

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

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## **I. GENERAL PROVISIONS**

### **Article 1**

This Law shall regulate the conditions and procedure for provision of mutual legal assistance in criminal matters (hereinafter referred to as the “mutual legal assistance”).

### **Article 2**

- (1) Mutual legal assistance shall be provided in accordance with an international agreement.
- (2) If there is no international agreement or if certain issues are not regulated under an international agreement, mutual legal assistance shall be provided in accordance with this Law, provided that there is reciprocity or that it can be expected that the foreign state would execute the letter rogatory for mutual legal assistance of the domestic judicial authority.

### **Article 3**

Mutual legal assistance shall include the extradition of the accused and sentenced persons, transfer and assuming of criminal prosecution, enforcement of foreign criminal verdicts, as well as other forms of mutual legal assistance provided for by this law.

### **Article 4**

- (1) Domestic judicial authority shall forward letters rogatory for mutual legal assistance to foreign judicial authorities and receive the letters rogatory for mutual legal assistance of the foreign judicial authorities through the ministry responsible for the judiciary (hereinafter referred to as the “Ministry”).
- (2) In cases where there is no international agreement or reciprocity, the Ministry shall deliver and receive letters rogatory for mutual legal assistance through diplomatic channels.
- (3) Exceptionally, in cases when provided for under an international agreement or where there is reciprocity, the national judicial authority may deliver directly or indirectly to the competent foreign judicial authority and receive letters rogatory for mutual legal assistance of the foreign state, with the obligation to deliver copy of letter rogatory to the Ministry.

- (4) In urgent cases, provided that there is reciprocity, letter rogatory for mutual legal assistance may be delivered and received through the National Central Bureau of the Interpol.
- (5) The courts and the state prosecutors' offices shall be responsible for provision of mutual legal assistance in accordance with the law.

### **Article 5**

Mutual criminal assistance may be provided if the offence for which the provision of mutual legal assistance is requested is a criminal offence both under the domestic law and under the law of the foreign state the judicial authority of which presented the letter rogatory for mutual legal assistance.

### **Article 5a**

- (1) Should the competent authority of the Requesting State require confidential treatment, letter rogatory may only be made available to the competent authorities to act on it and to the extent necessary for the procedure.
- (2) Should the confidentiality under paragraph 1 not be possible, the Ministry or national judicial authority shall inform the competent authority of the Requesting State.
- (3) Personal data received in response to the letter rogatory can only be used for the purpose of the proceedings for which required, as well as other legal proceedings connected with that process.

### **Article 6**

- (1) Unless otherwise has been provided for by an international agreement or this Law, the letter rogatory for mutual legal assistance of the domestic or of the foreign judicial authority shall be accompanied with the translation of the letter rogatory into the language of the requested state, or one of the official languages of the Council of Europe, if the requested state accepts it. The replies to the letters rogatory of the foreign judicial authorities do not need to be translated.
- (2) Domestic judicial authority shall also proceed upon the letter rogatory for mutual legal assistance of the foreign judicial authority if the letter rogatory has been presented electronically or by some other means of telecommunication providing delivery receipt, if it may verify its authenticity and if the foreign judicial authority is prepared to deliver the original of the letter rogatory within 15 days at latest.

### **Article 7**

- (1) Unless otherwise has been provided for by an international agreement or this Law, signed and certified letter rogatory for mutual legal assistance shall contain:
  - 1) the name and the seat of the authority making the request;

- 2) the name of the requested authority, and if its precise name is unknown, an indication that the letter rogatory is being sent to the competent judicial authority, and the name of the country;
  - 3) legal basis for the provision of mutual legal assistance;
  - 4) the form of the mutual legal assistance requested and the reason for the letter rogatory;
  - 5) legal qualification of the criminal offence committed and the summary of the facts, except if the letter rogatory refers to the service of court writs (applications, documents and the like);
  - 6) nationality and other personal details of the person regarding which the mutual legal assistance is requested and his status in the proceedings;
  - 7) in case of service of court writs, their type.
- (2) Except for the information under Paragraph 1 of the Article, national judicial authority may require for additional information and documents necessary to proceed under the letter rogatory.

