

INTERNATIONAL JUDICIAL CO-OPERATION IN CRIMINAL MATTERS

LAW No. 144/99, of 31 August

(as amended by Laws No. 104/2001, of 25 August, Law No. 48/2003, of 22 August, Law No. 48/2007 of 29 August and Law No 115/2009 of 12 October)

Approves the law on international judicial co-operation in criminal matters

In accordance with the provisions of Article 161, paragraph c) of the Constitution, the Assembly of the Republic enacts the following to be equal to a general law of the Republic:

Part I

General

CHAPTER I

Subject-matter, scope and general principles of international judicial co-operation in criminal matters

Article 1

Subject-matter

1. This law shall apply to the following forms of international judicial co-operation in criminal matters:

- a) extradition;
- b) transfer of proceedings in criminal matters;
- c) enforcement of criminal judgements;
- d) transfer of persons sentenced to any punishment, or measure, involving deprivation of liberty;
- e) supervision of conditionally sentenced or conditionally released persons;
- f) mutual legal assistance in criminal matters.

2. The provisions of paragraph 1 shall apply, as appropriate, to the co-operation between Portugal and any international judicial entities established within the framework of treaties or conventions that bind the Portuguese State.

3. The provisions of this law shall apply as subsidiary provisions to co-operation in matters pertaining (a) to offences of a criminal nature, during the stage of the procedure that is conducted before an administrative authority, and (b) to offences of a regulatory nature that give rise to proceedings that are subject to review before a court of law.

Article 2

Scope

1. Enforcement of this law shall be subject to the protection of the interests of sovereignty, security, ordre public, or other, constitutionally defined, interests of the Portuguese Republic.

2. No right to compel any form of international co-operation in criminal matters shall derive from this law.

Article 3

Primacy of international treaties, conventions and agreements

1. The forms of co-operation mentioned in Article 1 above shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice, the provisions of this law.

2. The provisions of the Code of Criminal Procedure shall apply as subsidiary provisions.

Article 4

Principle of reciprocity

1. International co-operation in criminal matters, as provided for in this law, falls within the province of the principle of reciprocity.

2. Where circumstances so require, the Ministry of Justice shall demand an undertaking to the effect that reciprocity shall apply; within the limits set out in the provisions of this law, it may provide other States with such an undertaking.

3. The absence of reciprocity shall not prevent compliance with a request for co-operation where such co-operation:

a) Is seen to be advisable in view of the nature of the facts, or in view of the need to combat certain serious forms of criminality;

b) may contribute to the betterment of the situation of the person concerned or to his social rehabilitation;

c) may serve to shed light on facts endorsed to a Portuguese national.

Article 5

Definitions

For the purposes of this law:

a) "Suspect" means any person with respect to whom there are grounds to believe that that person committed or participated in the commission of a criminal offence;

b) "defendant" means any person prosecuted or accused under criminal proceedings, or any person against whom investigations have been requested;

"sentenced person" means

any person against whom a judicial decision has been taken that imposes a criminal reaction , and any person against whom a judicial decision has been taken that recognises that person's guilt although the enforcement of the sanction is conditionally suspended, and

any person against whom a judicial decision has been taken that imposes a criminal sanction involving deprivation of liberty that is either conditionally suspended, in whole or in part, at the date of the sentence or at a later date, or replaced by a non-custodial measure;

d) "criminal reaction" means any sanction or measure involving deprivation of liberty, any pecuniary sanction and any other non custodial sanction, including ancillary sanctions.

Article 6

Mandatory grounds for refusal

1. Requests for co-operation shall be refused:

a) where the proceedings do not comply with the requirements laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, or other relevant international instruments ratified by Portugal;

b) where there are well-founded reasons for believing that co-operation is sought for the purpose of persecuting or punishing a person on account of that person's race, religion, sex, nationality, language, political or ideological beliefs, or his belonging to a given social group;

c) where the risk exists that the procedural situation of the person might be impaired on account of any of the factors indicated in the preceding sub-paragraph;

d) where the co-operation sought might lead to a trial by a court of exceptional jurisdiction or where it concerns the enforcement of a sentence passed by such a court;

e) where any of the facts in question is punishable with the death sentence or with a sentence resulting in any irreversible injury of the person's integrity;

f) where any of the offences in question carries a life-long or indefinite sentence or measure.

2. The provisions in sub-paragraphs e) and f) of the preceding paragraph shall not preclude co-operation:

should the requesting State, by way of an irreversible decision that binds its courts or any other authority with powers to execute the sentence, have either commuted the death sentence or the sentence resulting in any irreversible injury of the person's integrity, or withdrawn the life-long nature of the sentence or measure;

where the co-operation sought is in the form of extradition for offences that, under the law of the requesting State, carry a life-long or indefinite sentence or measure involving deprivation of or restrictions to liberty, should the requesting State offer assurances that such a sentence or measure shall not be imposed or shall not be executed;

should the requesting State accept the conversion of the sentence or the detention order, by a Portuguese court and under the Portuguese law applicable to the offence or offences for which the person was sentenced; or

where co-operation is sought on the basis of the provisions of Article 1.1.f), on grounds that it will presumably be relevant for the purpose of preventing such sentences or orders to be rendered.

3. In assessing the sufficiency of the assurances mentioned in sub-paragraph b) of paragraph 2 above, account shall be taken, in the light of the law and practice of the requesting State, inter alia, of the possibility that the sentence is not executed, of a reconsideration of the situation of the person sought

and his conditional release, as well as of the possibilities that pardon, amnesty, commutation of the sentence or similar measure be granted, as provided in the law of the requesting State.

4. A request for co-operation shall also be refused where reciprocity is not ensured, without prejudice to the provisions of Article 4. 3.

5. Where co-operation is refused on the grounds offered by the provisions of sub-paragraphs d), e) or f) of paragraph 1 above, the method of co-operation provided for in Article 32.5 shall apply.

Article 7

Refusal on grounds relating to the nature of the offence

1. A request for co-operation shall also be refused where the proceedings concern:

a) Any facts that, according to the concepts of Portuguese law, constitute a political offence or an offence connected with a political offence;

b) any facts that constitute a military offence and do not constitute an offence under ordinary criminal law.

2. The following shall not be regarded as political offences:

a) genocide, crimes against humanity, war crimes and serious offences under the 1949 Geneva Conventions;

b) the offences mentioned in Article 1 of the European Convention on the Suppression of Terrorism, opened to signature on 27 January 1977;

c) the acts mentioned in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 17 December 1984;

d) any other offences that ought not to be regarded as political under the terms of an international treaty, convention or agreement to which Portugal is a Party.

Article 8

Discontinuation of criminal proceedings

1. Co-operation shall not be admissible where, either in Portugal or in another State in which criminal proceedings concerning the same facts have been initiated:

a) Either the proceedings ended with a final sentence of acquittal, or were otherwise definitively discontinued;

b) either the sentence was carried out, or it cannot be carried out according to the law of the State in which it was passed;

c) the criminal proceedings were discontinued on any other grounds, unless an international convention provides that discontinuation of proceedings under such grounds does not prevent the requested State from engaging in co-operation.

2. The provisions of sub-paragraphs a) and b) of the preceding paragraph shall have no effect where the request by the foreign authority is made for purposes of the judicial review of a sentence and the grounds for such a review are identical to those that are provided for under Portuguese law.

3. The provisions of sub-paragraph a) of paragraph 1 above shall not preclude co-operation where the latter is sought for the purpose of re-opening proceedings, in accordance with the law.

Article 9

Concurrent admissibility and inadmissibility of co-operation

1. If the conduct attributed to the person against whom criminal proceedings are taken falls under several provisions of the Portuguese criminal law, the request for co-operation may be complied with only with respect to such offence or offences in respect of which the request is admissible, provided that the requesting State undertakes to abide by the conditions imposed.

2. However, co-operation shall not be granted if the conduct falls under several provisions of the Portuguese or the foreign criminal law, one of which concerns the conduct in its entirety and the nature of which excludes the possibility of co-operation.

Article 10

Minor offences

Co-operation may be refused where the minor importance of the offence does not justify it.

Article 11

Protection of confidentiality

1. In implementing a request for international co-operation submitted to Portugal, the provisions of the Code of Criminal Procedure and supplementary legislation concerning grounds of refusal to testify, seizure of property, telephone tapping, professional or State secrets, or any other cases in which confidentiality is protected, shall apply.

2. The provisions of the preceding paragraph shall apply to any information that according to the request, ought to be given by persons not involved in the foreign criminal proceedings.

Article 12

Applicable law

1. The following shall have legal effect in Portugal:

a) any facts that, under the law of the requesting State, interrupt or suspend time-limitation periods;

any complaint submitted in due time to a foreign authority, in cases where a complaint is regarded as a requirement under Portuguese law.

2. Where the Portuguese law alone regards the complaint as a requirement for prosecution and where the person entitled to complain objects, no criminal reaction shall be imposed or enforced in Portugal

Article 13

Effect of arrest

1. Any period of remand in custody abroad as well as any arrest ordered abroad as a result of one or another of the forms of co-operation provided for in this law, shall be taken into account in the framework of the Portuguese proceedings or deducted from the sentence, under the terms of the Criminal Code, as if the deprivation of liberty had occurred in Portugal.

2. With a view to making it possible to take into consideration any period of remand in custody, as well as any period of sentence actually served, information as necessary shall be exchanged.

Article 14

Compensation

Portuguese law shall apply to compensation for illegal or unjustifiable deprivation of liberty, or for other damages suffered by the suspect or the accused person,

a) during proceedings initiated in Portugal as a consequence of a request for co-operation made to Portugal;

b) during proceedings initiated abroad as a consequence of a request for co-operation made by a Portuguese authority.

Article 15

Concurrent requests

1. If, for the same or for different facts, international co-operation is requested by two or more States, co-operation shall be afforded to the State that, in view of the circumstances of the case, might better safeguard both the interests of justice and the interests of the social rehabilitation of the suspect, the accused or the sentenced person.

2. The provisions of the preceding paragraph:

in the cases covered by Article 1.2, shall cede against the rule according to which international jurisdiction shall have primacy over national jurisdiction;

shall not apply to the form of co-operation mentioned in Article 1. 1.f).

Article 16

Rule of speciality

1. No person who, as a consequence of international co-operation, appears in Portugal for the purpose of participating in criminal proceedings, either as a suspect an accused or a sentenced person, shall be proceeded against, sentenced or detained nor shall he be in any way restricted in his personal freedom, for any act committed prior to his presence on the national territory, other than the act or acts on the grounds of which the request for co-operation was made by a Portuguese authority.

2. No person who, in the same terms as above, appears before a foreign authority shall be proceeded against, sentenced, detained, nor shall he be in any way restricted m his personal freedom, for any act

committed, or any sentence passed, prior to his leaving the Portuguese territory, other than those mentioned in the request for co-operation.

3. The surrender of a person to the requesting State as mentioned in the preceding paragraph shall not be authorised unless that State provides the necessary guarantees to the effect that the rule of speciality shall be complied with.

4. The immunity that results from the provisions of this Article shall cease to have effect:

a) where it became possible for the person concerned to leave the Portuguese territory or the territory of another State, as applicable, and that person does not avail himself of that possibility within a period of 45 days, or that person voluntarily returns to one of the said territories;

b) where the State that authorised the transfer, once the suspect, the accused or the sentenced person have been heard, consents to a derogation to the rule of speciality.

5. The provisions of paragraphs 1 and 2 above do not preclude the possibility of extending the co-operation previously sought, by way of a new request, to facts other than those on the grounds of which the original request was made; the new request shall be prepared or examined, as applicable, in accordance with the provisions of this law.

6. Any request made under the provisions of the preceding paragraph shall be accompanied by a document established by the competent authority, containing the statements made by the person who benefits from the rule of speciality.

7. Where the request is submitted to a foreign State, the document mentioned in the preceding paragraph shall be established before the ""Tribunal da Relação" (court of appeal) that has jurisdiction over the area where the person who benefits from the rule of speciality resides or is staying.

Article 17

Special cases in which the rule of speciality does not apply

1. The immunity that results from the provisions of paragraphs 1 and 2 of Article 16 shall also cease to have effect in cases where a treaty, convention or international agreement to which Portugal is a Party does not make provision for the rule of speciality.

2. Where immunity ceases to have effect because the person concerned relinquishes it, such relinquishment must result from a personal statement, made before a judge, showing that the person expressed himself voluntarily and in full knowledge of the consequences thereof, assisted by counsel; counsel shall be appointed where the person has not chosen one.

3. Where the person concerned is called upon to testify in Portugal, further to a request submitted to Portugal or submitted by a Portuguese authority, the hearing shall be held before the ""Tribunal da Relação" (court of appeal) that has jurisdiction over the area where the person concerned resides or is staying.

4. Without prejudice to the provisions of the preceding paragraph, where only after the surrender of the person the Portuguese authorities become aware of facts that took place before such surrender, the relinquishment by a person who appears in Portugal as a result of co-operation requested by a Portuguese authority may only be produced within the framework of the proceedings that it relates to.

Article 18

Optional refusal of international co-operation

1. International co-operation may be refused if the facts that substantiate the request are the subject of criminal proceedings, or if they should or may be the subject of criminal proceedings for which a Portuguese judicial authority has jurisdiction.

2. International co-operation may also be refused if, in view of the circumstances of the case, granting the request might entail serious consequences for the person concerned on account of his age, health or other reasons of a personal nature.

Article 19

Non bis in idem

Where a request for international co-operation is granted that carries delegation of competence over criminal proceedings to a foreign judicial authority, criminal proceedings shall neither be initiated nor continued in Portugal for the same facts that substantiated the request; neither shall a sentence, the enforcement of which has been delegated to a foreign judicial authority, be enforced in Portugal.

CHAPTER II

General rules of procedure

Article 20

Language to be used

1. Requests for co-operation shall be accompanied by a translation into the official language of the requested State, unless otherwise stipulated in a convention or agreement, or unless that State exempts from the need for a translation.

2. The provisions of the preceding paragraph shall also apply to the requests addressed to Portugal.

3. The decisions concerning the admissibility or the refusal of a request for co-operation shall be notified to the authority of the requesting State, accompanied by a translation into the official language of that State, save in the cases mentioned in paragraph 1 above.

