

ARGENTINA - Contributions- Informal Expert Meeting on International Cooperation in Criminal Matters – UNODC

a) Briefing on the legal bases used for mutual legal assistance, including, where feasible, on the use of the United Nations Convention against Transnational Organized Crime, and the status of bilateral and other multilateral treaties or agreements.

Within the framework of the obligations assumed by the Argentine Republic upon ratifying the Palermo Convention, Argentina uses this instrument as a legal basis to provide international legal assistance and extradition. The National Supreme Court of Justice has argued in the Ralph case (2000) that the non-acceptance of multilateral conventions -such as UNTOC- as a legal basis to provide international cooperation to a Requesting State would imply a breach of the obligations assumed by the Republic and could entail the international responsibility of the State.

It is also noted that Argentina has a national law on cooperation in criminal matters (24,767) whose article 1 requires to provide the broadest cooperation to countries that require it and Article 3 states that in the absence of a treaty, the aid will be subordinated to the existence or offer of reciprocity for analogous cases. In this regard, it is emphasized that in cases where UNTOC is invoked, it will not be necessary to offer reciprocity for analogous cases in order to obtain cooperation from the Argentine authorities.

Likewise, Argentina has had an active policy in the last ten years in signing bilateral agreements. To name a few, there are treaties with Australia, Canada, China, South Korea, Spain, the United States, France, Italy, Portugal, Switzerland, Russia, South Africa, Tunisia. At the regional level, in turn, Argentina is a party to the Inter-American Convention on Mutual Assistance in Criminal Matters, which allows us to collaborate with the States Parties of the OAS that have ratified it and the Protocol of Mutual Legal Assistance in Criminal Matters of MERCOSUR, which allows us to cooperate with our neighbors: Brazil, Paraguay, Uruguay, and also Chile.

The advantages of using the UNTOC as a legal basis for cooperation is that it covers a larger number of countries by virtue of its broad base of ratification, favors the homogenization of requests for assistance in complex investigations and can be applied to other crimes - given the breadth of its scope.

The challenges that are observed continue to be translations and updated information on the Central Authorities designated in the Convention. Another important challenge turns out to be having enough information in the request for assistance that allows us to conclude that the investigation in which the cooperation is requested is effectively framed within the scope of application of the Convention.

b) Briefing on international cooperation for purposes of confiscation and disposal of confiscated proceeds of crime or property (as defined in the aforementioned Convention and on the basis of applicable bilateral treaties and agreements)

In relation to international cooperation for the purpose of confiscation and disposal of confiscated property, articles 95 and 96 of Law 24,767, establish that:

Article 95: "Sentences of fines or seizures of property issued in a foreign country, will be enforceable in the Argentine Republic, at the request of a court in that country, when:

- a) The infraction falls within the competence of the requesting State, according to its own legislation;
- b) The sentence is final;
- c) The fact that motivates it constitutes a punishable offense for Argentine law, even if it did not foresee the same penalties;
- d) The circumstances of Article 8 paragraphs a) and d) do not apply;
- e) The penalty has not been extinguished according to the law of the requesting State;
- f) The convicted person would not have been tried in Argentina or in any other country for the fact that motivates the request;
- g) The convicted person was personally summoned and his defense was guaranteed;
- h) The reasons specified in article 10 do not exist. The aid may not consist of the application of a prison sentence for conversion of a fine"

Article 96: "The Ministry of Foreign Affairs, International Trade and Worship may agree with the requesting State, on the basis of reciprocity, that part of the money or property obtained as a result of the execution process remain in the possession of the Argentine Republic."

In turn, Article 305 of the Criminal Code establishes that: The judge may adopt, from the beginning of judicial proceedings, sufficient precautionary measures to ensure the custody, administration, conservation, execution and disposition of the properties that constitute instruments, products, benefit or effects related to the crimes foreseen in the preceding articles.

In money laundering operations, they will be confiscated in a definitive manner, without the need of a criminal conviction, when the illegality of their origin, or of the material fact to which they were linked have been proven, and the defendant could not be prosecuted due to death, escape, prescription or any other reason for suspension or termination of the criminal action, or when the accused has recognized the provenance or unlawful use of the property.

The assets that were confiscated will be destined to repair the damage caused to society, to the victims in particular or to the State. Only to fulfill those purposes can goods be given a specific destination.