#### **Article 8**

- (1) Unless otherwise provided by an international agreement, the costs of provision of mutual legal assistance, under the condition of reciprocity, shall be borne by the Requested State, except for costs for:
- 1) expertise;
  - 2) a temporary transfer of persons detained for questioning;
  - 3) which are extraordinary and disproportionate.
- (2) The costs referred to in paragraph 1, points 1 and 2 of this Article shall be borne by the Requesting State and the reimbursement of expenses referred to in paragraph 1, item 3 of this Article shall be as agreed by the Requesting and Requested States.

#### **Article 9**

The expressions used in this Law shall have the following meaning:

- (1) 'domestic judicial authority' shall mean court and state prosecutor designated by law to provide mutual legal assistance;
- (2) 'foreign judicial authority' shall mean the state authority competent to provide mutual legal assistance under the law of the foreign state;
- (3) 'requesting state' shall mean foreign state the competent judicial authority of which sent the letter rogatory for mutual legal assistance;
- (4) 'requested state' shall mean the foreign state to which the letter rogatory for mutual legal assistance is sent;
- (5) 'letter rogatory' shall mean a document requesting mutual legal assistance;

(6) 'domestic law' shall mean the law of Montenegro.

## **II. EXTRADITION OF ACCUSED AND SENTENCED PERSONS**

### **Article 10**

The extradition of the accused or sentenced persons shall be requested and enforced in accordance with this Law unless otherwise has been provided for under an international agreement.

### **Article 11**

(1) The conditions for the extradition upon the request of the Requesting State shall be as follows:

- 1) that the person claimed is not a national of Montenegro;
- 2) that the offence for which extradition is requested was not committed in the territory of Montenegro, against Montenegro or its national;
- 3) that the offence motivating the request for extradition is a criminal offence both under the domestic law and under the law of the country in which it was committed;
- 4) that the criminal prosecution or enforcement of criminal sanction has not been barred by the lapse of time under the domestic law before the person claimed has been detained or examined as an accused;
- 5) that the person claimed has not been already convicted by a domestic court for the same offence or he has not been acquitted of the same offence by the domestic court in a final and legally binding manner, except if the requirements prescribed by the Criminal Procedure Code for retrial have been met; or criminal proceedings have not been instituted in Montenegro for the same offence committed against Montenegro or a national of Montenegro; or the security for the fulfilment of property law claim of the victim has been provided if the proceedings have been instituted for the offence committed against a national of Montenegro;
- 6) that the identity of the person claimed has been established;
- 7) that the requesting state presented facts and sufficient evidence for a grounded suspicion that the person claimed committed the criminal offence or there is a final and legally binding judicial decision;

### **Article 12**

(1) The extradition shall not be allowed for a political criminal offence, an offence connected with a political criminal offence or a military criminal offence within the meaning of the European Convention of Extradition (hereinafter referred to as "political and military criminal offences").

(2) Prohibition referred to in paragraph 1 above shall not apply to the criminal offences of genocide, crime against humanity, war crimes and terrorism.

### **Article 13**

(1) The extradition shall not be granted for the criminal offence punishable under the domestic law and the law of the Requesting State by imprisonment for a term of up to one year or a fine.

(2) If the extradition of the sentenced person is requested to serve the sentence, his extradition shall not be granted if the duration of the imposed imprisonment sentence or the remaining portion thereof which is yet to be served does not exceed four months.

(3) If the extradition request is related to the accused or convicted of various offenses, of which conditions for extradition for one criminal offense were met, pursuant to paragraphs. 1 and 2 of this Article, extradition may be allowed for the crimes for which these conditions have not been met.

#### **Article 14**

If the law of the requesting state prescribes death penalty for the offence for which the extradition is requested, extradition may be granted only if that state gives assurance that the death-penalty will not be imposed or carried out.