4. The provisions of this Article shall also apply to the documents that accompany the request.

Article 21

Procedure

1. The "Procuradoria-Geral da República" (Attorney-General's Office) is hereby designated to be the Central Authority for the purpose of receiving and transmitting any requests for co-operation covered by this law, as well as for all communications relating thereto.

2. Any request for co-operation made to Portugal shall be forwarded to the Minister of Justice by the Attorney-General with a view to its admissibility being decided upon.

3. Any request for co-operation made by Portuguese authorities shall be forwarded to the Minister of Justice by the Attorney-General.

4. The provisions of paragraph 1 shall not prejudice direct contacts relating to requests for co-operation, as mentioned in Article 1.1.f).

Article 22

Communication of requests

1. For the communication of requests, the use, where available, of adequate telematic means, including telefax, shall be permitted, subject to the authenticity, confidentiality and reliability of the data transmitted being assured and subject to an agreement between the requesting and the requested State.
2. The provisions of the preceding paragraph shall not prejudice the use of urgent channels as provided for in Article 29.2.

Article 23

Requests

1. Requests for international co-operation shall indicate:
 - a) The requesting as well as the requested authorities, even if the indication of the latter may be in general terms;
 - b) the purpose of and the reasons for the request
 - c) the legal qualification of the facts on the grounds of which the request is made;
 - d) the identification of the suspect, the accused or the sentenced person, of the person whose extradition or transfer is requested, as well as the identification of the witness or the expert whose evidence is sought;
 - e) a description of the facts, including time and place, proportional to the importance of the co-operation requested;
 - f) the text of the legal provisions applicable in the requesting State;
 - g) any relevant documents.
2. The authentication of the documents shall not be required.
3. The competent authority may require that a formally irregular or an incomplete request be modified or completed, without that precluding the possibility of taking provisional measures whenever such measures should not await the revised request.
4. The requirement mentioned in sub-paragraph f) of paragraph 1 above may be dispensed with where the form of co-operation requested is that which is mentioned in Article 1.1.f).

Article 24

Admissibility

1. Any decision by the Minister of Justice that declares the request admissible shall not bind the judicial authorities.
2. Any decision that declares the request inadmissible must be motivated and may not be appealed against.

3. The decisions mentioned in the preceding paragraph must be communicated by the Central Authority to the national or foreign requesting authority.

Article 25

Municipal jurisdiction for international co-operation

1. The jurisdiction of the Portuguese authorities, both for requesting international co-operation and for executing a request made to Portugal shall be determined in accordance with the provisions of the following Parts.

2. The provisions of the Code of Criminal Procedure, supplementary legislation thereto, as well as the legislation relating to offences of a regulatory nature shall apply as subsidiary provisions.

Article 26

Expenses

1. As a general rule, the execution of a request for international co-operation shall be free of charge.

2. The requesting State or the requesting international judicial entity shall however bear the following expenses:

a) compensation and remuneration, as well as travel and subsistence allowances, due to witnesses and experts;

b) expenses incurred by reason of sending or handing over property;
expenses incurred with the transfer of persons to the territory of that State or the seat of that entity;
expenses incurred with the transit of persons coming from a foreign State or from the seat of that entity, en route to a third State or to the seat of that entity;
expenses incurred with carrying out video-conferences at the request of third parties;
other expenses deemed by the requested State to be of relevance on account of the human or technological means used.

3. For the purposes mentioned in sub-paragraph a) of the preceding paragraph, an advance payment may be made to a witness or an expert; such an advance shall be notified to the other party and reimbursed after the execution of the request.

4. The provisions of paragraph 2 above may be departed from by way of an agreement between Portugal and the relevant foreign State, or international judicial entity.

Article 27

Transfer of persons

1. Any transfer of persons arrested or sentenced to a sanction involving deprivation of liberty, where that transfer should be executed as a result of a decision taken pursuant to the provisions of this law, shall be carried out by the Ministry of Justice, in agreement, as to the means of transport, the date, the hour and the place of surrender, with the authorities of the foreign State on whose territory the person concerned is, or to whose territory the person concerned should be transferred.

2. Transfer shall be carried out within the shortest possible delay as from the date of the decision ordering it.

3. The provisions of this Article, adapted as appropriate, shall apply to any transfer requested by any international judicial entity.

Article 28

Handing over of property or money

1. Where the request for co-operation concerns, exclusively or not, the handing over of property or money, these may be handed over only if they are not required for the purpose of producing evidence in connection with a criminal offence over which the Portuguese authorities have jurisdiction.

2. Handing over may be delayed; property and money may be handed over on condition that they are returned.

3. Any rights which bona fide third parties or legitimate owners or possessors may have over the property shall be preserved; any rights of the State that might result from the property being declared lost in its favour shall also be preserved.

4. If there is opposition to the handing over, property or money shall be handed over only subsequent to a final decision of the competent authority.

5. Where extradition is requested, the handing over as mentioned in paragraph 1 above may be executed even where extradition does not take place, notable because of the escape or death of the person sought.

Article 29

Urgent provisional measures

1. In case of urgency, the foreign judicial authorities may communicate with the Portuguese judicial authorities, either directly or through the International Criminal Police Organisation - INTERPOL or through central agencies designated to that effect, for the purpose of requesting provisional measures or measures that cannot be delayed; the request shall state the reasons for the urgency and shall be in accordance with the provisions of Article 23 above.

2. Requests shall be transmitted by post, by electronic means, by telegraph or by any other means allowing for a written record provided that it is admitted by the Portuguese law.

3. Where the Portuguese judicial authorities deem the request to be admissible, they shall execute it; however, where prescribed by this law, they must seek to obtain from the Minister of Justice, through the Central Authority, previous clearance- should that be possible - or ratification otherwise.

4. Where under this Article co-operation involves Portuguese and foreign authorities of a different nature, the request shall be channelled through the Central Authority.

Article 30

Final communications

1. Any final decision of a judicial authority to the effect of refusing a request for co-operation, shall be transmitted to the foreign requesting authority through the channels mentioned in Article 21 above.

2. Where a request for co-operation is executed, the judicial authority shall forward the respective documents, if applicable, to the foreign authority, in accordance with the provisions of Article 160.

Part II

Extradition

CHAPTER I

Extradition from Portugal

Section I

Requirements

Article 31

Purpose of and grounds for extradition

1. Extradition may be granted only for the purpose either of instituting criminal proceedings or of executing a sanction or measure involving deprivation of liberty, for an offence that the courts of the requesting State have jurisdiction to try.
2. For any such purpose, surrender of a person shall be possible only in respect of offences, including attempted offences, that are punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum period of at least one year.
3. If the request for extradition includes several separate offences each of which is punishable under the Portuguese law and the law of the requesting State by deprivation of liberty, but of which one or some do not fulfil the condition mentioned in the preceding paragraph, extradition for the latter offences shall also be possible.
4. Extradition requested for the purpose of executing a sanction or measure involving deprivation of liberty may be granted only if the duration of the sentence that remains to be served is not less than four months.
5. The provisions of the preceding paragraphs, adapted as appropriate, shall apply to co-operation that carries with it the extradition or the surrender of any person to international judicial entities as mentioned in Article 1.2 above.
6. The provisions of this Article establishing limits shall not preclude extradition where conventions, treaties or agreements to which Portugal is a Party establish lower limits.

Article 32

Cases in which extradition is excluded

1. Extradition shall be excluded in the cases mentioned in Articles 6 to 8 above, as well as in the following cases:
 - a) where the offence was committed on the Portuguese territory;
 - b) where the person claimed is a Portuguese national, without prejudice to the provisions of the following paragraph.

2. The extradition of Portuguese nationals shall however not be excluded where: extradition of nationals is provided for in a treaty, convention or agreement to which Portugal is a Party, and extradition is sought for offences of terrorism or international organised crime, and the legal system of the requesting State embodies guarantees of a fair trial.

3. In the circumstances covered by the preceding paragraph, extradition may only take place for purposes of criminal proceedings and provided that the requesting State gives assurances that it will return the extradited person to Portugal for that person to serve in Portugal the sanction or measure eventually imposed on him, once the sentenced is reviewed and confirmed in accordance with the Portuguese law, unless the extradited person expressly refuses to be returned.

4. For the purpose of assessing the guarantees mentioned in sub-paragraph c) of paragraph 2 above, account shall be taken of the European Convention of Human Rights and other relevant international instruments ratified by Portugal, as well as the conditions under which protection is ensured against the situations mentioned in sub-paragraphs b) and c) of paragraph 1 of Article 6.

5. Where extradition is not granted on any of the grounds stated in paragraph 1 above or in sub-paragraphs d), e) or f) of paragraph 1 of Article 6, criminal proceedings shall be instituted for the offence on the grounds of which the request was made; the requesting State shall be asked to provide such information as is necessary. The judge may impose such provisional measures as he deems adequate.

6. The question of whether the person claimed is or is not a Portuguese national shall be examined at the time of the decision on the extradition request.

7. Special arrangements, within the framework of military or other alliances, may provide that offences under military law which are not offences under ordinary criminal law shall be extraditable offences.

Article 33

Offences committed in a third State

In the case of offences committed on the territory of a State other than the requesting State, extradition may be granted only if under identical circumstances Portugal would have had jurisdiction under Portuguese law, or if the requesting State can prove that the former State does not request the extradition of the person concerned.

Article 34

Re-extradition

1. The requesting State shall not be empowered to re-extradite to a third State a person surrendered to it by way of extradition.

2. The provisions of the preceding paragraph shall have no effect where: authorisation for re-extradition is requested and granted under the same terms as those established for an extradition request, after the person concerned having been heard, or the extradited person, having been given the possibility to leave the territory of the requesting State, did not avail himself of that possibility within a period of 45 days or, having left it, voluntarily returned to it.

3. For the purposes of establishing the requirement set out in sub-paragraph a) of paragraph 2 above, a statement of the person concerned relating to his re-extradition may be requested.

4. The provisions of paragraph 1 above shall also have no effect where by virtue of a treaty, convention

or international agreement to which Portugal is a Party, the consent of the requested State is not required. Where the person consents to his re-extradition, the provisions of the following paragraph shall apply.

5. Any statements of the person sought produced on account of the provisions of paragraphs 3 or 4 above, shall be taken before the "Tribunal da Relação" (court of appeal) that has jurisdiction over the area where the person resides or is staying. With respect to the provisions of paragraph 4 above, the formalities provided for in Article 17 shall be respected.

Article 35

Postponed surrender

1. Neither the fact that criminal proceedings are pending in a Portuguese court against the person claimed, nor the fact that that person is serving a sentence involving deprivation of liberty for an offence other than the offence on the grounds of which extradition is requested, shall prevent extradition from being granted.

2. In such cases, the surrender of the person claimed may be postponed until the proceedings terminate or the sentence is served.

3. The surrender of the person may also be postponed if it is established through medical expertise that that person suffers from an illness that puts his life in danger.

Article 36

Temporary surrender

1. Under the circumstances described in paragraph 1 of Article 35, the person claimed may be temporarily surrendered for the purpose of procedural acts, in particular his trial, which the requesting State establishes cannot be postponed without it carrying serious prejudice, if the surrender does not in turn carry prejudice to the proceedings pending in Portugal and if the requesting State undertakes to return unconditionally the person concerned to Portugal once such procedural acts are terminated.

2. Where the person temporarily surrendered was serving a sentence, the enforcement of the latter shall be suspended as from the date of the surrender of the person to the requesting State and until the date of the surrender back of the person to the Portuguese authorities.

3. However, the duration of custody in the requesting State shall be deducted from the period that remains to be served in Portugal where such custody was not taken into consideration in that State.

4. Where surrender was postponed under the provisions of Article 35, for the purpose of the "Tribunal da Relação" (court of appeal) assessing the requirements mentioned in paragraph 1 above, the request for temporary surrender is processed by way of appending the file to that of the extradition request. The Tribunal da Relação shall seek an opinion both from the court under whose authority the person is, and the Minister of Justice.

Article 37

Conflicting requests

1. Where there are two or more requests for the extradition of the same person, decisions on which should have preference shall submit to criteria as follows:

where the requests concern the same facts, the place where the offence was committed or the place

where the main fact was carried out;

where the requests concern different facts, the seriousness of the offence according to Portuguese law, the date of the request, the nationality or the place of residence of the person sought, as well as any other concrete circumstances such as the existence of a treaty or the possibilities of re-extradition between the different requesting States.

2. In the cases mentioned in paragraph 2 of Article 1, the provisions of the preceding paragraph shall cede against the rule according to which international jurisdiction shall have primacy over national jurisdiction.

3. The provisions of the preceding paragraphs shall apply, as appropriate, for purposes of maintaining anticipated arrest.

Article 38

Provisional arrest

1. In case of urgency the provisional arrest of the person sought may be requested as a preliminary to a formal extradition request.

2. Any decision on such a provisional arrest, or on the continuation of such an arrest, shall be taken in accordance with the Portuguese law.

3. Requests for provisional arrest shall: indicate the existence of either a detention order or a sentence against the person claimed; describe briefly the facts that amount to an offence; state when and where such offence was committed, the legal provisions that are applicable, as well as the available data concerning the identity, the nationality and the whereabouts of that person.

4. The provisions of Article 29 shall apply to the transmission of the request.

5. Provisional arrest shall be terminated if the request for extradition is not received within 18 days of the arrest; it may however be prolonged for up to 40 days of the arrest if the reasons given by the requesting State so justify.

6. Provisional arrest may be replaced by any other coercive measure in accordance with the provisions of the Code of Criminal Procedure.

7. The provisions of paragraph 5 above shall not prejudice re-arrest and extradition if a request is received subsequently.

8. The request for provisional arrest shall be examined only where no doubts arise as to the powers of the requesting authority and if the request contains such elements as are indicated in paragraph 3 above.

Article 39

Non requested provisional arrest

The criminal police authorities may arrest any person who, according to official sources, in particular INTERPOL, is wanted by competent foreign authorities for purposes of criminal proceedings or the purpose of serving a sentence, for any notoriously extraditable offence.

