

**LAW ON INTERNATIONAL COOPERATION IN CRIMINAL MATTERS-
A SEGMENT OF THE STRATEGY FOR THE REFORM OF THE
JUDICIARY SYSTEM 2017-2022**

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Abstract

The Republic of North Macedonia and its European aspiration, as well as its current reformer context, impose the need for a serious revision of the fundamental tools and capacity of prevention institutions and suppression of one of the most relevant societal deviations: transnational organised criminal. Following the process of harmonization of the domestic legislation with the European one in the sphere of international cooperation in criminal matters, the need for a new law on international cooperation in criminal matters was confirmed.

This new law is almost ready and is in the process before the adoption and implementation, and is one of the most important laws, a relevant act in the suppression of transnational organized crime, which is at the same time an integral part of the adopted Strategy for the reform of the judicial sector for the period 2017-2022. What is important is that the new law regulates the institutional forms of international cooperation for the first time and also removes the flaws that were perceived by practitioners in the application of the current Law on International Cooperation in Criminal Matters. The new law means simplifying procedures and increasing its effectiveness. The purpose of the new law is to improve the current situation, as well as to increase the possibilities for a more efficient and effective fight in dealing with severe forms of criminality, especially those with a foreign element. The new law stems from the identified need for expanding knowledge in this area, as well as achieving a more uniform and more informed approach to handling these types of procedures.

The new Law on International Cooperation in Criminal Matters is one of the basic tools that regulates the conditions and procedure for international cooperation in criminal matters, together with all relevant international instruments, ratified conventions in the field of international judicial cooperation and international legal assistance, and their additional protocols will contribute to the suppression of transnational organized crime.

Keywords: *reform, transnational organised criminal, international cooperation in criminal matters*

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I. INTRODUCTORY NOTES

International legal aid is a relevant legal tool in the prevention and repression of organized forms of crime with a foreign element. In that sense, a national legislative plan has been drawn up to develop more general determinants to improve the current situation and increase the opportunities for a more efficient and effective fight against serious forms of crime, especially those with a foreign element. In that context, we would especially emphasize the following documents: a) The report of R. Receive as well as plans: 3-6-9 and 18; b) the strategy for reform of the judicial sector for the period 2017-2022; c) the action plan for implementation of the strategy for reform of the judicial sector: 2017-2022 and d) the Council for Monitoring the Implementation of the Judicial Reform Strategy. All this was the consequence of a conglomerate for several reasons, among which we would single out as more relevant: the new forms of sophisticated crime and their need for new models of social reaction, updating existing and establishing new incriminations, stipulating new sanctions, finalizing the institution and seizure of property and other types of property, correction of the normative framework of the institute "international legal aid" as a necessary instrument in combating transnational crime.¹

II. INTERNATIONAL LEGAL AID - A MORE DEFINITE DEFINITION AND ITS PHENOMENOLOGY

Mutual cooperation, in principle, implies any type of requested or spontaneous assistance at any stage of the criminal case or in the execution of the judgment by the judicial and police authorities, from one state to another, intending to gather information and evidence of offences which have been committed by a suspect and/or person to prove possible involvement or non-involvement in those crimes.

The theory of international (criminal) law makes a distinction between primary and secondary assistance. In this context, primary assistance refers to the transfer of proceedings and the transfer of convicted persons; through it, the requested State undertakes an essential part of the criminal proceedings on behalf of the requesting State. Meanwhile, the format of secondary assistance consists of two other institutes: extradition and mutual legal assistance. Usually, in case of secondary legal aid, the requested state only helps, either by conducting investigative actions or by handing over the accused person to the state - the applicant. Its legal perimeter usually includes: cross-border surveillance, controlled delivery, sending documents, written evidence and confiscated items, providing information, questioning witnesses, experts or suspects, questioning witnesses and experts via video or telephone conference, providing financial information institutions and confiscation of proceeds of crime, providing information from (telephone) companies and internet service providers, interception of communications, search and seizure, use of li and undercover etc.

