

WHAT IS THE VADEMECUM ?

The Dictionary of the Royal Academy of the Spanish Language defines the term “VADEMECUM ” as a summary or brief set of notes at hand when needed; or as a compendium of rules of a science or an art.

Either of these two definitions describes the content of this Vademecum of International Judicial Assistance which aims to offer Judges, Public Prosecutors, Judicial Secretaries and other members of the legal profession a tool, or basic and easy user’s guide to assist them when taking part in activities involving international judicial cooperation, both from an active perspective (issue of an application within the scope of a procedure processed by a Spanish judicial body) and from a passive standpoint (reception of an application from a foreign State).

THE VADEMECUM , created with the joint efforts of the Ministry of Justice, the Public Prosecutor, and the General Council of the Judiciary of Spain, aims to respond to the most common questions raised in the course of the day to day tasks of judicial operators, and facilitates the identification of international agreements or other applicable judicial regulations in this matter, and provides information on the various institutions which may provide additional support (European, Spanish or Latin American judicial networks, Eurojust, etc.) and it has a directory of contacts.

The web version of the VADEMECUM , which may be found on the Ministry of Justice and the General Council of the Judiciary website, is reviewed and updated on a quarterly basis.

INTRODUCTION

1.1. WHAT IS INTERNATIONAL JUDICIAL ASSISTANCE?

1.1.1. Introduction

In its broadest sense, international judicial assistance consists of the mutual assistance provided between two countries in order to carry out jurisdictional actions outside their respective territorial areas.

As a traditional manifestation of sovereignty, the exercise of jurisdictional powers by the judicial authorities of a State is confined to the interior of state borders.

However, the challenges raised by migratory movements and the growing interrelation between individuals and corporations (in civil matters) and by security and the fight against international crime (in criminal matters) has led to the need to take legal steps which will permit action outside national borders in the exercise of jurisdiction while safeguarding the sovereignty and respect for fundamental rights and freedoms.

1.1.2. Criminal international judicial assistance

In criminal matters, international judicial assistance includes, on one hand extradition procedures, and on the other, what is known as secondary judicial assistance or letters rogatory and requests, which consist of carrying out any procedural acts within the framework of a criminal investigation or criminal judicial procedure, (summonses, notification of judgments and judicial documents, obtaining evidence, etc).

With respect to enforcement of criminal judgments, this entails both movement of convicted persons, and recognition and enforcement of final judgments issued by another State.

1.1.3. Civil international judicial assistance

In civil matters, international cooperation in the broadest sense includes judicial assistance proper (notification requests, and transfer of judicial documents and obtaining evidence in civil and commercial matters) and the collaboration between central authorities in questions of international abduction of minors, the right to food in foreign countries and information on foreign law.

1.1.4. Assistance through other jurisdictional systems.

Generally, in employment and contentious-administrative matters, the existing regulations for civil and commercial matters are applied by analogy in terms of requests and provision of international judicial assistance.

In the case of criminal matters, there is no general rule extending the application of conventional regulations on international judicial assistance to military jurisdiction.

Nevertheless, with regard to the European Convention on Mutual Assistance in Criminal Matters, Spain has formulated a declaration in respect of article 24

indicating that, for the purposes thereof, it shall consider as judicial authorities, in addition to Judges and Courts of the ordinary jurisdiction, and members of the Public Prosecutor's Office, the military judicial authorities.

Bilateral Conventions shall be governed by the provisions contained in each one. Nevertheless, there are some (Morocco, United States for example) which expressly exclude from the scope of assistance, offences defined by military legislation.

1.2. LEGAL SYSTEM FOR ACTIVE AND PASSIVE INTERNATIONAL JUDICIAL COOPERATION IN SPAIN.

In the Spanish legal system, regulation of international jurisdictional cooperation is covered by articles 276 to 278 of the Organic Law of the Judiciary. At present there is no domestic Law on this matter.

The above articles of the Organic Law superficially regulate the notification of cooperation requests from Spanish judicial bodies to their counterparts abroad (active requests), indicating that these will be submitted to the Ministry of Justice via the President of the Supreme Court, the High court of Justice, or the Provincial Court.