Article 40

Consented extradition

1. Any person who is under arrest with a view to being extradited, after having been informed of his right to a judicial procedure as provided for in Articles 51 to 62, may state that he consents to his surrender to the requesting State or international judicial entity and thus relinquishes that right.
2. Such a statement shall be signed by the person sought and by his counsel or legal assistant.
3. The judge shall assess whether the requirements for granting extradition are met, shall hear the person sought in order to assess whether the statement was made of that person's free will and, if appropriate, shall ratify the statement and issue an order for the surrender of the person concerned, all being formally recorded in writing.
4. The statement, once ratified in accordance with the provisions of the preceding paragraph, shall be irrevocable.
5. The judicial decision of ratification of the statement shall, for all purposes, bear the legal value of a final decision in the extradition procedure.
6. Unless where a treaty, convention or agreement dispenses with a request for extradition, ratification shall not be considered before the Minister of Justice authorises the extradition procedure to continue.

Article 41

Coercive non custodial measures

Whilst the procedure is pending and until a final decision becomes unappealable, the provisions of paragraph 6 of Article 38 shall apply *mutatis mutandis*.

Article 42

Escape of the extradited person

Should any extradited person who escapes after surrender to the requesting State or international judicial entity and before the end of the criminal proceedings or before having served the sentence, return to Portugal, he shall again be arrested and surrendered to the same State or entity upon warrant from the competent authority of that State, save where violation of the conditions under which extradition was granted has occurred.

Article 43

Transit

1. Except for reasons of *ordre public*, transit of a person who is extradited from one to another foreign State, may be granted through the national territory or air space, if the offence at stake is an extraditable offence according to Portuguese law.
2. Where the person concerned is a Portuguese national, transit shall be granted only where such conditions as would be required for the extradition of that person are met.
3. Authorisation for transit is granted on submission of a request by the interested State.
4. Should the transit take place by air transport with no landing on the national territory scheduled, communication from the State interested in the extradition shall suffice.

5. Should an unforeseen landing occur, the provisions of paragraph 3 above shall apply.
6. Whilst in transit, the person concerned shall be kept under arrest.
7. The request shall be addressed to the Minister of Justice through the channels provided for in this law; it shall identify the person in transit; the provisions of paragraph 3 of Article 38 shall apply *mutatis mutandis*.
8. A decision on the request must be taken within the shortest possible delay; that decision shall be immediately transmitted to the requesting State through the same channels used for the request.
9. The decision authorising the transit shall specify the conditions under which the transit will take place, as well as the authority that will supervise the transit.

Section II

Extradition procedure

Article 44

Requests

1. The request for extradition must include, other than the elements mentioned in Article 23:
 - a) evidence to the effect that, under the concrete circumstances of the case, the person claimed is subject to the criminal jurisdiction of the requesting State;
 - b) where applicable, evidence that any third State on whose territory the offence was committed does not claim the person for the same offence;
 - c) a formal undertaking to the effect that the person claimed shall neither (i) be extradited to a third State, nor (ii) be arrested with a view to being proceeded against to serve a sentence or for other purposes, for any offence committed prior to, or concomitantly with, the offence for which extradition is requested.
2. The following must be appended to the request for extradition:
 - a) the warrant of arrest of the person claimed, issued by the competent authority;
 - b) a certificate or an authenticated copy of the decision ordering the issue of the warrant of arrest, in the case of extradition with a view to criminal proceedings;
a certificate or an authenticated copy of the conviction and sentence, in the case of extradition for the purpose of serving a sentence, as well as a statement specifying the duration of the sentence left to be carried out, if that duration does not correspond to the duration stated in the sentence;

a copy of the relevant enactments relating to the conditions under which the person becomes immune by reason of lapse of time from prosecution or punishment, as applicable;

if applicable, a statement by the competent authority concerning any facts that, according to the law of the requesting State, have suspended or interrupted the counting of time;

a copy of the relevant enactments relating to the possibility of an appeal, or to the possibility of a new trial in case of a sentence rendered in absentia.

Article 45

Supplementary information

1. If the request for extradition is either not complete, or not accompanied by all the information that is necessary in order to take a decision, the provisions of paragraph 3 of Article 23 shall apply; a deadline for the reception of the missing elements shall be fixed, but may be prolonged if the requesting State gives good reasons.
2. If the information requested in accordance with the provisions of the preceding paragraph is not made available, the extradition procedure may be discontinued at the end of the deadline, without prejudice to the possibility of the procedure being re-opened when such information is made available.
3. If the request concerns a person who is already arrested pending an extradition procedure, the discontinuation mentioned in the preceding paragraph entails the immediate release of that person; the provisions of paragraph 7 of Article 38 shall apply *mutatis mutandis*.

Article 46

Nature of the extradition procedure

1. The extradition procedure shall be of an urgent nature and shall consist of two stages, namely the administrative and the judicial stages.
2. The administrative stage of the procedure aims at an assessment of the extradition request by the Minister of Justice for the purpose of deciding on the basis of political reasons, or on discretionary grounds, taking into account the safeguards applicable, whether the request is admissible or not admissible.
3. The judicial stage rests under the exclusive competence of the "Tribunal da Relação" which, after having heard the person concerned, shall undertake a legal assessment of the form and substance of the facts in relation to the legal requirements, for the purpose of deciding whether extradition shall be granted or not; no evidence on the alleged conduct of the person claimed shall be taken into consideration.

Article 47

Participation of the requesting State in the extradition procedure

1. Any foreign State that so requests may participate in the judicial stage of the extradition procedure, through a representative appointed to that effect.
2. Where a request to participate in the procedure does not accompany the extradition request and should it be produced, it must be addressed to the "Tribunal da Relação" (court of appeal) via the Central Authority.
3. Any request to participate must be forwarded to the Minister of Justice with an opinion on its admissibility prepared by the Attorney-General's Office; the Minister shall decide on the admissibility of the request; the request may be refused if reciprocity is not ensured.
4. The participation aims at making it possible for the requesting State to have direct contact with the file, in conformity with the rules on the confidentiality of the procedure, and provide the court with any information that the court may require.

Article 48

Administrative procedure

1. Upon receiving the extradition request, the Attorney-General's Office shall assess the formal aspects of the request and, where appropriate, within no more than 20 days, shall forward the request to the Minister of Justice, along with its opinion on its admissibility.
2. Within the 10 following days, the Minister of Justice shall take a decision upon the request.
3. If the request is declared inadmissible the procedure shall be discontinued and the communication mentioned in paragraph 3 of Article 24 shall be made.
4. The Attorney-General's Office shall take such measures as are necessary in order to ensure the surveillance of the person claimed.

Article 49

Judicial procedure: jurisdiction and appeals

1. The ""Tribunal da Relação"" on whose area of jurisdiction the person claimed resides or is found at the time of the request shall have jurisdiction to deal with the judicial procedure of extradition.
2. The criminal section of the ""Tribunal da Relação"" shall be empowered to take the final decision.
3. Only the final decision shall be open to an appeal; the criminal section of the "Supremo Tribunal de Justiça" (Supreme Court of Justice) shall be empowered to take a decision on the appeal.
4. Any appeal against a decision to grant extradition shall stay the execution of that decision.

Article 50

Beginning of the judicial procedure

1. Extradition requests that are declared admissible, along with any documents available and the decision taken, shall be forwarded to the public prosecutor attached to the ""Tribunal da Relação"" that has jurisdiction over the request.
2. The public prosecutor shall, within 48 hours of receiving the file, take such steps as are necessary in order to initiate the judicial procedure.

Article 51

Introductory decision and arrest of the person claimed

1. Once the case referred to a chamber and within that chamber to a judge rapporteur, the procedure shall immediately be submitted to the latter who, within eight days, must produce a preliminary decision on whether the information available suffices and whether the request is viable.
2. If the judge rapporteur deems that the procedure should be discontinued, he shall submit the file and his written opinion to be examined for a period of five days by the other judges in chamber, the request being submitted to the chamber for decision at its next meeting.
3. If the case should proceed, the warrant of arrest of the person claimed shall be delivered to the public prosecutor who must promote its execution.

4. Should additional information be required, the competent authorities shall be instructed to keep the person claimed under surveillance, unless it is deemed necessary immediately to place that person under arrest on grounds that there are serious reasons for believing that the request will proceed.

Article 52

Duration of the arrest

1. The arrest of the person claimed shall be terminated and replaced by another coercive measure if the final decision of the ""Tribunal da Relação"" does not occur within 65 days of the date of the arrest.

2. Should no non-custodial coercive measure be adequate, the period mentioned in the preceding paragraph shall be prolonged for no longer than 25 days; a final decision must be taken within that period of time.

3. Without prejudice to the provisions of Article 40, the arrest shall continue where an appeal is made against the decision of the ""Tribunal da Relação"" ordering extradition; however, the period of arrest pending a decision on the appeal may not go beyond a period of 80 days from the date of the appeal.

4. Where a request for review is submitted to the Constitutional Court, the period of arrest pending a decision on the review may not go beyond a period of three months from the date of the request.

Article 53

Appearance of the person claimed

1. The authority that proceeds to the arrest of the person claimed shall, through the most expedite means that afford evidence in writing, immediately inform the public prosecutor attached to the ""Tribunal da Relação"" that has jurisdiction over the request.

2. Within 48 hours of his arrest, the person claimed must appear before the public prosecutor for the purpose of being heard; any property seized shall accompany the person.

3. The judge rapporteur shall hear the person after having appointed a legal counsel for that person if the latter has not done it himself.

4. The person shall be personally summoned to the hearing and informed of his right to be assisted by both a legal counsel and an interpreter.

5. Where for one reason or another the arrest cannot be examined by the ""Tribunal da Relação"", the person must appear before public prosecutor attached to the court of first instance that has jurisdiction over the area of the seat of the ""Tribunal da Relação"" that has jurisdiction over the request.

6. In the case mentioned in the preceding paragraph, the hearing shall have as its sole purpose for the judge of the court of first instance to examine whether the arrest was legal and whether it may continue; the public prosecutor shall take whatever measures are necessary in order to ensure that the person appears in the first working day that follows.

Article 54

Hearing of the person claimed

1. In the presence of the public prosecutor and the legal counsel of the person claimed, and if necessary with the assistance of an interpreter, the judge rapporteur shall proceed to the identification of the person and shall inform him

of his right to object to his extradition,

of his right to consent to his extradition,

of the possibility opened to him to relinquish the benefits of the rule of speciality in accordance with the applicable treaty law.

2. If the person claimed declares that he consents to being surrendered to the requesting State, the provisions of paragraphs 2 to 5 of Article 40 shall apply *mutatis mutandis*. If the person claimed declares that he objects to his extradition, the judge shall assess the reasons for the objection, should the person wish to state such reasons, and produce a written record of the hearing.

3. If the possibility is opened to the person claimed to relinquish the benefits of the rule of speciality, as mentioned in paragraph 1 above, a verbatim account of the information provided on the rule of speciality shall be written into the record of the hearing, along with the statements of the person; the provisions of paragraphs 2 to 5 of Article 40 shall apply *mutatis mutandis*.

4. The information mentioned in the preceding paragraph shall also be written into the record of the hearing, if under the applicable treaty law it is still possible for the person, after his surrender, to relinquish the benefits of the rule of speciality before the authorities of the requesting State.

5. Both the public prosecutor and the legal counsel may suggest questions for the judge, if he deems the questions appropriate, to put to the person.

6. The provisions of paragraphs 3 and 4 shall also apply to re-extradition.

Article 55

Objections of the person claimed

1. After the hearing of the person claimed, the file shall be entrusted to his legal counsel who may, within eight days, present in writing the person's objections to the extradition request, along with the reasons for the objections, and indicate ways and means of evidence compatible with the Portuguese law; the number of witnesses, however, cannot be in excess of 10.

Only the following grounds for objection shall be admitted:

the person detained claims not to be the person claimed, or

the person detained claims that one or more requirements for extradition have not been met.

3. Once the objections are put forward in writing, or once the time-limit for that procedure has expired, the file shall be submitted for a period of no longer than five days to the public prosecutor; the latter may put forward requests as he deems fit, subject to the limit on the number of witnesses as indicated in paragraph 1 above.

4. If property is seized, both the person claimed and the public prosecutor may put forward their views on the matter.

5. The ways and means of producing evidence that were indicated by the parties may, not later than the day before their being produced, be replaced by other ways and means, if such replacement does not entail any adjournment.

Article 56

Producing of evidence

1. Any steps requested or taken at the initiative of the judge, in particular steps taken in order to decide on the property seized, must be done within 15 days, in the presence of the person concerned, his counsel, an interpreter if necessary and the public prosecutor.
2. After the production of evidence, the public prosecutor and the counsel may each hold the file for a period of no longer than five days. They may produce submissions.

Article 57

Final decision

1. Where the person concerned has not objected in writing, or after the submissions have been produced in conformity with the provisions of paragraph 2 of Article 56, the judge shall have a period of ten days to examine the file and shall then forward it to each of the other two judges in chamber, for their examination, for a period of five days.
2. The file shall then be submitted to the next session of the chamber, with priority over other matters pending, for final decision; the final decision shall be taken according to the provisions of ordinary criminal procedure.

Article 58

Appeal

1. Both the public prosecutor and the person concerned shall enjoy the right to make an appeal within ten days of the decision.
2. The request for the appeal shall include submissions or otherwise the appeal shall be dismissed.
3. The other party shall have ten days to reply to the appeal.
4. The file shall be forwarded to the "Supremo Tribunal de Justiça" as soon as that reply is received or as soon as the ten days' time-limit is over.

Article 59

Decision on the appeal

1. Once the file is referred to one of the chambers of the criminal section of the "Supremo Tribunal de Justiça", the judge rapporteur shall have a period of ten days to prepare a draft decision. The file shall then be forwarded simultaneously to all the other judges in chamber, for eight days.
2. As soon as the file has been examined by all the judges, it shall be submitted to the next session of the chamber, with priority over other matters pending; not more than three days after the decision on the appeal becomes final, the file shall be returned to the ""Tribunal da Relação"".

Article 60

Surrender of the person

1. A certificate of the final decision ordering the extradition shall be required and shall be the only document required in order to surrender the person claimed.
2. Once the decision to extradite becomes final, the public prosecutor shall transmit that decision to the Ministry of Justice for the purposes stated in Article 27, and inform the Attorney-General's Office; the date of the surrender shall not be fixed later than 20 days after the date in which the decision to extradite became final.

