

# **LAW ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

## **I GENERAL PROVISIONS**

### **Subject and Application of the Law**

#### **Article 1**

This Law shall govern mutual assistance in criminal matters (hereinafter: mutual assistance) in cases in which no ratified international treaty exists or certain subject matters are not regulated under it.

### **Forms of mutual assistance**

#### **Article 2**

Mutual assistance shall include:

- 1) extradition of defendants or convicted persons;
- 2) assumption and transfer of criminal prosecution;
- 3) execution of criminal judgments;
- 4) other forms of mutual assistance.

### **Exercising mutual assistance**

#### **Article 3**

Mutual assistance shall be exercised in a proceeding pertinent to criminal offences which, at the time the assistance is requested, fall under the jurisdiction of the court in the requesting Party.

Mutual assistance shall be also exercised in a proceeding instigated before the administrative authorities for crimes punishable under the legislation of the requesting Party or the requested Party, in such case where a decision of an administrative authority may be the grounds for instituting criminal proceedings.

Mutual assistance shall be exercised also at the request of the International Court of Justice, International Criminal Court, European Court of Human Rights and other international institutions established under international treaties ratified by the Republic of Serbia.

### **Competent authorities**

#### **Article 4**

The authorities competent to exercise mutual assistance shall include national courts and public prosecutor's offices (hereinafter: judicial authorities) specified by law.

Certain actions in the mutual assistance proceedings shall be performed by the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Internal Affairs.

Requests for mutual assistance delivered to an incompetent authority shall be transmitted without delay to the authority competent to proceed, and the authority that has submitted the request shall be notified.

## **Letters rogatory**

### **Article 5**

Requests for mutual assistance shall be submitted in the form of letters rogatory. The letters rogatory shall comprise of:

- 1) name of the authority that has designed the letter rogatory;
- 2) name of the authority to whom the letter rogatory shall be addressed, or, if its accurate name is not known, it will be designated 'competent state authority' next to the name of the requested state;
- 3) legal grounds for execution of the request for mutual assistance;
- 4) the designation of the criminal case, the name of the criminal offence as specified under the law, text of a relevant provision of the law and a summary of facts;
- 5) description of actions relating to the requested mutual assistance and reasons for submitting the letter rogatory;
- 6) citizenship and other personal data of the person, i.e. the name and the seat of the legal entity being the subject of the request for mutual assistance, including its capacity in the proceeding;
- 7) other data that may be relevant to proceeding upon the letter rogatory.

The letter rogatory, including any other supporting documents transmitted by judicial and other competent authorities must be signed and stamped by the competent authority.

The letter rogatory and any other supporting documents shall be submitted and accompanied by translations into the language of the requested state or translations into English. A copy of translation shall be certified.

The letter rogatory which was not submitted in line with the provisions of this law will be sent back for updates or changes, with the deadline which may not be longer than two months.

## **Submission of letters rogatory and annexed documents**

### **Article 6**

Letters rogatory and other annexed documents of the national judicial authority shall be transmitted to foreign authorities through the Ministry of Justice. At the request of the requested state, letters rogatory and other supporting documents shall be transmitted through diplomatic channels.

Letters rogatory and supporting documents under paragraph 1 of this Article, subject to reciprocity, shall be:

- 1) transmitted directly to a foreign judicial authority;
- 2) in case of urgency, they may be transmitted through the International Criminal Police Organisation (Interpol).

Letters rogatory and supporting documents of a foreign authority shall be transmitted to the national judicial authority in accordance with paragraphs 1 and 2 of this Article.

In cases under paragraph 2 of this Article, national judicial authority shall submit a copy of the letter rogatory to the Ministry of Justice.

### **Preconditions to the execution of requests for mutual assistance**

#### **Article 7**

Preconditions to the execution of requests for mutual assistance include:

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

Without prejudice to paragraph 1, sub-paragraph 4 of this Article, mutual assistance shall be granted for the criminal offence against the international humanitarian law that is not subject to the state of limitations.

The competent judicial authority shall decide whether or not the preconditions under sub-paragraphs 1-3 of paragraph 1 have been met, whereas Minister of Justice shall decide or provide an opinion on whether or not the preconditions under sub-paragraphs 4 and 5 of paragraph 1 have been fulfilled.

### **Reciprocity**

#### **Article 8**

National judicial authorities shall grant mutual assistance subject to the rule of reciprocity. The Ministry of Justice shall provide a notification on the existence of reciprocity upon request of the national judicial authority.

Should there be no information on reciprocity, the rule of reciprocity is presumed to exist.

### **Confidentiality of information**

#### **Article 9**

It is the duty of state authorities to safeguard confidentiality of information obtained during the execution of requests for mutual legal assistance.

Personal data may be used solely in criminal or administrative proceedings in respect of which letters rogatory have been submitted.

## **Language**

### **Article 10**

The proceeding on mutual assistance shall be conducted in Serbian.

Pursuant to the Constitution and the law, where the proceeding mentioned in paragraph 1 is conducted before the national judicial authority that officially uses languages of national minorities, their language will also be applicable.

## **Costs**

### **Article 11**

Costs incurred during the proceeding on mutual assistance shall be borne by the requested state unless otherwise specified by this law.

### **Article 12**

In the proceeding on mutual assistance Criminal Code and laws which regulate the organization and jurisdiction of courts and public prosecutors will be applied accordingly if this law does not stipulate differently.

## **II EXTRADITION OF DEFENDANTS OR CONVICTS**

### **1. EXTRADITION OF DEFENDANTS OR CONVICTS TO A FOREIGN STATE**

#### **1) Basic provisions**

#### **Subject of extradition**

### **Article 13**

Extradition of defendants or convicts to a foreign state shall be allowed:

- 1) by reason of criminal proceedings for a criminal offence that is punishable by imprisonment for a maximum of more than one year under the law of the Republic of Serbia and the law of the requesting state;
- 2) by reason of the execution of a punishment of minimum duration of four months imposed by a court of the requesting party for the criminal offence under sub-paragraph 1 of this paragraph.

