the remaining 4 of them informed us that they do not keep records for MLA and advised us about contacting the Ministry of Justice. Some of the data were received after the term prescribed by the law. Also, not all of the courts provided information regarding the countries with which Macedonia had a case of mutual legal assistance.

While the responsiveness from the courts was rather incomplete, the Ministry of justice provided data only for the period 1<sup>st</sup> of January 2018 – 5<sup>th</sup> of November 2018. The data for the previous years are not available as a result of the fire which stroked the Ministry of justice in 2018 and that burned put the entire archive.<sup>28</sup> The data from the period 2016 and 2017 were not recorded online at that time, but rather they were kept only as hard copies because the ministry of justice did not have any software to record the activities of MLA. The LURIS system started being used only as of January 2018; thus, core statistical data provided from the Ministry of justice for the period 2016 and 2017 are missing.<sup>29</sup> Eventually, the Ministry of Justice provided some statistical data for the period 2016 and for the first half on 2017.

### 8.1. Data provided by the courts on MLA cases

From the data obtained from the courts in Macedonia, it is evident that the courts are quite active in the field of international cooperation in criminal matters. With **regard to the countries**, the data show that the largest number of cases of mutual legal assistance were registered between *Macedonia and Serbia, Greece and Italy*. Mutual legal assistance was made also with Switzerland, Bosnia and Hercegovina, Germany, Sweden, Montenegro, Croatia, Slovenia, Australia, Belgium, Kosovo, Denmark and Hungary.

**Regarding the criminal offences**, the largest number of MLA cases are related to the following criminal offences: *Fraud, Bodily Injury, Non-payment of child*

<sup>28</sup> This information is provided at the meeting with representatives of the ministry of justice on , 1 November 2018

<sup>29</sup> Writen answer from Minsitry of justice19-4977/2 from 09.11.2018

*support*. The remaining requests for MLA are for other criminal offences such as Serious offences against public safety and security, Tax Evasion, Heavy Theft, Seizure of motor vehicles, Homicide, Robbery, Unauthorized production and distribution of narcotic drugs, psychotropic substances and precursors and Severe crimes against the security of people and property in traffic.

According to data obtained by the courts, in 2016 the courts in Macedonia were engaged in MLA issues in 310 cases, in 2017 in 319 cases and in 2018 in 237 cases. The data includes incoming and outgoing requests, but the courts did not provide specific information for the delivered and requested MLA from Macedonia. In terms of available data, we can conclude that the application of MLA in the criminal procedure is in decline; still, it is necessary to bear in mind that not all the information were submitted by the courts, and the data that we received from the ministry for 2018 (1629 MLA requests in total) are more relevant in view of the newly established system which has basic data on the number of cases of MLA.

The Basic Court 1 in Skopje was involved in majority of the MLA cases. In 2016, the Basic court 1 in Skopje was involved in 65% of the MLA cases while in 2017 and 2018 this court was involved in 61% of the MLA cases which requested engagement of judicial authorities. It is important to note that all of the cases in which the Basic court 1 in Skopje was involved are incoming cases from other countries. There is no single case in which this court has requested MLA from other countries. These data indicate that the Basic court 1 in Skopje 1 is rather active in MLA cases to foreign countries. Nevertheless, the data of the courts doesn't provide specific information on the percentage on the outcome of the assistance, on the timeframe needed for their completion and on the countries to whom international legal assistance was provided. With regard to the type of MLA that was requested from the Basic Court 1 in Skopje, the numbers show that enforcement of procedural actions is the most common request from other countries with average 70% of the MLA requested (i.e. 71% in 2016; 76% in 2017 and 64% in 2018).

Table 1: Overview of the data for MLA provided by courts for 2016, 2017 and 2018

| Institutions   | Basic courts of Republic of Macedonia |                 |                               |                 |                               |                 |
|--|---------------------------------------|-----------------|-------------------------------|-----------------|-------------------------------|-----------------|
|  | 2016                                  |                 | 2017                          |                 | 2018                          |                 |
| Period   | Basic Court<br>1 in<br>Skopje         | Other<br>Courts | Basic Court<br>1 in<br>Skopje | Other<br>Courts | Basic Court<br>1 in<br>Skopje | Other<br>Courts |
| Extradition  | 14                                    | 0               | 13                            | 1               | 9                             | 2               |
| Transit  | /                                     | 0               | /                             | 0               | /                             | 0               |
| Enforcement of procedural actions                          | 145                                   | 43              | 150                           | 70              | 93                            | 35              |
| Transfer of proceedings                                    | 0                                     | 0               | 0                             | 0               | 0                             | 0               |
| Extracts from and information relating to criminal records | 1                                     | 58              | 0                             | 49              | 1                             | 43              |
| Recognition and enforcement of a foreign court judgment    | 12                                    | 0               | 6                             | 0               | 12                            | 0               |
| Hearings   | 11                                    | 0               | 11                            | 2               | 11                            | 0               |
| Other forms of mutual legal assistance                     | 19                                    | 7               | 15                            | 2               | 19                            | 12              |
|  | 202                                   | 108             | 195                           | 124             | 145                           | 92              |
| <b>TOTAL</b>   | <b>310</b>                            |                 | <b>319</b>                    |                 | <b>237</b>                    |                 |

## 8.2. Data provided by the Ministry of justice on MLA cases

The statistical data acquired from the Ministry of justice reflect the cases that were recorded by the Ministry in the period January-November 5, 2018. However, in the response, the Ministry of justice provided some cumulative figures for 2016 and 2017. According to the collected data in 2016, the Republic of Macedonia has received 1637 requests for judicial cooperation from other countries, while at the same time it has submitted 1228 requests to other countries. Macedonia submitted 121 cases for extradition out of which 70 were granted. At the same time, from 27 extradition requests submitted to Macedonia 18 have been approved. There are no available data regarding the country profile from where and toward which the MLA was initiated. As for the 2017 period (until 30 of June) Macedonia received 776 requests for MLA, and at the same time submitted 628 requests from MLA to third countries. The ministry of justice has submitted 84 requests for extradition among which 43 were granted. For the same period, third countries have requested MLA from Macedonia in 18 cases, out of which 9 were granted.<sup>30</sup>

With regard to the date for 2018, the number of incoming judicial cooperation requests received by Macedonia during 2018 is 1464. The number of judicial cooperation requests sent by Macedonia to other countries for 2018 is 681. The total number of MLA requests is 2241. Comparing these data with the ones of the previous years in 2016 and 2018, there is a slight increase of MLA cases between Macedonia and other countries. It should be emphasized that the number of incoming requests to Macedonia is twice higher if compared to the number of the requests sent from Macedonia to other countries. The data also show that the percentage of the granted MLA in both incoming and outgoing cases is very low. Out of the incoming MLA cases in 2018, only 3.5% have been granted and very small number of cases was refused. At the same time, from the outgoing request for MLA in 2018, only 2.5% of the cases were granted and resolved. It is interesting to mention the figures about pending cases on MLA in Macedonia. Currently there are 1629 pending incoming MLA cases in Macedonia. Comparing that statistics with the 1464 new incoming requests for 2018, the percentage of the pending cases is 111%. In spite of the received date, we should emphasize that from the Ministry of justice we were told that the number of the resolved cases is much higher compared to the one presented in the table, while at the same time the number of the pending cases is much lower from those presented in the table. The difference is that the LUSIR system introduced at the beginning of this year is new for the employees and therefore not all of the data were filled in the system on

<sup>30</sup> Written answer from Ministry of justice 19-4977/2 from 09.11.2018

a regular basis. Additionally, due to the limited knowledge for the system, different tables provided different data in the tables which are not compatible, and therefore it was not possible to generate precise and accurate data on the overall MLA cases that were circulated between Macedonia with other countries. Because of that, some of the statistics provided in Table 2 and 3 of this document regarding the number of granted, refused and pending cases might not present the realistic situation in the Ministry of justice.