Article 61

Time-limit for the surrender

1. The person concerned shall be removed from the Portuguese territory at the date that is fixed in accordance with the provisions of Article 60.
2. Should no-one show up to receive the person at that date, he shall be set free 20 days after that date.
3. That time-limit may be extended for another 20 days, inasmuch as the particular circumstances of the case so require, if reasons of force majeure, notably illness as described in paragraph 3 of Article 35 prevent surrender within that time-limit.
4. Any new request for the extradition of a person whose surrender did not take place within the time-limit mentioned in paragraph 2 above, or within any extension of that time-limit, may or may not be examined.
5. Once the person is surrendered, both the court and the Attorney-General's Office shall be informed.

Section III

Special procedural rules for cases of provisional arrest

Article 62

Powers

1. The judge mentioned in Article 51 above shall be empowered to order the provisional arrest; he shall not produce such an order unless he is satisfied with the authenticity, the regularity and the admissibility of the request; the warrant of arrest shall be handed over to the public prosecutor.
2. The authority who arrests the person shall bring him before the public prosecutor attached to the "Tribunal da Relação" that has jurisdiction over the request, for the purposes of the person being heard and of a decision being taken to the effect of ratifying or not the arrest and allowing or not its continuation; such a decision must be taken within a period of no more than 48 hours after the arrest.
3. The Attorney-General's Office shall be immediately informed of any provisional arrest; where provisional arrest should terminate according to the provisions of paragraph 5 of Article 38, an order for the release of the person shall be given.
4. The provisions of paragraphs 5 and 6 of Article 53 shall apply mutatis mutandis.

Article 63

Time-limits

1. Once the extradition request of a person provisionally arrested is received, the procedure provided for in Article 48 shall be completed within 15 days.
2. If the Minister of Justice deems the request to be admissible, it shall immediately be forwarded, via the Attorney-General, to the public prosecutor.
3. The arrest of the person shall terminate and be replaced by another coercive measure if the request is not submitted to court within 60 days of the date of the arrest.
4. The file shall immediately be referred to one of the chambers in the ""Tribunal da Relação""; the time-limits mentioned in paragraphs 1 and 2 of Article 51 shall be reduced to three days; the time-limit mentioned in paragraph 1 of Article 52 shall run as from the date of receipt of the request by the court.
5. Any decision by the Minister of Justice to the effect of refusing the request shall immediately be transmitted in accordance with the provisions of paragraph 2 above, for the purpose of releasing the arrested person.

Article 64

Non requested provisional arrest

1. Any authority who proceeds to an arrest according to the provisions of Article 39, shall bring the person before the public prosecutor of the ""Tribunal da Relação"" situated in the district where the person was arrested; the public prosecutor shall take steps for the hearing of the person, in accordance with paragraph 2 of Article 62.
2. If the arrest is upheld, it shall immediately be brought to the attention of both the Attorney-General's Office and, through the quickest channels, the foreign authority concerned; the latter shall be requested to inform urgently whether it will submit an extradition request; it shall also be requested to conform with the time-limits provided in paragraph 5 of Article 38.
3. The arrest shall be terminated after 18 days unless a reply is received to the question mentioned in the preceding paragraph, and it shall be terminated after 40 days if a positive reply is received but not followed by an extradition request.
4. The provisions of paragraphs 5 and 6 of Article 53 and those of Article 63 shall apply mutatis mutandis.

Article 65

Non-custodial coercive measures

The ""Tribunal da Relação"" shall be competent to decide upon any non-custodial coercive measures where such measures may apply under the provisions of Articles 38 and 64.

Section IV

Second surrender of a previously extradited person

Article 66

Arrest of the extradited person following his escape

1. The warrant of arrest mentioned in Article 42 shall be forwarded to the Central Authority, through the channels mentioned in this law, and shall contain or be accompanied by such information as is necessary in order to establish that the person concerned has previously been extradited from Portugal and has since escaped, before the end of the criminal proceedings against him, or before having served the sentence assigned to him.

2. The warrant of arrest shall be forwarded to the public prosecutor attached to the "Tribunal da Relação" which dealt with the extradition procedure; the public prosecutor shall provide for the implementation of the request.

Article 67

Implementation of the request

1. Once the implementation of the request has been requested, the judge, if he is satisfied that the request is regular and that the person in question is the same person that was previously extradited, shall make an order for implementation of the request.

2. Within eight days from the date of the arrest, the person concerned may object in writing to his being surrendered to the requesting State, on grounds that the requesting State violated the conditions under which extradition had been granted, indicating the nature of his evidence; the number of witnesses offered to substantiate his claim cannot exceed five.

3. If there is objection, the provisions of paragraphs 3 and 5 of Article 55 and the provisions of Articles 56 and 57, shall apply *mutatis mutandis*.

4. Any appeal against the decision on the request shall be dealt with according to the provisions of Articles 58 and 59.

Article 68

Second surrender of a previously extradited person

1. In accordance with the provisions of Article 60, the public prosecutor shall take such measures as are necessary in order to ensure the second surrender of the previously extradited person, where there has been no objection or as soon as the objections have been set aside, as applicable.

2. The warrant of arrest as executed shall replace the certificate mentioned in Article 60.

CHAPTER II

Extradition to Portugal

Article 69

Powers and procedure

1. The Minister of Justice shall be empowered to request the extradition to Portugal of any person against whom there are criminal proceedings pending in Portugal, from the foreign State on whose territory that person is.

2. The request and the accompanying documents shall be transmitted through the channels provided for in this law.

3. The Attorney-General's Office shall be empowered to organise the file on the basis of a request from the public prosecutor attached to the court in which the proceedings are pending.

4. The Minister of Justice may request to the foreign State to which extradition was requested that the Portuguese State, through a representative appointed to that effect, be allowed to participate in the extradition procedure.

Article 70

Re-extradition

The provisions of paragraphs 4 and 5 of Article 34 are applicable mutatis mutandis to re-extradition requested by Portugal

Article 71

International circulation of the request for provisional arrest

1. The judicial warrant for provisional arrest with a view to extradition must be forwarded by the public prosecutor attached to the competent court, to the Attorney-General's Office.

2. The Attorney-General's Office must forward the warrant to the National Bureau of INTERPOL and inform the court accordingly.

Article 72

Notification

Once extradition is granted, the Attorney-General's Office shall notify that to the judicial authority that requested it.

CHAPTER III

Final provision

Article 73

Legal costs; judicial recess

1. Extradition procedures shall be free of costs, save the provisions of paragraph 2, sub-paragraphs b) to d), and paragraph 4 of Article 26.

2. Extradition procedures shall be regarded as urgent and shall not stop during the periods of judicial recess.

CHAPTER IV

Special rules concerning simplified extradition

Article 74

Scope and purpose

The provisions of this Chapter aim at regulating extradition procedures in which the person claimed consents to his extradition, in conformity with the Convention on Simplified Extradition Procedure between the Member States of the European Union of 10 March 1995.

Article 75

Competent authority and time-limits

1. Any statement of consent to being extradited must be transmitted by the competent judge to the authority that requested the provisional arrest, not later than ten days after the arrest.
2. Where the person consents to being extradited, the judge must explain to him the meaning and consequences of him relinquishing the benefits of the rule of speciality, should that be admissible, and the effects of consent to re-extradition, as well as the time and terms in which such consent may be given; all shall be recorded in writing.
3. Not later than 20 days after the date of the consent mentioned in paragraph 1, the judge must decide whether or not to ratify any consent given pursuant to the provisions of paragraph 2
4. Before deciding, if necessary, the judge may request from the requesting authority any supplementary information and hear again the person arrested once he will have received that information.
5. The time-limits mentioned in paragraphs 1 and 3 above shall run as from the time of the statement of consent if the latter was given after expiration of the time-limit mentioned in paragraph 1 above.
6. Without prejudice to the provisions of the preceding paragraph, when a request for extradition is received, consent may be expressed only in accordance with the provisions of Article 54.
7. The provisions of Article 40 shall apply mutatis mutandis.
8. The provisions of this Article concerning time-limits and notifications shall apply to all cases in which Portugal is the requesting State.

CHAPTER V

Municipal application of the Convention applying the Schengen Agreement

Article 76

Purpose

The provisions of this Chapter aim at regulating the application of the provisions concerning extradition included in the Convention applying the Schengen Agreement, in the relations between Portugal and the other States that also apply that Convention.

Article 77

Extradition from Portugal

1. Any police authority that arrests a person on the basis of indications introduced in the Schengen Information System (SIS) shall bring the person before the public prosecutor attached to the "Tribunal da Relação" that has jurisdiction under the terms of Article 53.

2. The person arrested shall be accompanied by any available elements referring to that person as mentioned in paragraph 2 of Article 95 of the Convention applying the Schengen Agreement in particular the identity of the authority that requested the arrest, the existence or not of a warrant of arrest or equivalent, or a sentence, the nature and legal qualification of the offence, the description of the circumstances in which the offence was committed and the legal consequences of the offence.

3. Any judicial decision that assesses the validity of the arrest and any decision that ratifies the person's consent to be extradited must be communicated immediately to the Attorney-General's Office and the National Bureau of SIRENE.

4. Where there is no statement to the effect that the person claimed consents to his extradition, that fact is equally communicated to the Attorney-General's Office for the purpose of promoting that the extradition request be formalised by the requesting authority.

Article 78

Extradition to Portugal

1. For the purposes of Article 95 of the Convention, the judicial authority must take steps with the National Bureau of SIRENE with a view to the immediate inclusion in the SIS of the data concerning the person sought.

2. Any notification by a State Party to the Convention that the person sought has been found and arrested on its territory must immediately be communicated by the National Bureau of SIRENE to the court that issued the warrant and to the Attorney-General's Office with a view to the extradition request being formalised.

Part III

Transfer of criminal proceedings

CHAPTER I

Delegation of competence in criminal proceedings in favour of the Portuguese judicial authorities

Article 79

Principle

At the request of a foreign State, under the conditions and with the effects set out in the following Articles, proceedings may be taken or continued in Portugal for an offence committed outside the Portuguese territory.

Article 80

Specific requirements

1. Criminal proceedings may be taken or continued in Portugal for an act committed outside the Portuguese territory, subject to the general requirements provided for in this law, as well as the specific requirements that follow:

a) recourse to extradition is excluded;

b) the foreign State must have provided guarantees that it shall not take proceedings against the person concerned, for the same facts, if a final judgement is rendered by a Portuguese court in respect of the same person and for the same facts;

c) the facts for which criminal proceedings are requested must amount to an offence under both the law of the foreign State and under Portuguese law;

d) the maximum period of the punishment, or the measure, involving deprivation of liberty that is applicable with respect to the facts must be at least one year, or the maximum level of the pecuniary sanction involved must be at least the equivalent of 30 units of account in criminal procedure;

e) the person concerned must be a Portuguese national, or otherwise must have his habitual residence in Portugal;

f) acceptance of the request must be justified in terms of either the interest of good administration of justice or a better chance of rehabilitation of the person concerned should that person be sentenced.

2. Should the requirements laid down in the preceding paragraph be met, criminal proceedings may also be taken or continued in Portugal if:

a) criminal proceedings have already been instituted in Portugal against the same person for other facts, the latter being punishable with deprivation of liberty of at least one year, and the presence of the person before the court is guaranteed;

b) the person concerned is an alien or a stateless person habitually resident in Portugal and his extradition has been refused;

c) the requesting State deems that the presence in court of the person concerned cannot be ensured in that State but can be ensured in Portugal;

d) the requesting State deems that circumstances do not allow for the execution of an eventual sentence in that State, even through extradition, and circumstances allow for the execution of an eventual sentence in Portugal.

3. The provisions of the preceding paragraphs shall have no effect if the criminal reaction on the grounds of which the request was made already falls under the jurisdiction of the Portuguese courts by virtue of any other legal provision concerning the territorial jurisdiction of Portuguese courts.

4. The requirement of sub-paragraph e) of paragraph 1 may be dispensed with in the cases described in paragraph 4 of Article 32, if the circumstances of the case so require, in particular in order to avoid a situation where the trial cannot be held neither in Portugal nor abroad.

Article 81

Applicable law

The criminal reaction provided in the Portuguese law shall be applicable to the act for which criminal proceedings are taken or are continued in Portugal under the conditions mentioned in the preceding Article, save if the law of the requesting State is more favourable.

Article 82

Effects in the requesting State

1. The acceptance by Portugal of a request made by a foreign State implies that the latter relinquishes the proceedings for the same facts.
2. Once criminal proceedings are taken or continued in Portugal, the requesting State, after having been duly notified that the person left the Portuguese territory, regains the right to prosecute that person for the same facts.

Article 83

Procedure

1. The request made by the foreign State shall include the original or an authenticated copy of the criminal file, if it exists; it shall be submitted by the Attorney-General to the Minister of Justice.
2. Should the Minister of Justice decide that the request is admissible, he shall forward the file to the competent court; the latter shall summon the person concerned to appear in court and, if applicable, shall notify his counsel.
3. If the person does not appear in court, the court shall make sure that the summons were legally carried out and, if the person is not represented by a counsel or, if represented, the counsel did not appear either, shall appoint a counsel; every such step shall be recorded in writing.
4. The judge may, ex officio or at the request of the public prosecutor, the person concerned or that person's counsel, order that the summons and notifications mentioned in paragraph 2 above shall be repeated.
5. The person concerned, or his counsel, shall be invited to state reasons for or against the acceptance of the request; the public prosecutor shall enjoy the same right.
6. If necessary, the judge, at his own initiative or at the request of the public prosecutor, the person concerned or his counsel, shall take such steps as he deems indispensable with a view to the producing of evidence; for this purpose he will fix a time-limit not in excess of 30 days.
7. Once such steps have been taken or once that time-limit has expired, the file shall be handed for examination, first to the public prosecutor, then to the person concerned; each shall be given ten days to produce submissions in writing.
8. The judge shall then give his decision within the eight following days; the decision may be appealed against.
9. Whilst the procedure provided for in this Article runs, the judge may decide to adopt any provisional coercive measures, including financial guarantees, provided for in the Code of Criminal Procedure.

Article 84

Effects of the decision with respect to the request

Where the decision is in favour of the request, the judge, as appropriate, either:

- a) forwards the file to the judicial authority that is competent to take or continue proceedings, or
- b) takes steps to continue the proceedings if it is within his powers to do so.

