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Overview of International Cooperation Protocols in Criminal Matters Part 2

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Overview of International Cooperation Protocols in Criminal Matters



Spontaneous transmission of information are defined as the international cooperation mechanism through which the competent authorities of one state issue information to the competent authorities of another state without this information having been previously requested. This occurs when, during the development of an investigation, knowledge is obtained about facts that could have criminal relevance in another country. The main purpose is not necessarily to start a new investigation, but to provide information that may be relevant to an ongoing investigation in other country.

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Some of the main characteristics and advantages of this cooperation mechanism include the possibility of initiating investigations in the state receiving the information or enriching investigations already in progress, the security and opportunity in the collaboration between competent authorities, judges and prosecutors, and the capacity to jointly address regional problems that require a coordinated response.

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The procedure for carrying out this mechanism is relatively simple and is formalized in accordance with the provisions of international conventions. Typical steps include identifying useful data, determining the channel for sending the information, sending the information itself, analyzing the information by the recipient, using it in investigations, or incorporating it into an ongoing case, or discarding it if it is not relevant. Finally, the sender is informed about the use or discarding of the information.

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Spontaneous transmission of information are contemplated in the main conventions and treaties that regulate aspects of international mutual assistance and extraditions, such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the United Nations Convention against transnational organized crime and the United Nations Convention against corruption.

Within the framework of the Ibero-American Association of Public Ministries (AIAMP), there is an inter-institutional cooperation agreement between the public ministries and prosecutors' offices of the member states of this association. This agreement provides that public ministries or prosecutors' offices will promote the exchange of information when they become aware of facts that may be the subject of investigation in their own country. The information is sent without prejudice to the investigations being carried out in the sending country, and due confidentiality is maintained.

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International cooperation in criminal matters covers **both police cooperation and legal cooperation** in the strict sense. The latter involves the Public Ministry and the judiciary and is generally carried out through central authorities and diplomatic channels. However, modern international cooperation is not limited to interaction through intermediaries. The creation of networks that bring together police and judicial organizations in charge of investigating and prosecuting cases is increasingly common.

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Precautionary measures: at the national level, during ordinary criminal prosecution in a given country, it is common to apply precautionary measures, whether of property or personal, such as preventive detention or other measures restricting freedom. However, when it comes to a criminal case with immigration elements, it may be necessary to execute these precautionary measures in another country.

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Cybercrime: although cybercrime is a serious problem in South America in its several manifestations, there is no specific regional framework for cooperation against computer crimes. Instead, multilateral treaties such as the 1996 São Luís Protocol and the 1992 OAS Nassau Convention are used to obtain evidence in cybercrime cases.

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In the context of regional integration, the need to simplify extradition procedures through the principle of mutual recognition of judicial decisions has been recognized. In this sense, the Common Market Council approved the agreement on the Mercosur detention order and surrender procedures between the Mercosur member states and associated states. This agreement, similar to the European arrest warrant, is based on the principle of mutual trust and represents a tangible symbol of the direct cooperation that we long for in the region.

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It is important to highlight that formal cooperation, although effective, is usually bureaucratic. Therefore, informal or inter-institutional cooperation is gaining special relevance. This form of cooperation is based on international agreements and allows for a timely and effective exchange of information and official documents for investigative purposes. **Informal cooperation does not replace formal cooperation, but significantly complements and strengthens it.**

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There are tools that facilitate international cooperation in criminal matters, such as the Ibero-American Network for International Legal Cooperation (known as "Ibérica"), which brings together central authorities and contact points of prosecutors' offices, judicial powers and ministries of Justice from 22 Ibero-American countries. In addition, the International Criminal Police Organization (Interpol), with 194 sovereign states, provides information relevant to criminal investigations, including the Red Notice about internationally wanted fugitives and other useful data.

At the regional level, the Working Commissions and Subcommittees of the Specialized Meeting of Public Ministries of Mercosur play a prominent role in improving mechanisms to combat crime, exchanging good practices and strengthening International Cooperation. Similarly, there are permanent networks and working groups made up of specialized prosecutors from the 22 countries of the Ibero-American community that compose the Ibero-American Association of Public Ministries (AIAMP).

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In addition, informal cooperation tools have been generated, such as inter-institutional agreements on International Cooperation, practical guides for forming joint investigation teams, guidelines for extraditions and devices for the care and protection of victims and witnesses in criminal proceedings, among others, to legally support this type of assistance.



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