In addition, the law contains a brief regulation on the enforcement of requests for assistance from foreign judicial bodies to their Spanish counterparts (passive requests). Generally, the provisions of the international conventions and treaties are referred to in this matter and if there are none, the principle of international reciprocity is employed.

As is acknowledged, pursuant to article 94 of the Spanish Constitution, international treaties are directly applicable in Spain, and form part of the domestic legal system once they have been officially published. Therefore, the conventions in force pertaining to international legal cooperation are directly applicable, without any requirement of previous internal legislation.

1.3. SPANISH INSTITUTIONS INVOLVED IN INTERNATIONAL JUDICIAL ASSISTANCE

1.3.1. Ministry of Justice

The Ministry of Justice, via the General Department of International Legal Cooperation has the authority to apply international agreements in questions of cooperation and in this respect it is the designated central authority in cooperation matters and exercises the functions proper to such an authority. However, since there is no regulatory law for international judicial cooperation, its duties, competence and actions are not specified beyond the reference made to this question by applicable international bodies.

In practice, the central authority is authorised to receive requests for both active and passive jurisdictional cooperation, and to submit them to the body responsible for their enforcement. At the same time, it implements formal control of the application, in order to ensure that the request fulfils the requirements of the applicable convention. It also serves as intermediary

between the judicial bodies and foreign authorities in any subsequent follow up on enforcement, resolving any problems of interpretation arising in the application of the conventions, and intervening in the resolution of questions arising in specific cases.

On the other hand, since the Government is the State institution responsible for exercising authorities in matters of foreign policy, the General department shall represent the Spanish State in matters of international legal cooperation. In this respect it shall carry out multilateral and bilateral negotiations when drafting and amending conventions relating to international legal cooperation, attend various international forums dealing with matters relating to cooperation, and in short, assume the ultimate responsibility for compliance with State obligations in these matters.

1.3.2. Public Prosecutor's Office

As a general rule it should be borne in mind that the Public Prosecutor acts as "judicial authority" for the purpose of international judicial cooperation. It should be recalled that international judicial cooperation does not, in principle, presuppose the exercise of jurisdictional powers in the strict sense of "judging or enforcing what has been judged", and therefore it is not an activity exclusively destined for Judges and the Courts. The European Convention on Mutual Assistance in Criminal Matters of 1959 states, in article 24, that each State may define which authorities, for the purposes of the Convention, it shall deem to be judicial authorities when signing. Spain and most of the States signatories to the Convention have designated the Public Prosecution Office as judicial authority, and this designation has been maintained in the 2000 Convention, declared complementary to the previous Conventions, specifically that of 1959.

In the case of Spain, in addition, the Organic Statute of the Public Prosecutor's Office, pursuant to the draft executed under Law 14/03 in amendment of the Law 50/81 of 30 December, states in article 3. 15 that "*...it corresponds to the Public Prosecutor's Office to promote or, if appropriate, provide international judicial assistance, pursuant to international laws, treaties and conventions*".

In this respect the Spanish Public Prosecutor's Office is integrated in all the structures created by the European Union and other international organisations for the purpose of encouraging criminal judicial cooperation. Thus, there are 7 contact persons for the European Judicial Network within the Public Prosecutor's Office <http://www.eurojust.eu.int/ejn/ejn.asp> and the Public Prosecutor's Office also has a national Eurojust correspondent, www.eurojust.eu.int. In addition, public prosecutors are members of Ibered <http://www.cumbrejudicial.org/>

The General Prosecutor's Office has issued Instruction 2/03, designed to create a special service dedicated to international judicial cooperation within the territorial jurisdictions of the Public Prosecutors' Offices, comprising members of the Network of Public Prosecutors for International Judicial Cooperation whose duty is to enforce the letters rogatory and commissions received from international judicial authorities and carry out other duties relating to international mutual assistance in criminal matters, which are expressly described in the instruction.

The Technical Secretariat of the State Prosecution Office is responsible for coordinating these matters, pursuant to the terms of article 16 of the EOMF (law regulating the public prosecutor's office) "*Without prejudice to the competence granted to other bodies, the Technical Secretariat shall assume the exercise or, if appropriate, the coordination of those duties which the laws attribute to the Public Prosecutor in matters of international judicial cooperation*".