#### **Article 15**

(1) The procedure for extradition of the accused or sentenced person shall be initiated upon the letter rogatory of the Requesting State, or by determining detention on the grounds of the international arrest warrant.

(2) Letter rogatory for extradition shall be delivered to the Ministry.

(3) The following shall be enclosed to the letter rogatory:

1) means required to establish the identity of the accused and/or of the sentenced person (accurate description, photographs, fingerprints and the like);

2) certificate or other information on the nationality of the person claimed;

3) indictment, verdict or detention order, or any other document equivalent to indictment, verdict or detention order, in the original or certified copy, which shall contain the forename and surname of the person claimed and other information necessary to establish his identity, description of the offence, legal qualification of the offence and evidence for a grounded suspicion;

4) excerpt from the wording of the criminal law of the requesting country which is to be applied or which has been applied against the accused for the offence for which extradition is requested, and if the offence was committed in the territory of a third country, the excerpt from the wording of the criminal law of that country as well.

(4) If the information and documents referred to in paragraph 3 above were submitted in a foreign language, they shall be accompanied by a certified translation into the Montenegrin language.

#### **Article 16**

(1) The Ministry shall deliver letter rogatory for the extradition to the investigating judge of the court within the jurisdiction of which the person claimed resides or within the jurisdiction of which the person claimed happens to be.

(2) If the domicile or residence of the person claimed is unknown, his domicile or residence shall be established through the state administration authority competent for affairs relating to domicile and residence.

(3) If the letter rogatory was submitted in accordance with Article 15 above, the investigating judge shall issue the order to detain the person claimed, if there is a danger that the person shall avoid the procedure of extradition, or if other reasons referred to in the Criminal Procedure Code exist, and/or he shall undertake other measures to ensure his presence, unless it is obvious from the letter rogatory and delivered information and documents that the conditions for extradition have not been met.

(4) Detention referred to in paragraph 3 above may last until the decision on extradition is enforced at latest but no longer than six months.

(5) Upon a reasoned request of the Requesting State, the panel of the competent court may extend the duration of detention referred to in paragraph 3 above in justified cases for additional two months.

(6) The investigating judge shall, after he establishes the identity of the person claimed, inform him without delay why and based on which evidence his extradition is requested and the investigating judge shall ask him to present his defence.

(7) The record shall be made of examination and presenting of defence. The investigating judge shall be obliged to inform the person claimed immediately that he may engage a defence attorney, or that a defence attorney *ex officio* may be appointed for him if the defence is mandatory for the criminal offence in question pursuant to the Criminal Procedure Code.

#### **Article 17**

(1) Detention aimed at extradition may be ordered under conditions referred to in Article 15 of this Law even before the letter rogatory of the Requesting State is received, if requested by it, or if there is a grounded suspicion that the person claimed committed the criminal offence for which he can be extradited to the requesting state.

(2) Investigating judge shall release the person claimed when the reasons for detention terminate or if the letter rogatory has not been submitted within the period of time he determined while taking into consideration all circumstances, and which cannot exceed 40 days from the date of detention. The detention ordered pursuant to paragraph 1 above may be revoked if the letter rogatory has not been submitted within 18 days from the date of detaining the person claimed.

(3) The Ministry shall inform the Requesting State about the deadlines determined by the investigating judge without delay. Without prejudice to the above, if there are justified reasons, the investigating judge may extend the duration of detention for additional 30 days at most, if requested by the Requesting State.

#### **Article 18**

(1) Upon hearing by the state prosecutor and the defence attorney, the investigating judge shall undertake other actions, if necessary, to determine if the conditions for extradition and/or surrender of the items on which or by which the criminal offence was committed, if these had been confiscated from the person claimed, are fulfilled.

(2) After the actions referred to in paragraph 1 above have been completed, the investigating judge shall deliver the case files to the competent panel along with his opinion.

(3) If the criminal proceedings are underway before a domestic court against the person claimed for the same or another criminal offence, the investigating judge shall note that in the case files.

