International Cooperation in Non-Criminal Matters

Administrative Procedures of the Comptroller General’s Office of the Republic of Colombia

Jaime Andrés GNECCO DAZA
Head of the National and International Cooperation Unit for Asset Prevention, Investigation and Seizure
These three agencies are, in addition to the Ministry of Justice and Law, the four Central Authorities designated by Colombia before the United Nations - UNCAC.
WHO ARE WE?

- By constitutional mandate the Comptroller General’s Office (CGO) is the supreme control agency for overseeing the proper use of public resources and contributing to streamlining the Social Rule of Law.

- The 1991 Political Constitution of Colombia in its Article 267 sets forth that: “Fiscal control* is a public function to be performed by the Republic of Colombia’s Office of the Comptroller General that oversees the fiscal management of the public administration and of the individuals or entities that handle funds or property that belong to the Nation”.

* Fiscal control means to audit the correct management and execution of public resources.
FISCAL LIABILITY PROCEDURE

The CGO initiates the fiscal liability procedure by verifying the existence of:

- A negligent conduct attributable to natural or juridical persons responsible for conducting fiscal management;
- Damages to State property; and
- Causation.

The CGO is invested with legal authority to decree Precautionary Measures to:

- Seek compensation of the damages caused to the State;
- Prevent the person under investigation to become insolvent; and/or
- Freeze assets located inside or outside the country.
ABOUT THE NATURE OF THE FISCAL LIABILITY PROCEDURE

• It is a process of an administrative nature.

• It essentially deals with determining the liability that public servants or individuals performing public duties have in the improper handling of public assets or property.

• Said liability is, in fact, exclusively financial.

• With the declaration of liability, the State is entitled to the compensation of damages caused by such improper fiscal management by the defendant.
ABOUT THE NATURE OF THE FISCAL LIABILITY PROCEDURE

The declaration of the previously mentioned liability undoubtedly impacts the fundamental rights of the people affected, such as:

- The right to privacy
- The right to an honorable life
- The right to a good reputation
- The right to work
- Exercising certain political rights
- Other
ABOUT THE NATURE OF THE FISCAL LIABILITY PROCEDURE

- Such liability is independent and autonomous.
- It seeks compensation for the financial damages caused to the State.
- It is different from criminal or disciplinary liability; either or both may also apply to the unlawful acts committed.
THE CGO AND THE FIGHT OF TRANSNATIONAL CORRUPTION

LAW 1474 OF 2011: ANTICORRUPTION STATUTE

- Creation of the National and International Cooperation Unit for Asset Prevention, Investigation and Seizure. (2011).
- Central Authority- UNCAC. (2011)
EXPRIENCES IN PROCEEDINGS

Successful case number 1 (2013):

**Mutual Legal Assistance Request to the Republic of Ecuador**

- Procedural Activity: freezing of stocks.
- *Amount (of the seizure): USD $ 2 million (approx.)*

Procedure:

**Mutual Legal Assistance**

- Accepted by the Nacional Court of Justice of the Republic of Ecuador.

**Transferred to**

- Public Prosecutor in Pichincha, Ecuador.

**Request**

- Audience to the Criminal Guarantees Judge.

**Result**

- Freezing authorization of the stocks mentioned.
Successful case number 2 (2014):

**Mutual Legal Assistance Request to the Republic of Argentina**

- Procedural Activity: writ of imputation of fiscal liability.
- Amount (of the process): USD $ 700 thousand (approx.)

Procedure:

- Accepted by the Anti-Corruption Office of Justice and Human Rights of the Republic of Argentina.
- Transferred to the Investigations Directorate of the Anti-Corruption Office.
- Notification of the writ of the imputation of fiscal liability.
- Progress in the process, avoiding the case prescription.
**CHALLENGES IN PRACTICAL CASES**

Absence of structural elements to make an MLA

- CGO must find causation between conduct and damage; however, international cooperation mechanisms demand a nexus between identified assets and the crime from which such assets are derived.
- We are training the CGO’s investigators in this new perspective with the support of the Basel Institute of Governance and the StAR Initiative (WB – UNODC).

**BASEL INSTITUTE OF GOVERNANCE**
INTERNATIONAL CENTRE FOR ASSET RECOVERY (ICAR)
Assessments of governance gaps and technical assistance – May, 2013

**STOLEN ASSET RECOVERY INITIATIVE (StAR)**
WORLD BANK & UNITED NATIONS OFFICE ON DRUGS AND CRIME
Cooperation and technical assistance
CHALLENGES IN PRACTICAL CASES

Communication difficulties between legal systems

- The requested State (2013) didn’t recognize the CGO as the competent authority to order precautionary measures. This country only accepts an MLA from jurisdictional authorities.

Lack of cooperation in a internal level

- Transnational corruption is handled separately by each institution. This matter must be assumed as a State problem.
Thank you for your attention.

National and International Cooperation Unit for Asset Prevention, Investigation and Seizure

Jaime Andrés GNECCO DAZA
Head of Unit
jaime.gnecco@contraloria.gov.co
Phone number: +(57)1 6477000 Ext. 1591