In addition, it is appropriate to recall that the Public Prosecutor may, in the course of duty, carry out any enquiries required by the foreign authority making a request, with the sole exception of these which, since they affect fundamental rights, require judicial authorisation. Also, as investigatory body, prior to initiating proceedings, it may, as a judicial authority, direct any request for assistance from foreign judicial authorities.

1.3.3. General Council of the Judiciary (GCJ)

It falls to Spanish judges and magistrates to issue in any proceedings requests for judicial assistance to be carried out in other States, as well as compliance with requests for cooperation received in Spanish courts as designated in the community instruments and international treaties and conventions to which Spain is signatory.

Whereas in criminal matters, normally the Magistrates' Courts are the judicial bodies responsible for implementing requests for judicial assistance from other countries, in civil matters this competence is assumed by the Provincial Courts and the Courts of First Instance.

In matters pertaining to the responsibilities attributed to judges and magistrates, the General Council of the Judiciary, as the governing body of the Spanish judiciary, contributes to the process of international judicial cooperation.

The legal basis for its intervention lies in article 72 of the Regulation 5/1995 on incidental aspects of judicial actions, pursuant to which the General Council of the Judiciary will provide assistance in the Spanish Courts who so require it, for the correct dispatch and effective fulfilment of requests for international judicial assistance. This regulatory competence is based on article 110 of the Organic Law of the Judiciary, which states that the General Council of the Judiciary may issue regulations developing the Organic Law, and that among other matters, these include those relating to jurisdictional cooperation.

The Judicial Assistance Unit of the International Relations Service of the Council

<http://www.poderjudicial.es/CGPJ/relacionesinternacionales/default.asp>,

advises, facilitates and provides practical support to the courts and tribunals. In addition, contact persons of the General Council of the Judiciary have been appointed within the Service to the various judicial cooperation networks: the European Judicial Network in criminal matters <http://www.eurojust.eu.int/ejn/ejn.asp>, the European Judicial Network in Civil and Commercial matters http://europa.eu.int/comm/justice_home/ejn/ and the Latin American Judicial Cooperation Network, Iber Red <http://www.cumbrejudicial.org/>

Finally, the International Relations Service, pursuant to article 76 bis 2, coordinates the administrative and institutional operation of the Spanish Judicial

Network (REJUE). For more information, see the General Council of the Judiciary web site (www.poderjudicial.es)

1.3.4. State Security Forces and Organisations

The State Security Forces and Organisations acting in the compliance and enforcement of requests for international judicial assistance cover various aspects which come within the exercise of their duties.

On one hand as **Judicial Police**, they are under the orders of the judicial and prosecuting authorities for the material enforcement of as many actions as are required for coercion or legitimate use of force in the context of compliance with a request for judicial assistance.

And on the other, and specifically in terms of judicial cooperation, their intervention is expressly contemplated in most of the international Conventions regarding these questions, which include the notification and enforcement of letters rogatory **in urgent cases** through the International Police Organisation (INTERPOL), without prejudice to subsequent processing through ordinary channels. (Article 15.5 of the European Convention on Mutual Assistance in Criminal Matters).

In addition, in specific actions of judicial cooperation, an important task is the work in the arrest and custody of defendants and movement and transporting of detainees, both in the context of extradition and handover, and in the movement of convicted persons and, enforcement of letters rogatory and commissions.

1.3.5. Other participants

The complete spectrum of those involved in the process of notification and enforcement of requests for international judicial assistance is completed with other legal operators, such as the **Foreign Office, Embassies and Consulates**, and includes **Judicial Secretaries, Lawyers and Procurators**.

The Foreign Office and State Foreign Service act on three fronts:

- Firstly, in the notification of letters rogatory via diplomatic means, in virtue of the principle of international reciprocity, in the absence of a Convention, and in the application of numerous Conventions which have established diplomatic channels as a means of obligatory or optional notification.
- Secondly, as direct enforcers of requests for assistance in civil and commercial matters (notification or examination of evidence) with respect to nationals of their States of origin resident in the State where the request is made, in a voluntary manner.
- Finally, as civil servants of the State of origin in the territory where the request is made, they are called on to carry out the valuable work of logistic support and mediation between the authorities of both countries especially in places where due to their geographical, linguistic or cultural nature, relations are particularly difficult.