With regard to the countries of cooperation, the largest number of cases of MLA is with *Serbia (568), Albania (154), Bulgaria (117) and Slovenia (117)*. From the non-Western Balkan countries, the largest number of MLA requests are with Turkey (108), Switzerland (101), Germany (100), Italy (96) and Greece (96). A significant number of MLA requests has been made also with the USA. From table 6 of this report it can be concluded that a very high percentage (85%) of the incoming cases for MLA in Macedonia are coming from the Western Balkans Countries, which proves that the cooperation and communication between the neighboring countries is at a satisfactory level. Almost 50 % of the incoming MLA cases to Macedonia fall to Serbia as the biggest beneficiary of the MLA in the region, followed by Albania with 12.5% and Slovenia and Bulgaria with 9.5% of the cases. Unfortunately, from the data which were provided from the institutions in Macedonia that are subject to this analysis it is not possible to extract precise and accurate information on the level and intensity of the outgoing MLA request from Macedonia to the Western Balkans countries.

Regarding the criminal offences, the largest number of MLA requests is for the following offences: *Unauthorized production and distribution of narcotic drugs, psychotropic substances and precursors (133), Fraud (87), Forgery (68), Heavy theft (58) and Endangering traffic safety (42)*. A significant number of MLA requests was made also for Migrant Trafficking, Tax Evasion, Computer Fraud, Robbery, Homicide etc. The most used types of MLA are: extracts from and information relating to criminal records (449); following these there are: Enforcement of procedural actions, delivery of documents (404), extradition (256), transfer of sentenced persons (76), and hearings (45).

Table 2: Overview of the outgoing requests for MLA for 2018

| 2018<br>OUTGOING (request<br>send by Macedonia)  | NEW        |    |       | Granted   |    |       | Refused  |    |       | Pending    |    |       |
|--|------------|----|-------|-----------|----|-------|----------|----|-------|------------|----|-------|
|  | EU MS      | WB | Other | EU MS     | WB | Other | EU MS    | WB | Other | EU MS      | WB | Other |
| Extradition  | 184        |    |       | 16        |    |       | 5        |    |       | 202        |    |       |
| Transit  | 0          | 0  | 0     | 0         | 0  | 0     | 0        | 0  | 0     | 0          | 0  | 0     |
| Enforcement<br>of procedural<br>actions (delivery of<br>documents, criminal<br>records, evidence etc.) | 142        |    |       | 0         |    |       | 0        |    |       | 145        |    |       |
| Transfer of<br>proceedings   | 10         | 9  | 5     | 0         | 0  | 0     | 0        | 1  | 0     | 13         | 8  | 7     |
| Transfer of sentenced<br>persons   | 8          |    |       | 0         |    |       | 0        |    |       | 8          |    |       |
| Extracts from and<br>information relating to<br>criminal records                                       | 8          | 29 | 5     | 0         | 0  | 0     | 0        | 0  | 0     | 9          | 34 | 6     |
| Recognition and<br>enforcement of a<br>foreign court judgment  | 5          | 12 | 1     | 0         | 0  | 0     | 0        | 0  | 0     | 6          | 12 | 2     |
| Hearings   | 3          | 0  | 4     | 0         | 0  | 1     | 0        | 0  | 0     | 3          | 0  | 7     |
| Videoconference  | 1          |    |       | 0         |    |       | 0        |    |       | 1          |    |       |
| Other forms of mutual<br>legal assistance  | 26         | 8  | 19    | 0         | 0  | 0     | 0        | 0  | 0     | 27         | 8  | 20    |
| Other  | 202        |    |       | 0         |    |       | 0        |    |       | 221        |    |       |
| <b>TOTAL</b>   | <b>681</b> |    |       | <b>16</b> |    |       | <b>5</b> |    |       | <b>733</b> |    |       |

Table 3: Overview of the incoming requests for MLA for 2018

| 2018<br>INCOMING (received by<br>Macedonia)   | NEW         |     |       | Granted   |    |       | Refused  |    |       | Pending     |     |       |
|---|-------------|-----|-------|-----------|----|-------|----------|----|-------|-------------|-----|-------|
|   | EU MS       | WB  | Other | EU MS     | WB | Other | EU MS    | WB | Other | EU MS       | WB  | Other |
| Extradition   | 72          |     |       | 19        |    |       | 2        |    |       | 76          |     |       |
| Transit   | 0           | 2   | 0     | 0         | 0  | 0     | 0        | 0  | 0     | 0           | 2   | 0     |
| Enforcement of procedural<br>actions (delivery of<br>documents, criminal<br>records, evidence etc.) | 262         |     |       | 0         |    |       | 0        |    |       | 298         |     |       |
| Transfer of proceedings   | 30          | 31  | 2     | 2         | 0  | 0     | 1        | 0  | 0     | 30          | 35  | 3     |
| Transfer of sentenced<br>persons  | 68          |     |       | 1         |    |       | 1        |    |       | 76          |     |       |
| Extracts from and<br>information relating to<br>criminal records                                    | 18          | 370 | 19    | 0         | 7  | 1     | 0        | 0  | 0     | 19          | 443 | 19    |
| Recognition and<br>enforcement of a foreign<br>court judgment                                       | 5           | 19  | 1     | 1         | 1  | 0     | 0        | 0  | 0     | 6           | 21  | 1     |
| Hearings  | 17          | 13  | 8     | 1         | 2  | 0     | 0        | 0  | 1     | 17          | 14  | 9     |
| Videoconference   | 2           |     |       | 0         |    |       | 0        |    |       | 2           |     |       |
| Other forms of mutual legal<br>assistance   | 103         | 70  | 37    | 11        | 3  | 1     | 0        | 0  | 0     | 110         | 72  | 42    |
| Other   | 315         |     |       | 0         |    |       | 0        |    |       | 334         |     |       |
| <b>TOTAL</b>  | <b>1464</b> |     |       | <b>50</b> |    |       | <b>5</b> |    |       | <b>1629</b> |     |       |



Table 4: Overview of the MLA incoming requests from Western Balkan countries for 2018

| 2018   | Albani     | Bulgaria   | Greece    | Montenegro |  | Serbia     | Bosnia and Hercegovina | Croatia   | Slovenia   | Kosovo    |
|--|------------|------------|-----------|------------|--|------------|------------------------|-----------|------------|-----------|
| Extradition  | 7          | 11         | 12        | 4          |  | 36         | 1                      | 3         | 9          | 8         |
| Tranzit  | 47         | 34         | 48        | 1          |  | 31         | 5                      | 10        | 28         | 36        |
| Enforcement of procedural actions (delivery of documents, criminal records, evidence etc.) | 1          | 1          | 0         | 0          |  | 2          | 0                      | 0         | 0          | 0         |
| Transfer of proceedings  | 3          | 3          | 1         | 1          |  | 18         | 2                      | 6         | 1          | 2         |
| Transfer of sentenced persons  | 12         | 4          | 1         | 6          |  | 363        | 12                     | 1         | 9          | 4         |
| Extracts from and information relating to criminal records                                 | 16         | 7          | 0         | 0          |  | 8          | 0                      | 1         | 0          | 7         |
| Recognition and enforcement of a foreign court judgment                                    | 0          | 3          | 0         | 1          |  | 9          | 1                      | 3         | 3          | 2         |
| Hearings   | 0          | 0          | 0         | 0          |  | 0          | 0                      | 0         | 2          | 0         |
| Other forms of mutual legal assistance   | 11         | 20         | 15        | /          |  | 45         | 5                      | 4         | 13         | 10        |
| <b>TOTAL MLA (Incoming)</b>  | <b>154</b> | <b>117</b> | <b>96</b> | <b>18</b>  |  | <b>568</b> | <b>32</b>              | <b>46</b> | <b>117</b> | <b>92</b> |

## 9. Conclusions and Recommendations

The report provides an overview of the Macedonian system for international cooperation in criminal matters. The information presents the factual situation of the system in the country, and the level and intensity of the engagement of the Republic of Macedonia with international and regional initiatives that aim to improve the transnational organized crime. From the aspect of international cooperation, the Macedonian system is on constant transformation to address the contemporary needs and challenges related to the transnational organized crime and mutual cooperation with other countries.

