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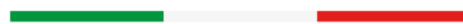
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# INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS IN MONTENEGRO

*by Ognjen Mitrović\**

SUMMARY: 1. Navigating the Present and Predicting the Future in International Judicial Cooperation System in Montenegro.

## **1. Navigating the Present and Predicting the Future in International Judicial Cooperation System in Montenegro.**

The area of international judicial cooperation in criminal matters, i.e., criminal justice cooperation with an element of foreignness in Montenegro, can be viewed from the perspective of current application and through the prism of European integration. The present state refers to the traditional procedure of mutual legal assistance (MLA), while through the process of European integration, our country is in the lobby of the procedure, which in the European Union is called judicial cooperation in criminal matters.

The two mentioned terms jointly form the field of international judicial cooperation in criminal matters in a broader sense. Although closely related, there is a clear difference between them. The first is based on the conventions and standards of the Council of Europe (CoE) and the United Nations (UN), which are already applied in Montenegro and are recognized in national legislation through the Law on Mutual Legal Assistance in Criminal Matters and the Law on Confiscation of Property Derived from Criminal Activity, i.e. through chapter VIII of the latter which refers to international cooperation. Both of these laws refer to the corresponding application of the Criminal Procedure Code. It is also very important to mention Article 9 of the Constitution of Montenegro, which stipulates that confirmed and published international agreements and generally accepted rules of international law are an integral part of the internal legal order, and what is even more important - they have primacy over domestic legislation and are directly applied when regulating relations different from the internal legislation. With this, the Constitution, as the highest legal act in the country, extends the normative framework for MLA to numerous bilateral and multilateral agreements that are applied in Montenegro. Moreover, it places them above national laws. Montenegro has acceded to all the key conventions of the CoE and the UN, but it also achieves cooperation in this area on a bilateral basis, mainly with neighbouring countries.

On the other hand, the area of judicial cooperation in criminal matters represents the perspective of Montenegro in the context of application, but also indicates the current state in terms of the transposition of EU instruments to the national legal system and preparation for their implementation. Namely, through the process of European integration, Montenegro is gradually transferring the legal *acquis* of the EU into its legislation. Significant steps in this regard have already been taken with the adoption of the Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union, as well as through the training program implemented in 2019 and 2020.

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This law introduced into the domestic legal system instruments such as the European arrest warrant, the European investigation order, the Decision on financial penalties, the European protection order, etc. It is important to note that these mechanisms are based on the principle of mutual recognition of the decisions of EU member states and as such differ from those currently applied in our country, as well as that the mentioned law will be applied from the day of Montenegro's accession to the European Union.

When it comes to the institutional framework, it consists of Courts and Prosecution Offices, then the Ministry of Justice, INTERPOL and the Ministry of Foreign Affairs. Courts and Prosecution Offices achieve international cooperation through receiving and sending requests (rogatory letters) for MLA, and at the same time they are preparing for a new, more demanding role within the process of judicial cooperation in the EU. The Ministry of Justice, in addition to the competence for drafting laws in this area and the process of European integration, also has the role of a central authority, i.e. mediator between domestic and foreign judicial authorities in the procedure of the MLA. By using INTERPOL as a channel of communication that was introduced for the sake of a more efficient procedure of the MLA and recognized as such in the law, there is a synthesis of judicial and police cooperation, i.e. using channels of international police cooperation in order to achieve judicial cooperation with an element of foreignness. The Ministry of Foreign Affairs also enters the institutional framework, through the work of the sector dealing with international legal affairs. This is of particular importance in cases where there is no bilateral or multilateral basis for cooperation, but it takes place on the basis of reciprocity. This state of affairs requires diplomatic communication, which is carried out precisely through the aforementioned sector of the Ministry of Foreign Affairs. In addition, some countries such as Germany and France insist on diplomatic communication in extradition cases.

This closes the circle of institutions that formally participate in the MLA process, but opens a special chapter of international judicial cooperation, namely networks and bodies for informal communication and cooperation. There are numerous organizations that facilitate and speed up the sometimes slow and cumbersome MLA. One of them is the European Union Agency for Criminal Justice Cooperation - EUROJUST. Before Montenegro signed the agreement with this EU agency, cooperation on a bilateral basis took place through contact points, and since 2017 and the entry into force of the aforementioned agreement, Montenegro, in addition to contact points, also has a liaison prosecutor for EUROJUST and national correspondent for terrorism issues. This mechanism represents a very important and effective means of judicial cooperation, especially in important and urgent cases. The importance of such cooperation is emphasized by the European Commission in almost all of its reports on Montenegro within the sub-area of Judicial Cooperation in Civil and Criminal Matters of Negotiating Chapter 24 - Justice, Freedom and Security.

Speaking further about networks, it is worth mentioning the European Judicial Network in Criminal Matters (EJN). It is a network that functions under the auspices of EUROJUST and is predominantly composed of representatives of EU member states, in which Montenegro has observer status. It is also a very important instrument of judicial cooperation, and it is particularly suitable for dealing with urgent cases, as shown by numerous examples from practice. Through the participation of their two contact points in the plenary and regular meetings of this network, Montenegrin practitioners are simultaneously familiar with the specifics of the application of instruments of judicial cooperation in EU countries.

A somewhat younger, but no less important body is the GlobE network, which recently operates with the support of the United Nations Office on Drugs and Crime



(UNODC). GlobE has been in existence for a little more than two years, and the plan is to form a sub-component of this network with the aim of providing support to the Western Balkans region in the fight against organised crime and corruption. The formation of this regional component of the GlobE network would have exceptional value and serve as an example to other regions around the world.

In conclusion, it is clear that mutual legal assistance and judicial cooperation in criminal matters in Montenegro are interconnected aspects of a unique process. Proper development is essential for both. Despite Montenegro's future EU membership, the procedure of mutual legal assistance, aligned with CoE and UN conventions and standards, will persist, requiring dedicated attention. Simultaneously, in line with our country's pronounced foreign policy priority, it is imperative to meticulously equip and shape personnel for the implementation of EU instruments based on the principle of mutual recognition.