Lawyers and Procurators have an important role in the notification of letters rogatory in civil and commercial matters. In addition to providing general legal

advice to private individuals, in practical terms they also assist judicial bodies in drafting notification requests for judicial documents or for the examination of evidence abroad, and may even directly transmit notification requests (pursuant to article 15 of the Regulation 1348/2000).

It is extremely important that private legal professionals have sufficient knowledge of existing instruments and their functions in order to correctly apply them.

1.4. JUDICIAL COOPERATION NETWORKS AND EUROJUST

At a European level various structures have been created with the aim of facilitating and coordinating international judicial assistance:

- In criminal matters the European Judicial Network (RJE – EJM) <http://www.eurojust.eu.int/ejm/ejm.asp> and “Eurojust”, <http://www.eurojust.eu.int/> have contact persons and a Spanish National Member respectively.
- In civil matters, the European Judicial Network in Civil and Commercial matters, http://europa.eu.int/comm/justice_home/ejm/ is represented in Spain both through Contact Persons (in the Ministry of Justice and the General Council of the Judiciary) and with territorial judicial authorities in each Autonomous Region.
- In criminal and civil matters and within the scope of Latin America, the Latin American Judicial Network of Judicial Cooperation (Iber.Red). In October 2004 the Latin American Judicial Network of Judicial Cooperation (Iber.Red) was inaugurated in Cartagena de Indias (Colombia) with participants from 22 countries in Latin America, belonging to the three areas involved in international judicial assistance: the Latin American Association of Public Prosecutors and Public Ministries, the Latin American Summit and the Conference of Justice Ministers of Latin American countries. The IberRed project is an initiative of the General Council of the Judiciary, aimed at conveying the European experience of a network structure to the Latin American sphere, benefiting from the enormous advantages this offers in terms of progress and improvement in judicial cooperation. This initiative is part of a greater project to create a Latin American Judicial Area, a concept raised at the IX Summit of Heads of State and Government, (Lima, November 2001), which drew attention to its content.

Like the European networks, IberRed has contact persons appointed by the respective national institutions responsible for cooperation in judicial and public prosecution spheres, as well as central authorities (Ministries) and with specific knowledge of such questions. Its main function is to optimise judicial cooperation between member countries in criminal and civil matters as a complement to the work of enforcement agencies and central authorities. IberRed is assisted by a General Secretariat, which is part of the General Department of International Legal Cooperation.

The functions of the contact persons, as stated in article 6 of the IberRed Regulations are as follows:

a) to provide all the information required for excellent judicial cooperation between the States to other contact persons, the authorities mentioned in sections b) and c) of paragraph 1 of Provision 4 and to the local judicial authorities of their States, so that they may submit requests for judicial cooperation in an efficient manner ;

b) to identify and facilitate when required by another contact person, information on the judicial, prosecuting or administrative authority responsible for complying with the requests for judicial cooperation;

c) to seek solutions to any difficulties which may arise as a result of a request for judicial cooperation;

d) to facilitate coordination of the examination of requests for judicial cooperation in the States in question, particularly when various requests from the judicial authorities of those States need to be enforced in another State;

On a national level, structures have been created with expert Judges, Magistrates and Public Prosecutors to facilitate territorial judicial cooperation.

1.4.1. Network of Cooperation Experts of the Public Prosecutor's Office.

Instruction 2/2003

The Public Prosecutor's role of judicial authority for the purpose of international judicial cooperation and the integration of the Public Prosecutor's Office in European structures, created to strengthen and improve international judicial cooperation mechanisms, was recommended as far back as 2001 with the establishment of organisations within the Public Ministry which would provide an efficient and adequate response to the increasing demands of the Public Prosecutor's task in the field of international judicial cooperation.

In this respect it should be recalled that in each of the Special Public Prosecutor's Offices, at least one of its members is a contact person for the European Judicial Network. In the remaining Public Prosecutor's Offices as stated in Instruction 3/2001, an internal structure was created or Public Prosecutors' Network, in matters of international judicial cooperation comprising in each of the Public Prosecutor's Offices of the Provincial Court and the High Court of Justice, one or two members –depending on the volume of cooperation matters in that Office.