#### **Article 19**

(1) If the Chamber of the competent court finds that the conditions for extradition prescribed by this Law have not been met, it shall make a decision to reject the letter rogatory for extradition.

(2) The order referred to in paragraph 1 above shall be submitted by the court *ex officio* directly to the higher court which may confirm, repeal or reverse the decision after it hears the state prosecutor.

(3) If the person claimed is held in detention, the Chamber of the competent court may decide that he remain in detention until the decision rejecting his extradition becomes final and legally binding.

(4) Final and legally binding decision rejecting the extradition shall be submitted to the Ministry which shall inform the requesting state thereof.

#### **Article 20**

(1) If the Chamber of the competent court finds that the conditions for extradition prescribed by this Law are met, it shall confirm this by passing a decision.

(2) The person claimed shall have right to complain against the decision referred to in paragraph 1 above directly to the court of higher instance within three days after the receipt thereof.

#### **Article 21**

If the court of second instance confirms the decision referred to in Article 20 above, or if the complaint has not been lodged against the decision of the court of first instance, the case shall be delivered to the minister competent for judiciary (hereinafter referred to as the Minister), in order to make decision whether to grant extradition.

#### **Article 22**

(1) In the event referred to in Article 21 above, the Minister shall pass the decision granting or refusing the extradition.

(2) When he grants the extradition, the Minister may make a decision to postpone the extradition because criminal proceedings are underway before a domestic court for another criminal offence against the person claimed or because this person is serving the imprisonment sentence in Montenegro.

(3) The Minister shall not grant the extradition of the person who enjoys the right of asylum in Montenegro or where it can be reasonably assumed that the person claimed shall be subjected to prosecution or punishment because of his race, religion, nationality, belonging to a specific social group or for his political beliefs, or that his status would be made more difficult for one of these reasons.

(4) The Minister shall refuse the extradition if the person claimed has not been given the possibility to have a defence attorney in the criminal proceedings preceding the extradition.

### **Article 23**

- 1) When extradition approved, the person claimed whose extradition has been approved, may not be prosecuted for another criminal offence committed prior to the extradition; the punishment for another criminal offence committed prior to the extradition cannot be enforced against the person claimed; nor a punishment more severe than the one to which he has been sentenced can be enforced against the person claimed, without the approval of the competent authority of Montenegro.
- 2) The approval referred to in paragraph 1 of this Article shall not be required if the person whose extradition was allowed during the extradition proceedings before the investigating judge issued a statement that he/she did not oppose the prosecution, the execution, the application of severe punishment or extradition to a third country for another before extradition committed criminal offense (hereinafter referred to as the waiver).
  - (3) A statement of waiver is given on the record before the competent court in accordance with the Criminal Procedure Code in a way that guarantees that the person whose extradition is requested voluntarily gave the statement and was aware of its consequences. The given statement of waiver cannot be revoked.
  - (4) The limitation of paragraph 1 of this Article or statement of waiver shall be noted in the decision granting the extradition.

### **Article 24**

- (1) The requesting state shall be notified of the decision concerning extradition through diplomatic channels.
- (2) The decision granting extradition shall be submitted to the administration authority competent for police affairs which shall escort the person claimed to the border crossing where at an agreed place he will be surrendered to the authorities of the requesting state.

### **Article 25**

- (1) The requesting state shall take over the person the extradition of whom has been granted within 30 days as of the date of delivery of the decision on extradition.
- (2) The Minister may extend the deadline referred to in paragraph 1 above for additional 15 days upon reasoned request of the requesting state.
- (3) If the person the extradition of whom has been granted has not been taken over upon the expiry of the deadline referred to in paragraphs 1 and 2 above, he shall be immediately released, and the Minister may refuse repeat extradition request for the same criminal offence.

### **Article 26**

If the extradition of the same person is requested by more than one country, either for the same offence or for different offences, the decision shall be taken having regard to seriousness of the criminal offences, the place of commission, the respective dates of the requests, the nationality of the person claimed, the possibility of subsequent extradition to another state, and other circumstances.

