



REPUBLIKA E KOSOVËS – PRESIDENTI  
REPUBLIC OF KOSOVO – THE PRESIDENT  
REPUBLIKA KOSOVA – PREDSEDNIK

## DECREE FOR RATIFICATION OF THE INTERNATIONAL AGREEMENT

Pursuant to Article 18, paragraph 2 of the Constitution of the Republic of Kosovo, Article 10 paragraph 4 of the Law no. 04/L-052, on International Agreements and Article 4, item 3 of the Law No. 03/L-004 on the Ministry of Foreign Affairs and Diplomatic Service, I hereby issue the following;

### **Decree**

The ratification of the Agreement on Mutual Legal Assistance in Criminal Matters, between the Government of the Republic of Kosovo and the Republic of Croatia, signed in Prishtina on 11 May 2012, and received in the Office of the President of the Republic of Kosovo on 23 May 2012.

Pursuant to Article 18, item 3 of the Constitution of the Republic of Kosovo, the ratified agreement shall be forwarded to the Parliament of the Republic of Kosovo as a notification.

The ratified agreement shall enter into force on the day of its publication in the Official Gazette.

Decree No: DMN-002-2012

Prishtina, 01 June 2012

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Atifete Jahjaga  
President of the Republic of Kosovo

**AGREEMENT  
BETWEEN  
THE REPUBLIC OF KOSOVO  
AND  
THE REPUBLIC OF CROATIA  
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

The Republic of Kosovo and the Republic of Croatia, hereinafter referred to as the "Parties",

In their aspiration for further developing and strengthening of the bilateral relations in the field of mutual legal assistance in criminal matters between the two countries,

Taking into consideration the existing friendship and cooperation between the two countries and their willingness to participate actively in the process of cooperation in Europe,

Have agreed as follows:

**CHAPTER I  
GENERAL PROVISIONS**

**Article 1  
Scope of mutual legal assistance**

- (1) The Parties undertake to afford each other, in accordance with this Agreement, the widest measure of mutual legal assistance in criminal matters in respect of offences the punishment of which, at the time of the request for mutual legal assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.
- (2) Judicial authorities of either Party shall afford mutual legal assistance, in accordance with this Agreement, to other authorities which, pursuant to the law of other Party, have competence in the matters specified in the paragraph (1) of this Article.
- (3) This Agreement does not apply to arrests, the enforcement of judgments or offences under military law which are not offences under ordinary criminal law.

**Article 2  
Channel and language of communication**

- (1) The Parties shall submit requests for mutual legal assistance through their competent authorities:
  - a) for the Republic of Kosovo: through the Ministry of Justice of the Republic of Kosovo;
  - b) for the Republic of Croatia: through the Ministry of Justice of the Republic of Croatia.
- (2) The request for mutual legal assistance and the supporting documents shall be transmitted in original or certified copies thereof shall be provided.

- (3) Requests for mutual legal assistance shall be submitted in Albanian, Serbian or English languages to the Ministry of Justice of the Republic of Kosovo and in Croatian or English languages to the Ministry of Justice of the Republic of Croatia.
- (4) In urgent cases the requests for mutual legal assistance may be transmitted through the International Criminal Police Organization (Interpol). Copy of such request shall be transmitted at the same time to the Ministry of Justice of the requested Party.
- (5) The provisions of the paragraph (1) of this Article do not exclude communication through diplomatic channels, where necessary.

### **Article 3**

#### **Requests for mutual legal assistance**

- (1) Requests for mutual legal assistance compiled in accordance with this Agreement shall be issued by the judicial authority or other competent authority of the requesting Party and addressed to the competent judicial authority or other competent authority of the requested Party.
- (2) Requests for mutual legal assistance shall indicate as follows:
  - a) the authority making the request;
  - b) the object of and the reason for the request;
  - c) where possible, the identity and the nationality of the defendant and/or the person concerned;
  - d) where necessary, the name and address of the person to be served;
  - e) description of facts and legal qualification of the offence for which the criminal proceedings is being conducted;
  - f) where necessary, the questions which must be posed on the persons whose examination is being requested.
- (3) The requested Party may require transmitting of additional information and documents if it deems necessary to execute the request.
- (4) The request and supporting documents shall be signed and stamped by the competent authority of the requesting Party. Further authentication shall not be required.

