DESCRIPTION AND GENERAL EXPLANATION OF THE SYSTEM OF MUTUAL JUDICIAL ASSISTANCE

Traditionally, international judicial cooperation in Ecuador is confined to extradition procedures and processing letters rogatory and other international requests. They are used to procure the detention and arrest on foreign territory of the author of a crime committed within the national territory of the requesting state, and to request that a foreign judge initiate certain procedures on behalf of a national judge.

However, the actors and proceedings involved in mutual judicial assistance have been gradually changing. This evolution has been influenced considerably by the political processes of regional and global economic and political integration that have been gaining momentum since the end of the 19th century, and which focused on criminal assistance in the mid-1950’s in Europe and America. There is no doubt that in this Hemisphere, both the 1889 and 1940 Montevideo treaties and the Sánchez de Bustamante Code were standards for cooperation in criminal matters, despite the fact that their provisions are very general.

At the present time, mutual assistance in criminal matters covers a broad range of procedures that may be requested.

Letters rogatory and exhortos are synonymous in legal doctrine, as established in Article 1 of the Inter-American Convention on Letters Rogatory.

However, it is important to clarify the difference between the two according to the 1975 Inter-American Conventions on Letters Rogatory [Exhortos and Cartas Rogatorias] (CISECR) and on the Taking of Evidence Abroad (CIRPE), on the one hand, and the Inter-American Convention on Mutual Assistance in Criminal Matters, on the other. Without attempting to draw a thematic comparison, the objective is to determine the practical differences between the two. The first two conventions create procedures that are unnecessary in criminal proceedings, such as authentication of documents, which, in a criminal action, takes a long time during which the subjective rights of citizens could be adversely affected. Moreover, they entail costs and other expenses that are charged to the interested parties; in other words, as far as the “interested parties” are concerned, civil and commercial considerations are incorporated into criminal proceedings, which are separate and different.

A more modern and practical convention was therefore needed; hence the Inter-American Convention on Mutual Assistance in Criminal Matters was adopted in Nassau, Commonwealth of Bahamas, on May 23, 1992, during the Twenty-Second Regular Session of the OAS General Assembly. Under it, a new system based on a new vision was created, to do away with bureaucratic obstacles, particularly in two areas:
- on central authorities, which communicate directly, but rather than being the diplomatic agents themselves, they are responsible for criminal proceedings; in Ecuador, this authority is the Fiscalía General;

- the importance of processing documents without any authentication or certification requirements.

We believe that these two provisions create a new and practical system that greatly improves assistance in criminal matters, since, as we mentioned earlier, the principle of prompt action is critical in criminal matters. Finally, this is the Convention that is recommended for use when states parties request mutual assistance.

In addition to existing difficulties, the rapid spread of transnational organized crime with its interminable networks of criminal circuits led the Fiscalía General del Estado to create the Unit for International Affairs on December 10, 2004, which, through the Ministro Fiscal, performs the functions of the Central Authority under the Nassau Convention (1992) and the Palermo Convention (2000).