



MUTUAL LEGAL ASSISTANCE AND EXTRADITION

CHILEAN EXPERIENCE IN MUTUAL LEGAL ASSISTANCE AND EXTRADITION DURING CRIMINAL INVESTIGATIONS

1. CENTRAL AUTHORITY IN INTERNATIONAL JUDICIAL COOPERATION MATTERS

The Ministry of Foreign Affairs of Chile, through its Directorate of Juridical Affairs, pursuant to national laws and some international treaties, exercises the function as Central Authority on matters related to international judicial cooperation.

2. FUNCTIONS

2.1. PROCESSING OF *LETTERS ROGATORY* ON NON-CRIMINAL MATTERS (Civil, Labor, Administrative, among others)

Processing of Active *Letters Rogatory*: This is the case when a national tribunal requests that a jurisdictional action be carried out abroad. In such event the tribunal by petition of one of the parties, makes the request to the Supreme Court, which forwards it to the Directorate of Juridical Affairs of the Ministry of Foreign Affairs (hereinafter, DIJUR) to be sent through diplomatic channels to the relevant tribunal. The Ministry of Foreign Affairs verifies that the *letters rogatory* complies with the requirements established by the relevant treaties or, in absence thereof, the general principles of International Law, International Customary Law, Local Practice and their internal legislation. Once fulfilled these steps, the international *letters rogatory* is sent to the relevant tribunal for its execution by Diplomatic channels, this is, through the Chilean Embassy to the country of the tribunal which has been requested to act.

Processing of Passive *Letters Rogatory*: Similarly to the processing of the active letters rogatory, but in an inverse manner, the processing of passive *letters rogatory* take place when a foreign tribunal requests the execution of a jurisdictional procedural act in Chile through diplomatic channels or the relevant Central Authority. Such requirement is received by DIJUR, which verifies if formal requirements are met, and if it complies with the requirements of the Treaties entered into by both countries, or with the applicable Multilateral Convention, the Practice or general principles of



international law. The *letters rogatory* is subsequently sent to the Supreme Court, which in turn, after giving an opinion about its applicability (legality control), sends it to the tribunal that has been required to carry out the legal assistance requested in the *letters rogatory*.

2.2. PROCESSING OF *LETTERS ROGATORY* AND JUDICIAL COOPERATION REQUESTS IN CRIMINAL MATTERS.

Active Letters Rogatory (Old System): These requests are made through diplomatic channels, by a Chilean tribunal to the foreign judicial authority, asking for the practice of legal assistance in a foreign country, which shall have an effect on the proceedings carried out in Chile.

The Old Criminal Procedure system is still in effect in Chile since there are many *letters rogatory* whose processing has not been completed yet, as well as criminal procedures regulated by the old system, in which international *letters rogatory* could be requested. Likewise, active *letters rogatory* requested as a result of facts occurred prior to the entry into force of the Criminal Procedure Reform in Chile (December 16th 2000), must still be processed in accordance with the old procedure, even if the request was made after that date.

The procedure starts with the *letters rogatory* request made by a Chilean Criminal Tribunal to the Supreme Court which, subsequent to the report issued by the Court's "*Fiscal*", verifies that it complies both in terms of formal requirements and those of the essence. After this is fulfilled, the request is forwarded to the Ministry of Foreign Affairs (DIJUR), which in turn sends it to the requested tribunal through diplomatic channels.

Requests of Active International Judicial Cooperation in Criminal Matters (New System): These requests are made by a Prosecutor of the Chilean Public Prosecutor's Office (person in charge of investigating the occurrence of an offence in accordance with the new Criminal Procedural System), to a foreign judicial authority or a foreign Public Prosecutor's Office, through diplomatic channels, for the practice of legal assistance that will have effects in the proceedings carried out in Chile.

The New Criminal Procedural System has gradually replaced the Old System. It regulates the requests related to facts occurred after December 16th 2000. In a near future, requests shall only be processed according to the new system, and will fully replace the old system.



Such requests are addressed by the Public Prosecutor's Office to the Ministry of Foreign Affairs of Chile (DIJUR), in order to be forwarded to the foreign judicial authority or the foreign Public Prosecutor's Office, through diplomatic channels.

Passive Letters Rogatory or Judicial Cooperation Requests (Old System):

These requests are made by a foreign judicial authority or by a foreign Public Prosecutor's Office to the Chilean judicial authority, through diplomatic channels, for the practice of legal assistance that will have effects in the proceedings carried out abroad.