These contact persons, as specialists in international judicial cooperation are points of reference for channelling, guiding and providing international judicial assistance in an efficient and effective manner.

Instruction 2/2003 of the State Public Prosecutor's Office sets up the network as a Special Service for International Judicial Cooperation and regulates its functions.

The Instruction specifies the need for a special service: *“There is no doubt that today, the field of international judicial cooperation is a complex one. This matter requires not only knowledge and use of international Conventions with all their declarations and reservations, and also knowledge and familiarity with international structures created to encourage cooperation and coordination of*

international judicial assistance, but also a minimal knowledge of comparative law as well as knowledge of foreign languages. This has led to the creation of a Special Service in matters of international judicial cooperation, which enables tasks involving international assistance to be carried out with greater efficiency and precision given the degree of specialisation that such tasks require”.

The centralisation of international cooperation in one Special Service for each Public Prosecutor’s Office, comprising public prosecutors belonging to the Network, has additional advantages. In particular, it enables the Technical Secretary to carry out the coordination duties attributed to him/her pursuant to the new Statute. In addition, the predetermination of competence in the dispatch of these matters by the contact persons of the Internal Network constitutes a means of expediting the active intermediary work corresponding to the contact persons in the European Judicial Network, and the task of coordinating, which falls to Eurojust, any matters attributed to that organisation. Finally it assists in obtaining the requisite information on letters rogatory currently being enforced or on the status of claims for the purposes of court proceedings, pursuant to article 21 of the 1959 Convention, which should be provided in specific cases to the central authority.

The public prosecutors who make up this service operate a computerised service created to record matters of international judicial cooperation, which contains both passive requests and active commissions issued from their offices.

The duties of the Public Prosecutors’ Network of International Judicial Cooperation are described in the instruction, with the most significant tasks as follows:

- The enforcement, or at least the coordination and monitoring of enforcement of all passive letters rogatory and requests which should be enforced by the Public Prosecutor’s Office, in which they provide their services, including police stations.
- Assisting, other Public Prosecutors as needed in issuing active letters rogatory and requests, making available, when required, the model for rogatory commission created by the European Judicial Network.
- Collaboration with other Public Prosecutors in drafting reports requested by judicial bodies in their respective jurisdiction in matters of international judicial cooperation.
- Providing direct contact by the Public Prosecutor’s Office with international judicial authorities when such contact is required for the enforcement or drafting of a request for international judicial assistance.
- Providing support to Spanish and foreign contact persons of the European Judicial Network who require information on the status of enforcement of pending requests for international judicial assistance,

both in the Public Prosecutor's Office and in the judicial bodies belonging to the jurisdictional territory of that Office, exercising if required, the powers accorded pursuant to article. 4.1º of the Organic Statute in an attempt to facilitate enforcement of those requests.

- Assistance required by Liaison Magistrates, the professional Association or to members of Eurojust in carrying out their duties when required to do so

The instruction also covers specific questions which may arise during the practical enforcement of a request for international judicial assistance.

In particular, since the Public Prosecutor has judicial authority pursuant to the 1959 Convention and subsequent conventions, he may enforce with full powers of autonomy all letters rogatory or requests for the purposes of investigation corresponding to the internal domestic sphere.

These enquiries, which do not have to be considered investigation enquiries and therefore which are not subject to the term of six months, pursuant to article 5 of the EOM, may be either directly enforced by the Public Prosecutor or ordered to be carried out by the Judicial Police. While this is not an exhaustive list, the Public Prosecutor may receive declarations of witnesses, victims, or suspects; carry out notifications or summonses; collect and send documentation, police reports and fingerprint and photographic reports; request and send expert reports, and in specific cases, when this does not affect fundamental rights, reports on assets, current accounts, identity of telephone users etc. Of course, also more specifically, the prosecutor may authorise surveillance or undercover police action, pursuant to Article. 263 bis and 282 of the Law on Criminal Procedure.

It may be that the enforcement of a specific rogatory commission necessitates enquiries in the jurisdictions of various Public Prosecutors. In such cases, the instruction provides for coordination systems which ensure fluid processing and improved monitoring of enforcement.