From the information presented in this report, it can be concluded that Macedonia is following the trends in this matters and is actively participating in different forms so as to improve and simplify the channels of cooperation with neighboring and third countries. From the aspects of compatibility and willingness to adapt and overcome the obstacles, the Republic of Macedonia has been rather successful. With the reform of the criminal legislation, and with its willingness to accept new methods of cooperation with the other countries and deepen the cooperation with the Western Balkan countries as well as EU countries, the Republic of Macedonia has shown sufficient capacities and initiatives to combat the transnational organized crimes which have no boundaries. However, there is a need for constant improvement and increase of the standards of judicial co-operation at all levels, especially with the Western Balkan countries, through capacity building programs, regular meetings among the judicial authorities, and information exchange practices.

Therefore, in conclusion, here are the further efforts and improvements that need to be taken:

- Further improving judicial cooperation in criminal matters by ratifying international and bilateral agreements;
- Linking the LURIS with the other electronic system, namely of the Courts (AKMIS) and the system at the public prosecution;
- Using guidelines for MLA by all courts to ensure unified approaches and practices;
- Developing and efficient managing the court system (AKMIS) for collecting, processing and analyzing statistical data on the cases of the courts for MLA;
- Equipping and enhancing the human resources and capacities of the Department for MLA;
- Capacity building of the staff of the MLA department on the usage of the LURIS software system;

- Establishing a uniformed method for administration/execution of requests for MLA throughout entire court system (manuals etc.);
- Enhancing and promoting the direct communication between the judicial authorities with their counterparts in other countries;
- Strengthening the capacities of the existing department for MLA within the Basic court 1 in Skopje in Macedonia;
- Capacity building of the PPO and courts in international criminal justice.

# SERBIA.

## 1. Introduction

In brief, international legal assistance in criminal matters includes actions of the authorized body of the foreign country undertaken upon the request of the domestic authorized body and vice versa that include extradition of defendants or convicted persons, assumption and transfer of criminal prosecution, transfer of the convicted persons, transfer of the criminal procedure from one country to another, execution of criminal judgments and other forms of mutual assistance established by law, special International Conventions and bilateral treaties. Legal system in Serbia shares the continental/civil law tradition and values, with visible tendency to amend it in the area of adjustment of the court practice, bringing it closer to the hybrid model combined with common law institutes. The amended criminal code, criminal procedure code, civil procedure code and other relevant legislation give good ground for judicial cooperation within the region of the Western Balkans in criminal matters. Also, as nearly all of the countries of the Western Balkans derive from the former Yugoslavia, they also share the common legal tradition and institutional memory. Additionally, the strategic commitment of the countries of the region towards EU membership, further emphasizes the need for strengthening regional cooperation, and the process of accession to the European Union can be seen as an incentive for further improvement of cooperation.

## 2. Methodology of the analysis

The key methods used to make this analysis were desk research, legal analysis and analysis of reports and public documents, through which the national legal and institutional framework, a request for mutual legal assistance and a prerequisite for extradition, a mechanism for direct cooperation against impunity for war crimes, as well as the potential of civil society organizations for further monitoring and advocacy in this field have been analyzed. In addition to the national, the analysis includes a regional and global view of international judicial cooperation in criminal matters. A special emphasis was given to Serbia's cooperation with EUROJUST, INTERPOL and EUROPOL, as well as on the overview of the cases Djukic, Strpci and Kravica. The analysis, besides indicating key achievements and deficiencies in this area, provides a set of recommendations for the improvement of the judicial cooperation in criminal matters of Serbia.

### 3. Legislative Framework – where Serbia fits to the region

Specificity of Serbia in international legal assistance is the relation to the Serbian autonomous province of Kosovo, as defined in the current Serbian Constitution. As the status of Kosovo is not yet fully regulated and there is no reciprocal recognition between Serbia and Kosovo, within these pages we will not dedicate much space to this issue, especially as regards to its fragility and political context. However, one should bear in mind that cooperation between Serbian and Kosovo authorities exists, or formerly with UNMIK<sup>1</sup> and EULEX. International legal assistance in Serbia is primarily defined within the Law on International Legal Assistance in Criminal Matters<sup>2</sup>. This Law<sup>3</sup> was adopted in 2009 and it creates a basic legal framework for the international legal assistance in criminal matters. The EU in its Country Reports on Serbia in previous years assesses that the international judicial cooperation legislative framework is in place and functional but not always efficient -situation that mirrors similar statements in the country reports of the European Commission on the Countries of the Western Balkans, reports formerly known as Progress Reports.

All of the foundations for the effective implementation are existing, as the Law on International Legal Assistance in Criminal Matters is giving detailed procedures. In addition to the law, above it, according to the Constitution of Serbia, one should note the overarching international treaties and bilateral treaties. As a result of this principle, the primary legal ground for the provision of international legal assistance in criminal matters are international multilateral treaties<sup>4</sup>, bilateral treaties signed by Serbia with other countries.

Additionally, in case of conflict between any applicable international treaty in the area of international judicial cooperation in criminal matters and the law in Serbia, international treaty prevails and shall apply directly as clearly stated in the relevant law and ambiguously defined in the Serbian Constitution from 2006 in articles 16<sup>5</sup>, 162, 194 and 195 that leaves international treaties on equal footing as the Constitution of Serbia. Namely, the Law in article 1 defines that *“in cases in which no ratified international treaty exists or certain subject matters are not regulated under it”*.

Prof. Andre Klip in his report “Facilitating Mutual Legal Assistance in the Western

<sup>1</sup> As defined on the website of the Ministry of Justice, cooperation with UNMIK is one of the areas.

<sup>2</sup> Law on International Legal Assistance in Criminal Matters (“Official Gazette of Serbia 20/2009)

<sup>3</sup> [https://sherloc.unodc.org/res/cld/document/srb/2009/law\\_on\\_mutual\\_assistance\\_in\\_criminal\\_matters\\_html/Law\\_on\\_Mutual\\_Assistance\\_in\\_Criminal\\_Matters.pdf](https://sherloc.unodc.org/res/cld/document/srb/2009/law_on_mutual_assistance_in_criminal_matters_html/Law_on_Mutual_Assistance_in_Criminal_Matters.pdf)

<sup>4</sup> Including international treaties that Serbia succeeded from the former Socialist Federal Republic of Yugoslavia by means of the Notification of Succession of International Treaties.

<sup>5</sup> Compare it with the info on the My Constitution Portal (available in Serbian): <http://mojustav.rs/strucni-komentar-16/>

Balkans: Towards removing obstacles in international cooperation in criminal matters” highlights: *“The legislation on mutual legal assistance in criminal matters of Serbia is generally up to date, consistent, inherently logical and provides for possibilities to assist other states and to be assisted in all forms of international cooperation at all stages of criminal proceedings. The degree of ratification of the relevant treaties of the Council of Europe is very high.”*<sup>6</sup>

#### 3.1. International judicial cooperation in criminal matters – global and regional view

Serbia is signatory to a number of international multilateral and bilateral treaties governing extradition and there is a steady pace of adopting new ones with a variety of the countries. As for multilateral conventions on international judicial cooperation, Serbia has signed all major treaties such as:

- UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- UN Convention against transnational Organized Crime treaties.
- Serbia signed also the regional treaties, such as:
- The European Convention on Mutual Assistance in Criminal Matters,
- The European Convention on the Transfer of Proceeding in Criminal Matters,
- The European Convention on Extradition and the three Additional Protocols to it,
- The European Convention on Mutual Assistance in Criminal Matters and Second Additional Protocol.

There is no accurate and easily accessible list of treaties that Serbia signed in the mutual legal assistance in criminal matters, however, fragmented data available from 2012 reach the number of a total of 42 treaties on judicial co-operation with 12 countries, with a large number of treaties in the pipeline, ready to be adopted<sup>7</sup>.

Additionally, by means of the Notification of Succession of International treaties, Serbia took over from the SFR of Yugoslavia another 18 bilateral treaties<sup>8</sup>.

And finally, with countries with whom Serbia did not sign bilateral treaty, or with those that are not signatories to international conventions in the area of criminal law, the principles of reciprocity apply.