Article 85

Validation of the procedural steps taken abroad

The judicial decision to the effect of continuing the foreign criminal proceedings automatically gives the same validity to the procedural steps taken abroad, as those taken before a Portuguese judicial authority, save where such steps would be considered inadmissible under the terms of the Portuguese criminal procedure law.

Article 86

Revocation of the decision

1. At the request of the public prosecutor, the person concerned or his counsel, the judicial authority may revoke the decision if, while the proceedings are pending:
 - a) any of the grounds justifying inadmissibility that are provided for in this law come to the knowledge of the parties;
 - b) the presence of the person concerned at his trial cannot be ensured, or the presence of that person for the purpose of carrying out a sentence involving deprivation of liberty in the cases mentioned in paragraph 2 of Article 82 in which the person left the Portuguese territory, cannot be ensured.
2. Such a decision shall be open to an appeal.
3. Once such a decision becomes enforceable, it puts an end to the jurisdiction of the Portuguese judicial authority and implies the return of the criminal file to the requesting State.

Article 87

Notification

1. The following shall be communicated to the Central Authority for the purpose of being notified to the requesting State:
 - a) the decision on the admissibility of the request;
 - b) the decision to quash the former;
 - c) the judgement passed;
 - d) any other decision that terminates the proceedings.
2. Notification shall be accompanied by a certificate or an authenticated copy of the decision that is notified.

Article 88

Territorial jurisdiction

The provisions of Article 22 of the Code of Criminal Procedure shall apply to the acts of international co-operation provided for in this Chapter, save the cases in which the question of territorial jurisdiction is already settled.

CHAPTER II

Delegation of competence in criminal proceedings in favour of a foreign State

Article 89

Principle

The power to take criminal proceedings, or to continue criminal proceedings pending in Portugal, for an act that constitutes an offence under Portuguese law may be delegated to a foreign State that accepts it, subject to the requirements laid down in the following Articles.

Article 90

Specific requirements

1. Delegation in favour of a foreign State of the powers to take or to continue criminal proceedings shall be subject to the general requirements provided for in this law, as well as the specific requirements as follows:

- a) the facts must be an offence under both the Portuguese law and the law of the other State;
- b) the maximum period of the punishment, or the measure, involving deprivation of liberty that is applicable must be at least one year, or the maximum level of the pecuniary penalty involved must be at least the equivalent of 30 units of account in criminal procedure;
- c) the person concerned must either be a national of the foreign State involved or, if he is either a national of a third State or a stateless person, must have his habitual residence in that former State;
- d) the delegation of powers must be justified in terms of either the interests of good administration of justice or a better chance of rehabilitation of the person- concerned should that person be sentenced.

2. Should the requirements laid down in the preceding paragraph apply, delegation of powers may also take place if:

- a) the person concerned is serving a sentence in the foreign State, for an offence which is more serious than the offence committed in Portugal;
- b) the person concerned has his habitual residence in a foreign State and the extradition of that person, either cannot be obtained for reasons pertaining to the national law of that State, or was requested and refused by that State;
- c) the person concerned has been extradited to the foreign State for an offence other than the offence under consideration and it is deemed that the delegation of powers allows for a better chance of rehabilitation of that person.

3. The delegation of powers may also take place, regardless of the nationality of the person concerned, if the Portuguese authorities deem that the presence of that person in court for his trial in Portugal cannot be ensured, whilst his presence in court for his trial in the foreign State can be ensured.

4. Exceptionally, the delegation of powers may also take place regardless of the requirement relating to habitual residence, if the circumstances of the case so require, in particular in order to avoid a situation where the trial cannot be held neither in Portugal nor abroad.

Article 91

Procedure for the delegation of powers

1. At the request of either the public prosecutor or the person concerned, and after adversarial proceedings during which reasons for and against the use of this form of international co-operation may be given, the court which has jurisdiction over the facts involved shall assess the need for the delegation of powers.
2. The public prosecutor or the person concerned, as appropriate, shall each be given a period of ten days within which they may react to the request mentioned in paragraph 1.
3. After such reaction or after the period of ten days, the judge shall take a decision within eight days, granting or refusing the request.
4. If the person concerned is on the territory of a foreign State, he may request the transfer of proceedings, either before an authority of that State, or before the Portuguese consular authority; the request may be made by the person concerned, by a person who legally represents him or by his counsel.
5. The judicial decision shall be open to an appeal.
6. Any final decision to grant the request shall have the effects of suspending the time-limitation period and discontinuing the proceedings, without prejudice of any urgent measures eventually required; that decision shall be forwarded by the Attorney-General to the Minister of Justice, along with a certified copy of the file, for the purpose of being examined by the latter.

Article 92

Communication of requests

The request from the Minister of Justice to the foreign State shall be transmitted through the channels provided for in this law.

Article 93

Effects of the delegation of powers

1. Once the delegation of powers to take or to continue criminal proceedings has been accepted by a foreign State, no new proceedings shall be taken in Portugal for the same facts.
2. The time-limitation period under Portuguese law shall be suspended until termination of the proceedings in the foreign State, including the enforcement of the sentence, if any.
3. Portugal shall, however, re-acquire the right to take proceedings for the same facts if, either:
 - a) the foreign State involved sends notification that it cannot conclude the proceedings transferred to it, or

b) any reason is disclosed that, according to this law, would have prevented the request for delegation from being granted.

4. Any judgement involving a sanction or a measure, rendered in a foreign State upon proceedings that were transferred to that State, shall be recorded in the Portuguese criminal records and have the same effects as if it had been rendered by a Portuguese court.

5. The provision of the preceding paragraph shall apply to any decision that terminates the criminal proceedings in the foreign State.

CHAPTER III

Common provisions

Article 94

Legal costs

1. Any legal costs due for proceedings abroad, before the transfer of such proceedings to Portugal, shall add to the legal costs due for the proceedings continued in Portugal and shall be claimed together with latter; such costs shall not be reimbursed to the foreign State concerned.

2. Portugal shall inform the foreign State of the amount of legal costs due for the proceedings, before the latter are transferred to that State; Portugal shall not require the reimbursement of such legal costs.

Part IV

Enforcement of criminal judgements

CHAPTER I

Enforcement of foreign criminal judgements

Article 95

Principle

1. Final and enforceable foreign criminal judgements may be enforced in Portugal under the conditions laid down in this law.

2. The request for delegation must be made by the sentencing State.

Article 96

Specific requirements

1. Any request for the enforcement in Portugal of a foreign criminal judgement shall be admissible only subject to the general requirements provided for in this law, as well as the following requirements:

a) a sentence imposing a criminal reaction must have been rendered for an offence in respect of which the foreign State has jurisdiction;

b) if the sentence was pronounced during a trial in the absence of the sentenced person, the latter must

have been given the legal possibility of requesting a new trial or introducing an appeal;

c) the enforcement of the sentence must not run counter to the fundamental principles of the Portuguese legal system;

d) the facts involved must not be the subject of criminal proceedings in Portugal;

e) the facts involved must amount to a criminal offence under Portuguese law;

f) the sentenced person must be a Portuguese national, or otherwise must have his habitual residence in Portugal;

g) the enforcement of the sentence in Portugal must be justified in terms of a better chance of, either the rehabilitation of the sentenced person, or compensation for damages caused by the offence;

h) the sentencing State must have provided guarantees that, once the sentence has been enforced in Portugal, it shall consider the criminal liability of the person concerned to be extinguished;

i) the term to be served under the sentence must not be less than one year or, in case of a pecuniary sanction, it should correspond at least to the equivalent of 30 units of account in criminal procedure;

j) where the sentence involves deprivation of liberty, the sentenced person must give his consent.

2. Without prejudice to the provisions of the preceding paragraph, a foreign judgement may also be enforced in Portugal if the person concerned is already serving in Portugal a sentence for any offence other than the offence for which the foreign judgement was passed.

3. The enforcement in Portugal of a foreign sentence involving deprivation of liberty shall also be admissible, even where the requirements provided for in paragraph 1, sub-paragraphs g) and j) above are not met, if, in case of escape to Portugal or other situation in which the person is present in Portugal, the extradition of the person concerned, for the offence for which he was sentenced, has been refused.

4. The provisions of the preceding paragraph shall also apply, subject to an agreement between Portugal and the foreign State concerned, once the person concerned has been heard, to the cases in which expulsion will be imposed once the sentence has been served.

5. The requirement provided for in paragraph 1, sub-paragraph i), may be dispensed with in special cases, notably where the health of the sentenced person, or reasons pertaining to his family or his profession, so dictate.

6. The enforcement of the sentence may however take place, notwithstanding the requirements provided for in paragraph 1, when Portugal, in accordance with the provisions of paragraph 2 of Article 32, will have previously extradited a Portuguese national.

Article 97

Execution of decisions taken by administrative authorities

1. Final decisions taken in proceedings for offences as mentioned in paragraph 3 of Article 1 may also be enforced, where the person concerned was given the possibility of appealing to a judicial authority.

2. The communication of requests shall be made according to the provisions of treaties, conventions or agreements to which Portugal is a party or, otherwise, through the Central Authority in accordance with the provisions of this law.

Article 98

Limits to the enforcement

1. The enforcement of a foreign judgement shall be limited to:
 - a) the enforcement of a sentence involving deprivation of liberty and, subject to property belonging to the sentenced person having been found in Portugal, the enforcement of a sentence involving the payment of a sum of money;
 - b) the confiscation of proceeds, objects or instrumentalities of the offence;
 - c) the enforcement of any decision concerning civil law compensation should the claimant request it.
2. Any order to the effect of exacting the legal costs shall be limited to the costs due to the requesting State.
3. The enforcement of a sentence involving the payment of a sum of money implies the conversion of the amount thereof into escudos at the rate of exchange ruling at the day when the decision reviewing and confirming the sentence was taken.
4. Ancillary sanctions and disqualifications shall be enforced only if enforcement can have practical effects in Portugal.

Article 99

Documents and procedure

1. The request must be submitted by the Central Authority to the Minister of Justice for examination.
2. The request must be accompanied by a certificate or an authenticated copy of the judgement to be enforced, the statement of consent of the person concerned where the provisions of sub-paragraph j) of paragraph 1 of Article 96 apply, as well as information concerning the length of provisional arrest or the length of the sentence already served.
3. If the judgement concerns more than one person or imposes several criminal reactions, the request shall be accompanied by a certificate or an authenticated copy of that part of the judgement in respect of which enforcement is sought.
4. Should the Minister of Justice deem the request admissible, the file must be forwarded via the Attorney-General to the public prosecutor attached to the competent "Tribunal da Relação" in accordance with the provisions of Article 235 of the Code of Criminal Procedure, for the public prosecutor to promote the implementation of the procedure concerning review and confirmation of the judgement.
5. The public prosecutor shall request that the sentenced person, or his counsel, be heard and state their views on the request, unless consent has already been given by that person or unless the original request for the delegation of powers to enforce came from that person.

Article 100

Review and confirmation of foreign judgements

1. Foreign judgements shall be enforceable only after they are reviewed and confirmed, according to the provisions of the Code of Criminal Procedure and the provisions of sub-paragraphs a) and c) of paragraph 2 of Article 6 of this law.

2. When deciding on the review and confirmation of a foreign judgement, the court shall be bound by the findings as to the facts, insofar as they are deemed to be proved by the foreign judgement;
shall not convert a sanction involving deprivation of liberty into a pecuniary sanction;
shall in no circumstances aggravate the sanction imposed by the foreign court.
3. If the court deems that the facts are not clear, or are insufficient, or that there are facts that are missing, it shall request the necessary supplementary information; confirmation of the judgement shall be denied where the information mentioned in the preceding paragraph is not possible to obtain.
4. The co-operation procedures provided for in this Chapter shall be of an urgent nature and shall not be interrupted during periods of judicial recess.
5. Where the request concerns a person under arrest, a decision must be taken within six months of the date in which the request reached the court.
6. Where the request concerns the enforcement of a sentence involving deprivation of liberty, in the cases mentioned in paragraph 5 of Article 96, the delay provided for in the preceding paragraph shall be shortened to two months.
7. If an appeal is made, the delays mentioned in paragraphs 5 and 6 above shall be extended respectively by three months and one month.

Article 101

Applicable law; effects of enforcement

1. Foreign judgements shall be enforced in conformity with the Portuguese law.
2. Foreign judgements enforced in Portugal shall produce the same effects that the Portuguese law accords to judgements rendered by Portuguese courts.
3. Only the foreign State that requests the enforcement of a sentence shall have the right to decide on any application for review of that sentence.
4. Both the foreign State and Portugal may exercise the right of amnesty, pardon or commutation.
5. The court which is empowered to enforce the judgement shall end the enforcement:

as soon as it comes to its knowledge that the sentenced person was granted amnesty, pardon or commutation in such a way as to justify the end of the enforcement of the sentence and the ancillary sanctions;
where it comes to its knowledge that an application was lodged for review of the sentence or of any other decision, if that application might result in a decision that renders the sentence unenforceable;
if it concerns a pecuniary sanction and the sentenced person pays the amount of the sanction in the requesting State.
6. Partial pardon, commutation and the substitution of the sanction with an alternative sanction shall be taken into consideration.
7. The foreign State must inform the court of any of the facts mentioned in paragraphs 5 above that might result in the enforcement being discontinued.
8. As soon as enforcement begins in Portugal, the requesting State must relinquish its right to enforce the same judgement; the right of enforcement shall however revert to the latter State (a) where the

sentenced person escapes and (b) where that State is informed that the sentence, if it involves the payment of a sum of money cannot be totally or partially enforced.

Article 102

Prison in which the sanction shall be enforced

1. When a decision to the effect of confirming the foreign sentence becomes final and enforceable, and if that decision involves deprivation of liberty, the public prosecutor shall take measures to ensure that the person is brought to the prison which is closest to the person's place of residence in Portugal, or to his latest place of residence in Portugal.

2. If it is not possible to identify that person's place of residence in Portugal, or his latest place of residence in Portugal, he shall be taken to one of the prisons situated in the judicial area of Lisbon.

Article 103

Court competent for the enforcement

1. The court of first instance of the judicial area where the sentenced person has his residence in Portugal, or where he had his latest residence in Portugal, shall be empowered to enforce the sentence, as reviewed and confirmed; should it not be possible to identify any such residence, the court of first instance of Lisbon shall be thus empowered.