Any claim or litigation over the origin, nature or property of the goods will be made through an administrative or civil restitution action. When the good has been auctioned, only its monetary value can be claimed. (Article incorporated by Article 5 of Law 26683 B.O. 06/21/2011).

Likewise, the new wording of Article 23 of the Criminal Code of the Argentine Republic (paragraph incorporated by Article 6 of Law No. 26,683 BO 06/21/2011) establishes that: () in the case of crimes foreseen in article 213 ter and quater and in title XIII of the second book of this Code (financing of terrorism), they will be definitively confiscated, without the need for a criminal conviction, when it could have been proven that their origin, or the material fact to which they were linked were unlawful, and the accused cannot be prosecuted for death, escape, prescription or any other reason for suspension or termination of criminal action, or when the accused had recognized the origin or illegal use of the property.

Finally, on November 9, 2018, the Argentine Republic signed, together with Brazil, Paraguay and Uruguay, the FRAMEWORK AGREEMENT FOR THE DISPOSITION OF FORFEITED ASSETS OF TRANSNATIONAL ORGANIZED CRIME IN MERCOSUR, which will enter into force as soon as it is ratified by at least two of the signatory States.

It aims to "establish mechanisms for cooperation and negotiation among the States Parties that enable the disposition of confiscated goods resulting from crimes linked to transnational organized crime." The Agreement establishes the obligation to negotiate "in each case and individually" on the disposition of the product and instruments of the crime between the State that decided the confiscation and the other States that had cooperated in the investigation, prosecution, and recovery of property that would finally have resulted in confiscation. In this regard, it is provided that in each case the intervening States will agree on the percentage of the confiscated property that will be distributed taking into consideration the cooperation provided and performing it according to the following parameters: a) The nature and importance of the assets; b) The complexity and importance of cooperation; and c) The incidence of cooperation provided in the outcome of the case.

The Argentine Republic is evaluating the possibility of signing bilateral agreements with other countries in order to regulate the confiscation of property derived from crime.

c) Briefing on the establishment and functions of central and other competent authorities dealing with international cooperation requests.

The Law of Ministries grants the Ministry of Foreign Affairs and Worship the following functions:

- ♣ To understand in the processing of judicial rogatory letters, requests for extradition and in matters related to international judicial assistance.
- ♣ To understand, from the point of view of foreign policy, in the preparation, registration and interpretation of treaties, agreements, protocols, arrangements or any other instrument of international nature, in all stages of negotiation, adoption , accession and denunciation.

And Decree 924/2011 grants the International Legal Assistance Directorate the following functions:

- ♣ To understand in the matter of legal cooperation and international judicial assistance in requests for preventive detention, extraditions, restitution of minors, transfers of convicts and any letters rogatory, official letters and/or requirements that must be processed through diplomatic channels or through the Central Authority, acting as a binding link between Federal, National, Provincial Courts and other Argentine authorities and their foreign counterparts, keeping the corresponding records.
- ♣ To act as natural contact point between representations, foreign and national organisms in matters of legal cooperation.
- ♣ To propose, elaborate, execute and evaluate projects of international agreements in the matter and its subsequent implementation, application and control.
- ♣ To understand as the central authority for the application of international conventions in which the MINISTRY OF FOREIGN AFFAIRS, INTERNATIONAL TRADE AND WORSHIP has been designated as such, carrying out the corresponding judicial and/or administrative procedures.

It is highlighted that the Ministry of Foreign Affairs and Worship has a double role in the management of requests for international legal assistance: it is Central Authority and diplomatic channel in all bilateral and multilateral treaties of which Argentina is party with the exception of the bilateral Treaty of Mutual Legal Assistance in Criminal Matters with the Government of the United States of America, whose Argentine Central Authority is the National Directorate for International Legal Cooperation and Judicial Systems of the Ministry of Justice and Human Rights.