Should the letter rogatory relate to several criminal offences, of which some do not meet the conditions set forth paragraph 1 of this Article, extradition may be granted for these criminal offences as well.

## **Rule of speciality**

### **Article 14**

Should extradition be granted the extradited person may not be prosecuted, subjected to the execution of a criminal sanction or extradited to a third party for the criminal offence committed before the extradition took place, the offence not being the subject of extradition.

Terms under paragraph 1 of this Article shall not apply:

- 1) the extradited person has explicitly waived the guarantee under paragraph 1 of this Article;
- 2) if the extradited person did not leave the territory of the state which he/she was extradited to, even though he/she had an opportunity to do so, within 45 days as of the day he/she was paroled or the day when a criminal sanction was fully served or if he/she returned to the territory concerned.

## **Supporting documents**

### **Article 15**

The following supporting documents shall accompany the letter rogatory:

- 1) means to establish proper identity of an accused or a convicted person (an accurate description, a photograph, finger prints, etc.);
- 2) a certificate or other data on the citizenship of an accused or a convicted person;
- 3) a decision on the instigation of criminal proceedings, the indictment, the decision on detention or the judgement;
- 4) evidence presented on the existence of the reasonable doubt.

## **Preconditions to extradition**

### **Article 16**

In addition to the preconditions provided for by virtue of Article 7 of this law, the preconditions to extradition shall include:

- 1) the person, in respect of whom extradition is requested, is not a national of the Republic of Serbia;
- 2) the offence, in respect of which extradition is requested, was not committed in the territory of the Republic of Serbia, and not committed against it or against its citizen;
- 3) the same person is not prosecuted in the Republic of Serbia for the offence in respect of which extradition is requested;
- 4) in accordance with the national legislation conditions exist for reopening the criminal case for the criminal offence in respect of which extradition is requested;
- 5) proper identity of the person in respect of whom extradition is requested is established;
- 6) there is sufficient evidence to support the reasonable doubt, that is, an enforceable court decision is in place demonstrating that the person in respect

of whom extradition is requested has committed the offence in respect of which extradition is requested;

- 7) the requesting party guarantees that in case of conviction *in absentia* the proceeding will be repeated in presence of the extradited person;
- 8) the requesting party guarantees that the capital offence provided for the criminal offence in respect of which extradition is requested will not be imposed, that is, executed.

### **Concurrence of letters rogatory**

#### **Article 17**

If several requesting states have concurrently submitted letters rogatory relating to the same or different criminal offences, the decision on extradition shall be passed taking into account the circumstances of the concrete case, in particular the territory in which the criminal offence was committed, gravity of the criminal offence, order of submission of requests, citizenship of the extraditable person and the possibility of extradition to a third party.

The decision under paragraph 1 of this Article shall be explained.

#### 2) Extradition procedure

##### *a) Proceeding before the Judge*

### **Procedure including the letter rogatory**

#### **Article 18**

The Ministry of Justice shall transmit the letter rogatory to the court in the territory of which the person sought for extradition resides or finds himself/herself in. Should the place concerned be unknown, the police authority shall identify where the person sought for extradition is.

If the letter rogatory was submitted in compliance with Articles 5 and 15 of this law, the judge shall issue an order for bringing the person requested for extradition. The order shall be executed by the police authority who shall bring the person concerned before the judge.

### **Search of persons and premises and the confiscation of objects**

#### **Article 19**

Upon request of the requesting state, the judge may order the search of the person sought for extradition as well as the premises the person concerned resides in.

The objects obtained by means of the commission of a criminal offence and the proceeds from crime shall be provisionally seized from the person sought for extradition.

The provisional seizure under paragraph 2 of this Article shall be in force until the decision on detention of the person sought for extradition is passed or on another measure

to secure the presence of the person in respect of whom extradition is requested, but not longer than 48 hours as of the moment of arrest.

If the measure of seizure mentioned in paragraph 2 of this Article is mandatory under the law of the Republic of Serbia, the judge may temporarily hand the objects over to the requesting state on condition that they be returned within the timeframe specified by the judge.

Should extradition be granted, the objects and proceeds from crime mentioned in paragraph 2 of this Article shall be handed over to the requesting state.

## **Legal advice**

### **Article 20**

Once he/she has established proper identity of the person sought for extradition, the judge shall notify him/her on the reasons for arrest, the evidence upon which the request for extradition is based, and advise him/her on his/her rights:

- 1) he/she is not obliged to give any statement;
- 2) he/she may have a defence attorney;
- 3) the defence attorney shall be present at the examination;
- 4) he/she may give his/her consent that he/she may be extradited under a simplified procedure.

Should the person sought for extradition waive his/her right to a defence attorney or should he/she fail to retain the services of one within 24 hours as of the time when he/she was advised on his/her rights, an *ex-officio* lawyer shall be designated.

The judge shall notify the public prosecutor of the arrest of the person sought for extradition.

## **Interrogation**

### **Article 21**

The judge shall interview the person sought for extradition on all relevant circumstances to establish the existence of preconditions to extradition, particularly on personal circumstances, the citizenship, the relation to the requesting state and the request for extradition.

The examination shall be attended by the public prosecutor and the defence attorney who can direct questions to the person sought for extradition.

Records on the interrogation shall be kept.

## **Detention**

### **Article 22**

Following the interrogation the judge may order detention:

- 1) if such circumstances exist which indicate that the person sought for extradition will hide or escape with a view to hindering the decision making process on the letter rogatory or the carrying out of extradition;

- 2) if such circumstances exist which indicate that the person sought for extradition will hinder the collecting of evidence in the extradition procedure or in criminal proceedings before the judge of the requesting state.

Detention may not last longer than the moment of the execution of the decision on extradition, that is, not longer than a year since the day when the person sought for extradition detained. After each two months have elapsed since the final judgement on detention, the court may *ex-officio* examine whether or not there are reasons for the extension of detention or for its revocation.

If justified by special reasons, the judge may, instead of detention, order another measure to secure the presence of the person sought for extradition.