<sup>6</sup> Compare, page 11, <http://www.prosecutorsnetwork.org/uiimages/MLA%20REPORT%20SERBIA.pdf>

<sup>7</sup> The bilateral treaty on extradition of Serbia with USA is in the pipeline, with long delay in responding on the side of Serbia and may be expected to be signed and ratified early 2019.

<sup>8</sup> Albania, Bulgaria, France, Greece, Netherlands, Italy, Hungary, Mongolia, Germany, Poland, Romania, Russia, Spain, Switzerland and Great Britain

Serbia has signed agreements with all countries in the region of the Western Balkans that are subject to this research:

### 1. Treaties between the Republic of Serbia and Montenegro

1.1. Treaty between the Republic of Serbia and Montenegro on Legal Assistance in Civil and Criminal Matters ("Official Gazette Republic of Serbia, International Agreements", no. 1/ 2010.).

1.2. Treaty between the Republic of Serbia and Montenegro on Mutual Enforcement of Judicial Decisions in Criminal Matters ("Official Gazette Republic of Serbia, International Agreements", no. 1/ 2010.).

1.3. Treaty between the Republic of Serbia and Montenegro on Extradition ("Official Gazette Republic of Serbia, International Agreements", no. 1/ 2010.).

1.4. Treaty between the Republic of Serbia and Montenegro on Amendments of Agreement on Extradition ("Official Gazette Republic of Serbia, International Agreement", no. 1/ 2011.)

### 2. Treaties between the Republic of Serbia and the Republic of Croatia

2.1. Treaty between the Republic of Serbia and the Republic of Croatia on Legal Assistance in Civil and Criminal Matters ("Official Gazette SRY International Agreements", no 1/1998).

2.2. Treaty between the Republic of Serbia and the Republic of Croatia on Extradition ("Official Gazette Republic of Serbia, International Agreements", no. 13/ 2010. ).

### 3. Treaties between Serbia and Bosnia and Herzegovina

3.1. Treaty between BiH, Serbia and Montenegro on Legal Assistance in Civil and Criminal Matters of 24 February 2005. ("Official Gazette Serbia and Montenegro"-International Agreements", no. 6/ 2005).

3.2. Treaty between BiH and the Republic of Serbia on Amendments to the Treaty between BiH and Serbia and Montenegro on Legal Assistance in Civil and Criminal Matters of 26 February 2010. ("Official Gazette Republic of Serbia, International Agreements" no. 13/ 2010).

3.3. Treaty between Serbia and Montenegro and Bosnia and Herzegovina on Mutual Enforcement of Judicial Decisions in Criminal Matters ("Official Gazette Serbia and Montenegro"-International Agreements", no. 6/ 2005).

3.4. Treaty between the Republic of Serbia and Bosnia and Herzegovina on Amendments of Agreement between Serbia and Montenegro and Bosnia and Herzegovina on Mutual Enforcement of Judicial Decisions in Criminal Matters

("Official Gazette Republic of Serbia, International Agreements", no. 13/2010).  
3.5. On 15<sup>th</sup> May 2012 in Belgrade was initialled the Treaty between the Republic of Serbia and Bosnia and Herzegovina on Extradition.

In addition to the steady progress and signing new treaties on international legal assistance in criminal matters, we may state the most recent ones with Kazakhstan adopted in 2018 – Treaties between the Republic of Serbia and Republic of Kazakhstan (official Gazette of the R. Serbia – international treaties no. 12/2018) and the treaty between the two states on legal aid in criminal matters (Official Gazette R. Serbia – international treaties, no.12/2018).

In addition to the treaties, large number of memoranda have been signed with the countries in the region of the Western Balkans, such as Memorandum of Understanding of the Public Prosecution of the Republic of Macedonia, of the General Prosecutor's Office of the Republic of Albania, of the Prosecutor's Office of Bosnia and Herzegovina, of the State Attorney's Office of the Republic of Croatia, of the Republic Public Prosecutor's Office of the Republic of Serbia and the Supreme State Prosecutor's Office of Montenegro for Regional Co-operation against Organised Crime and Other Forms of Serious Crime signed 30.3.2005 in Skopje, amended on 25.1.2010 in Rome.

We also have to emphasize the Memorandum on Strengthening Regional and Transnational Cooperation as a precondition for successful fight against organised crime in South Eastern Europe concluded between Ministry of Justice, Ministry of Interior and State Prosecutors of Republic of Serbia, Albania, Macedonia, Bosnia and Herzegovina, Montenegro, Romania, Bulgaria, Croatia and Slovenia (5.10.2010) and many more.

The Law on International Legal Assistance in Criminal Matters contains procedural and substantive provisions regulating letters rogatory<sup>9</sup>, channels of communications, urgency of proceedings, admissibility and course of action, denying the requests, reciprocity, language and costs of the processes. It also gives clear path for the confidentiality of information and many more. Institutional overview is followed by the general aspects of providing mutual legal assistance, extradition of suspects, accused and sentenced aliens from Serbia, procedure upon extradition request Serbia can send to the foreign country, transit of an alien through the territory of Serbia, transfer of sentenced persons from a foreign country to Serbia, transfer of sentenced persons from Serbia to a foreign country, transfer and takeover of criminal prosecution and final provision of the Law, and so on.

<sup>9</sup> Article 6 of the Law

In addition to this, the criminal procedure code in Serbia<sup>10</sup> prescribes provisions related to international mutual assistance and those provision shall be rendered under the provisions of the criminal procedure code, unless otherwise is already prescribed by the legislation of Serbia or by an international agreement. The criminal procedure code in Serbia prescribes provisions related to communication of a request for legal aid, actions following the request of foreign authorities, execution of the verdict rendered by foreign court, centralization of data, relinquishing criminal prosecution to a foreign state and taking charge of the criminal prosecution by a foreign state.

Additionally, Serbian courts have direct cooperation with courts of Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro and Slovenia.

### 3.2. Request for mutual legal assistance and precondition to the execution

A request for mutual legal assistance will be transmitted in the form of a letter rogatory. The letter rogatory of a foreign judicial authority and the attached documentation must be supported by the translation into the official language of Serbia verified by a certified interpreter. Letters rogatory by a national judicial authority and the attached documentation must be translated into the official language of the requested state.

Preconditions to the execution of requests for mutual assistance include:

- 1) the criminal offence, in respect of which legal assistance is requested, constitutes the offence under the legislation of the Republic of Serbia;
- 2) the proceedings on the same offence have not been fully completed before the national court, that is, a criminal sanction has not been fully executed;
- 3) the criminal prosecution, that is, the execution of a criminal sanction is not excluded due to the state of limitations, amnesty or an ordinary pardon;
- 4) the request for legal assistance does not refer to a political offence or an offence relating to a political offence, that is, a criminal offence comprising solely violation of military duties;
- 5) the execution of requests for mutual assistance would not infringe sovereignty, security, public order or other interests of essential significance for the Republic of Serbia.

<sup>10</sup> The Criminal Procedure Code of Serbia (Official Gazette of RS, no 72/2011 and 101/2011) <https://www.mpravde.gov.rs/files/Criminal%20Procedure%20Code%20-%202012.pdf>

In Serbia additionally special laws related to a criminal procedure regulate international mutual assistance, such as the Law on Seizure of Assets Deriving from Crime<sup>11</sup>. The special law provides that the provisions of international agreements shall be applicable in international assets recovery. In case that there is no such agreement, provisions of this Law shall be applicable. This law regulates the procedure for seizure and confiscation in more detail, regulating the competent institutions, format of the request for cooperation, criteria for decision, execution of seizure and confiscation decisions and have been amended in 2016 in order to be in line with the European Court of human rights practice.

### 3.3. Direct Cooperation against impunity for War Crimes

In addition to the Law, to bilateral and multilateral agreements, and to several agreements signed directly between judicial institutions in the region, the largest emphasis is given to the agreements in the region in the area of war crimes prosecution<sup>12</sup>. Additionally, the agreements in direct cooperation are covering the investigation of most complex crimes such as Organized Crime, Illicit Trade in Narcotics, Trafficking of Human Beings, Trade in Weapons, Corruption, Money Laundering and International Terrorism.