### **Article 27**



- (1) If the extradition is requested by a foreign state from another foreign state and the person claimed would have to be escorted through the territory of Montenegro, transit may be granted by the Minister upon the letter rogatory by the requesting state provided that the person concerned is not a national of Montenegro and that the extradition is not enforced for political or military criminal offence.
- (2) Letter rogatory for transit of the person through the territory of Montenegro shall contain the information and documents referred to in Article 15 paragraph 3 of this Law.
- (3) In the case of transit of the person through the territory of Montenegro by air transit, if no landing is expected, it shall not be necessary to obtain permit referred to in paragraph 1 above.
- (4) The requesting state shall notify the Ministry of transit referred to in paragraph 3 above. The notification shall contain information such as: the name of the person escorted through the territory of Montenegro, the state to which the person is extradited, the criminal offence for which the person is extradited, and the time of air transit.

#### **Article 28**

- (1) At the request of the requesting state, the competent court shall seize and surrender, in accordance with the domestic law, items which may serve as evidence materials or that resulted from the commission of criminal offence.
- (2) The items referred to in paragraph 1 above shall be surrendered even in case when an already approved extradition may not be enforced due to the death or escape of the person claimed.
- (3) If the items referred to in paragraph 1 above are subject to seizure or confiscation in the territory of Montenegro, they may be temporarily retained or surrendered provided that they are returned in connection with the ongoing criminal proceedings.
- (4) The items referred to in paragraph 1 above, to which Montenegro and third persons have rights, shall be returned to Montenegro as soon as possible after the hearing is completed. The costs of returning of items shall be borne by the requesting state.

#### **Article 29**

- (1) The person for the extradition, if the conditions for extradition prescribed by this Law have been met, may be extradited within a summary procedure if the person claimed consented.
- (2) The consent referred to in paragraph 1 above shall be entered for the record before a competent court in accordance with the Criminal Procedure Code, in a way ensuring that the consent has been given voluntarily and that the person claimed has been aware of all consequences of such consent. The consent once given cannot be revoked.
- (3) In the case where the process of extradition of the accused or convicted was instituted by the imposition of custody at an international arrest warrant, the Requesting State shall be notified within 10 days of the consent referred to in paragraph 1 of this Article and the statement of waiver, with note that it is not required to submit the letter rogatory.
- (4) The decision on extradition in a summary procedure shall be passed by a competent court, which shall without delay inform the Ministry, and the Ministry shall further notify the Requesting State.

- (5) The extradition within a summary procedure shall have the same force and effect as the extradition within an ordinary procedure.

#### **Article 30**

The costs of extradition incurred outside the territory of Montenegro shall be incurred by the requesting state.

#### **Article 31**

- (1) If criminal proceedings are underway in Montenegro against a person located in a foreign state or if the person located in a foreign state has been sentenced by a competent Montenegrin court, the Minister may submit the letter rogatory for extradition.
- (2) The letter rogatory shall be submitted to the requested state through diplomatic channels and it shall be accompanied by documents and information referred to in Article 15 of this Law.

#### **Article 32**

- (1) If there is danger that the person claimed will flee or hide, the Minister may request to order to detain that person temporarily or to undertake other measures required to prevent his escape even before the actions are taken in accordance with Article 31 of this Law.
- (2) The letter rogatory for temporary detention shall contain specifically the information on the identity of the person claimed, the name of the criminal offence for which the extradition is requested, indictment, verdict or detention order, date, place and name of the authority ordering detention, and/or information about the validity of verdict, as well as the statement that the extradition shall be requested through regular channels.

#### **Article 33**

- (1) If the person claimed is extradited, he may be criminally prosecuted and/or the punishment may be enforced against him only for the criminal offence for which the extradition has been granted, unless he has waived this right.
- (2) If the extradition has been granted under certain conditions with respect to the type or duration of sanction which may be imposed and/or enforced and if it has been accepted under such conditions, the court shall be bound by such conditions when pronouncing a sentence; while if the enforcement of an already imposed sentence is the subject of the extradition, the court adjudicating in the highest instance shall reverse the verdict and impose the punishment in accordance with the conditions of extradition.
- (3) If the person extradited had been held in detention in a foreign country for the criminal offence for which he has been extradited, the time spent in detention shall be accounted for in the imprisonment sentence.

