

PUBLIC PROSECUTOR'S OFFICE OF CHILE

1.- 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

At the national level, Chile does not have a domestic law in international cooperation. However, few rules regulate the mutual legal assistance and are applied for the execution of the outgoing and incoming MLA.

The article 20 bis of the Criminal Procedural Code, establishes that the Public Prosecutor's Office executes the incoming Mutual Legal Assistance, and when necessary the judicial authorization will be requested to the Judge of Guarantees. In the same sense, Law N°19.913, on Assets Laundering, article 33, and article 47 of the Law N°20.000, on Illegal Drug Trafficking regulate the proceeding for the MLA.

In general, double incrimination is not required for the execution of an incoming MLA. However, when coercive or precautionary measures are requested, such as confiscation, seizure, and searches, including house searches, the double incrimination may be required.

The international conventions in criminal matters have an essential role, as legal bases, in the Mutual Legal Assistance requests. Chile is part of bilateral and multilateral agreements, but also reciprocity is recognized as a legal ground for the MLA.

There are several bilateral agreements mainly with Latin American countries and the United States of America. In 2014 Chile and Spain signed a bilateral agreement for Fighting Against Crime and Security.

On the other hand, Chile is part of several multilateral conventions for international cooperation in criminal matters, such as:

- The Inter American Convention of Mutual Assistance in Criminal Matters, Nassau Convention.
- The European Convention on Mutual Assistance in Criminal Matters entry into force in 2012
- The Convention on Cybercrime of the Council of Europe (Budapest Convention) entry into force in 2017. The Public Prosecutor's Office of Chile through the International Cooperation and Extradition Unit is the contact point for the 24x7 network.
- The United Nations Convention on Psychotropic Substances
- United Nations Convention against Transnational Organized Crime and its protocols, among others.

Regarding the extradition processes, in 2005 a new accusation-based model, entry into force, according to which the Public Prosecutor's Office leads the investigation.

Before June 16, 2005, passive extradition requests will be processed following the system under the former Code of Criminal Procedure. The same proceeding is applied for MLA when the facts took place before 2005.

As mentioned before, the domestic law regulates the active and passive extradition process. The passive extradition is ruled by articles 440 to 454 of the Criminal Procedural Code.

Regarding the conventions in extradition, Chile is part of bilateral and multilateral agreements.

Chile has signed bilateral agreements with the following countries:

Australia
Belgium
Bolivia
Brazil
Canada
Colombia
Ecuador
Spain
United States of America
Italy
Mexico
Nicaragua
Paraguay
Perú
United Kingdom
Uruguay
Venezuela

Also, Chile is part of the multilateral agreements in extradition and treaties with specific regulations on this matter:

Inter America Convention on Extradition, Montevideo, 1933
Agreement on extradition of MERCOSUR, Bolivia, and Chile
International Private Law Code, (Bustamante Code)

2.- Briefing on international cooperation for purposes of confiscation and disposal of confiscated proceeds of crime or property (as defined in the Convention mentioned above and on the basis of applicable bilateral treaties or agreements)

Requests for MLA should be sent directly to the Chilean Central Authority, the Public Prosecutor's Office of Chile, as will be explained below. The MLA sending to obtain evidence for the investigation of suspicious transactions and movements of money and the purpose of confiscation and seizure of assets shall be accompanied with the supporting evidence in

order to prove the probable cause. Also, the domestic courts may request the confiscation order issued by the requested state's court.

In the first instance, the Prosecutor's Office of Chile could take investigative steps in order to adopt measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to a criminal offense. In Chile, a national rule establishes that the disposal of confiscated proceeds of crime or property will be earmarked to the Administrative Corporation of the Judicial Branch.

However, there is a successful incoming MLA involving a request for judicial assistance by the authorities of Honduras concerning the offenses of money-laundering. The MLA had the aim, among other measures, the seizure and confiscation of all movable and immovable assets, as well as funds held in Chile and linked with the offenses investigated by Authorities from Honduras. Also, the extradition of a suspect was requested. The Supreme Court granted the extradition and also the confiscation and disposal of the proceeds of crimes, in particular, the properties acquired with the illegal money. The Prosecutor's Office, required to the Court, according to article 14 of the Organized Crime Convention, the disposal of the proceeds to the authorities of Honduras. The Court decision granted the disposal of the proceeds to Honduras, based on the Convention, despite the domestic law regulation.