### **Examination of preconditions to extradition**

#### **Article 23**

The judge shall take appropriate steps to identify whether or not there are preconditions to extradition, that is, to the handing over of objects mentioned in Article 19, paragraph 2 of this law.

If the requesting party did not provide guarantees to the effect of Article 16, subparagraphs 7 and 8 of this Article, the judge shall request from it to do so within the timeline that can exceed 30 days.

After the steps mentioned in paragraph 1 have been taken, the judge shall transmit the documents to the Chamber consisting of three judges (Pre-trial Chamber).

If criminal proceedings are in progress before the national court against the person sought for extradition for the same or some other criminal offence or the person concerned is serving the prison sentence, the judge shall note it in the legal documents.

### **Detention order prior to the submission of the letter rogatory**

#### **Article 24**

In cases of urgency the competent authority of the requesting party may submit the request for detention prior to the submission of the letter rogatory.

The request shall comprise of:

- 1) information required for establishing proper identity of the person to be sought for extradition;
- 2) factual description and legal qualification of the offence;
- 3) statement by the competent authority of the requesting party regarding the existence of a court decision or an act of indictment mentioned in Article 15, sub-paragraph 3 of this law;
- 4) statement indicating that the letter rogatory will be submitted.

The request may be submitted to the national judicial authority or the police directly, through the Ministry of Justice or through the International Criminal Police Organisation (Interpol).

Subject to reciprocity, an issued international arrest warrant shall be deemed a request.



## **Action upon request**

### **Article 25**

The police shall arrest the person the request stipulated in Article 24 is related to and bring him/her to the judge without delay.

Having established the identity of the arrested person, the judge shall inform him/her of the reasons for the arrest, and on the rights under Article 20, paragraph 1, sub-paragraph 1 to 4 of this law.

Should the person sought for extradition waive his/her right to a defence attorney or he/she fail to retain the services of one within 24 hours since he/she was informed about it, he/she will be assigned an *ex-officio* lawyer.

## **Detention**

### **Article 26**

Following the interview of the arrested person, the judge may order detention.

A detention order and the legal advice document on the timeframe for submitting the letter rogatory shall be transmitted by the judge to the competent authority of the requesting state without delay in accordance with Article 24, paragraph 3 of this law, in respect of which the public prosecutor shall be notified. If the service was effected directly or through the International Criminal Police Organisation (Interpol), it will be communicated to the Ministry of Justice as well.

The judge will revoke a detention order:

- 1) should the competent authorities of the requesting state fail to submit the letter rogatory within 18 days since the day as of detention;
- 2) should the reasons for ordering detention cease to exist.

Upon request of a competent authority of the requesting party the judge may extend the timeframe mentioned in sub-paragraph 1 of paragraph 2 of this Article to the maximum of 40 days. If the letter rogatory was not submitted within said timeframe, the person concerned may be detained solely on the grounds of Article 22 of this law.

### *b) The proceeding before the Pre-trial Chamber*

## **Decisions of the Pre-trial Chamber**

### **Article 27**

After the legal documents mentioned in Article 23, paragraph 3 of this law have been examined, the Pre-trial Chamber shall pass a decision on refusing extradition or on the fulfilment of the preconditions to extradition.

## **Decision to refuse extradition**

### **Article 28**

Should the Pre-trial Chamber establish that the preconditions under Article 7 and 16 of this law are not fulfilled it will pass a decision to refuse extradition, transmitting it to a next instance higher court without delay.

After hearing the public prosecutor and the defence attorney of the person sought for extradition, the next instance higher court shall ratify, revoke or revise the decision mentioned in paragraph 1 of this Article.

An enforceable decision on refusing detention shall be transmitted to the Ministry of Justice which will notify the requesting party thereafter.

## **Decision on fulfilment of preconditions to extradition**

### **Article 29**

If the Pre-trial Chamber establishes that the preconditions mentioned in Article 7 and 16 of this law are fulfilled, it shall pass a decision thereon.

The decision mentioned in paragraph 1 of this Article may be appealed to the next instance higher court within three days as of the day of receipt of the decision.

After hearing the public prosecutor, the person sought for extradition and the defence attorney thereof, the next instance higher court shall revoke or revise the decision mentioned in paragraph 1 of this Article.

## **Simplified extradition procedure**

### **Article 30**

The person requested for extradition may be surrendered in a simplified procedure in line with the provisions of this law.

Should the person mentioned in paragraph 1 of this Article consent to the simplified procedure the judge shall present to him/her the consequences of such statement and ask him/her if such consent was expressed voluntarily. Records shall be kept on it.

The consent mentioned in paragraph 2 of this Article is irrevocable.

The records mentioned in paragraph 2 of this Article and the legal documents shall be addressed by the judge to the Pre-trial Chamber without delay which will pass a decision mentioned in Article 29 of this law. The decision may not be appealed.

The decision mentioned in paragraph 4 of this Article shall be transmitted to the Minister of Justice without delay, who will proceed in accordance with Articles 31-35 of this law.

*c) The procedure before the Minister*

**Decisions of the Minister of Justice**

**Article 31**

An enforceable decision on the fulfilment of preconditions to extradition accompanied with supporting documents shall be transmitted to the Minister of Justice.

The Minister of Justice shall pass a decision granting or refusing extradition. The decision shall be sent to the competent court, the person sought for extradition, the Ministry of Internal Affairs and the requesting party.

**The decision granting extradition**

**Article 32**

Within the decision granting extradition the Minister of Justice may:

- 1) impose conditions on extradition in terms of Article 14, paragraph 1 of this law, except if the person sought for extradition has waived these guarantees;
- 2) impose other conditions for extradition.

**The decision which does not permit extradition**

**Article 33**

The decision which does not permit extradition shall be passed by the Minister of Justice:

- 1) if the preconditions mentioned in Article 7, paragraph 1, sub-paragraph 4 and 5 of this law, are not fulfilled;
- 2) if the guarantees of a fair trial were not exercised within the trial process conducted in absence of the person sought for extradition.