The genesis of the mentioned institutes as well as their articulation has been an integral part of the Macedonian Law on Criminal Procedure for a long time, where their phenomenology was defined scarcely. Experience has shown that this matter, due to its complexity, the participation of most entities in the application of the mentioned institutes and the "rich" appearance is not the most adequate for it to be just an upgrade of basic law and several relevant issues to remain

¹ Tupancheski, N. July 2018, Report from the Roundtable on the Law on International Legal Assistance in Criminal Matters,

"open" and create serious problems in practice. In that context, the theoretical discourse and the mentioned phenomenology of the international legal aid had a stimulating effect on its novelization, ie on the need to adopt a special act which would cover the "relief" character of this sphere.

III. PRINCIPLES OF INTERNATIONAL LEGAL COOPERATION

Despite the munitions regulation of any legal phenomenon, there is always room for legal hermeneutics to apply it and the reasons may be of a different nature. In this sense, certain general rules can often be a useful tool in filling legal gaps as well as in overcoming, in this particular case, some potential misunderstandings that often have an international context. Also, we will briefly list some of the more important principles that the legal doctrine suggests as an additional instrument in the realization of international legal aid.²

Speciality: The principle of speciality is contained in most contracts. This means that the requesting State, which has provided evidence or information through legal cooperation, may use it only for the purposes for which the assistance was requested. If the information and evidence are used for other purposes, there is a possibility only if prior permission has been obtained from the requested state.

Trust: The fact that the two countries have signed an agreement or a settlement can be considered as a way of expressing mutual trust in the legal systems of each of the states. In enforcing the request for assistance, trust means that states act in accordance with their laws and respect human rights. When the request is submitted based on an existing agreement or agreement, the assessment of the request is minimal. Unless there are serious contraindications, it is checked whether the facts and circumstances stated in the request for legal aid are correct and not incorrect.

Double crime: According to this principle, the facts stated in the legal claim must also be a crime in the requested State. However, the requested State is not bound by the same qualification used in the requesting State, and the qualification of such an offence may be different.

Reciprocity: This is a principle on which many multilateral agreements are based. This means that no country is ready to offer legal aid if the other country is not ready to do the same. The principle of reciprocity can affect legal cooperation in two situations. On the one hand, the state may limit the degree of co-operation with a specific statement stated in the agreement or agreement. Other states may limit the extent of that country's legal aid in the same way. On the other hand, this principle may play a role in deciding whether to seek assistance from a country with which agreements or bilateral agreements have not yet been signed. By submitting a legal request, the requesting State may give the impression that the next time the requested State requires assistance, reciprocity will be offered. To prevent such incidents, the Ministry of Justice, ie if the request must be sent through the Ministry of Justice, must indicate in the cover letter that is sent together with the request in which part it may or may not provide reciprocity.

Ne bis in idem: The Ne bis in idem principle provides the basis for refusing to act on a request for legal cooperation. The requested State may refuse assistance when it is clear that the accused

² For more information, see: Handbook on International Legal Aid in Criminal Matter, Prepared by: TWING LAW PROJECT, Strengthening Legal Cooperation in Civil and Criminal Matters (MK 12 IB JH 01 TWL) The project is implemented by the Center for International Legal Cooperation (CILC), 2016, pp.9-10. Also: Philipp Castner, International Criminal Law in Context, London, October 2017.

person has already received a conviction or acquittal for the same offence specified in the legal claim.

Confidentiality: This principle implies that any information shared by the requesting State Party will be treated with confidentiality by the receiving State. Ultimately, the information provided in each legal application is the "property" of the investigating authorities of the requesting State. The use of such information without proper notice or consultation with the requested State may seriously damage the criminal investigation.

IV. CONVENTION LAW AND BILATERAL AGREEMENTS

Of particular importance in achieving the set goal - combating transnational organized crime, in addition to the mentioned principles, are two other components: conventional law or international acts signed and ratified by the Republic of Northern Macedonia and bilateral agreements concluded between us and other countries. Of course, international documents only provide guidelines based on which countries that cooperate in this regard can "move", but, in principle, it is always recommended as a priority "bilateral agreement" because it can be fully treated and covered all the specifics of the signatory countries.

