

International judicial co-operation – the role of the Central Authority

Under most of the conventions on international co-operation relating to criminal and civil matters, states are required to appoint a central authority to serve as a contact point for the cooperation. The Division for Criminal Cases and International Judicial Co-operation (BIRS) at the Ministry of Justice is the Swedish central authority for this co-operation.

The Central Authority assists Swedish and foreign authorities in such matters as extradition for criminal offences, international legal assistance in criminal matters, the transfer of enforcement of sentences and criminal proceedings.

The Division also deals with matters related to international judicial co-operation that require a decision by the Government. Another of its tasks is responsibility for legislation on international judicial co-operation in criminal matters and negotiations within the Nordic region, the EU, the Council of Europe and the UN related to this field.

The purpose of this fact sheet is to present a comprehensive picture of the role of the Central Authority in international judicial co-operation.

More information about the Division's areas of responsibility is available on the Swedish Government website, www.government.se/centralauthority

About international judicial co-operation in general

International judicial co-operation in criminal matters means that states assist each other by taking action to enable investigation and prosecution of crime, and measures concerning enforcement of sentences and final decisions. As crime becomes more and more cross-border, international co-operation is naturally becoming increasingly important.

Greater mobility and more cross-border transactions also mean that a growing number of cross-border elements are involved when dealing with civil cases and matters, such as the taking of evidence

The great majority of regulations in the field of international judicial co-operation have their origin in international agreements. Co-operation may take different forms depending on the countries covered by the co-operation and the regulations and agreements that apply. Co-operation may also involve international criminal courts. To put it simply, co-operation may either take the form of more traditional, intergovernmental judicial co-operation, where states' central authorities play a key role in dealing with cases, or of co-operation based on the principle of mutual recognition and enforcement of other states' judgments and decisions. In the latter case, communication increasingly takes place directly between the judicial authorities which also normally have the competence to take decisions in these matters.

What does the central authority do?

Every year, the Central Authority deals with more than 1 500 matters involving international judicial co-operation. The Central Authority receives, examines and forwards requests to and from Sweden in such matters as international legal assistance in criminal matters, extradition for criminal offences, transfer of enforcement of sentence, transfer of legal proceedings for offences, the taking of evidence in civil matters, and applications for legal aid.

A large part of the Central Authority's work consists of providing service and advice to Swedish and foreign judicial authorities so as to facilitate international judicial co-operation. The Central Authority also provides Swedish and foreign agencies with information on the contents of Swedish and foreign law.

The Central Authority processes Government business involving international judicial co-operation in criminal matters. This primarily applies to extradition of persons to another state, transfer of enforcement of sentences to Sweden, and legal assistance in criminal matters. Other matters concern the transfer of legal proceedings or authorisation to institute prosecution in certain cases for crimes committed abroad.

A brief account of the most usual forms of international judicial co-operation

Extradition and surrender for criminal offences

Extradition and surrender for criminal offences may be considered when a state or an international court requests that a suspect or convicted person be physically extradited or surrendered to that state or court.

Where a matter concerns extradition to states outside the Nordic region and the EU, the decision on extradition from Sweden is taken by the Government. The Prosecutor-General is responsible for examining whether extradition is possible in such cases. If the person whose extradition is requested opposes extradition, the Supreme Court must deliver an opinion on the issue. A final decision is then taken by the Government.

Within the EU, a procedure for surrender under a European arrest warrant is applied instead of extradition. Within the Nordic countries, a procedure for surrender under a Nordic arrest warrant is applied. When surrendering a person from Sweden under an arrest warrant, a prosecutor or court decides whether the surrender is to take place.

Requests for extradition to Sweden can be made in the case of persons who are suspected of offences in Sweden, or who have been sentenced for offences in Sweden but who have evaded enforcement of their sentence. Decisions to request extradition to Sweden are made by the authorities in the judicial system. Such requests are sent to the Central Authority for forwarding to the competent foreign authority.

When it comes to the surrendering of people to Sweden from Nordic countries or other EU countries, the procedure for surrender under an arrest warrant is applied instead. The arrest warrant is sent directly to authorities in the other state, not via the Central Authority.