### **III. TRANSFER AND ASSUMING OF CRIMINAL PROSECUTION**

#### **Article 34**

- (1) If a foreigner whose place of residence is in a foreign state committed a criminal offence in the territory of Montenegro, that state can be surrendered the criminal files for the purpose of criminal prosecution and trial if the foreign state does not object to it.
- (2) Before confirmation of the indictment, the decision to transfer criminal prosecution shall be taken by the competent state prosecutor; and after the confirmation of the indictment the decision to transfer criminal prosecution shall be taken by the panel of the competent court composed of three judges.
- (3) If the victim is a national of Montenegro, the transfer of criminal prosecution shall not be allowed if the victim opposes to it, unless a security for the settlement of his property law claim has been provided.

#### **Article 35**

The competent court or the state prosecutor shall deliver the letter rogatory for the transfer of the criminal prosecution accompanied with the decision on the transfer of criminal prosecution and the case files to the Ministry.

The Ministry shall deliver the letter rogatory for the transfer of the criminal prosecution to the competent authority of the requested state, in accordance with Article 4 of this Law.

#### **Article 36**

(1) Upon letter rogatory of the Requesting State for Montenegro to assume the criminal prosecution of a national of Montenegro or a person whose residence is in Montenegro for the criminal offence committed abroad, the competent authority in Montenegro may assume the criminal prosecution:

- 1) when extradition is not allowed;
- 2) if the competent authority of the Requesting State states that upon the final decision of the competent authority in Montenegro it will not prosecute the defendant for the same offense.

(2) The letter rogatory referred to in paragraph 1 of this Article shall be submitted with the documents to the competent public prosecutor in whose territory the person resides.

(3) If the property law claim has been lodged with the competent authority of the Requesting State, action shall be undertaken as if it were presented to the competent court.

(4) The Requesting State shall be informed of the refusal to assume criminal prosecution as well as of the final and legally binding decision passed within the criminal proceedings, in accordance with Article 4 of this Law.

#### **Article 37**

- (1) If the criminal prosecution has been assumed upon the letter rogatory referred to in Article 36 of this Law, domestic law shall apply.
- (2) Procedural action taken under the regulations of the Requesting State is equated with procedural action taken against the Montenegrin legislation, unless it is contrary to the fundamental principles of the domestic legal order and international standards on the protection of human rights and fundamental freedoms.
- (3) The law of the foreign state shall apply in case when it is more lenient for the accused.

## **IV. ENFORCEMENT OF FOREIGN CRIMINAL VERDICT**

### **Article 38**

(1) Competent Montenegrin court shall, to enforce final and legally binding criminal verdict of a foreign court if this has been prescribed under an international agreement or if there is reciprocity, make a decision on the imposition of criminal sanction, or a decision ordering the suspension or revocation of property obtained by criminal activity, in accordance with domestic law.

(2) In the case referred to in paragraph 1 above, the competent court shall pass the decision within a panel composed of three judges without presence of the parties.

(3) Territorial jurisdiction of the court shall be defined according to the last place of residence of the sentenced person in Montenegro and if the sentenced person has never reported his place of residence in Montenegro – according to the place of birth. If the sentenced person neither has had his place of residence nor was born in Montenegro, the Supreme Court of Montenegro shall identify one of the courts having subject-matter jurisdiction before which the proceedings shall be conducted.

(4) In the operative part of the verdict referred to in paragraph 2 of this Article, the court shall insert full wording of the operative part and the name of the court from the verdict of the foreign court and it shall pronounce the sentence upon letter rogatory. In the particulars of judgement, the court shall state reasons it took into account in the pronouncement of the sanction and refer to the reasons of the foreign court the verdict of which is to be enforced.