**Deferral of extradition**

**Article 34**

The Minister of Justice may defer the enforcement of the decision mentioned in Article 32 of this law:

- 1) until the criminal proceedings conducted against the person sought for extradition for some other offence before the national court are finally completed;
- 2) until the person, in respect of whom extradition was granted, has served the prison sentence or the sentence constituting deprivation of liberty.

**Provisional extradition**

**Article 35**

The Minister of Justice may, in the case mentioned in Article 34 of this law, decide to permit provisional extradition of the person concerned to the requesting state:

- 1) should it be without prejudice to the criminal proceeding conducted before the national court;
- 2) should the requesting state provide guarantees that the provisionally extradited person will be detained and that he/she will be transferred back to the Republic of Serbia upon request of the Minister of Justice.

### **Inclusion of the time spent in detention**

#### **Article 36**

When pronouncing the prison sentence the national court shall include the time spent in prison by the provisionally extradited person in the requesting state, that is, the duration part of the sentence not served shall be reduced by that amount of time.

Taking into account the circumstance mentioned in paragraph 1 of this Article, the Minister of Justice may decide not to request the provisionally extradited person be transferred back.

### **Surrender procedure of the defendant or the convicted person**

#### **Article 37**

The Ministry of Internal Affairs shall enforce the decision permitting extradition.

The Ministry mentioned in paragraph 1 of this Article shall agree with the competent authority of the requesting state the place, the time and the manner of surrender of the defendant or the convicted person. The surrender shall be effected within 30 days as of the day of the passing of the decision mentioned in Article 32 of this law.

Should the requesting party, without any justified reason, fail to take over the defendant or the convicted person on day previously agreed, he/she shall be released. Another day for surrender may be specified upon justified request of the requesting state.

## **2. EXTRADITION OF THE DEFENDANT OR THE CONVICTED PERSON TO THE REPUBLIC OF SERBIA**

### **Preconditions to extradition to the Republic of Serbia**

#### **Article 38**

If criminal proceedings are conducted before the national court against the person residing in a foreign state or the national court has pronounced, by virtue of an enforceable decision, a criminal sanction to the person concerned, the Minister of Justice may submit the letter rogatory upon request of the competent court.

If the person mentioned in paragraph 1 of this Article is extradited, he/she may face criminal proceedings or the execution of a criminal sanction only for the offence in respect of which extradition was granted, except if he/she has waived the right and the foreign party has not set forth such condition.

The letter rogatory shall be accompanied with the supporting documents mentioned in Article 15 of this law.

## **Conditions for pronouncing criminal sanctions**

### **Article 39**

If the foreign party has granted extradition on certain conditions relating to the type or the gravity of the criminal sanction that may be pronounced, that is, executed, the national court shall be bound to such conditions when pronouncing a punishment. On the other hand if the subject is the execution of a criminal sanction already pronounced, the court that adjudicated in the first instance shall revise the decision on the punishment in line with the legislation of the Republic of Serbia on this matter.

If the extradited person is detained in a foreign state by reason of a criminal offence he/she was extradited for, the time he/she has spent in custody shall be included in the criminal sanction constituting deprivation of liberty.

## **Transit through the territory of the Republic of Serbia**

### **Article 40**

Should the foreign party request extradition from another foreign party, whereas the extradited person has to be transferred through the territory of the Republic of Serbia, the Minister of Justice may grant to the requesting party the transfer of the person concerned in accordance with the preconditions mentioned in Articles 7 and 16 of this law.

The letter rogatory shall be accompanied by the supporting documents submitted in compliance with Article 15 of this law.

The costs incurred for the transit through the territory of the Republic of Serbia shall be borne by the requesting state.

## **III ASSUMPTION AND TRANSFER OF CRIMINAL PROSECUTION**

### **1. ASSUMPTION OF CRIMINAL PROSECUTION BY A FOREIGN STATE**

#### **1) Basic provisions**

#### **Assumption of criminal prosecution**

### **Article 41**

Under conditions provided for by this law the competent public prosecutor may assume criminal prosecution of a suspect or a defendant for the criminal offence falling under the jurisdiction of the requesting state.

## **Crime related documents**

### **Article 42**

The letter rogatory shall be accompanied by the original or a certified copy of crime related documents.

## **Preconditions to assumption of criminal prosecution**

### **Article 43**

In addition to the preconditions set forth in Article 7 of this law, criminal prosecution of a person may be assumed if one of the following preconditions is fulfilled:

- 1) the person concerned has domicile or resides in the Republic of Serbia;
- 2) the person concerned is serving the prison sentence in the Republic of Serbia;

## **2) Procedure regarding the letter rogatory**

## **Submission of the letter rogatory and crime related documents to the public prosecutor**

### **Article 44**

The Ministry of Justice shall submit the letter rogatory and crime related documents to the competent public prosecutor in whose territory the person, in respect of whom criminal prosecution is requested to be assumed, has domicile or resides, is serving the prison sentence or to the public prosecutor participating in criminal proceedings conducted against the person concerned for the same offence or another crime.

The Ministry of Justice shall also submit to the competent public prosecutor the opinion on the fulfilment of the preconditions mentioned in Article 7, paragraph 1, subparagraphs 4 and 5 of this law.

## **Decision making on assumption of prosecution**

### **Article 45**

The competent public prosecutor may decide to assume prosecution if the preconditions provided for in Article 7 and Article 43 of this law are fulfilled.

## **Notification by the requesting party and the returning of crime related documents**

### **Article 46**

A decision of the competent public prosecutor regarding the request for assumption of criminal prosecution, as well as an enforceable decision made in the course of the assumed criminal proceedings, shall be communicated to the requesting party.

Should assumption of criminal prosecution be refused, a notification containing a rationale and documents supporting the letter rogatory shall be transmitted to the foreign state concerned.

## **Rules of assumed criminal proceedings**

### **Article 47**

Assumption of criminal proceedings shall be implemented in compliance with the legislation of the Republic of Serbia.