### **Article 4**

#### **Refusal of mutual legal assistance**

- (1) The requested Party may refuse a request for mutual legal assistance if it considers that execution of the request is likely to prejudice its sovereignty, security, public order or its other essential interests.
- (2) The requested Party shall refuse a request for mutual legal assistance if it is related to:
  - a) an act which pursuant to the law of the requested Party does not constitute an offence;
  - b) an offence which the requested Party considers to be a political offence or an offence connected with a political offence.



- (3) For the purposes of this Agreement, the following offences shall not be considered political offences or offences connected with a political offence:
- a) murder or attempt of murder of a Head of State or a member of his or her family;
  - b) the crimes against humanity specified in the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948 by the General Assembly of the United Nations;
  - c) the violations specified in Article 50 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, Article 51 of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, Article 130 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949 and Article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949;
  - d) any comparable violations of the customs of war having effect at the time when this Agreement enters into force;
  - e) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970;
  - f) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971;
  - g) a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents;
  - h) an offence involving kidnapping, the taking of a hostage or serious unlawful detention;
  - i) an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons.
- (4) However, besides offences referred to in the paragraph (3) of this Article, the following offences shall not be considered political offences or offences connected with a political offence:
- a) a serious offence involving an act of violence against the life, physical integrity or liberty of a person;
  - b) a serious offence involving an act against property that created a collective danger for persons.

#### **Article 5** **Execution of the requests**

- (1) The requested Party shall execute request for mutual legal assistance in accordance with the procedure and in the manner provided for by its law.
- (2) The requested Party may apply, upon request, a particular procedure required by the requesting Party in the execution of the request for mutual legal assistance to the extent that such procedure is compatible with its law.
- (3) Officials of the requesting Party and other interested persons or their representatives may be present, as observes, at the execution of request for mutual legal assistance, if the requested Party consents thereto.

- (4) To that end and on the express request of the requesting Party, the requested Party shall duly inform the latter of the date and place of the execution of request for mutual legal assistance.
- (5) Requests for the presence of such officials or interested persons should not be refused where that presence is likely to render the execution of request for mutual legal assistance more responsive to the needs of the requesting Party and, therefore, is likely to avoid the need for supplementary requests for mutual legal assistance.
- (6) When the requested Party determines that the request for mutual legal assistance can not be fulfilled, it shall immediately inform the requesting Party and specify the reasons thereof. Original request and the attached documents shall be returned to the requesting Party without delay.
- (7) Upon execution of the request for mutual legal assistance, the requested Party shall transmit certified copies of records or documents requested, unless the requesting Party expressly requires the transmission of originals.

**Article 6**  
**Seizure and surrender of objects**

- (1) Request for seizure and surrender of objects shall be supported by the decision of the competent judicial authority of the requesting Party ordering seizure of those objects.
- (2) The requested Party may delay the surrender of any property, records or documents requested, if the said property, records or documents are required for the purposes of its pending criminal proceedings.
- (3) Property, original records or documents surrendered to the requesting Party in the execution of the requests for mutual legal assistance, shall be returned to the requested Party, as soon as possible, unless the latter waives the return thereof.
- (4) Paragraphs (1) to (3) of this Article shall be without prejudice to any legitimate interests of interested persons, including *bona fides* third parties, in relation to seized and surrendered objects.

**CHAPTER II**  
**SERVICE OF SUMMONS AND JUDICIAL DOCUMENTS,**  
**APPEARANCE OF WITNESSES, EXPERT WITNESSES AND DEFENDANTS**

**Article 7**  
**Service of procedural acts**

- (1) Service shall be proved by means of a receipt dated and signed by the person served or by means of declaration made by requested Party that service has been executed and stating the form and date of such service. One or other of these documents shall be transmitted immediately to the requesting Party.