2. The provisions of the preceding paragraph shall apply without prejudice to the specific powers of the "Tribunal de Execução de Penas" (court of supervision of the enforcement of sanctions).

3. For the purposes of the provisions of paragraph 1 above, the "Tribunal da Relação" shall forward the file to the court which is empowered to enforce the sentence.

CHAPTER II

Enforcement abroad of Portuguese criminal judgements

Article 104

Requirements

1. The powers to enforce a Portuguese criminal judgement may be transferred to a foreign State only if, other than the general requirements provided for in this law:

a) the sentenced person is either a national of that State, or a national of a third State with his habitual residence in the former State, or yet a stateless person with his habitual residence in the former State;

b) the sentenced person is a Portuguese national with his habitual residence in that State;

c) it is not possible or advisable to obtain the extradition of the person concerned for the purpose of enforcement of the Portuguese sentence;
there are good reasons to believe that the transfer will provide better chances for the rehabilitation of the person concerned;
the sentenced person, once informed of the consequences of the transfer of enforcement, consents to it;

the period of the punishment or measure is not shorter than one year or, where the sentence is a pecuniary sentence its amount is not shorter than the equivalent of 30 units of account in criminal

procedure; however, upon agreement with the foreign State concerned, this requirement may be dispensed with, in special cases, notably having regard to the health of the sentenced person or family or professional reasons.

2. Where the requirements provided for in the preceding paragraph, as applicable, are met, transfer shall also be admissible if the person concerned is serving a sentence involving deprivation of liberty in the foreign State for facts other than those for which he was sentenced in Portugal.

3. The enforcement abroad of a Portuguese sentence involving deprivation of liberty shall also be admissible, even where the requirements provided for in paragraph 1, sub-paragraphs d) and e) above are not met, if the sentenced person is present on the territory of the foreign State and extradition for the facts mentioned in the sentence is not possible or has been refused.

4. Upon agreement with the foreign State concerned and where the circumstances of the case point in that direction, the provisions of paragraph 3 may also apply to the execution of ancillary sanctions of expulsion.

5. Transfer shall be made subject to the proviso that the foreign State shall not aggravate the sanction imposed.

Article 105

Provisions applicable

1. The provisions of paragraphs 1, 2 and 4 of Article 98 concerning limits to the execution, and the provisions of paragraphs 2 to 7 of Article 101 concerning the effects of the execution, shall apply *mutatis mutandis*.

2. Where the sentenced person does not have enough property in Portugal to guarantee the full enforcement of a sanction involving the payment of a sum of money, transfer of the enforcement of the remaining part of the sanction shall be admissible.

Article 106

Effects of the transfer

1. The acceptance by a foreign State of the powers to enforce the Portuguese judgement shall involve that Portugal relinquishes its powers to enforce it.

2. Where the foreign State accepts to enforce the Portuguese judgement, the court shall discontinue the enforcement as from the date of the beginning of enforcement in that State, until enforcement is concluded or until that State informs that enforcement became impossible.

3. At the time of the surrender of the sentenced person, the foreign State shall be informed both of the duration of the deprivation of liberty already served in Portugal and the duration of deprivation of liberty that remains to be served.

4. The provisions of paragraph 1 above shall not preclude Portugal from recuperating its powers to enforce the judgement where the sentenced person escapes or, where the sanction imposed is a pecuniary sanction, as from the time when Portugal is informed that the sanction, or part of it, was not enforced.

Article 107

Procedure

1. Requests for the transfer of enforcement to a foreign State must be submitted to the Minister of Justice by the Attorney-General, at the previous request of either that State, the public prosecutor, the sentenced person; the "assistente" or the party claiming damages it may also be submitted by the public prosecutor, at his initiative or at the request of the sentenced person, the "assistant" or a party claiming damages; requested by parties claiming damages shall be limited in scope to the execution of that part of any sentence that imposes the payment of damages.
2. The Minister of Justice must take a decision within a period of time not longer than 15 days.
3. Should the Minister of Justice deem the request admissible, he shall immediately forward the file, via the Attorney-General's Office, to the public prosecutor attached to the ""Tribunal da Relação"l" for him to implement the applicable procedure.
4. Where the consent of the sentenced person is necessary, such consent, if given, must be given before that court, unless the person is abroad, in which case consent may be given before a Portuguese consular authority or before a foreign judicial authority.
5. If the sentenced person is present in Portugal and the request for transfer did not originate in him, the public prosecutor shall request that the person be notified of his right to state his views within ten days.
6. Should the sentenced person abstain from stating his views, his silence shall be deemed to mean acquiescence with the request; the notification mentioned in paragraph 5 shall warn the person accordingly.
7. For the purposes mentioned in paragraphs 4 and 6 above, a letter rogatory shall be forwarded to the foreign authority or an official communication shall be sent to the Portuguese consular authority; in either case, a time-limit shall be fixed.
8. The ""Tribunal da Relação"l" may take such steps as it deems necessary in order to be in a position to take a decision, including requesting the submission of the criminal file relating to the sentence.

Article 108

Time-limits

1. The co-operation procedures regulated in this chapter shall be regarded as urgent and shall not stop during the periods of judicial recess.
2. Where the request concerns the enforcement of a sentence involving deprivation of liberty, it must be decided within six months from the date in which it was registered in the court, save the cases mentioned in the second par of sub-paragraph f) of paragraph 1 of Article 104 in which the time-limit is two months.

Article 109

Outgoing requests

1. Following any decision in favour of the transfer, a request shall be forwarded by the Minister of Justice, through the Central Authority, to the foreign State, accompanied by the following documents:
 - a) a certificate or an authenticated copy of the Portuguese sentence, mentioning the date as from which it became enforceable;
 - b) a statement mentioning the duration of the deprivation of liberty already served until the date of the request;

c) the text of the consent of the person concerned, if applicable.

2. Where the competent foreign authority notifies that the request is accepted, the Central Authority shall request to be kept informed of the enforcement until it is completed.

3. Any information received, such as provided for in the previous paragraph, shall be forwarded to the court which rendered the sentence.

CHAPTER III

Proceeds of fines, confiscated property and provisional measures

Article 110

Proceeds of fines and confiscated property

1. The proceeds of any fines imposed by foreign sentences enforced in Portugal shall revert to the Portuguese State.

2. If however the sentencing State so requires, such proceeds may be rendered to it on the condition that under the same circumstances reciprocity would apply.

3. The provisions of both preceding paragraphs shall apply mutatis mutandis where the enforcement of a Portuguese sentence is transferred to a foreign State.

4. Property confiscated shall revert to the State of enforcement, but may however be remitted to the sentencing State if it so requires, if the property is of special interest to it and if reciprocity is ensured.

Article 111

Coercive measures

1. At the request of the public prosecutor and in the framework of the procedure for the review and confirmation of a foreign judgement for the purpose of enforcement of a sentence involving deprivation of liberty, the "Tribunal da Relação" may decide to impose on the sentenced person such coercive measures as it deems fit, if that person is in Portugal.

2. Where provisional arrest is the coercive measure imposed, the measure shall be ended after expiration of the time-limits provided for in paragraphs 4 and 5 of Article 100, if by that time the decision of confirmation is still not forthcoming.

3. Provisional arrest may in such a case be replaced by another coercive measure, in conformity with the law of criminal procedure.

4. Any decision concerning coercive measures shall be open to an appeal.

Article 112

Provisional measures

1. At the request of the public prosecutor, the court may decide to impose such provisional measures as it deems necessary in order to ensure the possibility of enforcing a sentence where the safe-keeping of property is at stake.

2. Any decision taken upon such a request shall be open to an appeal; appeals against decisions imposing such measures shall not suspend the implementation thereof.

Article 113

Provisional measures taken abroad

1. The request for transfer of the enforcement of a Portuguese judgement to a foreign State may be accompanied by a request that coercive measures be taken with respect to the sentenced person, should the latter be on the territory of that State.

2. The provisions of the preceding paragraph shall also apply to any provisional measures aimed at ensuring the possibility of enforcing a sentence where the safekeeping of property is at stake.

CHAPTER IV

Transfer of sentenced persons

Section I

Common provisions

Article 114

Scope

This Chapter applies to the enforcement of criminal judgements where such enforcement carries with it the transfer of a person sentenced to a sanction or measure involving deprivation of liberty and where the transfer results from the person's request or Depends on the person's consent.

Article 115

Principles

1. If the general requirements provided for in this law and in the following articles are met, any person sentenced by a foreign court to a sanction or a measure involving deprivation of liberty may be transferred to Portugal in order to serve the sentence imposed on him.

2. In the same way and for the same purposes, any person sentenced in Portugal to a sanction or measure involving deprivation of liberty may be transferred to the territory of a foreign State.

3. The transfer may be requested either by a foreign State or by Portugal, in both cases provided that it is either at the request or with the express consent of the sentenced person.

4. The transfer is also subject to the existence of an agreement between the State in which the person was sentenced and the State to which the transfer should be requested.

Article 116

Information to sentenced persons

The prison administration shall inform all foreign persons sentenced in Portugal of their right to request their transfer in conformity with this law.

Section II

Transfer out

Article 117

Information and supporting documents

1. Where the person concerned expresses his interest in being transferred to a foreign State, the Central Authority shall so inform that State with a view to obtaining its agreement; that information shall include:

- a) name, date and place of birth, and nationality of the person concerned;
- b) his address in that State, where applicable;
- c) a statement of the facts upon which the sentence was based;
- d) the nature and duration of and date in which the person started serving the sanction or measure.

2. The following information shall also be forwarded to the foreign State:

a certificate or an authenticated copy of the sentence and of the text of the legal provisions that apply to the case;

a statement indicating the duration of the sanction or measure that was already served, duration of provisional arrest, reduction of the sentence and any other facts pertaining to the enforcement of the sentence;

a statement on the consent of the person concerned to be transferred;
if applicable, any medical or social report relating to the person concerned and in particular to any medical treatment undergone by that person in Portugal and any recommendations as to the continuation of such treatment.

Article 118

Powers

1. The Public Prosecutor at the Court for Execution of Penalties having jurisdiction, on his own initiative or at the request of the applicant, shall process the request for transfer.

2. Requests for transfer must be forwarded as soon as the sentence becomes enforceable.

3. Requests shall be forwarded by the Attorney-General's Office to the Minister of Justice for examination.

4. Where the circumstances of the case so justify, the Minister of Justice may request an opinion from the Attorney-General's Office, the prison administration and the Institute for Social Rehabilitation; the opinions requested shall be produced within 10 days.

5. The person concerned shall be informed in writing of all the decisions taken subsequent to the request.

Article 119

Request and supporting documents

1. Where a person expressed to a foreign State the wish to be transferred, that State should forward, with the request, the following documents:
 - a) a statement indicating that the sentenced person either is a national of that State or has his habitual residence on its territory;
 - b) a copy of the legal provisions from which it can be assumed that the facts upon which the Portuguese sentence was based also amount to a punishable offence in that State;
 - c) any other pertinent documents.
2. The information listed in paragraph 2 of Article 117 shall be forwarded to the foreign State, save if the request is summarily rejected.

Article 120

Decision

1. Where the Minister of Justice deems the request to be admissible, it shall be forwarded by the Attorney-General's Office to the public prosecutor attached to the ""Tribunal da Relação"" that has jurisdiction in the area of the prison where the person concerned is.
- 2.. The public prosecutor shall take steps to ensure that the person concerned is heard by the judge; the provisions of the Code of Criminal Procedure relating to the hearing of arrested persons shall apply.
3. The ""Tribunal da Relação"" shall take a decision on the request, after having determined that the person concerned, fully knowledgeable of the legal consequences thereof, voluntarily consented to his transfer.
4. A consular agent or any official appointed with the agreement of the foreign state shall be granted the possibility of verifying whether or not the consent was given in conformity with the provisions of the preceding paragraph.

Article 121

Effects of transfer

1. The transfer of the person to a foreign State shall have the effect of suspending the enforcement of the sentence in Portugal.
2. Portugal may no longer enforce the sentence after the person has been transferred if the foreign State communicates that a judicial decision has deemed the sentence as having been fully enforced.
3. Where any court applies a measure of amnesty, pardon or commutation, the foreign State shall be informed accordingly through the Central Authority.

Section III

Transfer in

Article 122

Request

1. Where a person sentenced in a foreign State expresses his wish to be transferred to Portugal, the Attorney-General shall forward to the Minister of Justice the information mentioned in Article 117 that he will have received from that State for the purpose of the Minister examining the admissibility of the request.
2. The provisions of the preceding paragraph shall also apply in the cases in which the request comes from the foreign State.
3. The Minister of Justice may request an opinion from the Attorney-General's Office, the prison administration and the Institute for Social Rehabilitation; the opinions requested shall be produced within 10 days.
4. The provisions of paragraph 5 of Article 118 shall apply mutatis mutandis.

Article 123

Specific requirements

1. Once a request for transfer to Portugal is accepted, the file shall be forwarded through the Attorney-General's Office to the public prosecutor at the "Tribunal da Relação" which has jurisdiction in the place of residence indicated by the person concerned, in order to engage a procedure of revision and confirmation of foreign sentence.
2. When the judicial decision on the review and confirmation of the foreign sentence becomes enforceable, that decision shall be transmitted by the Central Authority to the requesting State for the purpose of the transfer being carried out.

Section IV

Information concerning the enforcement and transit

Article 124

Information on the enforcement

1. All information concerning the enforcement of the sentence shall be transmitted to the requesting State; that information shall include:
 - a) the date on which enforcement of the sentenced has been completed, as decided upon by way of a judicial decision;
 - b) if applicable, notice of the escape of the person concerned prior to the sentence having been fully enforced.
2. At the request of the State that requested the transfer, a special report on the way in which enforcement took place and the results thereof, shall be forwarded to it.

Article 125

Transit

Authorisation for the transit through the Portuguese territory of a person being transferred from one State to another may be granted, at the request of any such State; the provisions of Article 43 shall apply *mutatis mutandis*.