The case mentioned is a notable example, where the Convention has been a legal base used by the Chilean courts in order to fulfill a MLA.

About the outcoming MLA, Chile has some successful cases, especially with Switzerland. For example, in 2013 the Public Prosecutor's Office of Chile sent a MLA concerning fraud, tax, and fiscal offenses with the aim of freezing, seizing and confiscating the bank account in Switzerland, of the convicted person by the Chilean courts. The suspect was charged and convicted, and the Chilean judge orders the confiscation of the Swiss bank accounts in Switzerland.

The MLA was based on the European Convention on Mutual Assistance in Criminal Matters, and the Organized Crime Convention.

The Swiss authorities granted the MLA by promoting a bilateral agreement among both countries, intending to share the confiscated assets on the bank account of the convicted, in equal shares (fifty-fifty).

The Swiss Confederation transferred to the Republic of Chile approximately US\$ 307.456. -- (three hundred and seven thousand four hundred and fifty-six US Dollars), representing 50 % (fifty per- cent) of the amount seized in the account mentioned above.

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

From the 1st of February of 2018, the functions of the Central Authority to send, receive and respond to requests for mutual assistance in criminal matters, were transferred from the

Ministry of Foreign Affairs to the Public Prosecutor's Office. This functions inherent in the Central Authority are exercised under various bilateral and multilateral Conventions on international legal cooperation in criminal matters and on cooperation concerning specific offenses with transnational elements.

With this decision, Chile seeks to make international legal cooperation more efficient, and useful, enhancing the role of this figure, from a more practical point of view, now designating those who effectively execute the requests in this matter.

Requests for MLA should be sent directly to the Chilean Central Authority, the Public Prosecutor's Office of Chile. Notwithstanding this, urgent requests may be forwarded, in advance by e-mail, or any other safe electronic means of communication that might be available.

Once the Public Prosecutor's Office receives the MLA and executes the request, if coactive or precautionary measures are necessary, the Prosecutor's Office may request judicial authorization to the Judge of Guarantee in order to execute the MLA.

For extradition requests, the Central Authority is the Chilean Ministry of Foreign Affairs, which refers to the Supreme Court the request and the supporting documents to the Supreme Court, as mentioned before. However, the Public Prosecutor's Office represents the interest of the requesting State before the Supreme Court.

4.- The main countries with which cooperation in the fields of extradition and mutual legal assistance takes places

The main countries with which Chile requests international cooperation are the Latin American countries. Especially assistance is held with Argentina, Perú, Colombia, and Bolivia. However, cooperation with other countries, especially with European countries have been increased in the last years. For example, with Europe, the main countries with which extradition and mutual legal assistance take place are Spain and Italy. However, Chile has sent and received MLA from and to the United Kingdom, Austria, Sweden, Germany, Rumania, Malta, Russia, The Netherlands, France, Portugal, Switzerland, among others.

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

As mentioned before, the mutual legal assistance and the extradition requests have different proceedings.

The mutual legal assistance received from foreign countries should be sent to the Public Prosecutor's Office who is the Central and the executing authority. The MLA is executed by the Local Prosecutor's Office depending where the requested information is located or the place where the investigative steps should take place. For this purpose, the MLA is assigned to a Public Prosecutor who opens a file in order to fulfill the requirement.

The Prosecutor could give instructions to the police or could execute the request by his or her self, for example, taking statements to the witnesses. If court approval is necessary, the prosecutor carries out the judicial request. When the MLA is fully executed, the Prosecutor send the response to the International Cooperation and Extradition Unit of the Public Prosecutor's Office who is in charge to send the response to the requesting State.

It is important to mention as a good practice, that the Public Prosecutor's Office of Chile has bilateral agreements with the purpose of transmitting by electronic means the MLA and the responses. Currently, this transmission is working with the United States of America, Brazil, Argentina, Perú and Ecuador. The above is an essential step in order to reduce the time of executing the MLA, hence facilitate a rapid disposition of the request for assistance.