- (2) Requests for service of a summons on the defendant shall be transmitted to the Ministry of Justice of the requested Party no later than 45 days before the date set for appearance of the defendant on the territory of the requesting Party.
- (3) The summons shall not contain notice of restraint measures to be applied if duly summoned witness or expert witness fails to appear. The summons containing notice of restraint measures shall be served but the witness or expert witness who fails to appear shall not be subjected to any punishment or restraint measure in the territory of the requested Party.
- (4) If the requesting Party considers the personal appearance of a witness or expert witness before its judicial authorities especially necessary, it shall so mention in its request for service of the summons and the requested Party shall invite the witness or expert witness to appear. The requested Party shall inform the requesting Party of the reply of the witness or expert witness.

### **Article 8** **Allowances and expenses**

- (1) The witness or expert witness who has been summoned in accordance with Article 7 of this Agreement, and who appears, has right on expenses which shall be borne by the requesting Party in accordance with its law.
- (2) The request or the summons shall indicate the approximate travelling and subsistence expenses refundable.

### **Article 9** **Guarantees of personal liberty**

- (1) A witness or expert witness, whatever his or her nationality, who appears upon the summons of the requesting Party, shall not be prosecuted, detained or subjected to any other restriction of his or her personal liberty on its territory in respect of acts committed or convictions pronounced prior to his or her departure from the territory of the requested Party.
- (2) A person, whatever his or her nationality, summoned before the judicial authorities of the requesting Party as a defendant to answer for acts for which he or she is charged, shall not be prosecuted, detained or subjected to any other restriction of his or her personal liberty on its territory in respect of acts committed or convictions pronounced prior to his departure from the territory of the requested Party and which are not specified in the summons.
- (3) The guarantees provided for in this Article shall cease:
  - a) if the witness, expert witness or defendant remained on the territory of the requesting Party more than fifteen days after his or her presence is no longer required by its judicial authorities, although he or she has had the opportunity to leave its territory;
  - b) if the witness, expert witness or defendant, after leaving the requesting Party, voluntarily returns to its territory.

**Article 10**  
**Temporary surrender of detained persons**

- (1) If either Party summons as a witness or for the purposes of confrontation the person detained by the other Party, the detained person shall, upon his or her consent, be temporarily surrendered to the requesting Party provided that he or she shall be returned within the period stipulated by the requested Party.
- (2) Surrender of the detained person may be refused if:
  - a) surrender is liable to prolong his or her detention, or
  - b) there are other overriding grounds for not surrendering him or her to the requesting Party.
- (3) Surrender of the detained person may be postponed if his or her presence is necessary at criminal proceedings pending in the territory of the requested Party.
- (4) In case of the temporary surrender of detained person from the third State to one of the Parties, through the territory of the other Party, the latter shall, in accordance with this Agreement, grant his or her transit through its territory provided that detained person is not its national.
- (5) The surrendered person shall remain in detention in the territory of the requesting Party and, where applicable, in the territory of the Party through which territory transit is granted, unless the Party from whom surrender is requested applies for his or her release.
- (6) When the purpose specified in the paragraph (1) of this Article is fulfilled the requesting Party shall immediately return the surrendered person to the requested Party unless the latter applies for his or her release. The surrendered person has rights specified in Article 9 of this Agreement.

**Article 11**  
**Hearing by video conference**

- (1) If a person who is present on the territory of either Party has to be heard as a witness or expert witness by the judicial authorities of other Party, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by video conference, as provided for in paragraphs (2) to (7) of this Article.
- (2) The requested Party shall agree to the hearing by video conference provided that it has the technical means to carry out the hearing. If the requested Party has no access to the technical means for video conferencing, such means may be made available to it by the requesting Party by mutual agreement.
- (3) Requests for a hearing by video conference shall contain, in addition to the information referred to in Article 3 of this Agreement:
  - a) the reason why it is not desirable or possible for the witness or expert to attend in person;
  - b) the title of the judicial authority and the name of the persons who will be conducting the hearing.
- (4) The judicial authority of the requested Party shall summon the person referred to in paragraph (1) of this Article in accordance with the procedure laid down by its law.