From the rich range of conventions that regulate this matter, as more significant we would single out:

- Single Convention on Narcotic Drugs, New York, March 30, 1961;
- UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988;
- Convention on money laundering, detection, seizure and confiscation of property gain obtained from a crime; Strasbourg, 8 November 1990;
- Convention for the Suppression of Terrorist Bombings, New York, 15 December 1997;
- UN Convention on Corruption, 27 January 1999;
- Convention for the Suppression of the Financing of Terrorism, 9 December 1999;
- Convention on the Suppression of Nuclear Terrorism Acts, 13 April 2005;
- Convention for the Prevention of Terrorism, 16 May 2005;
- Convention on Action against Trafficking in Human Beings, 16 May 2005;
- European Convention on Mutual Legal Assistance in Criminal Matters, April 20, 1959;
- Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters, 17 March 1978;
- Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters, 8 November 2001;
- European Convention on the Transfer of Criminal Procedure, Strasbourg, 15 May 1972
- European Convention on Mutual Assistance in Criminal Matters (Article 21), Strasbourg, 20 April 1959;
- European Convention on Extradition (Article 6), Paris, 13 December 1957;
- Convention on the Transfer of Sentenced Persons (CTSP), Strasbourg, 21 March 1983;
- Additional protocol to the European Convention on the Transfer of Sentenced Persons, Strasbourg, 18 December 1997, etc.

Of course, the list of international documents does not end here - the number is large, but only a few of them explicitly regulate this issue, while others indirectly point to some specifics of legal aid in combating specific forms of crime: terrorism, money laundering, human trafficking.

Bilateral agreements are also considered to be an extremely important tool in the cooperation between states in combating various forms of crime. In principle, as mentioned above, this form of legal aid is preferred, which can yield great results and at the same time protect the peculiarities and needs of the signatory states to the agreement. The Republic of Northern Macedonia has concluded several such agreements and the full list can be found on the website of the Ministry of Justice.³ For the purposes of this text, we will list some of them: Agreement between the Government of the beneficiary country and Albania on legal aid in civil and criminal matters, Official Gazette No. 16/98, 2 October 1998; Agreement between the Government of the beneficiary country and Bosnia and Herzegovina on legal aid in civil and criminal matters, Official Gazette No. 10/06, 6 January 2006. Amended on 30 July 2014, Official Gazette No. 13/2014; Agreement between the Government of the beneficiary country and Croatia on legal aid in civil and criminal matters, Official Gazette No. 19/95, 26 May 1995; Agreement between the Government of the beneficiary country and the Republic of Kosovo on mutual legal assistance in criminal matters, Official Gazette No. 178/2011, 24 June 2012; Agreement between the Government of the beneficiary country and Montenegro on legal aid in civil and criminal matters, Official Gazette No. 77, 2004; Agreement between the Government of the beneficiary country and Montenegro on legal aid in civil and criminal matters and the execution of court judgments in criminal matters, October 26, 2016; Agreement between the Government of the beneficiary country and Serbia on legal aid in civil and criminal matters, Official Gazette No. 77/2004, 9 March 2005; Agreement between the Government of the beneficiary country and Serbia on legal aid in civil and criminal matters, Official Gazette No. 15/13, 5 February 2013; Agreement between the Government of the beneficiary country and Slovenia on legal aid in civil and criminal matters, Official Gazette No. 24/96, 5 September 1997; Agreement between the Government of the beneficiary country and Turkey on legal aid in civil and criminal matters, Official Gazette No. 23/97, 28 July 2001. Both the international recommendations and the domestic jurisdiction and jurisprudence intend to have a greater extension of this form of international legal aid because this in practice means respecting all the peculiarities in terms of cooperation between the states.

V. NATIONAL LEGISLATION

In addition to the previously mentioned international instruments that North Macedonia has accepted, the legal framework of international cooperation in the criminal matter of North Macedonia also consists of the Law on Criminal Procedure (LCP)⁴ and the Law on International Cooperation in Criminal Matters⁵ (applied in 2013).

The Republic of North Macedonia, realizing the need for a separate law that would regulate exclusively this matter, made a serious step towards high international standards and adopted such a law. In fact, the legislative intervention was not just an ordinary extraction of the provisions of the Criminal Procedure Code concerning international legal aid, but on the contrary, they were elaborated, with excellent systematics and a lot of sense of pragmatism. The law, which numbered 105 members, proved to be a good legal investment that seriously helped combat not only national but also a global crime, where most perpetrators of crimes in various roles/roles are members of regional or multinationals criminal associations.