Passive criminal *letters rogatory* are submitted through diplomatic channels entering the Directorate of Juridical Affairs of the Chilean Ministry of Foreign Affairs. If the *letters rogatory* fulfill the formal requirements, they are sent to the Supreme Court of Justice, which in turn forwards them to the relevant tribunal in order to be executed.

All passive criminal *letters rogatory* and judicial cooperation requests for facts occurred before December 16th 2000, are processed in this manner.

Passive Letters Rogatory or Judicial Cooperation Requests (New System). These requests are made by a foreign judicial authority or foreign Public Prosecutor's Office to the Chilean Public Prosecutor's Office, through diplomatic channels, for the practice of legal assistance which will have effects in the proceedings carried out abroad.

These requests are submitted through diplomatic channels to the Directorate of Juridical Affairs of the Chilean Ministry of Foreign Affairs. If the requests fulfill the formal requirements, they are sent to the Unit for International Cooperation and Extraditions of the Chilean Public Prosecutor's Office, and then they are forwarded to the relevant Prosecutor's offices, in accordance with the jurisdiction thereof, for the practice of the requested assistance with the intervention of the *Guarantee* Judge, as appropriate.

All requests related to facts occurred after December 16th 2000, are processed in this manner.

3. JURIDICAL INSTRUMENTS MOST FREQUENTLY USED BY CHILE IN INTERNATIONAL CRIMINAL JUDICIAL COOPERATION

3.1. Bilateral Treaties



Bilateral Treaties constitute the direct source to determine the manner of complying a request, *letters rogatory* or an international judicial cooperation request between two countries.

Chile has signed bilateral criminal judicial cooperation agreements with a number of South American countries and with Spain.

3.2. Multilateral Conventions

In the absence of bilateral treaties or in order to complement a treaty or to supplement a treaty's lacuna, Multilateral International Conventions signed by Chile and the country with which it is cooperating are applied. Chile is party to the following multilateral agreements that have effects in international criminal judicial cooperation matters:

- **Inter-American Convention on Letters Rogatory (Panama, 1975) and the Additional Protocol thereto:** Although the Convention deals with the processing of civil letters rogatory, Chile made a statement (in accordance with its article 16^o), that its rules are extended to the processing of letters rogatory referring to criminal and other matters.
- **Inter-American Convention on the Taking of Evidence Abroad (Panama, 1975):** Although the Convention deals with the processing of civil *letters rogatory*, Chile made a statement—upon ratifying such Convention—extending its rules to the processing of *letters rogatory* referring to the taking of evidence in criminal and other matters.
- **Inter-American Convention on Mutual Assistance in Criminal Matters (Nassau, Bahamas, 1992).**
- **Private International Law Code (Bustamente Code) signed in La Havana in 1928. (Section Five of Book IV).**
- **United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances** of 1988, whose Article 7 deals with Mutual Judicial Assistance.
- **United Nations Convention against Transnational Organized Crime, the Protocol against the Smuggling of Migrants by Land, Sea and Air, and the Protocol to prevent, suppress and punish Trafficking in Persons especially women and children (Palermo Convention).**



- It is also worth noting that Chile has been taking steps in order to accede to the **European Convention on Mutual Assistance in Criminal Matters**.

3.3 PRINCIPLE OF RECIPROCITY AND GENERAL PRINCIPLES OF INTERNATIONAL LAW.

In the absence of a treaty that could bind Chile with a determined country, assistance is provided on the basis of general principles of International Law, basically the principles contained in the Convention on Private International Law (Bustamante Code) of 1928. Thus, an international practice has been created on the basis of cooperation experiences among countries.

4. EXTRADITION

4.1. PROCEDURE

Active Extraditions (Old System): A request made by a Chilean Criminal Tribunal to the Supreme Court which in turn makes the formal extradition request to the judicial authority of the foreign country. Such request is submitted to the Ministry of Foreign Affairs of Chile (DIJUR), which forwards it through diplomatic channels to the judicial authorities of the requested country. The Old Criminal Procedure system is still in force in this matter because the processing of many extradition requests made during the validity of the old system's period have not been completed yet.

