



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

**DECREE FOR RATIFICATION OF THE
INTERNATIONAL AGREEMENT**

Pursuant to Article 18, paragraph 2 of the Constitution of the Republic of Kosovo and Article 4, paragraph 3 of the Law Nr.03/L-004 for the Ministry of Foreign Affairs and Diplomatic Service, I hereby issue the following;

Decree

On the ratification of the Agreement on Mutual Legal Assistance on Criminal Matters, between the Government of the Republic of Kosovo and the Government of the Republic of Macedonia, signed on April 8, 2011, and received by the Office of the President of the Republic of Kosovo on May 6, 2011.

Pursuant to Article 18, paragraph 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-010-2011

Prishtina, 9 June 2011

Atifete Jahjaga
President of the Republic of Kosovo

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

PREAMBLE

The Government of the Republic of Kosovo and the Government of the Republic of Macedonia; hereinafter referred to as the „Parties”;

In their aspiration for further development and reinforcement of the bilateral relations in the spirit of the existing friendship and co-operation in the field of mutual legal assistance in criminal matters between the two Parties;

Taking into consideration the desire to participate actively in the European integration cooperation process, and with a view to more efficiently realising the protection of the rights and interests of their nationals;

As well as for the purposes of promoting the overall relations and co-operation between the two Parties;

Have agreed as follows:

CHAPTER I
GENERAL PROVISIONS

Article 1

Affording mutual legal assistance

1. The Parties undertake to afford each other, upon request, the widest possible measure of mutual legal assistance in proceedings in respect of criminal matters, on the conditions and in a manner defined by the provisions in this Agreement.
2. The legal assistance shall be afforded by the courts and other authorities of the Parties which under the regulations of their countries are competent to decide on the cases referred to in paragraph 1 of this Article.

Article 2

Scope of assistance

The cooperation shall refer to criminal matters of mutual legal assistance: for location of witnesses, obtaining information about persons under investigation and investigation of criminal offences that do not involve any measure of coercion of any person to answer any question, between the competent authorities of both Parties, hearing witnesses, forensic experts and other persons, recognition and execution of judgments in criminal matters, exchange of evidence or other material during investigating and criminal proceedings, providing information from the penal records, search of premises and persons, temporary taking away of items, communication of acts, written materials and other items that are in relation with a criminal procedure in the requesting Party, transfer and takeover of criminal prosecution.

Article 3

Channel and language of communication

1. Requests for mutual legal assistance shall be communicated in writing through the Ministries of Justice of both Parties.
2. Requests for mutual legal assistance and other enclosed supporting acts that are communicated shall be in the original or a certified copy thereof.
3. The request for mutual legal assistance shall be written in the language of the requesting Party, for the Republic of Kosovo – in the Albanian or Serbian language, and for the Republic of Macedonia – in the Macedonian language.
4. The letters enclosed with the request for mutual legal assistance shall be written in the language of the requesting Party and there should be enclosed a certified translation into the language of the requested Party, unless otherwise defined by this Agreement.
5. The acts that according to the requests for mutual legal assistance are to be handed to the national of the requesting Party staying in the territory of the requested Party do not have

to have an enclosed translation into the language of the requested Party, if the recipient agrees to that.

6. Letters in connection with the acting upon the requests for mutual legal assistance shall be written in the language of the requested Party.

Article 4

Contents of the Request

1. The request for mutual legal assistance shall indicate in so far as possible:
 - 1) the name of the authority of the requesting Party issuing the request for mutual legal assistance, and if possible also the name of the requested authority;
 - 2) description of the case for which legal assistance in criminal matters is requested and a legal description of the criminal offence;
 - 3) subject and aim of the request for mutual legal assistance;
 - 4) necessary data required for the enforcement of the procedure for affording legal assistance;
 - 5) full name of the parties to the procedure, data about the date and place of birth, place of their permanent or temporary residence, citizenship, and a name and seat for the legal persons;
 - 6) a short description of the writs and evidence being requested, if necessary;
2. Legal assistance shall be afforded pursuant to the law of the requested Party.
3. There should be a signature and a seal by the requesting Party on the request for mutual legal assistance and the other supporting acts.

Article 5

Refusing of mutual legal assistance

1. Requests for mutual legal assistance may be refused by the requested Party in the following cases:
 - 1) If the requests for mutual legal assistance concerns:
 - a criminal offence which the requested Party considers a political criminal offence or a criminal offence connected with a political criminal offence;
or
 - a military criminal offence which does not constitute a criminal offence under the applicable criminal law.

- 2) The requested Party may refuse to afford legal assistance if it considers that the execution of the requests for mutual legal assistance would prejudice its sovereignty or security, or it would be in contradiction with its legal order.
 - 3) If it is suspected that the execution of such request is in contradiction with the European Convention on Human Rights and Fundamental Freedoms.
 - 4) Each decision on refusing mutual legal assistance should be elaborated.
2. The aforementioned criminal offences shall not be considered political criminal offences or criminal offences connected with a political criminal offence, if an investigation and procedure for such criminal offences is obligatory for the Contracting Parties under multilateral and international treaties.