Part V

Supervision of conditionally sentenced or conditionally released offenders

CHAPTER I

General

Article 126

Principles

1. International co-operation with a view to the supervision of conditionally sentenced or conditionally released offenders habitually resident on the territory of the State to which such co-operation is requested, shall be admissible under the terms of the provisions of the Articles that follow.
2. Co-operation as mentioned in the preceding paragraph shall aim at:
 - a) facilitating the social rehabilitation of the offender through the adoption of adequate measures;
 - b) supervising the behaviour of the person concerned with a view either to order a criminal reaction on that person or to enforce a criminal reaction already ordered.

Article 127

Subject-matter

1. Co-operation provided for in this Part may consist in one of the following modalities:
 - a) supervision of the sentenced person;
 - b) supervision and eventual enforcement of the sentence, or
 - c) full enforcement of the sentence.
2. Where a request for co-operation under one of the above-mentioned modalities is received, it may be refused and one of the other modalities, if deemed to be more adequate, proposed in its stead; such a counter-proposal shall have no effect unless it is accepted by the requesting State.

Article 128

Competence

Co-operation shall be made subject to a request from the State on whose territory the judgement was rendered.

Article 129

Double incrimination

The offence with respect to which the request for co-operation is made must be punishable under both the law of the requesting and the requested State.

Article 130

Optional refusal

Notwithstanding the general requirements provided for in this law, co-operation requested to Portugal may be refused if:

a) the decision with respect to which the request is made was taken in absentia and there was no legal possibility to have a new trial or for an appeal;

b) that decision is not compatible with the underlying principles of the Portuguese criminal law, notably if in view of the age of the person concerned, that person shall not have been subject to criminal proceedings in Portugal.

Article 131

Request

1. Any request made to Portugal shall be submitted by the Central Authority to the Minister of Justice.
2. The Minister of Justice may request an opinion from any agency that is empowered to follow the measures imposed in the sentence.
3. If the Minister of Justice accepts the request, the Attorney-General's Office shall forward it to the public prosecutor attached to the "Tribunal da Relação" that has jurisdiction in the area of the residence of the person concerned for obtaining a judicial decision on the admissibility of the request.

Article 132

Information

1. The decision on the request for co-operation shall be immediately communicated by the Central Authority to the requesting State and, in case of total or partial refusal, reasons shall be given.
2. Where the request is accepted, the Central Authority shall also communicate to the requesting State any circumstances that might affect either the implementation of the supervision measures or the enforcement of the sentence.

CHAPTER II

Supervision

Article 133

Supervision measures

1. The foreign State that requests no more than supervision shall inform the Portuguese authorities of the conditions imposed on the offender and, if applicable, of the supervisory measures with which the latter must comply during the period of probation.
2. Where the request is accepted, the prescribed supervisory measures shall, if necessary, be adapted by the court to the measures provided for in the Portuguese law.
3. In no case may the supervisory measures applied by Portugal, as regards either their nature or their duration, be more severe than those prescribed in the decision taken in the foreign State.

Article 134

Consequences of accepting a request

Acceptance of a request for supervision shall carry the following duties:

- a) to ensure co-operation between the authorities and bodies responsible, on the Portuguese territory, for supervising and assisting offenders;
- b) to inform the requesting State of all measures taken and their implementation.

Article 135

Revocation and expiration

1. Should the offender become liable to revocation of the conditional suspension of his sentence either because he has been prosecuted or sentenced for a new offence, or because he has failed to observe the prescribed conditions, the necessary information shall be supplied to the requesting State automatically and without delay.
2. When the period of supervision expires, the necessary information shall be supplied to the requesting State.

Article 136

Powers of the requesting State

The requesting foreign State shall alone be competent to judge, on the basis of the information and comments supplied to it, whether or not the offender has satisfied the conditions imposed upon him, and, on the basis of such appraisal, to take any further steps provided for in its own legislation; it shall inform the Portuguese authorities of its decision.

CHAPTER III

Supervision and enforcement of sentences

Article 137

Consequences of revocation of the conditional suspension of the sentence

1. After revocation of the conditional suspension of the sentence by the foreign State, Portugal shall become empowered to enforce the said sentence, upon an application by that State.

2. The enforcement shall take place in accordance with the Portuguese law, after verification of the authenticity of the request for enforcement and its compatibility with the terms of this law concerning the revision and confirmation of foreign sentences.
3. Portugal shall transmit to the requesting State a document certifying that the sentence has been enforced.
4. The court shall, if need be, substitute for the penalty imposed in the requesting State, the penalty or measure provided for by Portuguese law for a similar offence.
5. In the cases mentioned in the preceding paragraph, the nature of the substitute sanction or measure shall correspond as closely as possible to that of the original decision, without however exceeding the maximum penalty provided for by the Portuguese law, nor may it be longer or more severe than that imposed by the foreign State.

Article 138

Powers with respect to conditional release

The Portuguese court alone shall be empowered to grant the offender conditional release.

Article 139

Amnesty, pardon and commutation

Amnesty, general pardon and commutation may be granted either by the foreign State or Portugal.

CHAPTER IV

Full enforcement of the sentence

Article 140

Applicable provisions

Where the foreign State requests the full enforcement of the sentence, the provisions of paragraphs 2 to 5 of Article 137 and Articles 138 and 139 shall apply *mutatis mutandis*.

CHAPTER V

Co-operation requested by Portugal

Article 141

Applicable provisions

1. Once a request made by Portugal is accepted, the Central Authority shall so inform the authorities responsible for following the implementation of the measures imposed in the sentence with a view to them establishing direct contacts with their foreign counterparts.
2. The provisions of the preceding Chapters shall apply, *mutatis mutandis*, to the requests for co-operation made by Portugal.

CHAPTER VI

Common provisions

Article 142

Contents of the request

1. Requests for co-operation shall be prepared and organised in accordance with both the provisions of Article 23 and the specific requirements listed in the following paragraphs.
2. Requests for supervision shall include:
 - a) the reasons for supervision;
 - b) a description of the supervisory measures prescribed;
 - c) the nature and duration of the supervisory measures the application of which is requested;
 - d) information about the character of the offender and his behaviour in the requesting State before and after the date of the decision imposing supervision.
3. Requests for supervision and enforcement shall be accompanied by the decision imposing a criminal reaction and the decision to revoke conditional suspension of the pronouncement or enforcement of sentence.
4. The enforceable nature of both decisions shall be certified in the manner prescribed by the law of the requesting State.
5. Where the decision to be enforced has replaced an earlier one and does not contain a recital of the facts of the case, the decision containing such recital shall also be attached.
6. If it is considered that the information supplied by the requesting State is insufficient for the purposes of granting the request, additional information shall be requested; a time-limit for receipt of such information may be fixed.

Article 143

Procedure and decision

1. The provisions of Part IV relating to the enforcement of criminal judgements, in particular those concerning examination of requests by the Ministry of Justice, jurisdiction of the Portuguese courts, procedure and effects of enforcement, shall apply *mutatis mutandis* to requests of co-operation as provided for in this Part.
2. The provisions relating to the consent of the person concerned shall not apply to cases where a request for supervision alone is at stake.
3. The Minister of Justice may request an opinion to the Attorney-General's Office or the Institute for Social Rehabilitation before deciding on the request.

Article 144

Expenses and legal costs

1. Upon application of the requesting State, expenses incurred with, and legal cost resulting from the procedure in that State, if duly indicated, shall be collected.
2. Where expenses or costs are collected, refund to the requesting State shall not be mandatory, save experts' fees.
3. Supervision and enforcement expenses incurred shall not be refunded by the requested State.

Part VI

Mutual legal assistance in criminal matters

CHAPTER I

Provisions common to different forms of assistance

Article 145

Principle and scope

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.
2. Assistance shall include in particular the following:
 - a) the notification of deeds and the service of documents;
 - b) the procuring of evidence;
 - c) searches, seizure of property, experts examination and analysis;
 - d) the service of writs to and hearing of suspects, accused persons, witnesses or experts;
 - e) the transit of persons;
 - f) the communication of information on Portuguese law or the law of a foreign State, as well as the communication of information relating to the judicial record of suspect, accused or sentenced persons.
3. Where the circumstances of the case so require, subject to an agreement between Portugal and a foreign State or an international judicial entity, any hearings as mentioned in sub-paragraph d) of paragraph 2 above may take place by using telecommunication means in real time, in accordance with Portuguese criminal procedure law and without prejudice to the provisions of paragraph 10 ahead.
4. Within the framework of assistance in criminal matters, either upon authorisation of the Minister of Justice or in conformity with the provisions of any agreement, treaty or convention to which Portugal is a Party, direct communication of information relating to criminal matters may be established between Portuguese and foreign authorities that assist judicial authorities.
5. The Minister of Justice shall be empowered to authorise the participation of foreign judicial authorities and foreign criminal police authorities in criminal proceedings that take place on Portuguese territory, in particular within the framework of joint criminal investigation teams made up of both national and foreign members.
6. Unless provided for by international agreements, treaties or

conventions, setting up joint criminal investigation teams requires authorisation from the Minister of Justice.

7. Participation as mentioned in paragraph 5 shall be authorised only if reciprocity applies and where its purpose is to assist a Portuguese or foreign judicial authority or a Portuguese or foreign criminal police authority; under the authority and in the presence of Portuguese authorities; the provisions of the Portuguese criminal procedure law shall apply; all must be recorded in writing.

8. The provisions of Article 29 above shall apply to any measures that come under the competence of the criminal police authorities where such measures are undertaken under the conditions and within the limits provided for in the Code of Criminal Procedure.

9. The powers mentioned in paragraph 5 above may be delegated upon the Central Authority or, where the participation sought is exclusively that of a foreign criminal police authority or body, upon the national Director of the "Pólicia Judiciária" (criminal police organisation).

10. The provisions of paragraph 5 shall apply mutatis mutandis to requests for assistance submitted by Portugal.

11. The provisions of this Article shall not prejudice the application of more favourable provisions in agreements, treaties or conventions to which Portugal is a party.

Article 145 - A

Joint criminal investigation teams

1 Joint investigation teams shall be set up by mutual agreement between the Portuguese State and a foreign State, in particular where:

a) in the framework of a foreign State's criminal investigation, specially complex investigations having links with Portugal or with another State are required;

b) a number of States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the States involved.

2 Requests for the setting up of joint investigation teams shall, in addition to the information referred to in the relevant provisions of Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty of 27 June 1962, as amended by Protocol of 11 May 1974, include proposals for the composition of the team.

3 Seconded members of a joint investigation team may be present when criminal investigation acts are carried out in the Portuguese territory, unless the national authority leading the team decides otherwise, giving the reasons therefor, in accordance with the Portuguese law.

4 Criminal investigation acts may be carried out in the Portuguese territory by seconded members of a joint investigation team by a decision taken by the national authority leading the team and subject to the approval of the Minister of Justice and of the competent authority of the seconding State.

5 Where a joint investigation team needs assistance from a State other than those which have set up the team, the request for assistance may be addressed by the Minister of Justice to the competent authorities of the State concerned in accordance with the relevant instruments or arrangements.

6 Members of joint investigation teams who have been seconded by the Portuguese State may provide their teams with information available in Portugal for the purpose of the criminal investigations conducted by them.

7 Information lawfully obtained by the members of joint investigation teams during the performance of their duties which is not otherwise available to the competent authorities of the seconding States concerned may be used for the following purposes:

a) for the purposes for which the team has been set up;

b) subject to the prior consent of the Minister of Justice, for detecting, investigating and prosecuting other criminal offences, provided that such use will not endanger criminal investigations being carried out in Portugal or when facts are at stake in respect of which the State concerned could refuse mutual assistance;

c) for preventing an immediate and serious threat to public security and, without prejudice to subparagraph (b), if a criminal investigation is subsequently opened;

d) for other purposes provided that an agreement thereon exists between States setting up the team.

8 Arrangements may be agreed for persons other than representatives of the States setting up a joint investigation team to take part in the activities of the team, in accordance with national laws or the provisions of any legal instrument applicable. Such persons shall not enjoy the rights conferred upon the seconded members of the team unless an agreement expressly states otherwise.

Article 145 - B

Civil liability regarding members of joint investigation teams

1 The seconding State shall be liable for any damage caused to third parties by its own officials during the exercise of their functions as seconded members of a joint investigation team, in accordance with the law of the State in whose territory such damage was caused.

2 The Portuguese State shall make good any damage caused in the national territory by seconded members of a team, and shall exercise its right to claim return of all sums it has paid.

3 The Portuguese State shall reimburse any sums paid to third parties by the seconding State for damage caused by its own members of joint investigation teams.

4 The Portuguese State shall waive all requests for reimbursement of damages it has sustained, caused by members of joint investigation teams who have been seconded by the foreign State, without prejudice to the exercise of its rights vis-à-vis third parties."

Article 146

Applicable law

1. Requests for assistance addressed to Portugal shall be carried out in conformity with the Portuguese law.

2. However, where the foreign State so requests explicitly or where it results from an international agreement, treaty or convention, the assistance sought may be given in conformity with the law of that State, if such is not incompatible with the fundamental principles of Portuguese law and if it does not carry serious prejudice to the parties involved.

3. Requests for assistance shall be refused where the assistance sought implies measures that are banned under Portuguese law or might carry penal or disciplinary sanctions.

Article 147

Coercive measures

1. Where any of the measures mentioned in Article 145 above imply the resort to coercive measures, such measures shall be carried out only if the facts mentioned in the request amount to an offence under Portuguese law and if the measures are carried out according to Portuguese law.
2. However, coercive measures shall be admitted even where the facts are not punishable under Portuguese law, if such measures aim at procuring or producing evidence to the effect of excluding the responsibility of the person against whom the criminal proceedings run.

Article 148

Prohibition to use information obtained

1. Any information obtained in order to be used within the criminal proceedings mentioned in the foreign State's request shall not be otherwise used.
2. At the request of a foreign State or an international judicial entity, the Minister of Justice, after having sought the opinion of the Attorney-General, may exceptionally authorise that information to be used in the framework of other criminal proceedings.
3. Any authorisation given to a foreign State to consult a Portuguese criminal proceedings file within the framework of which that State is an injured party, shall be made subject to the conditions mentioned in the preceding paragraphs.

Article 149

Confidentiality

1. Upon application of a foreign State or an international judicial entity, the request for assistance, its purpose, the measures taken upon the request, as well as the documents involved, shall be kept confidential.
2. If the assistance requested cannot be carried out without unveiling information thereupon, the Portuguese authority shall invite the interested authority to confirm or annul its request for assistance.