Moreover, in April 2015, under the auspices of the UN, the State Prosecutors of Croatia, Bosnia and Herzegovina and Serbia signed the Guidelines for enhancing regional co-operation in war crimes processing, the search for missing persons and the establishment of a coordination mechanism.

<sup>11</sup> (Official Gazette 32/2013 and 94/2016) [https://www.paragraf.rs/propisi/zakon\\_o\\_oduzimanju\\_imovine\\_proistekle\\_iz\\_kvivnog\\_dela.html](https://www.paragraf.rs/propisi/zakon_o_oduzimanju_imovine_proistekle_iz_kvivnog_dela.html)

<sup>12</sup> Protocol on Agreement in Achievement and Improvement of Cooperation in Fighting all forms of Severe Crime concluded Republic Public Prosecutor Office of Serbia and Prosecutor Office of Bosnia and Hercegovina. 2005, [http://www.tuzilastvorz.org.rs/upload/Regulation/Document\\_sr/2016-05/memorandum\\_srb\\_bih\\_lat.pdf](http://www.tuzilastvorz.org.rs/upload/Regulation/Document_sr/2016-05/memorandum_srb_bih_lat.pdf)

Protocol on Agreement in Achievement and Improvement of Cooperation in Fighting all forms of Severe Crime concluded Republic Public Prosecutor Office of Serbia and Prosecutor Office of Croatia, [http://www.tuzilastvorz.org.rs/upload/Regulation/Document\\_sr/2016-05/memorandum\\_srb\\_hrv\\_lat\\_1.pdf](http://www.tuzilastvorz.org.rs/upload/Regulation/Document_sr/2016-05/memorandum_srb_hrv_lat_1.pdf)

Agreement on Cooperation in Prosecuting Perpetrators of the Criminal Acts of War Crimes, Crimes Against Humanity and Genocide, 2006, [http://www.tuzilastvorz.org.rs/upload/Regulation/Document\\_sr/2016-05/sporazum\\_srb\\_hrv\\_lat45.pdf](http://www.tuzilastvorz.org.rs/upload/Regulation/Document_sr/2016-05/sporazum_srb_hrv_lat45.pdf)

Protocol on Agreement in Achievement and Improvement of Mutual Cooperation Fighting All Forms of Organised Crime, Illicit Trade in Narcotics, Smuggling People, Trade in Weapons, Corruption, Money Laundering, International Terrorism, War Crimes and Similar Matters of Mutual Interest Between the Supreme State Prosecutor of the Republic of Montenegro and the Prosecutor's Office of Serbia".

Protocol on Agreement in Achievement and Improvement of Mutual Cooperation Fighting All Forms of Organised Crime, Illicit Trade in Narcotics, Smuggling People, Trade in Weapons, Corruption, Money Laundering, International Terrorism, War Crimes and Similar Matters of Mutual Interest Between the Prosecutor's Office of the Republic of Serbia and the Prosecutor's Office of Bosnia and Herzegovina" signed in July 2005.

Protocol on Agreement in Achievement and Improvement of Mutual Cooperation Fighting All Forms of Grave Crimes signed between the Office of the Public Prosecutor of the Republic of Macedonia and the Prosecutor's Office of Serbia".

## 4. Institutional framework – different roles within the system and procedures

Jurisdiction over the area of international judicial cooperation is given to the Ministry of Justice of Serbia, according to the Law on Ministries<sup>13</sup> in the Art. 9. The Law on Ministries determines the jurisdiction of the Ministry of Justice of the Republic of Serbia, which covers mutual judicial assistance and extradition. Ministry had developed institutional capacity and departments dealing strictly with communication with the competent authorities of contracting states. Law on International Legal Assistance in Criminal Matters also confirmed this in Article 4 that broadens the list of competent authorities to exercise mutual assistance including national courts and public prosecutor's offices specified by law.

Law stipulates that certain actions in the mutual assistance proceedings shall be performed by the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Internal Affairs.

Law defines that the letters sent by the foreign judicial authorities for international legal assistance in criminal matters will be transmitted through the Ministry of Justice of Serbia, unless otherwise provided by an international treaty.

### 4.1. Ministry of Justice of Serbia and its institutional structures

Within the Unit for the international legal aid inner units/sectors are formed and effective:

- Sector for international legal aid in civil matters
- Sector for international legal aid in criminal matters<sup>14</sup>

Ministry of Justice, within the Sector for International Legal Aid in Criminal Matters formed the Department for International Legal Aid in Criminal Matters that has the following tasks:

- Acting upon requests coming from domestic and foreign courts, and other relevant institutions;
- Hand and takes over criminal prosecutions;
- Publishes international arrest warrant;
- Executes criminal convictions and the transfer of convicted individuals;

<sup>13</sup> "Official Gazette of the RS", No. 44/2014, 14/2015, 54/2015 and 96/2015 – other law

<sup>14</sup> See the website of the Ministry of Justice: <https://www.mpravde.gov.rs/tekst/3796/odeljenje-za-medjunarodnu-pravnu-pomoc.php>

- Monitors the European integrations related to international legal assistance;
- Provides expertise to judicial and other organs regarding the validity and implementation of international agreements;
- Provides information and reports regarding international legal assistance;
- Prepares and concludes international agreements related to international legal aid;
- Cooperates with UNMIK and other international organizations;
- Validates documents used abroad.

With the assistance of the Netherlands, a registration system, LURIS, has been installed in the Ministry of Justice.

### 4.2. Direct communication – initial steps

Direct communication with foreign judicial authorities, courts and prosecutor offices, is possible only if governed in international agreements with the foreign country and is based on the principle of reciprocity. Additionally, as stated in the article defining the detention, if the service was effected directly or through the International Criminal Police Organisation (Interpol), it will be communicated to the Ministry of Justice as well.

Namely, according to Article 8 of the Law, "National judicial authorities shall grant mutual assistance subject to the rule of reciprocity. The Ministry of Justice shall provide a notification on the existence of reciprocity upon request of the national judicial authority.

Should there be no information on reciprocity, the rule of reciprocity is presumed to exist." In addition to that, more ground rule is that letters rogatory and other annexed documents of the national judicial authority shall be transmitted to foreign authorities through the Ministry of Justice. At the request of the requested state, letters rogatory and other supporting documents shall be transmitted through diplomatic channels.

Letters rogatory and supporting documents, subject to reciprocity, shall be transmitted directly to a foreign judicial authority.

In case of urgency, they may be transmitted through the International Criminal Police Organization (Interpol) as we will describe in more detail below.

Foreign judicial authorities may directly address the letter rogatory to national judicial authorities, when such a communication is provided in an international treaty.

In the situation where the legal assistance is not direct, Ministry of Justice is obliged to transmit it to the relevant institutions in Serbia, with additional obligation to determine/identify the relevant institution.

The letter rogatory which was not submitted in line with the provisions of the Law will be sent back for updates or changes, with the deadline which may not be longer than two months. Such a short deadline, compared to the region<sup>15</sup>, especially that it may be implemented with shorter deadlines, may trigger additional legal instability.

When it comes to the the jurisdiction of the court, in case that the addressed court, to which the documents are transmitted finds that the jurisdiction is lacking, it will without delay transmit the documents to the relevant court, in line with its jurisdiction and notify the Ministry of Justice that further has its clear roles and steps to be taken according to the law.

#### 4.3. How close is Serbia to full cooperation with the EUROJUST, EUROPOL and INTERPOL?

According to the Law, mutual assistance shall be exercised also at the request of the International Court of Justice, International Criminal Court, European Court of Human Rights and other international institutions established under international treaties ratified by the Republic of Serbia. Within the line of other international institutions, one should consider INTERPOL and EUROJUST on the first place.

Namely, for Serbian relevant authorities, if the international treaty allows it, in cases of a highest urgency the letter rogatory may be transmitted through the International Criminal Police Organisation (Interpol).