International legal assistance in criminal matters

Legal assistance in criminal matters means that authorities in different states assist each other in criminal investigations. This may involve, for example, a Swedish prosecutor who wants certain objects to be confiscated abroad, or a foreign prosecutor wanting assistance with hearing a witness in Sweden.

When Sweden assists another state, the point of departure is that all measures that may be taken in a Swedish preliminary investigation or trial can also be undertaken at the request of a foreign authority or court investigating an offence.

Swedish prosecutors or courts are responsible for determining whether assistance will be given. Only in exceptional cases does the Government decide in such matters. Swedish prosecutors and courts can seek legal assistance in other states. When and to what extent assistance can be given is conditional, on the one hand, on the international agreements applying between Sweden and the other state, and on the other by that state's national legislation.

Requests for international legal assistance in most cases should be sent directly from the requesting authority to the authority involved in the other country (such as in the Nordic countries and the EU). In other cases, they are sent via the Central Authority which forwards them to the competent Swedish or foreign authority.

Hearing by telephone conference

When Swedish courts or prosecutors are able under Swedish law to hold a hearing by telephone conference, this may also be permitted when the person to be heard is abroad, provided the other state permits this. Before planning a hearing by telephone conference of someone abroad, it is therefore important to ascertain the position of the other state. Information on other states' positions regarding hearings by telephone conference is available on the Central Authority's website. If no information about the position of a specific country is available, the Central Authority may be able to assist in obtaining such information.

Regarding foreign requests to hear persons by telephone conference in Sweden, the Swedish approach has long been that if officials from another country wish to hold a telephone hearing with a person on Swedish territory, this does not constitute an exercise of public authority. This is deemed to apply to both criminal and civil cases. Consequently, a foreign authority may hold a telephone hearing with a person in Sweden without any formalities and without involving Swedish authorities, provided the person to be heard consents to the hearing.

Transfer of enforcement of sentences

The transfer of enforcement of sentences means that a foreign judgment or decision on a custodial sanction, fines or confiscation may be enforced in Sweden. By the same token, Swedish judgments or decisions may be enforced abroad.

The purpose of transferring the enforcement of a custodial sentence is primarily to make it easier for the sentenced person to re-adjust to a law-abiding life in the country in which he or she will be living after

release. Decisions on taking over the enforcement of a sentence imposed by a non-Nordic country are made by the Government. Similar decisions in Nordic matters are taken by the Swedish Prison and Probation Service. Decisions to apply for a penalty imposed in Sweden to be transferred to another state are taken by the Swedish Prison and Probation Service and, in exceptional cases, by other authorities. A decision in non-Nordic matters to this effect may, however, be appealed to the Government.

All requests for the transfer of enforcement of sentences of non-Nordic matters should be sent to the Central Authority, which forwards them to the competent Swedish or foreign authority.

Transfer of proceedings

The transfer of proceedings entails a request from one state to another, asking the requested state to initiate legal proceedings for an offence that is punishable both in the requesting and the requested state.

The Central Authority forwards requests for the transfer of proceedings to and from Sweden. Requests to Sweden are passed on to the Swedish Prosecution Authority for further processing.

When transferring proceedings from one Nordic country to another, where the transfer is based on the Nordic co-operation agreement, direct communication takes place between the prosecution authorities of the countries in question.

Taking of evidence in civil matters

At the request of a court in one country, evidence may be taken directly in another country by the requesting court, or by an authority in this country and be transferred to the requesting court, to be used there in a trial.

The Central Authority provides assistance in forwarding requests for the taking of evidence in civil matters to and from Swedish courts. However, if direct exchanges of letters are permitted in accordance with conventions or agreements with the other state, the request is to be submitted directly to the appointed Central Authority or the relevant court in the other state. This applies under the 1974 Nordic agreement on mutual legal assistance in matters concerning service of process and taking of evidence, the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, and Council Regulation (EC) No. 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

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The Government's website: www.government.se (www.regeringen.se)

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