- (5) With regard to hearing by video conference, the following rules shall apply:
- a) a judicial authority of the requested Party shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Party. If the judicial authority of the requested Party is of the view that during the hearing the fundamental principles of the law of the requested Party are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;
  - b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Party;
  - c) the hearing shall be conducted under the direction of the judicial authority of the requesting Party in accordance with its law;
  - d) upon the request of the requesting Party or the person to be heard, the requested Party shall ensure that the person to be heard is assisted by an interpreter, if necessary;
  - e) the person to be heard may claim the right not to testify in accordance with the law of either the requested or the requesting Party.
- (6) Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested Party shall on the conclusion of the hearing draw up minutes indicating:
- a) the date and place of the hearing;
  - b) the identity of the person heard;
  - c) the identities and functions of all other persons in the requested Party participating in the hearing;
  - d) any oaths taken; and
  - e) the technical conditions under which the hearing took place.
- (7) Each Party shall take the necessary measures to ensure that, where witnesses or expert witnesses are being heard within its territory, in accordance with this Article, and refuse to testify, when under an obligation to testify, or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national criminal proceedings.

### **CHAPTER III TAKING OVER THE CRIMINAL PROCEEDINGS**

#### **Article 12 Conditions for taking over the criminal proceedings**

- (1) If national of one Party or the person who resides on its territory commits on the territory of other Party an offence punishable by the laws of both Parties, the Party on whose territory the offence has been committed may request the other Party to take over the criminal proceedings.
- (2) Competent judicial authority of the requested Party shall conduct criminal proceedings in accordance with its law.

#### **Article 13**



### **Requests for taking over the criminal proceedings**

- (1) Requests for taking over the criminal proceedings shall indicate the factual description of offence and data about the defendant, his or her nationality and his or her address of residence.
- (2) Requests referred to in paragraph (1) of this Article shall be supported by:
  - a) original file or the certified copy thereof;
  - b) excerpt from the provisions of the criminal law applicable in the respective criminal matter.

### **Article 14 Prosecution in the requesting Party**

When the requesting Party has requested taking over of criminal proceedings, it may no longer prosecute the defendant for the offence in respect of which the taking over of criminal proceedings have been requested. However, the requesting Party shall retain its right to take all steps in respect of the prosecution until:

- a) the competent judicial authority of the requested Party finally discontinues the criminal proceeding because there is no evidence that the defendant has committed the offence or because the act the defendant is charged with is not an offence;
- b) the defendant is finally acquitted of the charge in the requested Party;
- c) the judicial decision rendered in the requested Party is executed or its execution becomes impossible pursuant to the law or act on pardon or amnesty or because of the lapse of time according to the law of the requested Party.

### **Article 15 Obligation to inform**

The requested Party shall inform the requesting Party on the result of the criminal proceedings initiated on the request for taking over the criminal proceedings as well as provide the final decision or the certified copy thereof.

## **CHAPTER IV MISCELLANEOUS PROVISIONS**

### **Article 16 Information from the criminal records**

Either Party shall transmit information from the criminal records upon the request of the judicial authorities of other Party, to the same extent as in the case where the request is made by its own judicial authorities.

### **Article 17 Exchange of information from the criminal records**

- (1) The Parties shall exchange information from the criminal records relating to the nationals of the other Party.
- (2) Information shall be exchanged every six months between the Ministry of Justice of the Republic of Kosovo and the Ministry of Justice of the Republic of Croatia.
- (3) The Party which has informed the other Party on data referred to in the paragraph (1) of this Article shall, upon the latter's request, transmit judgments or certified copies thereof, as well as data on sanctions, in order to enable it to consider whether they necessitate any measures according to its law.