CHAPTER II

Request for assistance

Article 150

Powers

Any foreign authority or entity that has powers to take criminal proceedings under the law of the State or the International Organisation involved, may request assistance.

Article 151

Contents of the request and supporting documents

Other than the documents and statements mentioned in Article 23 above, requests shall include, as applicable:

- a) the name, address and capacity of the person to whom the writ or the document should be serviced, as well as specification of the nature of such document;
- b) a statement to the effect of certifying that search, seizure or handing of property, as requested, are admissible under the law of the requesting State;
- c) any reference to particulars of the proceedings or to requirements, including time-limits and confidentiality, that the foreign State or judicial entity wishes to be met.

Article 152

Procedure

1. Requests for assistance that take the form of letters rogatory may be transmitted directly between competent judicial authorities, without prejudice to the possibility of using the channels mentioned in Article 29.
2. In accordance with the criminal procedure law, the judge or the public prosecutor shall be empowered to take decisions to the effect of executing letters rogatory.
3. Where a letter rogatory is received that should not be executed by the public prosecutor, the public prosecutor shall be given the possibility to state his opinion.
4. The execution of letters rogatory shall be refused in the following cases:
 - where the requested authority is not empowered to execute the measures sought, without prejudice of the transmission of the letter rogatory to the competent judicial authority if such authority is a Portuguese authority;
 - where the measures sought are forbidden by law or contrary to the Portuguese "ordre public";
 - where the execution of the letter rogatory offends the sovereignty or the security of the State;
 - where the measures imply the execution of a decision of a foreign court, and that decision must have previously been reviewed and confirmed and that decision has not been reviewed and confirmed.
5. Other requests, in particular requests relating to criminal records, to the verification of the identity of a person and mere requests for information, may be directly forwarded to the competent authorities or entities and, once complied with, the result communicated back through the same channels.
6. The provisions of paragraph 4 above shall apply mutatis mutandis to requests that do not take the form of a letter rogatory.
7. The provisions of paragraph 3 above shall apply mutatis mutandis to letters rogatory addressed by any competent Portuguese judicial authority to any foreign authorities; letters rogatory shall be issued in every instance where any competent Portuguese judicial authority deems that such is necessary in order to obtain evidence of any fact that is essential either to the prosecution or to the defence.

CHAPTER III

Special forms of international assistance

Article 153

Service of documents

1. The Portuguese authorities shall service any judicial decisions, as requested by a foreign authority.
2. Service may be carried out by simple transmission of the documents to the person by post or, where the foreign authority expressly so requests, by any other manner if consistent with the Portuguese law.
3. Proof of service shall be given either by means of a document dated and signed by the person served or by means of a statement made by the Portuguese authority indicating the manner in which the documents were served and the date.
4. Documents shall be deemed to be serviced when they are accepted, as well as when they are refused in writing.
5. If documents cannot be served as requested, the foreign authority shall be informed of the reasons thereof.
6. The provisions of this Article shall not prejudice direct service to any person who is present on the territory of a foreign State, in accordance with the provisions of any agreement, treaty or convention to which Portugal is a party.

Article 154

Summons to appear

1. Suspect or accused persons, witnesses or experts who are summoned to appear for the purposes of foreign criminal proceedings, service of which has been requested, may fail to appear.
2. When the summons are served, the person concerned shall be informed of his right not to appear.
3. The Portuguese authority shall refuse to service any summons where the person concerned is threatened with sanctions or where the safety of the person concerned is not safeguarded.
4. Consent to appear, if it is given, shall be freely given by way of a written statement.
5. Requests shall indicate the allowances and remunerations, as well as the travelling and subsistence expenses, to be paid out; they ought to be transmitted reasonably in advance so that they can be received 50 days at least before the date at which the person should appear.
6. In urgent cases, the time-limits indicated in the preceding paragraph may be shortened.
7. The allowances, remunerations and expenses mentioned in paragraph 5 above shall be calculated as from the place of residence of the person concerned and shall be at the rates provided for in the law of the State where the hearing is intended to take place.

Article 154-A

Transmission and reception of denunciations and complaints

- 1 – Criminal police bodies and judicial authorities receive denunciations and complaints on the perpetration of criminal offences against residents in Portugal having been committed on the territory of another Member State of the European Union.

2 – The Public Prosecutor shall, without delay, send the denunciations and complaints received in accordance with paragraph 1 above to the competent authority of the Member State on whose territory the offence was committed, except where Portuguese courts are competent to try the offence.

3 – The Public Prosecutor receives from the competent authorities of Member States of the European Union any denunciations and complaints regarding criminal offences committed on Portuguese territory against residents in another Member State, for the purposes of prosecution.

Article 155

Temporary surrender of persons in custody

1. A person arrested or imprisoned in Portugal may be temporarily surrendered to an authority of a foreign State for the purposes mentioned in the preceding Article, provided that that person consents, that his remaining in custody is guaranteed and that he shall be returned within the period stipulated by the Portuguese authorities or when his presence in that State is no longer necessary.

2. Without prejudice to the provisions of the preceding paragraph, surrender shall be refused if:

a) the presence of the person concerned is necessary at criminal proceedings pending in Portugal;

b) it is liable to prolong the provisional arrest of the person concerned;

c) regarding the circumstances of the case, the Portuguese judicial authority does not deem surrender to be convenient.

3. The provisions of sub-paragraphs 1 and 2 of Article 21 shall apply to the requests mentioned in this Article.

4. The time during which the person remains out of Portugal shall be taken into consideration for the purposes of provisional arrest or sentence imposed in Portugal.

5. If the sentence imposed on the person surrendered expires while that person is on the territory of a foreign State, that person shall be set free and shall as from that moment enjoy such rights as enjoy the persons who are not under custody.

6. The Minister of Justice may grant the assistance requested subject to specified requirements.

Article 156

Temporary transfer of persons in custody for purposes of investigation

1. The provisions of Article 155 shall apply to cases in which, upon agreement, a person arrested or imprisoned in Portugal may be temporarily transferred to the territory of another State for purposes of investigation in the framework of Portuguese criminal proceedings.

2. The agreement mentioned in paragraph 1 above shall not be required where the transfer is made under an international agreement, treaty or convention that does not impose it.

3. The provisions of the preceding paragraph shall apply mutatis mutandis to requests of assistance submitted to Portugal.

Article 157

Safe conduct

1. Any person appearing on the territory of a foreign State under the terms and for the purposes of the provisions of Articles 154, 155 or 156 above:

a) shall not be arrested, prosecuted, punished or subjected to any other restriction of his personal liberty in respect of any act anterior to his departure from the Portuguese territory other than those mentioned in the request for co-operation;

b) shall not be under an obligation to accept to be heard or make a statement at proceedings other than those mentioned in the request.

2. The immunity provided for in paragraph 1 above shall cease when the person voluntarily remains in the territory of the foreign State for more than 45 days from the date when his presence is no longer required or, having left that territory, voluntarily returned to it.

3. The provisions of the preceding paragraphs shall apply mutatis mutandis to any person habitually resident in a foreign State who comes to Portugal as a result of a summons to appear for purposes of criminal proceedings.

Article 158

Transit

1. The provisions of Article 43 shall apply mutatis mutandis to the transit of any person who is under custody in a foreign State and who must appear in the territory of a third State in order to take part at criminal proceedings.

2. Custody of a person in transit shall not remain if the State that authorised the transfer requests the person to be set free.

Article 159

Handing over of property, valuables, documents or files

1. At the request of the competent foreign authorities, any property, in particular documents or valuables, the seizure of which is consistent with the Portuguese law, may be put at the disposal of those authorities if they are relevant to the criminal proceedings.

2. Any proceeds from an offence may be returned to their owners regardless of criminal proceedings having been instituted in the requesting State.

3. Criminal files or other records which are of importance to criminal proceedings pending in a foreign State may be handed over to the competent authorities of that State, provided that they shall be returned within the time-limit fixed by the competent Portuguese authorities.

4. The handing over of any property, valuables, documents or criminal files may be delayed if they are required in connection with pending criminal proceedings.

5. Authenticated copies of the documents or files requested may be handed over instead of the originals; however, should the foreign authority expressly request the transmission of originals, the request shall as far as possible be complied with if the condition for their restitution provided in paragraph 3 above is met.

Article 160

Proceeds, objects and instrumentalities

1. At the request of a competent foreign authority, steps may be taken in order to trace the proceedings of an allegedly committed offence; the results thereof shall be communicated to the requesting authority.
2. The foreign authority must state the grounds on which it deems that such proceedings might be located in Portugal.
3. The Portuguese authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply mutatis mutandis.
4. When the foreign authority communicates its intention to request the enforcement of any decision as mentioned in the preceding paragraph, the Portuguese authority may take such steps as are consistent with the Portuguese law in order to prevent any dealing in, transfer or disposal of property which at a later stage shall be, or may be, the subject of that decision.
5. The provisions of this Article also apply to objects and instrumentalities of an offence.

Article 160 A

Controlled and surveyed deliveries

1. For the purposes of obtaining the identification of largest possible number of offenders and establishing their criminal liability, in co-operation with one or more foreign States, the Public Prosecution shall be empowered to authorise on a case by case basis, upon request from one or more foreign States, in particular where such is provided for in a conventional instrument, that criminal police bodies abstain from acting within the framework of trans-border criminal investigations concerning extraditable offences.
2. The Portuguese authorities shall have the legal powers to act as well as the supervision and control of the criminal investigation operations conducted within the framework of the provisions of the preceding paragraph, without prejudice to the necessary co-operation with the competent foreign authorities.
3. Authorisations given under paragraph 1 above shall be without prejudice to the exercise of criminal proceedings for the facts in respect of which the Portuguese law is applicable; they shall be given only where :

the competent foreign authorities have ensured that both their legislation provides adequate criminal sanctions for the offence at stake and criminal proceedings shall be exercised; and

the competent foreign authorities have ensured the security of the substances and goods at stake against the risks of flight and loss; and
the competent foreign authorities have undertaken urgently to communicate detailed information about the results of the operation as well as the acts performed by each of the offenders, in particular those who acted in Portugal.
4. Even where the above-mentioned authorisation has been granted, the criminal police bodies shall act if safety margins noticeably decrease or if any circumstance arise that renders the arrest of the culprits, or the seizure of the substances or goods, more difficult; where such action by the police bodies was not previously communicated to the authority that granted the authorisation, such shall be done in writing within the next 24 hours.
5. Subject to the existence of an agreement with the country of destination, where prohibited or

dangerous substances are in transit, they may be partially replaced by innocuous; a written record shall be filed.

6. Non-compliance of obligations undertaken by foreign authorities may constitute grounds for refusal of authorisation in case of future requests.

7. International agreements are made by the National Bureau of INTERPOL, through the "Polícia Judiciária" (criminal police organisation).

8. Any other entity that receives requests for controlled deliveries, in particular the "Direcção-Geral de Alfândegas" (Directorate General of Customs), either through the Customs Co-operation Council or through its foreign counterparts, without prejudice of processing of custom-specific data, shall address such a request to the "Polícia Judiciária" (criminal police organisation) for action.

9. The Public Prosecution magistrate of the judicial circle of Lisbon shall be empowered to decide upon requests for controlled deliveries.

Article 160 B

Undercover action

1. Criminal investigation officials of other States may develop undercover action in Portugal, in accordance with the applicable law; in such cases, their status shall be similar to that of Portuguese criminal investigation officials.

2. Action as mentioned in paragraph 1 above is subject both to a request based on an international agreement, treaty or convention, and reciprocity.

3. The judge of the "Tribunal Central de Instrução Criminal" (Central Court of Criminal Investigation) shall be empowered to authorise such action, upon a proposal of the Public Prosecution magistrate at the "Departamento Central de Investigação e Acção Penal - DCIAP" (Central Department for Criminal Investigation and Action)

Article 160 C

Interception of telecommunications

1. Upon request of the competent authorities of a foreign State, the interception of telecommunications effected in Portugal may be authorised, if such is provided for in an international agreement, treaty or convention and provided that, in similar national circumstances, interception would be admissible under the Portuguese criminal procedural law.

2. The "Polícia Judiciária" (criminal police organisation) shall be empowered to receive requests for interception; it shall thereupon submit the requests to the Criminal Investigations' judge of Lisbon for authorisation.

3. The decision concerning the authorisation mentioned in the preceding paragraph shall include an authorisation for the immediate transmission of the communication to the requesting State, should such transmission be provided for in the international agreement, treaty or convention under which the request was made.

Article 161

Information on the law applicable

1. Any information requested by a foreign judicial authority and relating to the provisions of Portuguese law that are applicable in the framework of criminal proceedings shall be given by the Bureau for Documentation and Comparative Law of the Attorney-General's Office.

2. Any Portuguese judicial authority requiring information on foreign law shall request such collaboration as is necessary from the Bureau mentioned in the preceding paragraph.

Article 162

Information from criminal records

Direct communication of requests relating to criminal records, as mentioned in paragraph 5 of Article 152, shall be addressed to the criminal identification services.

Article 163

Information about criminal judgements

1. Information about or copies of criminal judgements, as well as information about measures taken after criminal judgements or any other relevant information relating to any of those may be requested in respect of nationals of the requesting State.

2. Any requests submitted under the provisions of the preceding paragraph must be channelled through the Central Authority.

Article 164

End of the procedure

1. The authority in charge of executing a request shall forward the file and other documents to the requesting foreign authority as soon as it deems that the request has been fully complied with.

2. If, however, the foreign authority does not deem that the request has been fully complied with, it may return the file, provided that it states its reasons.

3. Should the Portuguese authority deem that such reasons are valid, it shall comply with the request.

Part VII

Final provision

Article 165

Delegated powers

The powers conferred upon the Minister of Justice by the following provisions of this law may be delegated upon the Attorney-General: paragraph 1 of Article 69, paragraph 6 of Article 91, Article 92, paragraphs 1, 2 and 3 of Article 107, paragraphs 3 and 4 of Article 118, paragraph 2 of Article 141.

Article 166

Repeals

The provisions of Decree-Law no. 43/91, of 22 January are hereby repealed.

Article 167

Entry into force

This law shall enter into force on the first day of October 1999.

[Initial version](#) (*Act n. 144/99 of 31 August*)