#### EUROJUST

Unlike Albania, Montenegro and Macedonia, Serbia still has not signed the (operational) cooperation agreement with EUROJUST, due to a delay in harmonizing the legislation on protection of personal data with the Acquis. However, it does not prevent it from being one of the three States that have active cooperation with the named institution. Namely, according to the EUROJUST data, Serbia, Montenegro and Bosnia and Herzegovina rank among the top 10 third States that actively cooperate with EUROJUST on crime cases, in the role of a requesting or requested State. EUROJUST lists the type of cases where

<sup>15</sup> E.g. Bosnia stipulates that the deadline is 3 months.

Serbia is mostly involved and points out the cooperation in drug trafficking and swindling and fraud cases<sup>16</sup>.

Serbia, since 2004 has a contact point in place within EUROJUST and is actively communicating and cooperating: that is further noted in the EUROJUST reports with more detailed data, and with a number of cases. Serbia is the most requested Western Balkan State in EUROJUST cases and, since January 2015, has been involved in 94 cases, 20 of which only in 2018. Serbia participated in five JITs and 14 coordination meetings<sup>17</sup>.

In 2017, Serbia was involved in 26 EUROJUST cases, mainly cases concerning drug trafficking, money-laundering, corruption and organized property crime. Organized crime groups were involved in several cases. Serbia also participated in three coordination meetings organized by EUROJUST and took part in four joint investigation teams supported by EUROJUST<sup>18</sup>. Serbia ratified also the European Convention on Mutual Assistance in Criminal Matters, as well as the protocols that entered into force in 2003 and 2007<sup>19</sup> and they are directly applicable, thus defining the communication in criminal matters in between Serbia and all the EU member.

There is an open offer by the leadership of the EUROJUST to enhance the cooperation between EUROJUST and Serbia in the areas of: coordination meetings, coordination centres and joint investigation teams as well as to the all of the Western Balkans country.

#### EUROPOL

Based on the Law on Ratification of the Agreement on Operational and Strategic Cooperation<sup>20</sup> between the Republic of Serbia and the European Police Office EUROPOL, a special department is formed in the Ministry of Interior. The department continuously exchange information relating to the commission of offenses, information on routes of smugglers or those involved in crimes, forensic police methods and investigative procedures, methods of training officers, criminal intelligence analytical methods, and so on.

<sup>16</sup> Q & A Eurojust's cooperation with Albania and the Western Balkans, available at: [http://www.eurojust.europa.eu/press/Documents/2018-10-05\\_Eurojust-cooperation-with-Albania-and-Western-Balkan\\_QA.pdf](http://www.eurojust.europa.eu/press/Documents/2018-10-05_Eurojust-cooperation-with-Albania-and-Western-Balkan_QA.pdf)

<sup>17</sup> Ibidem

<sup>18</sup> Eurojust Annual Report 2017, Eurojust 2018, available at: [http://eurojust.europa.eu/doclibrary/corporate/eurojust%20Annual%20Reports/Annual%20Report%202017/AR2017\\_EN.pdf](http://eurojust.europa.eu/doclibrary/corporate/eurojust%20Annual%20Reports/Annual%20Report%202017/AR2017_EN.pdf)

<sup>19</sup> Serbia has reservation over the implementation of the Article 16 of the Second Additional Protocol. [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/182/declarations?p\\_auth=1CsC1GIP&\\_coconventions\\_WAR\\_coconvention-sportlet\\_enVigueur=false&\\_coconventions\\_WAR\\_coconventionsportlet\\_searchBy=state&\\_coconventions\\_WAR\\_coconventionsportlet\\_codePays=SAM&\\_coconventions\\_WAR\\_coconventionsportlet\\_codeNature=2](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/182/declarations?p_auth=1CsC1GIP&_coconventions_WAR_coconvention-sportlet_enVigueur=false&_coconventions_WAR_coconventionsportlet_searchBy=state&_coconventions_WAR_coconventionsportlet_codePays=SAM&_coconventions_WAR_coconventionsportlet_codeNature=2)

<sup>20</sup> "Official Gazette of the RS", No. 5/14



#### 4.4. Civil Society Organizations – potentials for further monitoring and advocacy

Role of the civil society, as related to the international cooperation in criminal matters, can be summed up in few points. On the first place, lack of easily available data makes the role of the CSOs unequal, distracting them from deep insight into the problems and issues, also preventing them of giving concrete recommendations and need for the policy change. Organizations, such as Humanitarian Law Center are focused on the cooperation in the area of war crimes and has produced large number of reports on concrete cases, where international cooperation between prosecutor offices of Bosnia, Croatia is tackled.

Additionally, as Serbia is deeply in the EU integration process, with opened Chapter 23, dealing with judiciary and fundamental rights, there is additional potential for CSOs<sup>21</sup> to elaborate the effects of the judicial cooperation in criminal matters and to have joint actions.

#### 5. Multilateral and Bilateral Agreement – key achievements

Summing up the achievements, there is a need to point out larger number of remaining challenges of Multilateral and Bilateral Agreements on Judicial Cooperation, mainly in the area of timely response, as pointed out in the analysis of the EU Country Report for Serbia. Within the National Justice Sector Reform Strategy it is clear that Serbia had set-up a legal framework in line with the EU *acquis* allowing clear lines for international cooperation in criminal matters. However, the main obstacle remains the capacities of the local stakeholders to fully use the existing framework and deficiency in good practice exchange. According to the Trafficking in Persons, State Department Report for 2017<sup>22</sup> In 2016 a joint investigative team was established between Bosnia and Herzegovina, Serbia and Germany which resulted in synchronized raids and arrest of 11 members of an organized crime group which were engaged in trafficking and recruiting young women and girls from Serbia and Bosnia and Herzegovina for exploitation in Germany.

<sup>21</sup> National Convention on the EU, Working Group for Chapter 23.

<sup>22</sup> Bosnia and Herzegovina, Office to monitor and combat trafficking in persons, 2017 Trafficking in Persons Report

#### 6. Regional Judicial Cooperation Practice – brief overview

As already indicated, the impact of international legal assistance is not monitored in detail and data are not accessible<sup>23</sup> on the website of the Ministry of Justice of Serbia. However, EU 2018 Report on Serbia<sup>24</sup> gives us good overview of the steady progress. Namely, during the second half of 2017, Serbia successfully handled significantly more incoming judicial cooperation requests than during the second half of 2016 (1 281 compared to 2 254 in civil, and 1 969 compared to 2 054 in criminal matters), while there was a reduction in handling outgoing criminal matters cooperation requests compared with the second half of 2016 (961 compared to 788 for criminal matters). For civil matters there is an increase from 982 in 2016 to 1 042 in 2017. Overall, this resulted in fewer pending requests in December 2017 than in December 2016. The total of all pending cases was 23 176 in December 2017 compared to 23 474 in December 2016<sup>25</sup>.

Data on direct communication between different regional judicial institutions is not easily accessible and not summed up. Therefore, many of the data presented in this paper are the product of the secondary data collection, with interviews and broader methodology in order to have a detailed picture of the state of play.

As mentioned, specificity of Serbia is the special relation with Kosovo authorities that is reflected also in the judicial cooperation in criminal matters. Namely, Serbia's Justice Ministry, the Kosovo Police and the EU rule-of-law mission in Kosovo, EULEX, stated that there has been a regular flow of information between Pristina and Belgrade in recent years.

But interviews with officials conducted by Balkan Insight<sup>26</sup> working for EU and Kosovo institutions, as well as analysts who have studied the issue, suggest the process is fraught with difficulties and rarely results in decisive action.

War crimes trials are the ones where a bit more focus is put in Serbian public, mainly because of the activities of the civil society and where judicial cooperation and the trends in cooperation are more visible. After the closure of ICTY, judicial cooperation between the countries of the region became even more essential. Dozens of trials will go on Serbian "special court for war crimes" as well as on

<sup>23</sup> or at least not easily accessible.

<sup>24</sup> <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>

<sup>25</sup> Compare: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>

<sup>26</sup> Compare: <http://www.balkaninsight.com/en/article/serbia-kosovo-stalemate-allows-fugitives-allows-criminals-to-stay-free-05-17-2018>

other national special courts and hundreds of criminal fugitives will remain on the run – mainly the lower and middle ranks of the military; not prosecuted by the ICTY. Many of them found impunity in Serbia, as the neighboring country, thanks to the double citizenship they often have.