Without prejudice to the provision of paragraph 1 of this Article, the provisions relating to a trial *in absentia* shall not apply in the assumed criminal proceedings.

A procedural action taken in accordance with the legislation of the requesting state shall be equated with the procedural action taken in accordance with the legislation of the Republic of Serbia, except if it is contrary to basic principles of the national legal system and international standards on the protection of human rights and fundamental freedoms.

A criminal sanction pronounced in the assumed criminal proceeding may not be more severe than a criminal sanction that may be pronounced under the legislation of the requesting state.

### **Request for detention before submission of the letter rogatory**

#### **Article 48**

In case of urgency, the competent authority of the requesting party may submit a request for detention before the submission of the letter rogatory.

The request shall include:

- 1) information required for the establishment of proper identity of the person subject of the request;
- 2) factual description and legal qualification of act;
- 3) statement of the foreign judicial authority regarding the existence of a court decision or an act of indictment from Article 15, paragraph 3 of this law;
- 4) statement indicating that a letter rogatory shall be submitted.

The request may be addressed to the competent public prosecutor or the police directly, through the Ministry of Justice, or through the International Criminal Police Organization (INTERPOL).

Subject to reciprocity, an issued international arrest warrant shall be deemed a request.

Proceeding on the request will be in accordance and pursuant with the provisions of Article 25 and 26 paragraphs 1 to 4 of this law.

## 2. TRANSFER OF CRIMINAL PROSECUTION TO A FOREIGN COUNTRY

### **Transfer of criminal prosecution**

#### **Article 49**

Under conditions foreseen in this Law, a national judicial authority can transfer to a foreign country criminal prosecution of the person suspected or accused of a criminal offence that falls with the jurisdiction of a national court.

### **Crime related documents**

#### **Article 50**

A letter rogatory shall be accompanied by original crime related documents or a certified copy thereof.

### **Conditions for transfer of criminal prosecution**

#### **Article 51**

A national judicial authority may transfer criminal prosecution of a person to a requested party if the presumptions stipulated by Article 7 paragraph 1, sub-paragraph 4 and 5 of this law are met and one of the following conditions:

- 1) if a person is a resident of or has residence permit in the requested party;
- 2) if a person is serving a prison sentence or other criminal sanction which consists of deprivation of liberty;
- 3) if it is clear that it would be easier to conduct proceedings in the requested party.

If the party injured by the criminal offence is the Republic of Serbia, its citizen, or a legal entity with headquarters in its territory, consideration shall be given during the decision making process relating to transfer of criminal prosecution, to the possibility of securing the property request as well as other interests of the injured party.

### **Decision on transfer of prosecution**

#### **Article 52**

A decision to institute the proceedings for the transfer of criminal prosecution shall be passed by:

- 1) The Public Prosecutor, prior to the initiation of criminal proceedings;
- 2) The Judge, upon the recommendation of the Public Prosecutor until the indictment comes into force;
- 3) The Pre-trial Chamber having obtained the opinion of the Public Prosecutor prior to the main hearing;
- 4) The Chamber, having obtained the opinion of the Public Prosecutor before the conclusion of the main hearing.



The suspect has the right to complain to the immediately higher prosecutor against the decision from paragraph 1, sub-paragraph 1 of this Article within a period of three days.

The accused and the public prosecutor have the right to appeal to a higher Court against the decision from paragraph 1, sub-paragraphs 2-4 within a period of three days.

### **Actions related to the letter rogatory**

#### **Article 53**

A letter rogatory and crime related documents shall be transmitted to the requested party accompanied by a request for prompt information about the decision.

If the requested party fails to transmit information about its decision within a period of six months from the date of reception of the letter rogatory and documents from paragraph 1 of this Article, national judicial authorities shall proceed with criminal prosecution.

### **Consequences of initiation of proceedings for transfer of criminal prosecution**

#### **Article 54**

After the decision referred to in Article 52, paragraph 1 of this Law, a national judicial authority shall undertake only such procedural activities that cannot be postponed.

A national judicial authority shall proceed with criminal prosecution, that is, with criminal proceedings:

- 1) if the requested party communicates a decision stating that it does not agree to assume the criminal prosecution;
- 2) if the requested party rescinds the decision to assume the criminal prosecution;
- 3) if a national judicial authority revises its decision on transfer of criminal prosecution before the requested party transmits a decision on the letter rogatory.

### **Request for detention before submission of letter rogatory**

#### **Article 55**

In case of urgency, a national judicial authority may submit a request for detention to the requested party prior to the submission of a letter rogatory.

The request shall include:

- 1) information required for the establishment of proper identity of the person whose extradition shall be requested;
- 2) factual description and legal qualification of the act;
- 3) statement about the existence of a court decision or act of indictment referred to in Article 15, sub-paragraph 3 of this law;
- 4) statement that a letter rogatory shall be submitted.

The request may be addressed to the competent authority of the requested party directly, through the Ministry of Justice, or through the International Criminal Police Organization (INTERPOL).

## **IV. EXECUTION OF CRIMINAL JUDGEMENT**

### **1. EXECUTION OF FOREIGN CRIMINAL JUDGEMENT**

#### **Subject of execution**

##### **Article 56**

Criminal sanction ordered by a final decision of a competent court from the requesting party can be executed in the Republic of Serbia in accordance with the provisions of this law.

#### **Supporting documents**

##### **Article 57**

A letter rogatory shall be accompanied by a certified transcript of the foreign court's criminal judgement.

#### **Conditions for execution**

##### **Article 58**

In addition to conditions listed in Article 7 of this law, criminal sanction issued by the competent court of the requesting party can be executed if one of the following conditions is met:

- 1) if the convict is a citizen of Serbia;
- 2) if the convict is a resident of or possesses a resident permit in the Republic of Serbia;
- 3) if the convict is serving a criminal sanction in form of a prison sentence for a prior conviction.

#### **Court jurisdiction**

##### **Article 59**

The court with a territorial jurisdiction according to the latest known address or residence of the convict, or according to the location of execution of the criminal sanction, is competent to conduct proceedings relating to letter rogatory.