Active Extraditions (New System): A request made by a Prosecutor through the Guarantee Judge to the Court of Appeals of the jurisdiction where the crime was committed. Such Court in turn makes the formal extradition request to the judicial authority of the foreign country. This request is submitted to the Ministry of Foreign Affairs of Chile (DIJUR), which sends it through diplomatic channels to the judicial authorities of the requested country. Under the New Criminal Procedure System, the Courts of Appeals are responsible for making the formal requests submitted by the Guarantee Judges, unlike the Old System in which the Supreme Court was the entity in charge of doing so.

Passive Extraditions (Old System): A request made by a foreign judicial authority to the Chilean judicial authorities, through diplomatic channels, requesting the extradition of a person who is in Chile.



Such requests must be presented through diplomatic channels, submitting them to the Directorate of Juridical Affairs of the Chilean Ministry of Foreign Affairs. If the requests comply with the formal requirements, they are sent to the Supreme Court for its acknowledgment and resolution thereof.

All extradition requests related to facts occurred before the entry into force of the Criminal Procedure Reform in the Metropolitan Region - in other words, before June 16th 2005 -, are processed in this manner.

Passive Extraditions (New System): A request made by a foreign judicial authority to Chilean judicial authorities, through diplomatic channels, requesting the extradition of a person found in Chile.

The passive extradition requests are submitted through diplomatic channels to the Directorate of Juridical Affairs of the Chilean Ministry of Foreign Affairs. If the requests comply with the formal requirements, they are sent to the Supreme Court for its acknowledgment and resolution thereof.

The principal innovation is that the Public Prosecutor's Office shall represent the interests of the requesting State in those cases where the foreign State does not appoint a lawyer to do so.

All extradition requests related to facts occurring after the entry into force of the criminal procedure reform in the Metropolitan Region, in other words, after June 16th 2005, are processed in this manner.

4.2. JURIDICAL INSTRUMENTS MOST FREQUENTLY USED BY CHILE IN EXTRADITION MATTERS

Bilateral Treaties

Constitute the direct source for determining how to comply with an extradition request between two countries.

Chile has signed a number of bilateral extradition treaties.

Multilateral Conventions

In the absence of bilateral treaties or in order to complement a treaty or to supplement a treaty's lacuna, Multilateral International Conventions signed by Chile



and the country with which an extradition request must be resolved, are applied. Chile is Party to the following multilateral agreements on Extradition:

- **Convention on Extradition, signed in Montevideo in 1933.**
- **Bustamante Code, (Section Three of Book IV)**
- **United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Article 6 refers to Extradition).**
- **Other multilateral Conventions related to specific crimes that include rules on extradition.**

Principle of Reciprocity and General Principles of International Law.

In absence of a treaty that could bind Chile to a specific country, extradition may be requested on the basis of general principles of International Law, offering reciprocity. Supreme Court case law considers that general principles are those contained in the Bustamante Code, the Montevideo Convention of 1933, and the Bilateral Treaties signed by Chile over this matter.

5. CHILEAN EXPERIENCE IN MUTUAL LEGAL ASSISTANCE

In general terms, the existing experience in judicial cooperation on international criminal matters is satisfactory because Chile has relationships with most of the countries in the world and there is a permanent collaboration abroad in the fulfillment of requests. Internally, there is full compliance by competent Chilean authorities on requests for penal cooperation. The main problems are related to the fulfillment of the deadlines of compliance, both for active and passive requests, and with the lack of background information to fulfill the requests, which frequently makes it necessary to ask for additional information.

With the implementation of the Criminal Procedure Reform, fulfillment of passive requests is now the responsibility of the Prosecutors of the Public Prosecutor's Office, with the possible participation of the Guarantee Judges. As it is with every new system, it will take some time to operate in optimal conditions. For the time being, it can be said that the time taken for processing requests has been reduced, and the judiciary has been rid of its tremendous backlog. It can also be affirmed that there is a great interest in performing all the requirements of assistance requested by the foreign authorities.

After the implementation of the Criminal Procedure Reform, the active requests are submitted by the Public Prosecutor's Office. A Specialized Unit on Extraditions (UCIEX) assists National Prosecutors in relation to the manner in which requests



must be submitted. Although there is still a great deal to be done and amendments to be introduced, the change from one system to the other has been extremely positive.

Processing of judicial cooperation requests abroad has also been positive. Although there are countries that respond more rapidly and efficiently to such requests than others, no country refuses to take the necessary steps. Conversely, there is a wide fulfillment, acceptance and collaboration to the requests of Chilean authorities.

