

## **INTERNATIONAL JUDICIAL COOPERATION**

International judicial cooperation in civil and penal cases is carried out under multilateral intergovernmental agreements concluded either within the framework of the European Union or other international organizations such as the UN, the European Council, and others, or under bilateral intergovernmental agreements.

Within such agreements, the Ministry of Justice operates either as the Central Authority within the meaning of cooperation with the respective authorities of other countries for the exchange of information, or as the authority receiving and transmitting requests to/from abroad for the purpose of instituting and holding judicial or administrative processes.

The Ministry of Justice handles, among others, the following matters under international conventions:

### A. INTERNATIONAL JUDICIAL COOPERATION IN CIVIL CASES

#### **1. International Abduction of children**

The 1980 International Hague Convention on civil matters from the international abduction of children has been ratified by our country under law 2102/92 – Official Gazette 193/A/1992.

Its aim is to secure the prompt return of children moved or detained illegally in one of the contracting states and also to secure that the rights of custody and communication existing under the law of one contracting state shall be respected in the other contracting states as well.

Therefore:

If your ex- or current spouse, another relation or a third party, moved and detains illegally your minor child in a foreign country implementing the Convention and you wish the child's return or to communicate with your child:

You may apply to the Ministry of Justice which, under the above Convention, shall forward your request and shall care for the institution of judicial or administrative procedures for the prompt return of the minor child to the country of its usual residence. A list of the contracting states may be found at the Ministry of Justice website, under «International Relations» (Διεθνείς Σχέσεις).

The application form may be obtained from the same web site, under «Application forms» (Έντυπα αιτήσεων).

#### **2. Custody of a Minor**

The 1980 Luxembourg Convention on the recognition and enforcement of judgments concerning the custody of children and restitution of custody has been ratified by our country under law 2104/1992 – Official Gazette 193/A/1992.

Its aim is to reconstitute the right to custody and communication on an international level. If a judgment awarding you custody of your minor child has been rendered by a Greek court, in order to have it recognized abroad you may proceed as follows:

The Ministry of Justice shall care for transmitting your request to the competent Authority of the other country as provided for in the Convention so that the said

judgment be recognized and enforced there. A list of the contracting states may be found at the Ministry of Justice website, under «International Relations» (Διεθνείς Σχέσεις).

The application form may be obtained from the same web site, under «Application forms».

### **3. Vindication of Maintenance claims abroad**

The 1956 New York Convention on the vindication of maintenance claims abroad has been ratified by our country under Legislative Decree 4421/1964 – Official Gazette 215/A/1964.

Its aim is the vindication of maintenance claims in case the party liable to pay maintenance and the maintenance beneficiary live in different countries. It provides for the establishment of two Central authorities, one receiving and one transmitting Authority:

a) For Greece, the Central Authority for receiving requests from abroad is the Ministry of Justice, and b) the Authority transmitting the relevant requests abroad is the Ministry of Foreign Affairs.

If you wish to claim maintenance in a contracting country:

You may address your request to the Ministry of Foreign Affairs, in particular Division E3, 1 Zalokosta Street, Tel. No. 210 3683300, 210 3683134.

### **4. Transmission of requests for judicial aid**

The European Convention of Strasbourg, 1977, on the transmission of requests for judicial aid, has been ratified by Greece under law 1456/1984 Official Gazette 89/A/1984. Its aim is to limit, through the establishment of a system of transmission of judicial aid requests, the financial obstacles that complicate the appeal to civil courts and to allow the financially weaker people to assert their rights before the courts of the contracting parties.

If you wish to be provided with free legal help for a civil, commercial or administrative matter in a foreign country, which is party to the Convention:

You may apply to the Ministry of Justice that shall transmit your application to the foreign authority so that you be granted the requested judicial aid, in the framework of the European Convention. Your application shall be accompanied by all evidence at your disposal for supporting your request.

## **B. INTERNATIONAL JUDICIAL COOPERATION IN PENAL CASES**

Within the scope of international judicial cooperation in penal cases, matters such as the following are regulated:

1. Entry in the Schengen Information System (SIS)
2. Extradition of extraditees
3. Provision of judicial assistance in penal cases

### **1. SCHENGEN AGREEMENT**

The Agreement and the Treaty on the implementation of the Schengen Agreement have been ratified by Greece under law 2514/1997 Official Gazette 140/A/1997.

The Schengen Agreement and Treaty have created a zone of free movement of persons, abolishing controls in the internal borders of member-states and establishing the principle of a uniform zone upon entry in the Schengen zone. However, for security reasons, it was deemed necessary to institute compensating measures, in the first line of which is the Schengen Information System (SIS).

SIS is a file common for all Schengen member-states concentrating two major categories of information:

The first regards persons sought or under probation, such as persons sought-after or under observation by police authorities, persons who have disappeared or require protection, such as minors, persons who are non-Schengen nationals and have been prohibited from entering the Schengen territory or persons whose identity is fraudulently used by other persons.

The second category of entries concerns sought-after vehicles or objects.

Parties to this treaty are all European Union members except the United Kingdom.

**May any citizen be informed of the SIS entries?**

No. Access to such information is restricted only to the competent national authorities.

**Who exercises control over whether the Schengen member-states respect the rights enjoyed by people under the Treaty for the implementation of the Schengen Agreement?**

This is done by an independent Authority, the so-called Common Schengen Control Authority consisted of members of the Schengen member-state Authorities on the protection of personal data.

**If you are entered in the SIS, you have the following rights:**

1. Right to access information entered concerning yourself.
2. Right to correct data, when these are based on an error concerning the law or the facts.
3. Right to appeal to the courts or the competent authorities in order to obtain the correction or deletion of erroneous information.
4. Right to request verification of data entered and of their intended use.