#### **Request for detention prior to submission of the letter rogatory**

##### **Article 60**

In case of urgency, a competent authority of the requesting party may submit a request for detention before the submission of a letter rogatory.

The request shall include:

- 1) information required to establish proper identity of the person subject of the request;
- 2) factual description and legal qualification of the act;
- 3) statement regarding the existence of a court decision;
- 4) statement that a letter rogatory shall be submitted.

The request may be addressed to the national judicial authority or the police directly, through the Ministry of Justice, or through the International Criminal Police Organization (INTERPOL), or in any other manner deemed appropriate. .

Subject to reciprocity, an issued international arrest warrant shall be deemed a request.

Proceeding on the request will be in accordance and pursuant with the provisions of Article 25 and 26 paragraphs 1 to 4 of this law.

### **Actions upon receiving the letter rogatory**

#### **Article 61**

The Ministry of Justice shall forward to the competent court a letter rogatory and a certified transcript of the criminal judgement, as well as the opinion about the existence of conditions referred to in Article 7, paragraph 1, sub-paragraphs 4 and 5 and Article 63, sub-paragraph 4 of this law.

The Pre-trial Chamber of the competent court shall decide on the letter rogatory at the session of the Chamber. The public prosecutor and the lawyer provided by the court *ex officio* shall be notified about the Chamber session.

Prior to passing the decision, the court shall examine the convict about the fulfilment of conditions for execution.

After the termination of the Chamber session, the court shall reach a decision whether to adopt or refuse the execution of the letter rogatory. During the decision making process, the court must observe the factual description of the criminal offence from the foreign criminal judgement.

### **Judgement to recognise a foreign criminal judgement**

#### **Article 62**

If the court accepts a letter rogatory, the court shall, by a decision to recognise a foreign criminal judgement, pronounce a criminal sanction in accordance with the criminal legislation of the Republic of Serbia. The issued sanction may not be stricter than the sanction pronounced in the foreign criminal judgement.

In its judgement from Paragraph 1 of this Article, the court shall include the decision to accept a letter rogatory, name of the competent court from the requesting party, the complete text of the foreign criminal judgement; and the court's criminal sanction. In the explanation of the judgement, the court shall present reasons that guided it towards the issued criminal sanction.

The public prosecutor, the convict, and the defence attorney have the right to appeal the decision from paragraph 1 of this Article.

The execution of the judgement from paragraph 1 of this Article, as well as the decision regarding parole, shall be conducted in accordance with the law of the Republic of Serbia.

### **Decision to refuse the execution of the letter rogatory**

#### **Article 63**

A decision to refuse the execution of the letter rogatory shall be passed when:

- 1) conditions required for the execution of a foreign criminal judgement are not present;
- 2) if it can be concluded that the person was convicted because of his/her race, religion, nationality, or political convictions;
- 3) if the judgement was reached in the absence of the convicted person;
- 4) if there was no fair trial.

### **Legal means**

#### **Article 64**

The court of the requesting party that issued a criminal judgement executed in the Republic of Serbia shall decide on extraordinary legal remedies filed against the judgement.

Competent authorities of the requesting party and competent authorities of the Republic of Serbia shall decide on commuting the adjudicated sentence, on amnesty, and pardon.

The Ministry of Justice shall, without delay, notify the court of the requesting party about the decision of the national court or other state authority that leads to the discontinuation of the execution of the foreign criminal judgement.

## **2. EXECUTION OF A FOREIGN CRIMINAL JUDGEMENT WITH TRANSFER**

### **Execution with transfer**

#### **Article 65**

A citizen of the Republic of Serbia who is serving a criminal prison sanction in a foreign country may be transferred to the Republic of Serbia for the purpose of serving the sanction.

Minister with the Justice Portfolio shall grant permission for the transfer of the convict. Agreement shall not be granted if, at the moment of submission of request, the convict has less than six months until the completion of his/her prison sanction.

## **Rule of speciality**

### **Article 66**

If the convict is transferred to the Republic of Serbia, he/she can not be detained, criminally prosecuted, or subjected to execution of a criminal sanction for the criminal offence committed prior to his/her transfer, except for the offence for which he/she was transferred.

Provision from paragraph 1 of this Article shall not be applied:

- 1) if the convict explicitly waives the guarantee from paragraph 1 of this Article;
- 2) if the convict, though given the opportunity, fails to leave the territory of the Republic of Serbia within 45 days from the day of parole or completed prison sentence, or if he/she returns to the territory of the Republic of Serbia.

## **Supporting documents**

### **Article 67**

A letter rogatory shall be accompanied by a certified transcript of the foreign criminal judgement and a statement of consent to transfer provided by the convict.

## **Conditions for transfer**

### **Article 68**

In addition to conditions referred to in Article 7 of this Law, transfer of the convict to the Republic of Serbia for the purpose of execution of criminal judgement may be performed if one of the following conditions is present:

- 1) the execution of criminal sanction in the Republic of Serbia shall improve the chances for social rehabilitation of the convict;
- 2) the convict consents to a transfer.

## **Procedure**

### **Article 69**

Provisions of Article 61, paragraphs 1, 2, and 4, and Articles 62-64 of this law shall be applicable accordingly to the execution of foreign criminal judgement with transfer.

A decision allowing the execution of foreign criminal judgement with transfer shall be accompanied by a decision providing permission to transfer the convict.

### 3. EXECUTION OF NATIONAL CRIMINAL JUDGEMENT

#### **Subject of execution**

##### **Article 70**

Execution of a criminal sanction issued by a national court may be requested from a foreign country, in accordance with the provisions contained in this law.

#### **Supporting documents**

##### **Article 71**

A letter rogatory shall be accompanied by the original or a certified copy of the national criminal judgement with a finality clause.