### 6.1. Djukic case

As an example, we will draw attention to the case of Novak Djukic, that conducted artillery strike on the town of Tuzla killing 71 people, case called Tuzla gate, or in BHS "Tuzlanska kapija"<sup>27</sup>. At the time of attack, Djukic was the wartime commander of the Bosnian Serb Army's Ozren Tactical Group<sup>28</sup>.

A warrant for Djukic was issued in October 2014, but the Higher Court in Belgrade has postponed for several times a hearing at which the takeover of responsibility for his imprisonment was due to be discussed.

Pursuant to the provisions of the Law on International Legal Assistance in Criminal Matters, the High Court (in Serbia) may adopt or reject a rogatory requesting the execution of a foreign court judgment, but it can not deviate from the factual description of the criminal offense referred to in the judgment of the Court of Bosnia and Herzegovina.

In other words, High Court can open the evidence procedure and consider the findings of the mentioned rogatory.

This case can be considered as illustrative and for that reason we are emphasizing it, as it points to several important issues. First, it points to the problem of prosecution and execution of convicting criminal judgments in relation to persons who avoid criminal responsibility by moving to the territory of another state where they have the citizenship. Secondly, in this case, it is quite obvious that for successful regional cooperation, there is a need for a trustful relationship among the judicial institutions of the region. This relationship should be based on mutual respect and acceptance of facts established before the courts of other states of the region, that is, in confirming the final judgments of these courts. Djukic's case is one of more than 40 cases in which the Bosnian authorities are seeking people who are suspected or accused of genocide or war crimes who currently reside in Serbia or Croatia. Among them are former Bosnian Serb Interior Minister Tomislav Kovac and Zlatan Mijo Jelic, a retired general from the Bosnian Croat wartime force, the Croatian Defence Council and many more<sup>29</sup>. This case, as many others, were the reason for the chief prosecutor at the UN

<sup>27</sup> Compare: [http://www.hlc-rdc.org/wp-content/uploads/2018/12/Analiza\\_i\\_preporuke\\_za\\_unapredjenje\\_regionalne\\_saradnje\\_u\\_procesuiranju\\_ratnih\\_zlocina.pdf](http://www.hlc-rdc.org/wp-content/uploads/2018/12/Analiza_i_preporuke_za_unapredjenje_regionalne_saradnje_u_procesuiranju_ratnih_zlocina.pdf)

<sup>28</sup> Data on the case are accessible on the Court of Bosnia and Herzegovina: <http://www.sudbih.gov.ba/predmet/2472/show>

<sup>29</sup> Compare: <http://www.balkaninsight.com/en/article/poor-cooperation-leaves-balkan-war-crime-suspects-at-large-09-26-2018>

war crimes court in The Hague, Serge Brammertz, to give harsh statements on the lack of judicial cooperation in criminal matters in Serbia, especially towards the cases in relation to Bosnia and Herzegovina.

### 6.2. Strpci case

Strpci case was one of the positive examples of cooperation in criminal matters and in that case the State Prosecutor Office in Bosnia and Herzegovina reported<sup>30</sup>. *Police operation was conducted simultaneously in the territories of the two respective states and several suspects were deprived of liberty; ten suspects were arrested in Bosnia and Herzegovina, whereas five suspects were arrested in the Republic of Serbia. These persons were charged for war crimes in Štrpci and Višegrad, when at least twenty victims, citizens of Serbia and Montenegro of Bosniak ethnicity, one person of Croat ethnicity and one victim of Afro-Asian origin, were abducted from the train operating from Belgrade to Bar and later killed in the territory of Bosnia and Herzegovina*<sup>31</sup>.

### 6.3. Kravica case

The arrests in Serbia in March 2015 took place following a cooperation protocol on war crimes, signed in 2013 by the special attorneys of Bosnia and Herzegovina and Serbia despite the protracted resistance and the delay in the implementation (especially from the Bosnian side). The Sarajevo and Belgrade authorities finally agreed to share information and evidence, to allow the extradition of fugitives, and to give jurisdiction to their foreign counterparts. Only this made it possible to arrest the 8 Bosnian Serb defendants of Kravica, who had settled in Serbia for years, ignoring their trials in Bosnia and Herzegovina<sup>32</sup>. Achievements in cooperation in relation to organized crime and trafficking in narcotics can be also identified in the reports. Serbian authorities have cooperated recently more often on issues of migrations.

<sup>30</sup> Suspects of war crimes in Štrpci and Višegrad arrested, Great success of the regional cooperation of the Prosecutor's Offices in BiH and Serbia, 05.12.2014., available at: <http://www.tuzilastvobih.gov.ba/?id=2747&jezik=e>

<sup>31</sup> Compare: Report of the Humanitarian Law Center: <http://www.hlc-rdc.org/?p=13170&lang=en>

<sup>32</sup> Compare: <https://www.balcanicaucaso.org/eng/Areas/Bosnia-Herzegovina/The-Kravica-case-and-judicial-cooperation-in-the-former-Yugoslavia-181659>

## 7. Conclusion and Recommendations

Serbia has made a steady progress within international cooperation in criminal matters, with larger number of requests and response rate and thus has a good framework and clear responsibilities for different actors, mainly coordinated by the Ministry of Justice. Law on International Legal Assistance in Criminal Matters gives a clear ground and no further substantive changes of this piece of legislation is needed as the *acquis* is met, as described also in the EU 2018 Report on Serbia<sup>33</sup>.

The following key recommendations can be made, with the note that many of them can be identified in other countries of the region of the Western Balkans:

- Increase the capacities of the relevant sector of the Ministry of Justice of Serbia to respond to its role, with special focus to data collection as well as the data presentation;
- Facilitate direct cooperation on outgoing requests between Serbian and foreign courts and to centralize the receipt of requests for international judicial cooperation within the court system, in line with the findings of analysis, so they can be processed more efficiently;
- Review the administrative, budgetary and training needs in the regard of the international support in criminal matters;
- Improve the processing of statistical data through improved program LURIS, as well as adequate needs in finances in this area;
- Increase the knowledge of foreign languages, especially English and German;
- Increase capacities of judicial institutions to facilitate direct communication and coordination between courts and prosecutors' offices;
- Develop MLA Handbooks and clear Guidelines, as well as standard Forms and make them mandatory to ensure uniformed method/system for administration and execution of requests applicable to all authorities involved;
- Arrange for continuity and career opportunities for the staff (i.e. experienced employees in MLA with language skills);
- Access deficiencies and find mechanisms in order to provide response in reasonable time;
- Present infrastructure used for replying to requests for mutual legal assistance and statistics need to be further improved for ensuring better monitoring;
- promptly reaction applying the mutual recognition principle subject to pending analysis of capacity needed to improve efficiency, including special legal and language skills;

- Conduct continuous training within the Judicial Academy to increase the lack of consistency of case law throughout the country, and consequent consistent interpretation and implementation of international standards. Training should focus on new developments in international cooperation such is the asset seizure and asset recovery and other specific issues arising from the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the UN Convention against Transnational Organized Crime and the UN Convention against Corruption;
- Make information/statistic/data easily accessible on the website of the Ministry of Justice of Serbia;
- Practitioners should be encouraged to use more frequently direct contacts with colleagues abroad (via phone and email), even before any action takes place.
- Identify and resolve regional cooperation issues in particular in relation to war crimes and dual citizenships;
- Intensify signing and ratifying bilateral treaties with the countries, with special focus to the already prepared, such as the agreement with United States of America on extradition;
- Sign a (operational) cooperation agreement with Eurojust, upon harmonising the legislation on protection of personal data with the *acquis*;
- Implement fully the Agreement with EUROJUST to support enhanced cooperation with this agency;
- Support enhanced regional cooperation through available financial instruments and in particular in relation to Organized Crime, Illicit Trade in Narcotics, Smuggling People, Trade in Weapons, Corruption, Money Laundering, International Terrorism and War Crime as these crimes have in most cases both international and regional element;
- Cooperation with Kosovo related to the international legal assistance should be further strengthened and institutionalized.