We highlight that the Public Prosecutor's Office of Chile is willing to implement this proceeding with other countries. However, even if an agreement has not been signed, the requesting states may forward the MLA, in advance, to the Chilean Central Authority by e-mail. The request could be executed before receiving the formal MLA in order to cooperate and accelerate the response. Also, as a good practice, it may be desirable to establish contact before sending the request, in order to clarify legal requirements or simplify procedures. Such contact can be initiated by e-mail to ucieux@minpublico.cl. This prior approach allows to open communication channels and to develop the familiarity and trust necessary to achieve best results in mutual legal assistance casework.

The Organized Crime Convention had been increasingly used in connection with requests for international cooperation in criminal matters, whether as the sole basis for those requests or in conjunction with bilateral or regional legal instruments relating to legal assistance and extradition. The Convention is mainly used as a legal base in MLA regarding human trafficking and smuggling of migrants criminal investigations. This mutual legal assistance takes place mainly with Ecuador, Dominican Republic, Colombia, and Perú for the criminal offenses mentioned above. There have been significant and successful proceedings, and currently, are ongoing requests based in regional agreements and the Organized Crime Convention.

Regarding the extradition process, the request is processed through the Central Authority for extradition, the Chilean Ministry of Foreign Affairs, which refers to the request and the supporting documents to the Supreme Court. When it receives the documents, the Supreme Court designates a Minister of the Supreme Court as the judge responsible for the hearing of the extradition request in lower court. The Criminal Chamber of the Supreme Court shall have jurisdiction to hear any appeals.

The Public Prosecutor's Office represents the interests of the requesting state in passive extradition hearings, without prejudice to the principle of objectivity that governs it. In all cases, the requesting state may designate another representative.

Even though, the Central Authority is the Ministry of Foreign Affairs, the Public Prosecutor's Office represents the interests of the requesting state before the Supreme Court by the legal advisors (lawyers) of the International Cooperation and Extradition Unit (UCIEX). For this reason, we encourage to the States as a good practice to make contact with UCIEX before sending the extradition request or provisional arrest and be in touch during the proceeding in order to fulfill the requirements or if any doubts arise. It is essential to consider that the

probable cause must be proven before the Supreme Court. For this reason, the supporting evidence shall be attached to the request, and the judge will assess the evidence in order to determine whether there is enough evidence to presume the participation of the *extraditurus* and to presume the existence of the elements of the criminal offense. If both are fulfilled, the extradition will be granted. The decision may be appealed before the criminal chamber of the Supreme Court.

Regarding the main challenges, it is necessary to consider that cross-border crimes have increased and the judicial systems and the international cooperation between states must adjust to the new situation. The above is relevant because it implies a challenge for the parties to cooperate and to improve international assistance. However, we could mention some specific cases that represent the problems that have arisen in this topic. For example, regarding an extradition process between Chile and Malta. in 2016 Chile sent an extradition request to Malta with the purpose to obtain the extradition of a suspect concerning the offenses of fraud and money-laundering. Between Chile and Malta, there is no bilateral or regional agreement of extradition. Chile, based the request in reciprocity and the Organized Crime Convention.

The Maltese authorities did not grant the extradition because, according to the judicial reasoning, the supporting evidence and documents must adjust to the Maltese law. The Maltese Court analyzed this case from the perspective of its laws of evidence and procedure, which may be different from that of the Chilean Court, despite the same set of facts and documents being available to both Courts may have been the same. The Maltese court rejects the extradition request, for the following considerations:

“...for the reasons abovementioned, and in particular due to the lack of admissible evidence that satisfies this Court that the extraditability criteria in terms of Article 16 of the Palermo Convention have been fulfilled in relation to the offenses for which the Chilean Authorities request the suspect and as proffered in the Minister’s Authority to Proceed, in terms of Article 8 of the Extradition Act this Court concludes that the Prosecution failed to sufficiently prove that the offenses with which the suspect is accused in Chile are extraditable offenses in accordance with the Palermo Convention.”

This case reflects one of the main challenges, which is the problem to fulfill standards of the domestic law of the requested state. In some cases, it is not possible to accomplish by the requested state, because of the different legal systems.

Also, it is a challenge the guarantees demanding to the requested states in order to grant the extradition. For example, European countries are increasingly demanding new guarantees to grant the extraditions, such as prison conditions or other requirements. Even we recognize the necessity of this guarantees; this is becoming increasingly complex and demanding.