**How may you exercise the above rights?**

You shall apply to the National Authority For the Protection of Personal Data where you shall obtain all useful information on the exercise of your rights under your national law or the law of the country where you chose to exercise your right. Upon your application, the competent Authority for the Protection of Personal Data shall advise to you the relevant applicable law and shall inform you on how your request

proceeds.

For Greece, the Authority for the Protection of Personal Data is established in Athens, at 8 Omirou Street, Tel. No. 210 3352610-13.

## **2. EXTRADITION**

The extradition of extraditees is carried out on the basis of bilateral or multilateral intergovernmental agreements, with concurrent application, as the case may be, of the relevant provisions of the Penal Procedure Code, articles 436 through 456 for those matters not regulated by the agreements.

In case an extradition issue arises between Greece and another country without a relevant agreement being in place, the extradition is carried out only on the basis of the reciprocity principle always in conformance with the relevant procedural provisions.

### **Can Greek nationals be extradited in another country?**

No. It is prohibited that Greek nationals be extradited. Only alien nationals can be extradited (the nationality and the time of commission of the punishable act are taken into consideration).

### **When is an alien's extradition prohibited?**

The extradition of an alien is prohibited:

- a) In case the extraditee alien had the Greek nationality at the time of commission of the relevant act
- b) When the prosecution of the crime committed abroad falls, in accordance with the Greek law, within the jurisdiction of the Greek courts.
- c) In the case of a crime which, under the Greek law, is designated as military, political, or of form or is prosecuted only upon a complaint of the injured person or when under the circumstances it derives that the extradition was requested for political reasons.
- d) If, under the laws of the state requesting the extradition or of the Greek state or the state where the crime was committed, there have already arisen (before the decision on the extradition) legal grounds preventing the prosecution or the enforcement of the sentence or precluding or eliminating punishability.
- e) If it is deemed likely that the person for whom extradition is requested shall be prosecuted by the state to which such person is surrendered for an act different than that for which extradition is requested.

### **Is extradition to a country applying the capital punishment allowed?**

Extradition to a country in which the capital punishment is in force is allowed only provided the requesting country provides sufficient guarantee that such punishment shall not be executed.

**If the extradition-requesting countries are more than one, to which one shall the extradition be made?**

If more than one countries request the extradition for the same crime, extradition shall be either to the country whose the perpetrator is a national, or to the country where the act was committed. If the requests refer to different acts extradition takes place preferably to the state in which the heavier crime, under the Greek law, was committed, or in the case of acts of the same severity, to the state whose request arrived first. The obligation undertaken by such country to re-extradite the perpetrator for the other crimes is always taken into consideration.

**What is the rule of specificity?**

That the person shall not be prosecuted or sentenced in the state requesting his/her extradition for other acts, previous to the extradition and different than those for which such person is being extradited. In case there are other punishable acts, a request of extension must be made. The extraditee may, if extradition is requested under the Schengen Agreement, waive the rule of specificity.

**What is required for the extradition of a person?**

1) An application by the requesting state accompanied by the supporting documents specified in the relevant agreement and/or the Penal Procedure code.

2) An irrevocable (affirmative) opinion of the Appellate Justices Board (which is subject only to the legal remedy of appeal before the 2<sup>nd</sup> division of the Supreme Court).

**During the hearing before the Appellate Justices Board is the extraditee entitled to attend?**

Yes, if wishing to, with a counsel and interpreter of his/her choice and, if he/she has no counsel or interpreter, he/she may request that such persons be appointed by the Presiding Judge.

**Who orders the extradition?**

Sole the Minister of Justice may order an extradition and only provided the Appellate Justices Board has rendered an affirmative and irrevocable opinion.

**Can an extradition decision be issued upon an irrevocable negative opinion by the Appellate Justices Board?**

No. The extraditee is released from prison upon the order of the Prosecuting Attorney to the Appellate Court and the Minister of Justice is advised accordingly, unless otherwise specified in the relevant agreement. Such person is also released in case the requesting state has not collected such person within two months as of the date the Minister of Justice decision on the extradition was communicated to it. In all cases such person is released if two years have elapsed from the date of arrest; such time limit may be extended by six months under a decision of the Board of Justices.

**After the issuance of an irrevocable decision against the extradition can a new request for the extradition of the same person be submitted?**

Yes, provided it contains new evidence for the extradition, which had not been previously advised to the appellate justices board.

**In Greece, who makes the request for the extradition of a person from a foreign state?**

The Prosecuting Attorney to the Court of Appeals, within whose district the penal prosecution is instituted or where the sentence has been pronounced, through the Minister of Justice. It may also be requested on the initiative of the Minister of Justice.

**Can a person extradited to the Greek authorities be re-extradited to a third country?**

Yes, provided the country that extradited such person to Greece consents to such extradition to a third country and the crime for which extradition to such third country is requested is prior to and different than the one for which such person was extradited to Greece.

### **3. PROVISION OF JUDICIAL ASSISTANCE IN PENAL CASES**

**What is judicial assistance?**

Judicial assistance is the provision of assistance by the judicial or prosecuting authorities of a country to the respective authorities of another country, given upon request, either on the basis of a (bilateral or multilateral) agreement or on the basis of the reciprocity principle and in conformance with the rules of the domestic procedural law.

**What is judicial assistance consisted of?**

Judicial assistance may take the form of:

1. Execution of judicial orders such as:
  - a. examination of witnesses or experts or accused persons
  - b. conducting a search or seizure and delivery of objects
  - c. transmission of exhibits or other objects
  - d. conducting an inspection and expert survey
2. Service of legal documents and judgments, subpoena of witnesses, experts and prosecuted persons, etc.

**Who requests judicial assistance?**

Sole the judicial or prosecuting authorities and only for the requirements of a specific judicial case.