### **Article 18 Confidentiality**

The requesting Party may require that the requested Party keeps as confidential the fact of submission of the request as well as its substance, except to the extent necessary to execute the request. If the requested Party can not comply with the requirement of confidentiality, it shall promptly inform the requesting Party thereof.

### **Article 19 Personal data protection**

- (1) The Party to which personal data have been transmitted from the other Party as a result of the execution of the request submitted in accordance with this Agreement, may use them only:
  - a) for the purpose of criminal proceedings to which this Agreement apply;
  - b) for other judicial or administrative proceedings directly related to the criminal proceedings referred to in subparagraph a);
  - c) for preventing an immediate and serious threat to public security.
- (2) In the case where transmission of personal data could have been refused or their use could have been limited by the requested Party, the requesting Party shall not use them for the purposes specified in the paragraph (1) of this Article without prior consent of the requested Party.
- (3) Such data may however be used for any other purpose if prior consent to that effect has been given by the requested Party.
- (4) Either Party may refuse to transmit personal data obtained as a result of the execution of a request submitted in accordance with this Agreement where:
  - a) such data are protected under its law; and
  - b) the Party to which the data should be transmitted does not provide for the protection of individuals regarding to automatic processing of personal data to the extent proscribed by the relevant international agreements, unless the latter Party undertakes to afford such protection of the personal data as is required by the other Party.
- (5) The Party which has transmitted personal data obtained as a result of the execution of the request submitted in accordance with this Agreement may require from the other Party to give information on the use of those data.



**Article 20**  
**Costs of the mutual legal assistance**

- (1) Each Party shall bear the costs of the execution of the request for mutual legal assistance which occurred on its territory except for the following which shall be refunded by the requesting Party:
  - a) fees for expert witness and costs of expertise occurred on the territory of the requested Party;
  - b) costs of the temporary surrender of the detained person carried out in accordance with Article 10 of this Agreement;
  - c) costs of establishing and servicing of the video-conference link in the requested Party, the fee of interpreters and expenses of witnesses which were borne by the requested Party in accordance with its law, unless the Parties agree otherwise.
- (2) Requested Party shall inform the requesting Party on the amount of the costs referred to in the paragraph (1) of this Article.
- (3) Expertise may be conditioned by the advance deposit at the competent judicial authority of the requested Party.
- (4) Without prejudice to the costs refund referred to in paragraph (1) of this Article, the Parties shall consult each other with a view to making arrangements for the payment of any substantial or extraordinary costs which occurred in the execution of the requests.

**Article 21**  
**Information on law**

The Ministry of Justice of the Republic of Kosovo and the Ministry of Justice of the Republic of Croatia shall on request provide each other the text of law provisions which are in force or have been in force in the territory of the Parties, as well as the information about certain legal issues.

**CHAPTER V**  
**FINAL PROVISIONS**

**Article 22**  
**Settlement of disputes**

Any dispute regarding the interpretation or application of this Agreement shall be settled by the Parties through diplomatic channels.

**Article 23**  
**Entry into force, duration and termination**

- (1) This Agreement shall enter into force on the date of the receipt of the last written notification by which the Parties have informed each other, through diplomatic channels, that their internal legal procedures necessary for its entry into force have been completed.
- (2) This Agreement is concluded for an indefinite period. Either Party may terminate this Agreement at any time, by giving written notification to the other Party through diplomatic channels, six months in advance.
- (3) This Agreement shall be provisionally applied from the date of its signature.

Done at Prishtina this eleventh day of May, 2012 in two originals, each in the Albanian, Serbian, Croatian and English languages, all texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.

**FOR THE REPUBLIC OF KOSOVO**

Hajredin KUÇI

Deputy Prime Minister and Minister of Justice

**FOR THE REPUBLIC OF CROATIA**

Orsat MILJENIĆ

Minister of Justice