Article 6

Action on the Requests

1. If the requested Party finds that the request for mutual legal assistance does not correspond with the provisions of this Agreement or may not be executed under its laws, that Party shall immediately inform the requesting Party and shall state the reasons thereof.
2. After refusing the request for mutual legal assistance, the requested party shall return the original request to the requesting Party, together with the entire documentation, information or evidence obtained.
3. If the authority to which the request for mutual legal assistance is addressed is not competent to act, it shall, *ex officio*, communicate the request for mutual legal assistance to the competent authority of its country.

CHAPTER II

LETTERS-ROGATORY

Article 7

Letters-rogatory

1. Each Contracting Party may communicate to the competent authorities of the other Party a letter-rogatory for the purposes of providing evidence such as testimony or statements of witnesses or forensic experts and transmission of documents and writs.
2. If the requesting Party desires witnesses or forensic experts to give evidence on oath, it shall expressly so request and the requested Party shall comply with the request if it is not in contradiction with the law of its state.

3. If the requesting Party requests the execution of the letter rogatory through video conference, it shall expressly so request and the requested Party shall comply with the request if it is not in contradiction with the law of its state and it is in possession of the proper equipment for such service.

Article 8

Execution of letters-rogatory

1. The requested Party shall execute the letters-rogatory related to criminal matters and addressed to it by the requesting Party, in accordance with the usual procedure and manner provided for by its own laws.
2. The requested Party may apply, upon request, a particular procedure required by the requesting Party in the execution of the letters rogatory, to the extent that such procedure is compatible with the laws of the requested Party.
3. If the requesting Party requests so expressly, the requested Party shall notify it about the date and place of execution of the letter-rogatory. Interested authorities and persons may be present in the execution if the requested Party consents.
4. Letters-rogatory for the presence of these authorities or interested persons may not be refused in case when such presence is aimed at the execution of the letter-rogatory to meet the needs of the requesting Party and enables to avoid additional requests for legal assistance.

5.

Article 9

Service and return of documents and writs from evidence

1. The requested Party may delay the handing over of any items, records or documents requested, if they are required in connection with pending criminal proceedings.
2. Any items, as well as originals from the dossier and the documents handed over in the execution of a letter-rogatory shall be returned by the requesting Party to the requested Party as soon as possible unless the latter party waives the return thereof.

CHAPTER III

SERVICE OF WRITS AND COURT DOCUMENTS

Article 10

Writs or court orders in securing evidence by applying measures of coercion

1. The requesting Party may serve to the other Party writs or orders issued by its criminal court addressed to the competent court of the requested Party requesting that the evidence noted in the writs or orders be provided by applying, if necessary, measures of coercion that are admissible under the laws of the requested Party.

2. Each Contracting Party shall withhold its right to service of writs for its nationals in the territory of the requested Party through diplomatic or consular missions.

Article 11

Contents of writs and court orders in providing evidence

The writs and court orders in providing evidence shall include:

- 1) the name of the authority making the request; and
- 2) the name, address, and citizenship of the person to whom the summons or order refers.

Article 12

Execution of foreign judgments in criminal matters

In accordance with this Agreement, both Parties shall recognise and execute judgments in criminal matters issued by the competent courts in the requesting Party, pursuant to their national relevant law.

Article 13

Temporary transfer of detainees to the territory of the requesting Party

1. A person in custody whose personal appearance is applied for by the requesting Party for the purposes of evidence other than his/her trial shall be temporarily transferred to the territory of that Party, provided that he/she shall be sent back within the period stipulated by the requested Party.
2. Transfer may be refused:
 - 1) if the person in custody does not consent;
 - 2) if his/her presence is necessary in pending criminal proceedings in the territory of the requested Party;
 - 3) if the transfer is liable to prolong his/her detention; or
 - 4) if there are other overriding grounds for not transferring him/her to the territory of the requesting Party.

Article 14

Handing over and taking over criminal prosecution

1. If a national of one Contracting Party or a person having a residence on its territory has committed a criminal offence on the territory of the other Contracting party, which is punishable by law in both Contracting Parties, the Contracting Party in which the offence has been committed may request from the other Contracting Party to take criminal prosecution.
2. The competent authorities of the requested Party shall conduct a criminal procedure in accordance with the regulations of that Party.

Article 15

1. In the letter-rogatory for taking criminal prosecution must be described the facts of the case and must be included as much comprehensive data about the defendant as possible, his/her citizenship and place of residence or place of abode.
2. The following shall be enclosed with the letter-rogatory:
 - 1) genuine writs or certified transcript;
 - 2) proof for the citizenship, that is, place of residence of the person for whom taking criminal prosecution is requested;
 - 3) an excerpt from the provisions of the Criminal Code that is applied in the requesting Party in that criminal matter;
 - 4) statements by the damaged parties saying that they consent with the handing over of the criminal prosecution.
3. If the requested Party does not accept the letter-rogatory for taking criminal prosecution it shall immediately notify the requesting Party and shall return the writs enclosed with the letter-rogatory.