³ <https://translate.google.com/translate?sl=mk&tl=en&u=https%3A%2F%2Fwww.pravda.gov.mk%2Fmpp-dogovori>

⁴ Criminal Procedure Code (LCP), Official Gazette No. 150/2010

⁵ Law on International Legal Aid in Criminal Matters, Official Gazette no. 24 of 20.09.2010

Thus, for example, in Art. 4 all forms of international cooperation in criminal matters were listed in a taxonomic manner: 1) international legal aid; 2) taking over and deviating from criminal prosecution; 3) extradition and 4) execution of criminal convictions and transfer of convicted persons.

It should be emphasized that the procedure for its realization was established for all forms of cooperation. The entire professional public had positive assessments of the adopted Law, until the moment (five or six years after its application) when several entities (Ministry of Justice, courts, prosecutors, police) that applied it did not begin to detect its weaknesses, at times and contradictions, up to the applicability of certain norms. In general, his biggest flaw was the need to simplify it - direct communication between entities from different countries and not for it to go through the ministries of justice regularly. The six-year period has shown many other shortcomings: in the procedures themselves, in terms of reimbursement of costs, insufficient precision in terms of which institution/organ when acting, etc.

In that sense, the New Judicial Reform Strategy 2017-2022⁶ found the weaknesses of the Law and proposed to make appropriate adjustments to overcome them without emphasizing whether it would be a completely new law or an amendment approach. Practitioners were unanimous - it would be best to draft a new law that would fully revise the whole matter but at the same time be a good opportunity to incorporate all new international standards.

In 2018, an expert group was formed by practitioners, representatives of the Ministry of Justice and the academic community, as a result of which a new draft verification of the Law on International Cooperation in Criminal Matters was prepared.

In summary, given the fact that this law as a very relevant (complimentary) act in combating transnational organized crime is an integral part of the adopted Strategy for Reform of the Judicial Sector for the period 2017-2022, it should have been part of the legal nomenclature a long time ago. Unfortunately, the law has not been adopted yet in 2020.⁷ The exact reasons for its non-adoption are not known and no one has any arguments, at least good ones that would go in favour of this form of social abstinence of the Macedonian society.

Without any special chronology, in the following, we will present some basic legal stigmas that were proposed by the expert group and are segments of the new law. Practically, out of 105 articles contained in it, the current law was intervened in over forty.

The innovation of the Law, in general, had the following legal trajectory: it is necessary to harmonize with the Law on Criminal Procedure, revision of Art. 27 and considering the possibility of adding some new incriminations, what is emphasized is that the "data centralization" is not clear enough. Furthermore, the possible emergence of cost-related issues in procedures that can be enormously high; there are ambiguities regarding the language of communication (Article 17), the format of invitations sent abroad to be different (Article 19). Some adjustments are needed in terms of extradition deadlines because the convention allows it. It is especially important to harmonize with the Constitution (Article 51 of the Law) regarding the principle of specialization, as well as to finalize some aspects of the shortened procedure.⁸

⁶ Judicial Reform Strategy 2017-2022

⁷ Unfortunately, the unfulfilled obligation undertaken with the Strategy was not ascertained in the "Analysis of the implementation of the Strategy for Reform of the Judicial Sector (2017-2022) for the period 2018/2019", Blueprint Group, Skopje 2019.

⁸ See in more detail: Tupancheski N., Report from the Roundtable on the Law on International Legal Aid in Criminal Matters, July 2018

VI. CONCLUDING REMARKS

International co-operation in criminal matters has gained new proportions in recent decades, with significantly increased demands for co-operation between states to expand criminal offences with a foreign element and to constitute the right to international co-operation as a separate branch of international criminal law. Transnational co-operation between states is becoming a necessary and key factor in the process of detecting and combating crime. The possible new Law on International Cooperation in Criminal Matters will not only fulfil the obligations undertaken by the Judicial Reform Strategy: 2017-2022 but will mean another step closer to achieving European standards and at the same time greater opportunities for prevention and suppression transnational organized crime.

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