

THE PROCEDURE FOR REQUESTING MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Investigation and punishment of crimes to protect the citizenry, their property and society, in addition to maintaining public order and peace, constitute one of the most important objectives of any organized society. However, this effort cannot be restricted to the national sphere, because criminals are increasingly better organized, they cross borders with great ease, they perfect their techniques, they communicate easily amongst themselves, and as a result they have many opportunities to hide their criminal conduct and the profits of their national or transnational crimes, and to avoid investigation and prosecution. For these reasons, cooperation among countries is crucial to combat this common threat, since this facility of cross-border movement hampers the exchange of information, gathering of evidence, and safeguarding of the assets derived from the crimes, and makes it possible to evade criminal liability and to operate with impunity.

Thus, convinced that mutual assistance in criminal matters is an extremely valuable mechanism in the effort by states and the international community to combat crime, and aware that the gathering of evidence is essential for establishing criminal liability and, ultimately for preventing impunity, the Bolivarian Republic of Venezuela has adopted a series of measures in its search for an expeditious procedure for providing mutual assistance in criminal matters, as a way to fight crime and fulfill international commitments assumed by the Venezuelan State, through various international treaties and agreements on the subject it has signed and ratified.

In the first place, based on Article 108(17) and Article 201 of the Organic Code of Criminal Procedure, the Ministerio Público was designated as the central authority for issuing and executing formal requests and letters rogatory in criminal matters, which is extended to mutual assistance in this area. Thus, the Ministry of Foreign Affairs was asked to communicate to all countries or general secretariats of international organizations, as applicable, with which it has signed bilateral or multilateral agreements on letters rogatory or mutual assistance in criminal matters, that the Ministerio Público was designated as the central authority.

Once the Ministerio Público began operating as central authority, all requests were centralized in a specialized unit, with personnel trained to perform this important function. This unit is the Coordination of International Affairs (CAI), attached to the General Directorate for Legal Support [Dirección General de Apoyo Jurídico].

Within the single central authority, a point of contact was also designated, with the support of professionals in international relations and international public law, which has worked expeditiously to channel letters rogatory or requests for mutual assistance in criminal matters. It is important to note that the designation of this point of contact fulfills the requirements specified by “Iber-Red” in its organic description.

This coordination unit is also responsible for preparing a data base of both active and passive letters rogatory and requests for assistance, in addition to bilateral and multilateral agreements in the area of mutual assistance. By centralizing this information, it is easier to monitor and control execution of these instruments. At the same time, a model for active letters rogatory and requests for mutual assistance, establishing the minimum requirements for those instruments, was designed. These requirements are as follows:

- Identification of the competent authority of the requesting party;
- Description of the matter that is the object of the request for cooperation or assistance;
- Description of the procedures requested;
- Indication of the applicable legislation;
- Reasons why the measures are requested;
- Identity of the persons subject to criminal proceedings, when known;
- Information regarding the identity, nationality, and location of the persons to be notified and their relationship to the investigation;
- Precise description of the place to be inspected; identification of the person to be examined, or the goods that are the object of a provisional or definitive measure;

- Description of the way in which the request is to be fulfilled, including any special procedures to be followed, if such were requested;
- Indication of the authorities of the requesting party that intend to participate in the action requested and the corresponding request for such authorization, addressed to the authorities of the requested state;
- The text of the questions formulated for the taking of testimonial evidence in the requested party;
- Information on payment of the costs to be covered by the person whose presence is requested of the requested party;
- The requirements contained in Article 7 of the United Nations Convention against Illicit Trafficking in Narcotics and Psychotropic Substances and Article 18 of the United Nations Convention against Transnational Organized Crime, whenever the matter that has given rise to the request for assistance involves a crime related to drug trafficking or organized crime, respectively.
- In the case of urgent requests, the time available for execution should be indicated.

It is also important to note that a letter was drawn up for circulation to all prosecutors in the Ministerio Público, to specify the procedure to be followed in processing active and passive letters rogatory and requests for mutual assistance.

Similarly, besides ongoing advice to government representatives, talks are organized and held for the purpose of making people aware of the need to carry out the procedures in a timely, expeditious manner, and of responding to their questions and resolving any problems that may arise, as well as to analyze the application of international instruments related to the matter.

Moreover, through the Coordination Unit referred to, observations are made on proposed mutual assistance agreements in criminal matters.

ACTIVE PROCEDURE:

- 1) When the prosecutor in a case requests preparation of a letter rogatory or a request for mutual assistance in criminal matters, he may ask for the advisory services of the Coordination for International Affairs of the

Ministerio Público, if he deems such necessary. Once it has been prepared, he will forward it to the entity indicated so that it can be reviewed in light of national legislation in force and international practices.

- 2) Once a request for assistance is received, the Coordination for International Affairs requests the Directorate of the General Secretariat for the certified copy of the decision on the appointment of the prosecutor that issued it, which must in every case be forwarded to the Ministry of Foreign Affairs, along with the letter rogatory or request for mutual assistance in criminal matters.
- 3) In the event that the letter rogatory or request for mutual legal assistance in criminal matters is directed to a country of another language, it must be previously translated by a government translator into the language of the requested country; to this end, the Unit for Coordination of International Affairs will proceed to contact the Coordination of General Services to hire the translator.
- 4) Finally, the Coordination for International Affairs sends the rogatory or request for mutual assistance in criminal matters to the General Directorate of Consular Relations in the Ministry of Foreign Affairs, so that it can be sent by diplomatic channels to the requested country.

PASSIVE PROCEDURE:

- 1) The Ministry of Foreign Affairs receives the letters rogatory or requests for mutual assistance in criminal matters issued by the foreign authorities and forward them to the Ministerio Público. Once they are received by the Coordination for International Affairs, that unit will send them to the competent department or to the responsible government prosecutor or of the corresponding federal agency, depending on the nature of the request, so that a state attorney can be designated to perform the functions requested; the Coordination for International Affairs is informed of the attorney assigned in each case, and this is then reported to the General Directorate of Consular Affairs in the Ministry of Foreign Affairs, so that it can notify the diplomatic representation of the requesting state.
- 2) Once the requested measures have been taken, the state attorney must forward that information to the Coordination for International Affairs, which will request the Directorate of the General Secretariat to provide a certified copy of the decision appointing the executing state attorney, so that said document may be appended.
- 3) Finally, these documents are forwarded to the General Directorate of Consular Affairs of the Ministry of Foreign Affairs, so that they can be sent by diplomatic channels to the requesting country.

The Venezuelan Ministerio Público , as the single central authority in these matters and by virtue of its mission of international cooperation, immediately processes those requests for assistance that, because of the gravity or urgency of the case, are sent by fax, e-mail, or through the Groove, before receiving the original request. It also maintains a continuous relationship with the members of the Ibero-American Association of Ministerios Públicos, IberRED, MERCOSUR, and EUROJUST, among others, so that all appropriate requests may be met.