Decree 1486/2011 grants the aforementioned Directorate the following functions:

- ♣ To participate and monitor the activities derived from international cooperation carried out by other national or international organisms.
- ♣ To intervene in what corresponds to the competence of the Ministry within the framework of Law No. 24,767.
- ♣ To understand in the compliance with international treaties of judicial criminal assistance and cooperation and transfer of convicts in which the Ministry is the enforcement authority.
- ♣ To understand in the application of the Treaty of Mutual Legal Assistance in Criminal Matters signed with the Government of the United States of America, approved by Law No. 24,034.
- ♣ To contribute to the implementation of a federal policy of international legal cooperation.

d) The main countries with which cooperation in the fields of extradition and mutual legal assistance takes place:

According to statistics, the ranking of the countries with the highest flow of assistance with the Republic in active and passive mutual assistance requests and active and passive extraditions is the

following:

Requests for Passive Mutual Assistance in Criminal Matters:

Brazil
Spain
Paraguay
Peru
Chile
Uruguay
Switzerland

Requests for Active Mutual Assistance in Criminal Matters:

Uruguay
Paraguay
Bolivia
Spain
Chile
Brazil
U.S
Peru
Switzerland

Requests for Passive Extraditions:

Peru
Paraguay
Chile
Spain
Uruguay
Brazil

Requests for Active Extraditions:

Paraguay
Peru
Uruguay
Spain
Brazil
Chile
Bolivia

e) Briefing on the handling of mutual legal assistance and extradition requests –practical aspects and main challenges encountered.

The Argentine Central Authority has 10 lawyers working in legal assistance in criminal matters and extraditions. Its functions are the analysis and processing of requests for preventive detention, extraditions and requests for international legal assistance, as well as of requests for collaboration that must be processed through diplomatic channels or through the Central Authority. Likewise, the same staff carries out the analysis and assessment of projects of international agreements in the matter and participates in negotiations of international treaties in matters of criminal legal cooperation.

At the same time, it counts with approximately 13 administrative staff that is shared with the other two divisions of the Directorate: Civil, Labor, Commercial and Administrative assistance and Restitution of Minors.

The applications for international legal assistance received at the Desk of the Central Authority and those that arrive by email are stamped with an entry date. They immediately go through a filter in order to assign them a degree of priority. The documentation is, then, loaded into the electronic file management system and assigned to a lawyer / legal counsel for processing.

The Central Authority analyzes the origin of the request in accordance with the existing applicable legal basis or offer of reciprocity, the need for double criminality and the minimum penalty applicable to the offense under investigation in the requesting country, the formal requirements, the viability of the request with the data provided according to the measures that are required. If it is considered appropriate, it will be sent to the judge with federal competence in the place where the measures must be carried out unless the requesting state explicitly indicates an authority.

The measures are executed by the federal judge who intervenes. The results of the proceedings return in the same way.

If the Central Authority considers that there is a lack of data for its execution, it will be required to the requesting country in order to correct the omissions, without prejudice that, then, the Judge in charge of the execution may require additional data. Requests for additional information will always be channeled through the Central Authority.

In certain cases, it will be in charge of executing the measures requested by the prosecutors.

The Central Authority will direct the request to the judicial or fiscal authority, on a case by case basis.

Extradition requests received at the Desk will be stamped with the date of entry. This date interrupts

the term for the requesting country in order to submit an extradition request (in the case that there has previously been a request for preventive detention through the diplomatic channel or that preventive detention has occurred due to a Interpol Red Notice). Highest Priority Grade will immediately be assigned. The documentation is then loaded into the electronic file management system and assigned to a lawyer/legal counsel for processing.

The Foreign Ministry, in its dual role, analyzes the existence of the applicable legal basis or offer of valid reciprocity, the non-existence of grounds for inadmissibility of an extradition request, the non-existence of refugee status of the requested person, and compliance with the necessary formal requirements according to the treaty or, where appropriate, the law. If it is considered appropriate, it will be sent to the federal judge who intervenes in the preventive detention of the accused. If there is no intervening judge, it is sent to the Public Prosecutor's Office, which after ruling will send it to the competent federal judge.

When the order is understood at Court, the judge analyzes whether it has all the elements to set a debate date. If he does not have them, he will suspend the procedure for 30 days in order for the requesting party to rectify the omissions through the diplomatic channel. Then, the debate hearing will be held and the judge will decide on the origin or not of the extradition. Its decision is appealable by Ordinary Appeal before the National Supreme Court of Justice. With final sentence, if the extradition is declared inadmissible at court, the Ministry of Foreign Affairs will inform the Requesting State of said circumstance. If a judicial proceeding is declared admissible, a copy of the complete judicial file is sent to the Ministry of Foreign Affairs for the final decision. The Ministry has 10 business days to resolve. After these 10 days, it will be understood that the extradition has been granted and the requesting country, the intervening Argentine court and Interpol Buenos Aires National Central Bureau will be notified in order to coordinate the delivery of the extradited person (in case of deciding that the person is able to be delivered).