(5) State prosecutor and the sentenced person or his defence attorney may lodge a complaint against the verdict.

### **Article 39**

(1) If the foreign court pronounced criminal sanction which is not prescribed by the domestic law, the competent Montenegrin court shall pronounce a criminal sanction which is most similar to the criminal sanction imposed by a foreign court by type and severity.

(2) In the event referred to in paragraph 1 above, the criminal sanction may not be more severe than the criminal sanction pronounced by a foreign court.

### **Article 39a**

Foreign judicial criminal verdict shall not be enforced, if:

- 1) the statute of limitation came in force under domestic law;
- 2) in accordance with the domestic law for the criminal procedure the court in Montenegro has jurisdiction, and there are circumstances which preclude criminal prosecution;
- 3) the decision was made in the absence of the defendant or if the defendant was not heard or did not have the opportunity to present his defense.

### **Article 40**

The provisions of the domestic law regulating pardon, amnesty and conditional release shall also apply to the persons convicted by foreign criminal verdicts to imprisonment sentence or security measure.

#### **Article 41**

- (1) If under an international agreement, a criminal verdict of a Montenegrin court may be enforced in a foreign state or if there is reciprocity, the competent authorities of the foreign state shall be delivered a letter rogatory.
- (2) If the foreign national convicted in Montenegro or if a competent authority authorized by an international agreement submits a letter rogatory to the competent Montenegrin court for the sentenced person to serve the sentence in his country, the court shall proceed pursuant to the international agreement.
- (3) If a Montenegrin citizen who is serving a sentence in a foreign state petitions to a Ministry or the competent authority of that State to be transferred to Montenegro to continue serving a prison sentence, transfer can be made with the consent of the Minister and the competent authority of the country in which Montenegrin citizen is serving his sentence, if he is left to serve more than six months imprisonment and if there is reciprocity.

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

#### **Article 42**

Other forms of mutual legal assistance shall be: submitting documents, written materials and other cases related to the criminal proceedings in the requesting country; mutual exchange of information, as well as undertaking of individual procedural actions; hearing the accused, witness and expert, including hearing through video and telephone conference, crime scene investigation, search of premises and persons, temporary seizure of items, secret surveillance measures, DNA analysis, temporary surrender of a person deprived of liberty in order to give testimony, delivering information from penal records, information on the judgement and other procedural actions.

#### **Article 43**

- (1) The Ministry shall deliver and receive letters rogatory for the forms of mutual legal assistance referred to in Article 42 of this Law in accordance with Article 4 of this Law.
- (2) The permissibility and the method of enforcement of the action which is the subject matter of the letter rogatory of the foreign judicial authority shall be decided by the court in accordance with domestic law and international agreement.

#### **Article 44**

- (1) At the letter of request of the foreign judicial authority, domestic judicial authority may approve the presence of a foreign official person and person having legal interest in the enforcement of the action requested by the letter rogatory.

- (2) In case the presence at the letter of request referred to in paragraph 1 above is approved, domestic judicial authority shall send notice to the foreign judicial authority of the place and time of enforcement of the action requested by the letter rogatory.

#### **Article 45**

Procedural action undertaken by the foreign judicial authority in accordance with its law shall be deemed equal to the relevant procedural action undertaken by a domestic judicial authority within the criminal proceedings, unless this is contrary to the principles of the domestic judicial system and generally accepted principles of the international law.

#### **Article 46**

Mutual legal assistance shall not be provided if the letter rogatory concerns military criminal offence.

#### **Article 47**

Mutual legal assistance referred to in Article 42 of this Law may be refused:

- 1) if the letter rogatory of the requesting state concerns political criminal offences;
- 2) if the execution of the letter rogatory of the requesting state is likely to prejudice the sovereignty, constitutional order, security or other essential interests of Montenegro.