1.4.2. The Spanish Judicial Network (REJUE)

a. Background

When the European criminal judicial network came into operation and following the appointment of contact persons within the Council, the work of active mediation began, in order to promote more effective international judicial cooperation .

However, given the magnitude of this task, a sub-network was created within the General Council of the Judiciary comprising Judges and Magistrates distributed throughout national territory entrusted with the task of complementing the work of the existing contact persons within the Council.

Within this framework, the Plenary Session of the General Council of the Judiciary in a meeting of 14 April 1999, approved execution of the "Project for

Strengthening the Contact Point for the European Judicial Network” which as mentioned, aimed to form a group of experienced and specialised judges and magistrates in matters of international jurisdictional assistance disseminated throughout national territory with the purpose of serving as a contact point for the European judicial Network within the General Council of the Judiciary and to complement the advisory functions in matters of international judicial cooperation which, as indicated, correspond to the General Council of the Judiciary.

Initially forty judges and magistrates were selected, to which twenty more were added following a Decision of the Council of 25 October 2000. All received specific training in criminal and civil matters.

With sixty members of the then Sub-Network,- which today is known as REJUE– the aim is to cover all national territory, so that at least each province has one person (and various in very populated areas) whom the various working judges and magistrates may approach for advice in matters of international judicial cooperation, and through various channels (telephone, fax, E-mail, personal contact etc.).

At the present time, and as a result of this programme, approximately 85% of the provinces on national territory have been covered.

b. Structure

Prior to start up of the European Judicial Network in Civil and Commercial Matters it was agreed to create two “Divisions” or groups of experts: the criminal REJUE- and the civil REJUE.

This new structure and organisation has been supported by a regulation- level legal instrument which has provided legal endorsement for REJUE, the Regulatory Agreement 5/2003 of the Plenary General Council of the Judiciary which amends Regulation 5/1995 in respect of international judicial cooperation.

In accordance with this regulation, REJUE comprises two divisions, consisting of territorial experts in international judicial cooperation:

c. Civil Division:

The civil division comprises senior judges who belong – in the main- to the civil jurisdictional system, but in accordance with the Spanish legal system it also includes some senior judges who are part of the employment and contentious-administrative systems.

As in the European networks, all are required to speak another Community language in addition to their own.

d. Territorial Division

It is guaranteed that at least one representative of REJUE-civil division exists in each Autonomous Community.

e. Functions

In accordance with the aforementioned Regulation of duties (article 76 bis 4 of Regulation 5/1995): “1.- the Network members shall provide support to the contact points in the European and Latin American Judicial Network, and shall act as active intermediaries to facilitate international judicial cooperation. This active mediation includes informing, advising, coordinating and, if appropriate, carrying out any other actions which would facilitate judicial assistance in international issues, whilst totally respecting the jurisdictional powers of the judicial bodies affected. The aforementioned mediation shall be provided on request by any Spanish judicial body, a Spanish central authority, the Public Prosecutor’s Office or a foreign authority with competence to request assistance. 2.- In addition Network members carry out the following duties: a) promote and participate in training activities in matters of international judicial cooperation, in particular those taking place in territory where they work; b) draft studies, draw up documents and propose other instruments which would encourage international judicial cooperation; c) Record their activities as intermediary in the automated support system determined by the General Council of the Judiciary; d) Publish an annual report on their activities as member of the Network which shall be submitted to the General Council of the Judiciary”.

On the basis of the above, the REJUE has been created to provide support at a territorial level to the contact persons in the European and Latin American Judicial Networks. This means that the Spanish members are available to:

- The contact persons in the judicial networks of the General Council, Ministry of Justice and the Public Prosecutor’s Office.
- The contact persons in the judicial networks of any Member State of the European Union.
- The contact persons or correspondents in the Latin American Network of Judicial Assistance

The REJUE members actively mediate in matters of international judicial cooperation, that is, they assist in the processing and handling or provide support from both a legal and practical standpoint to their colleagues in matters of letters rogatory and requests. Support is provided to both Spanish and foreign judicial bodies with competence in this area.

In addition to the above duties, the REJUE also carries out training, advisory, study and recording tasks as well as drafting an annual report.