Article 16

The judicial authorities of the requesting Party shall temporarily waive from the prosecution measures regarding the offences noted in the letter-rogatory for taking criminal prosecution. Such measures shall be anyway waived from if:

- 1) the competent court or the competent authority of the requested Contracting Party finally suspended the criminal prosecution owing to the lack of evidence or because the committed offence is not a criminal offence;
- 2) the defendant has been acquitted in the requested Party with a final decision;

- 3) a decision of the court which has been made in the requested Party has already been executed or there is no room for execution under the law, or owing to an act of pardon or amnesty, or if under the law of the requested party expiration of the statute of limitations has occurred.

Article 17

The requested Contracting Party shall notify the requesting Party about the outcome of the criminal procedure regarding the letter-rogatory for taking criminal prosecution and therefore shall communicate the original final decision or a certified transcript thereof.

Article 18

Save passage

A person, whatever his/her nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him/her, shall not be prosecuted or detained or subjected to any other restriction of his/her personal liberty in respect of acts or convictions anterior to his/her departure from the territory of the requested Party and not specified in the summons.

Article 19

Data protection

1. Personal data communicated by one Party to the other Party as a result of the execution of a request made under this Agreement, may be used by the Party to which such data have been transmitted, only:
 - 1) for the purposes of the procedure to which this Agreement applies;
 - 2) for other court and administrative proceedings directly related with the procedure referred to in paragraph 1.1;
 - 3) for the purposes of preventing direct and serious threat on public safety.
2. Such data may, nevertheless, be used for any other purpose if prior consent has been given either by the Party that has transmitted the data or by the person to whom the data relate.
3. Each Party may refuse to communicate personal data obtained as a result of the execution of a request made under this Agreement:
 - 1) when such data are protected under the national law; and
 - 2) when the Party to which the data should be transmitted is not bound by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, adopted in Strasbourg on 28 January 1981, unless the latter Party commits itself to provide such protection of the data as requested by the first Party.

4. Each Party transmitting personal data obtained as the result of the execution of a request made under this Agreement, may request from the Party to which the data have been transmitted to inform it of the manner in which such data have been used.

CHAPTER IV

OTHER PROVISIONS

Article 20

Communication of information for judgments

1. Each Party shall notify the other Party of all criminal judgments and subsequent measures in respect of nationals of the latter Party, entered in the judicial records. Ministries of Justice shall communicate such information to one another at least once a year. Where the person concerned is considered a national of two or more Parties, the information shall be given to each of the Parties, except if the person is not a national of the Party in the territory of which he/she was convicted.
2. In addition, each Party that has communicated the aforementioned information shall communicate to the other Party, upon its request, in individual cases, copies of the judgments and measures concerned, as well as all other relevant information relating to them and with a view to enabling it to realise whether the result from them is a need to take measure at national level. This communication shall take place between the Ministries of Justice concerned.

Article 21

Costs

1. Parties shall not request compensation of the costs incurred in the application of this Agreement, except for:
 - 1) the costs incurred for the work of forensic experts on the territory of the requested Party;
 - 2) the costs incurred with the transfer of the person in custody under Article 13 of this Agreement;
 - 3) the more considerable or extraordinary costs.
2. The costs for the fee for interpreters, however, that it provided and the fees given for the witnesses and their travel expenses in the requested Party shall be compensated to the requested Party by the requesting Party, unless otherwise agreed by the Parties.
3. Parties shall consult with one another with regard to the determination of the conditions for the payment of the costs that may be requested in accordance with the provisions referred to in paragraph 1 of this Article.

Article 22
Settlement of disputes

When implementing the provisions of this agreement in case of dispute, the same shall be resolved by diplomatic means.

CHAPTER V
FINAL PROVISIONS

Article 23

Scope of effect

The provisions of this Agreement shall apply to all requests for mutual legal assistance with respect to acts or criminal offences committed after the date of entry into force of this Agreement.

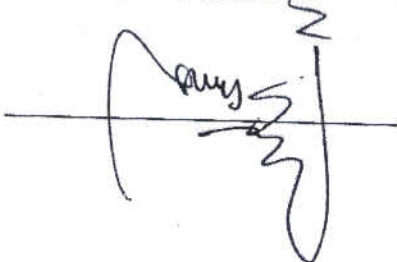
Article 24

Entry into force and termination

1. This Agreement shall be subject to ratification.
2. This Agreement shall enter into force after the expiration of 30 days from receiving the last of the notes with which the Contracting Parties notify each other about the ratification procedure conducted in accordance with the domestic law.
3. This Agreement shall remain in force for an indefinite period. Each Contracting Party may denounce the Agreement in writing through diplomatic channels. In such a case, the Agreement shall cease to be in force 6 months after the date of such notification.

Done in Prishtinë, on 8 April 2011, in two originals, each in the Albanian, Macedonian and English languages, all texts being equally authentic. In case of any differences in the interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE
REPUBLIC OF KOSOVO



FOR THE GOVERNMENT OF THE
REPUBLIC OF MACEDONIA