#### **Conditions for the submission of request**

##### **Article 72**

A national court may request the execution of a criminal judgement in a foreign country if one of the following conditions is satisfied:

- 1) if the convict is a foreign national;
- 2) if the convict has a residence or a resident permit in a foreign country;
- 3) if the convict is serving, based on a previous judgement, a criminal sanction or other sanction that involves a prison sentence in a foreign country.

#### **Decision on transfer of execution of a national criminal judgement**

##### **Article 73**

A decision to instigate proceedings for execution of a national criminal judgement abroad shall be passed by the Pre-trial Chamber of the court that issued a first instance judgement, upon the acquisition of the opinion of the public prosecutor.

#### **Request for detention prior to submission of the letter rogatory**

##### **Article 74**

In case of urgency, the competent authority of the requesting party may submit a request for detention before the submission of a letter rogatory.

The request shall include:

- 1) information required for to establish proper identity of the person subject of the request;
- 2) factual description and legal qualification of the offence;
- 3) statement regarding the existence of a court decision or an act of indictment from Article 15, paragraph 3 of this law;
- 4) statement that a letter rogatory shall be submitted.

The request may be addressed to the competent authority of the requested party directly, through the Ministry of Justice, or through the International Criminal Police Organization (INTERPOL).

### **Action upon receipt of the letter rogatory**

#### **Article 75**

A letter rogatory and the accompanying documents shall be forwarded to the requested party along with a request for prompt information about the related decision.

If the convicted person is at large, a foreign country may be asked to take the person into custody.

### **Consequences of acceptance of execution of a national criminal judgement**

#### **Article 76**

If the requested country accepts the execution of a national criminal judgement, the execution of the criminal sanction in the Republic of Serbia shall be terminated.

If the requesting party does not assume the execution of a criminal judgment or the convict manages to avoid execution of criminal sanctions in the requested country, a competent court in the Republic of Serbia shall proceed with the execution of judgement.

The Ministry of Justice shall notify the foreign authority about any and all court decisions or decisions of other state authorities that may influence the execution of the national criminal judgement.

## **4. EXECUTION OF A NATIONAL CRIMINAL JUDGEMENT WITH TRANSFER**

### **Subject of execution**

#### **Article 77**

A convict who is serving a criminal sanction in the Republic of Serbia may be transferred to the country of its origin, domicile or residence for the purpose of serving the sanction in accordance with provisions of this Law.

### **Information about the possibility of transfer**

#### **Article 78**

The court that issued the first instance judgement, or the management of the correctional facility in which the convict is serving a criminal sanction, shall inform the convict about the possibility of execution of a national criminal judgement with transfer to a country of the person's origin or residence.

## **Request for transfer**

### **Article 79**

A convict may submit a request for execution of a national criminal judgement with transfer to the country of the person's origin or residence to the management of the correctional facility or to the court referred to in Article 78 of this Law.

Request from paragraph 1 of this Article may be submitted by the convict's country of origin or residence as well, with the approval of the convict.

## **Decisions regarding requests for transfer**

### **Article 80**

Having obtained the opinion of the public prosecutor, the Pre-trial Chamber of the court that provided the first instance judgement shall decide upon the request for transfer.

The court shall decide to refuse the execution of the request for transfer if the convict has, at the moment of the submission of request, less than six months remaining until the completion of his/her prison sanction.

If it does not reach a decision from paragraph 2 of this Article, the court shall decide to either accept or refuse to execute the request for transfer. The decision is subject to appeal.

## **Actions related to decision to accept the request**

### **Article 81**

The final decision to accept the request for transfer, the national criminal judgement, the text of the corresponding provision of the Criminal Code, the convict's transfer request, and the report of the correctional facility on the amount of time the convict spent serving a prison sanction shall be submitted to the Ministry of Justice. The Ministry of Justice shall forward the said documents to the foreign authority.

## **Execution of decision to transfer a convict**

### **Article 82**

On the basis of the final decision of the foreign authority to accept the transfer of the convict, the Ministry of Justice shall issue an order to the management of the correctional facility, referred to in Article 78 of this Law, to hand the convict over to police authorities. They, in turn, shall escort the convict to a foreign country.

The order referred to in paragraph 1 of this Article shall be accompanied by a decision to accept the request for transfer.



## **V. OTHER FORMS OF MUTUAL ASSISTANCE**

### **1. BASIC PROVISIONS**

#### **Subject of other forms of mutual assistance**

##### **Article 83**

Other forms of mutual assistance include:

- 1) conduct of procedural activities such as issuance of summonses and delivery of writs, interrogation of the accused, examination of witnesses and experts, crime scene investigation, search of premises and persons, temporary seizure of objects;
- 2) implementation of measures such as surveillance and tapping of telephone and other conversations or communication as well as photographing or videotaping of persons, controlled delivery, provision of simulated business services, conclusion of simulated legal business, engagement of under-cover investigators, automatic data processing;
- 3) exchange of information and delivery of writs and cases related to criminal proceeding pending at the requesting party, delivery of data without the letter rogatory, use of audio and video-conference calls, forming of joint investigative teams;
- 4) temporary surrender of a person in custody for the purpose of examination by the requesting party's competent body.

#### **Conditions**

##### **Article 84**

Other forms of mutual legal assistance may be provided if the conditions listed in Article 7 of this law met as well as:

- 1) if the conditions envisaged by the Criminal Procedure Code are met,
- 2) if there are no criminal proceedings pending against the same person before national courts for the criminal offence being the subject of the requested mutual assistance.

#### **Rule of speciality**

##### **Article 85**

A person in a foreign country may not be taken into custody, detained or criminally prosecuted for a committed criminal act committed earlier whilst the person concerned is in the territory of the requesting party for the purpose of giving testimony as the injured party, witness, or expert in criminal proceedings for which mutual assistance had been provided.

The summons shall expressly state that the injured party, witness, or expert has the rights referred to in paragraph 1 of this Article.

## **Supporting documents**

### **Article 86**

A letter rogatory shall be accompanied by a specification of expenses to be paid to a witness or an expert.

## **Non-application of enforcement measures**

### **Article 87**

A witness or expert who fails to respond to a summons from the competent authority of the requesting party shall not be subjected to any sanctions or measures of enforcement, even if the summons contained such an order.