Relating to bribery, our Directorate of Juridical Affairs does not have any record to determine the number of cooperation requests processed and executed. However, it can be stated that the number of cases is minimal compared to the large number of requests processed for other crimes.

6. PROCESSING OF AN INTERNATIONAL JUDICIAL COOPERATION REQUEST IN CRIMINAL MATTERS

We will briefly explain the role played by the Directorate of Juridical Affairs in its capacity as Central Authority in the execution of a criminal cooperation request:

The jurisdictional activity that a tribunal or the Public Prosecutor's Office of a foreign country may request from a Chilean tribunal or from our Public Prosecutor's Office is basically the following:

- Mere formal procedural acts like services, summons to appear or calls.
- Receiving and obtaining evidence (judicial confession, testimonial, expert's opinion, among others) and reports;
- Requests of Preventive Arrest for Extradition purposes;
- Extradition requests

It can be said that when a Judicial Authority with criminal jurisdiction resolves that certain procedures must be carried out in a foreign country for the progress of the case, the result of which shall be attached to the files or to the ongoing investigation, it must send an Official Letter with the necessary procedural pieces to the relevant tribunal or Public Prosecutor's Office abroad in order for such bodies to comply therewith.

As an example, if the request is to obtain the deposition of a witness, a list of questions shall have to be attached; if the request is the drafting of a report, the request must at least contain the reason for such and the background enabling the entity in charge of its draft, to understand the procedure to be carried out.



It is therefore necessary to determine the following:

1. Which aspects of the *letters rogatory* belong to the venue of the requesting Tribunal or Authority, and what aspects are of the venue of the requested Tribunal or Authority.
2. Which institutions and individuals are participating in the issuance, transmission, proceeding and devolution of the *letters rogatory*.
3. Which formalities must be met by the *letters rogatory*.

The first point will be solved by the text of the relevant treaty or, in the absence thereof, by the general principles of International Law or by the relevant internal legislations of both the requesting and required States. In general, it may be stated that corresponds to the requesting entity to decide over the venue, legality and timeliness of the act or evidence, and to the required entity the decision on how to comply over it.

We shall examine in continuation what institutions participate in the processing of a *letters rogatory* or of a judicial cooperation request in criminal matters.

Old System

1. Foreign Tribunal or Public Prosecutor's Office (requesting jurisdictional body)
2. Ministry of Foreign Affairs of the requesting country
3. Embassy of the Foreign Country in Chile
4. Ministry of Foreign Affairs of Chile, Directorate of Juridical Affairs (Central Authority)
5. Supreme Court of Justice
6. Tribunal that must carry out the legal assistance (requested Jurisdictional body)

New System:

1. Foreign Tribunal or Public Prosecutor's Office (requesting jurisdictional body)
2. Ministry of Foreign Affairs of the requesting country
3. Embassy of the Foreign Country in Chile
4. Ministry of Foreign Affairs of Chile, Directorate of Juridical Affairs (Central Authority)
5. Chilean Public Prosecutor's Office (UCIEX)
6. Competent Prosecutor's Office, with the participation of the Guarantee Judge, as appropriate. (requested jurisdictional body).



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MINISTERIO DE RELACIONES EXTERIORES
Dirección de Asuntos Jurídicos

As for the formalities that a *letters rogatory* should meet, we must rely on the treaties in force binding both parties (requesting and required countries) over the matter; in absence of such treaties, to the requirements and formalities existing in the Multilateral Agreements; and in the absence thereof, to Reciprocity, International Practice and General Principles of International Law.

The Directorate of Juridical Affairs must oversee that the minimum formal conditions required by the applicable legislation to each specific requirement are complied with, depending on whether there are treaties in force with the requesting State, in cases of passive requests. On the other hand, when the matter is active requests, it must verify that the same meets the requirements set by the required State. Among others, it must check that the requirements for authentication and translation are satisfied (where applicable), whether or not copies of procedural pieces necessary for processing are attached, and whether or not timely processing of the request is feasible, etc.

Once the letters rogatory is sent through the diplomatic channel, DIJUR acts as an intermediary in all further communications related to its processing between both the requesting and required Tribunals, thereby creating a “*processing record*”, made up of a series of proceedings, which is regularly consulted by attorneys, judges and interested parties.