#### **Article 48**

- (1) Domestic judicial authority may delay provision of mutual legal assistance referred to in Article 42 of this Law if this is necessary for criminal prosecution or conduct of criminal proceedings which is pending before domestic judicial authorities, and which is related to the letter rogatory delivered.
- (2) If the domestic judicial authority delays the provision of mutual legal assistance, in accordance with paragraph 1 above, it shall notify the requesting state thereof and state reasons for delay.

#### **Article 48a**

The person who, as a defendant, victim, witness or expert, at the invitation of the national judicial authority comes from abroad to give evidence in the proceedings on which the call was made, he shall not be arrested while in the territory of Montenegro, detained or prosecuted for previously committed crime.

#### **Article 49**

(1) Person deprived of liberty in Montenegro may be temporarily transferred to the requesting state at the letter of request of its competent judicial authority as a witness for the purpose of hearing, confrontation or crime scene investigation, for the proceedings initiated in that state, provided that:

- 1) the person gave a statement for the record of the competent court that he consents to temporary transfer;
- 2) the period of temporary transfer will not prolong his detention and jeopardize the criminal proceedings underway against him in Montenegro;
- 3) a person shall not be punished or another sanction imposed on him during temporary transfer;

4) it has been ensured that the transferred person shall be sent back to Montenegro immediately after the procedural action has been completed.

(2) The requesting state shall be obliged to send back the person referred in paragraph 1 above to Montenegro, without delay, immediately after the procedural action has been completed, within 60 days at latest.

(3) The decision on transfer shall be passed by the competent court within a Chamber composed of three judges and it shall be enforced in a manner prescribed by Article 24 paragraph 2 of this Law.

(4) The person the transfer of whom is requested shall have the right to lodge a complaint against the decision referred to in paragraph 3 above to the competent court within three days as of the receipt of decision.

#### **Article 50**

As regards the criminal offences of making and putting into circulation counterfeit money, money-laundering, unauthorized production, processing and sale of narcotic drugs and poisons, trafficking in human beings, as well as other criminal offences with respect to which the centralization of data is prescribed under international agreements, the authority before which the criminal proceedings are conducted shall be obliged to deliver to the National Central Bureau of the INTERPOL, without delay, data on criminal offences and the perpetrator, while the court of first instance shall be further obliged to submit a final and legally binding verdict.

#### **Article 51**

(1) The Ministry shall, at the request of domestic judicial authorities, obtain from the competent foreign judicial authorities texts of legislation which are applicable or were applicable in other countries, and, if necessary, notifications regarding certain legal issue.

(2) The Ministry shall, at the request of foreign judicial authorities, deliver texts of domestic legislation or notifications on certain legal issue.

#### **Article 52**

(1) Mutual legal assistance referred to in Article 42 of this Law shall also be provided to the European Court of Human Rights and European Court of Justice, in accordance with this Law.

(2) Provision of mutual legal assistance to the International Criminal Court shall be prescribed under a separate law.

#### **Article 53**

The costs incurred in relation to expert examination, and the costs of temporary transfer of the person deprived of liberty for the purpose of hearing in the requesting state shall be borne by the requesting state.

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

#### **Article 54**

Unless otherwise has been provided for under this Law, the provisions of the Criminal Procedure Code shall apply *mutatis mutandis* to the provision of mutual legal assistance.

#### **Article 55**

The procedures for provision of mutual legal assistance underway on the date of entry into force of this Law shall be finalized in accordance with the provisions of Chapter XXX and XXXI of the Criminal Procedure Code ('Official Gazette of SFRY', Nos. 4/77, 14/85, 74/87, 57/89 and 3/90, and 'Official Gazette of FRY', Nos. 27/92 and 24/94).

#### **Article 56**

The provisions of Chapter XXX and XXXI of the Criminal Procedure Code ('Official Gazette of SFRY', Nos. 4/77, 14/85, 74/87, 57/89 and 3/90, and 'Official Gazette of FRY', Nos. 27/92 and 24/94) shall cease to be valid by entry into force of this Law.

#### **Article 57**

This Law shall enter into force eight days after the date of its publication in the Official Gazette of Montenegro.