## **2. PROVISION OF OTHER FORMS OF MUTUAL ASSISTANCE TO FOREIGN COUNTRIES**

### **Submission of the letter rogatory**

#### **Article 88**

The Ministry of Justice shall submit a letter rogatory and its opinion on the presence of conditions referred to in Article 7, paragraph 1, sub-paragraphs 4 and 5 of this law to the court in the territory of which activity is to be undertaken.

### **Decision upon a letter rogatory**

#### **Article 89**

The court shall reach a decision regarding the provision of other forms of mutual assistance considering the fulfilment of preconditions from Articles 7 and 84 of this law.

### **Procedural rules**

#### **Article 90**

As an exception from Article 12 of this law, upon a request of the competent authority of the requesting party, mutual assistance shall be provided in a manner foreseen in the legislature of the requesting party, unless contrary to basic principles of the legal system of the Republic of Serbia.

## **Presence of a foreign authority**

### **Article 91**

Upon request of the competent authority of the requesting party to be informed about the provision of other forms of mutual assistance, the court shall notify the authority about the time and place of the mutual assistance act.

If the court feels that the presence of a representative of the foreign judicial authority at the venue where other forms of mutual assistance are being performed can contribute to better clarification of issues, the court may decide to grant permission for such presence as well as participation in certain procedural activities.

## **Temporary surrender**

### **Article 92**

Upon request of the requesting party, a person detained or serving a criminal sanction in the Republic of Serbia may be temporarily surrendered for the purpose of being examined as a witness or as an expert.

## **Preconditions for temporary surrender**

### **Article 93**

Temporary surrender of a person referred to in Article 92 of this law can be authorized if the following preconditions are present:

- 1) if the person agrees with the temporary surrender
- 2) if the person's presence at criminal proceedings pending before a national court is not necessary;
- 3) if temporary surrender does not lead to a prolonged custody;
- 4) if there are no other important reasons against the temporary surrender. In cases foreseen in paragraph 1 of this Article, transit through the Republic of Serbia may be approved for the purpose of temporary surrender of a person.

## **Decision upon request for temporary surrender**

### **Article 94**

The court that provided the first instance decision may, by temporary decision, allow or decline temporary surrender.

A decision to allow temporary surrender shall include in particular:

- 1) a date set for the return of the temporarily surrendered person;
- 2) necessity for the person to remain in custody until his/her return;

A decision to reject the temporary surrender must include a rationale.

## **Appeal**

### **Article 95**

The person whose temporary surrender is requested may submit an appeal against the decision from Article 94 of this law within three days from the day of reception of the decision. The Pre-trial Chamber shall decide within 48 hours on the appeal.

## **Joint investigative teams**

### **Article 96**

If the circumstances of the case justify it, joint investigative teams may be formed by an agreement between the competent authorities of the Republic of Serbia and a foreign country.

## **Deferral of provision of mutual assistance**

### **Article 97**

The court may postpone the provision of other forms of mutual assistance if such action is necessary for the unhindered conduct of criminal proceedings pending before a national judicial authority relating to the received letter rogatory.

The competent authority of the requesting party shall be notified about the deferral of provision of other forms of mutual assistance. Information shall be accompanied by a rationale.

## **Provision of information without the letter rogatory**

### **Article 98**

Under the condition of reciprocity, national judicial authorities may transmit, without letter rogatory, information relating to known criminal offences and perpetrators to the competent authorities of the requesting party if this is considered to be of use to criminal proceedings conducted abroad.

Transmission of information from paragraph 1 of this Article shall be performed only if it does not hinder criminal proceedings conducted in the Republic of Serbia.

The national judicial authority may request from the competent authority of the requesting party that received the information from paragraph 1 of this Article to notify the national authority about the activities undertaken and decisions reached.

## **Expenses**

### **Article 99**

As an exception to the provision from Article 11 of this law, the requested party may be asked to compensate the expenses which occurred with regard to a person's expert witnessing and temporary surrender.

### 3. REQUISITION OF OTHER FORMS OF MUTUAL ASSISTANCE FROM A FOREIGN COUNTRY

#### **Delivery to national citizens residing abroad**

##### **Article 100**

Writs shall be delivered to national citizens residing abroad through diplomatic or consular offices of the Republic of Serbia.

In case of delivery through diplomatic or consular offices, the authorized employee of the diplomatic or consular office of the Republic of Serbia shall sign as deliverer - if the writ was delivered at the office; if it was serviced by mail, delivery is confirmed on the return slip.

#### **Delivery to persons enjoying diplomatic immunity**

##### **Article 101**

Writs shall be transmitted to persons who enjoy diplomatic immunity through diplomatic channels.

### **VI. TRANSITIONAL AND FINAL PROVISIONS**

#### **Termination of effect**

##### **Article 102**

At the moment of coming into effect of this law, provisions from Chapter XXXII - Procedure for international legal assistance and enforcement of international treaties in criminal matters (Articles 530-538) and Chapter XXXIII - Proceedings for extradition of Defendants and Convicted Persons (Article 539-555) of the Criminal Code („The Official Gazette SRY”, No. 70/01 and 68/02 and “The Official Gazette of RS”, No. 58/04, 85/05, 115/05 and 49/07) shall cease to be in effect.

#### **Initialized procedure for mutual assistance**

##### **Article 103**

Mutual assistance in existence on the day of coming into effect of this law shall be effected according to provisions from Chapter XXXII - Procedure for international legal assistance and enforcement of international treaties in criminal matters (Articles 530-538) and Chapter XXXIII - Proceedings for extradition of Defendants and Convicted Persons (Article 539-555) of the Criminal Code („The Official Gazette of SRY”, No. 70/01 and 68/02 and “The Official Gazette of RS”, No. 58/04, 85/05, 115/05 and 49/07).

## **Coming into effect**

### **Article 104**

This Law shall come into effect on the eighth day following its publication in the „Official Gazette of the Republic of Serbia“.