<sup>33</sup> Page 39: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>

## Summary of conclusions and recommendations

### For Albania:

- The legislative overlap/ambiguity between Criminal Procedural Code and Law on Jurisdictional Relations with Foreign Authorities in Criminal Matters that confuses practitioners should be addressed by bringing the regulation in one consolidated piece of legislation;
- Albanian authorities should include the international judicial cooperation in criminal matters in their Justice Strategy. A policy approach would help authorities to better identify and address the common threats in the region and will help to enhance their technical and analytical capacities;
- Measures should be taken to address the work overload and increase the professional knowledge of the staff working in departments dealing with international judicial cooperation. Inability to provide the requested information for this study shows that there is a need for more personnel which should do better record keeping and data analysis;
- The case law until now has demonstrated that there is a lack of cooperation between institutions involved in judicial cooperation. Authorities should take measures to put in place mechanism that will prevent violation of the legal provisions due to lack of institutional cooperation.

### For Bosnia and Herzegovina:

- The capacities of the relevant sector of the Ministry of Justice of BiH should be increased to respond to its liaison role and data collection;
- Capacities of judicial institutions should be increased to facilitate direct communication and coordination where it is allowed;
- Continuous training should be organized to increase the lack of consistency of case law throughout the country, and consequent consistent interpretation and implementation of international standards;
- Training should focus on new developments in international cooperation such is the asset seizure and asset recovery and other specific issues arising from the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the UN Convention against Transnational Organized Crime and the UN Convention against Corruption;
- Regional cooperation issues should be identified and resolved, and in particular in relation to war crimes and dual citizenships;
- Given the complex structure of the judiciary, international judicial cooperation units should be organized at different levels of the judiciary to support of investigations and which would have specialized prosecutors working exclusively on the matters of international judicial cooperation;
- Agreement with EUROJUST should be signed to support enhanced cooperation with this agency;
- Support for enhanced regional cooperation should be sought through available financial instruments and in particular in relation to Organized Crime, Illicit Trade in Narcotics, Smuggling People, Trade in Weapons, Corruption, Money Laundering, International Terrorism and War Crime as these crimes have in most cases and international and regional element.

### For Kosovo:

- Judges and prosecutors need to be more thoroughly informed on the new bilateral agreements in this field, but also on novelties surrounding new crimes and forms of cooperation in general. Preferably the Ministry of Justice should prepare handbooks for the Judges and Prosecutors;
- In order to have a higher language proficiency as the sector does not have enough translators available, the academy of justice has to organize language courses and increase number of translators;
- International legal cooperation has to be specifically addressed in the Judicial and Prosecutorial Council's yearly reports;
- The Ministry should continue its endeavor to have more bilateral agreements with other countries and exchanges of practices and make use of international projects regarding the western Balkans;
- It is important that the data collected by the Ministry is also properly organized. Undoubtedly there are specific patterns in international cooperation that can be identified and then used to have better and more informed policies in place.

### For Montenegro:

- Besides the fact that legislative reform was significant in the preceding period, especially in the area of judiciary, it is recommended to continue with the reform in the area of IC. Besides the process of continuous transposition of the EU instrument and parallel to this process, legislative framework for international legal assistance with 'third countries' should be improved by amending the existing Law on Mutual Legal Assistance in Criminal Matters. In this way, the Law should be aligned with the new concept of criminal procedure and the increasing need for the application of certain international legal assistance mechanisms, such as joint investigation teams and seizure/confiscation of the proceeds of crime;
- The Ministry of Justice should insist on the initiatives of drafting the missing bilateral agreements on the provision of international legal assistance, with the countries which whom these have not been signed yet;
- Having in mind the fact that the introduction of new legal concepts in the area of judicial cooperation will increase the scope of legal assistance on the occasion of Montenegrin EU accession, it is necessary to have a plan for the increase in the number of civil servants to deal with these cases;
- It is necessary to encourage judicial authorities to use direct communication among judicial authorities in the procedures of international legal assistance – where this is envisaged by the Agreement – or to establish the principle of reciprocity;
- Expecting that fundamental principle of communication in the area of international legal assistance by means of direct contacts among judicial authorities to become a common practice in Montenegro and in the countries in the region, the idea of International Centre for Expertize in the Ministry of Justice may be worth consideration;
- International criminal law training with the emphasis on practical experiences and mandatory regional aspect – as well as foreign language courses – must be a part of permanent education in the Ministry of Justice and in judicial authorities;

- Implementation of LURIS as a uniform case management system in the area of international legal assistance in all state authorities involved and their networking. In addition to the Ministry of Justice and State Prosecution Service, LURIS or a system compatible to it should be introduced in Montenegrin courts, too. The idea of networking with the already existing systems in the countries in the region should be further developed.

#### **For Republic of North Macedonia:**

- Further improving judicial cooperation in criminal matters by ratifying international and bilateral agreements;
- Linking the LURIS with the other electronic system, namely of the Courts (AKMIS) and the system at the public prosecution;
- Using guidelines for MLA by all courts to ensure unified approaches and practices;
- Developing and efficient managing the court system (AKMIS) for collecting, processing and analyzing statistical data on the cases of the courts for MLA;
- Equipping and enhancing the human resources and capacities of the Department for MLA;
- Capacity building of the staff of the MLA department on the usage of the LURIS software system;
- Establishing a uniformed method for administration/execution of requests for MLA throughout entire court system (manuals etc.);
- Enhancing and promoting the direct communication between the judicial authorities with their counterparts in other countries;
- Strengthening the capacities of the existing department for MLA within the Basic court 1 in Skopje in Macedonia;
- Capacity building of the PPO and courts in international criminal justice.

### For Serbia:

- Increase the capacities of the relevant sector of the Ministry of Justice of Serbia to respond to its role, with special focus to data collection as well as the data presentation;
- Facilitate direct cooperation on outgoing requests between Serbian and foreign courts and to centralize the receipt of requests for international judicial cooperation within the court system, in line with the findings of analysis, so they can be processed more efficiently;
- Review the administrative, budgetary and training needs in the regard of the international support in criminal matters;
- Improve the processing of statistical data through improved program LURIS, as well as adequate needs in finances in this area;
- Increase the knowledge of foreign languages, especially English and German;
- Increase capacities of judicial institutions to facilitate direct communication and coordination between courts and prosecutors' offices;
- Develop MLA Handbooks and clear Guidelines, as well as standard Forms and make them mandatory to ensure uniformed method/system for administration and execution of requests applicable to all authorities involved;
- Arrange for continuity and career opportunities for the staff (i.e. experienced employees in MLA with language skills);
- Access deficiencies and find mechanisms in order to provide response in reasonable time;
- Present infrastructure used for replying to requests for mutual legal assistance and statistics need to be further improved for ensuring better monitoring;
- promptly reaction applying the mutual recognition principle subject to pending analysis of capacity needed to improve efficiency, including special legal and language skills;
- Conduct continuous training within the Judicial Academy to increase the lack of consistency of case law throughout the country, and consequent consistent interpretation and implementation of international standards.

- Training should focus on new developments in international cooperation such is the asset seizure and asset recovery and other specific issues arising from the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the UN Convention against Transnational Organized Crime and the UN Convention against Corruption;
- Make information/statistic/data easily accessible on the website of the Ministry of Justice of Serbia;
- Practitioners should be encouraged to use more frequently direct contacts with colleagues abroad (via phone and email), even before any action takes place.
- Identify and resolve regional cooperation issues in particular in relation to war crimes and dual citizenships;
- Intensify signing and ratifying bilateral treaties with the countries, with special focus to the already prepared, such as the agreement with United States of America on extradition;
- Sign a (operational) cooperation agreement with Eurojust, upon harmonising the legislation on protection of personal data with the acquis;
- Implement fully the Agreement with EUROJUST to support enhanced cooperation with this agency;
- Support enhanced regional cooperation through available financial instruments and in particular in relation to Organized Crime, Illicit Trade in Narcotics, Smuggling People, Trade in Weapons, Corruption, Money Laundering, International Terrorism and War Crime as these crimes have in most cases both international and regional element;
- Cooperation with Kosovo related to the international legal assistance should be further strengthened and institutionalized.





