Principle of Reciprocity

The principle of reciprocity involves permitting the application of the legal effects of specific relationships in law when these same effects are accepted equally by foreign countries. In international law, reciprocity means the right to equality and mutual respect between states. This principle has served as a basis for attenuating the application of the principle of territoriality of laws.

For example, in matters of extradition, a mechanism of international judicial cooperation, doctrine has established that in the absence of a treaty, there is a moral duty to assist arising from the obligation of nations to turn over criminals to their rightful judge so that they can be tried and punished if found guilty. For some authors, it is more than a moral duty; it is a real international obligation arising from membership in a community of states and is based on international cooperation, mutual assistance and solidarity.

Some countries, however, extradite accused persons mainly on the basis of **reciprocity**. This is the case for the Code of Criminal Procedure of Argentina, which makes extradition subordinate to this principle. The Spanish Constitution also enshrines the requirement of reciprocity.

It should be mentioned that this need for states to ensure equal treatment is best supported in international agreements, since these more than any other instrument assure every state that in similar conditions the other party would act the same way; therefore bilateral and multilateral treaties are rightly seen as a genuine expression of the principle of reciprocity, since under them states assume the commitment of equal treatment.

In our opinion, international judicial assistance is basically an expression of this mutual or reciprocal assistance that states owe each other, but it is clearly a duty that applies to all states equally when the occasion arises. It should also be mentioned that the rule of reciprocity comes into play only in the absence of a valid treaty, for if a treaty exists, it makes no sense to bypass it and apply the principle of reciprocity.

Finally, when it comes to mutual legal assistance in criminal matters, the **principle of reciprocity** is limited in cases where it is contrary to the legal order of the country concerned or undermines its sovereignty or security, public order or other fundamental interests.

Principle of Freedom of Evidence

In general, the principle of freedom of evidence can be defined as the right of parties in a criminal trial to establish with any form of evidence all the relevant facts of the case, provided that this evidence is presented in accordance with the Code of Criminal Procedure and the provisions of the national Constitution. In this regard, freedom of evidence is understood as the right that the parties have to make their case using any means at their disposal.

This principle of evidence is enshrined in article 198 of the Code of Criminal Procedure, which states that unless expressly provided by law, evidence may be presented in any form on all the facts and circumstances of interest for the proper resolution of the case, provided that the evidence is submitted according to the terms of this code and the law does not expressly forbid it.

Jurisprudential Opinion
Analysis of the Principle of Direct Knowledge by Judge Jesús Eduardo Cabrera Romero
(Case: Créditos Mexicanos)
Analysis of sentence of August 22, 2001, concerning mediated direct knowledge

In chapter V of the sentence, concerning direct knowledge, the judge began with a conceptual analysis of the principle of direct knowledge from an evidentiary point of view, and defined it as "the need for the judge who will pass sentence to be present when the evidence is presented."

Later, he stated that direct knowledge has two purposes in the oral hearing, namely to receive allegations and to receive evidence, with emphasis on evidence, because regardless of the allegations made, the principle of direct knowledge has a real effect on the debate, and in most cases is related to the principle of concentration of evidence.

The judge ruled that the evidence submitted in the oral hearing must be presented in a public hearing, in the presence of the judge who will pass sentence on the case, but if the judge does not have jurisdiction in the place where the evidence is submitted, another judge in that location may receive it, but so that the sentencing judge may attend the submission of the evidence, and thus maintain direct knowledge, audiovisual means of reproduction may be used.

This opens the possibility for mediated direct knowledge, in which the judge is not physically present to hear the evidence, but directs the receipt of evidence in a mediated form, using "remote-control techniques and equipment by which he can be personally made aware of the facts, using screens, sensors, monitors or similar devices (e.g. video-conferences), at the same time as they are presented."

Thus, inspections of a place by a judge using video or similar equipment that transmits or retransmits images and sounds or whatever is necessary for the evidence from the place where this evidence is found to the court does not violate the principle of direct knowledge. The judge also ruled that receiving information directly in the courtroom via equipment located in that court and provided by the parties and judicial authorities is not a violation of direct knowledge.

Similarly, the judge ruled that the principle of direct knowledge is in no way breached if the evidence is presented as described above, provided that the means of reproduction or communication used are pertinent and legal.

With respect to cross-examination in these cases, the judge ruled that the same principle could apply, since the witnesses can be questioned or the parties can be asked to clarify their statements.

From the above, it is clear that Venezuelan criminal trials may use video-conferences or other similar means (telephone, fax, etc.), on the basis of the principle of direct knowledge, albeit mediated in this case, and the principle of freedom of evidence, both of which are enshrined in the Code of Criminal Procedure. It should be made clear that the right to cross-examine also applies, since both the judge and the opposing party may question and verify the evidence presented.

Types of Evidence

1. Testimony	Evidence consisting of the statement of an actual person obtained in the course of a criminal trial, in which the witness can report what he observed concerning the facts under investigation, in order to help reconstruct the events. This form of evidence is regulated in article 222 and following of the Code of Criminal Procedure, and it is handled as described in articles 355 and 356 thereof. This evidence may also be presented in advance, as specified in article 307 of the Code.
2. Expertise	Expertise is the form of evidence involving a report based on particular scientific, technical or artistic knowledge, which is of great value in discovering or assessing evidence presented in the trial. This form of evidence is regulated in article 237 and following of the Code of Criminal Procedure, as well as article 209, which provides for a physical and mental examination of the accused.
3. Documentary	In this context, a document is any physical object on which, using conventional signs, words, images, sounds or any other expression of intellectual content has been recorded or printed. This form of evidence is not expressly regulated in our code, but its use in Venezuelan criminal trials is absolutely valid, under the principle of freedom of evidence, enshrined in article 198 of the Code of Criminal Procedure. Another reason for maintaining the validity of documentary evidence in our criminal trials is that it is mentioned in several places in the Code of Criminal Procedure, such as articles 339.2 and 358, which state that documents received in a trial must be read during the proceedings.
4. Seizure of correspondence	According to legal doctrine, the seizure of correspondence is the interruption of the normal course of correspondence, from the time it is sent until it is received, so that it may be used as evidence. The intercepted correspondence is sent to the judge hearing the case. This form of evidence is established in article 218 of the Code of Criminal Procedure, which authorizes the public prosecutor to seize correspondence and other documents that are presumed to have come from the offender or have been sent to him and may be related to the facts being investigated, provided that this seizure is first authorized by the overseeing judge.
5. Interception or recording of communications	Communications sent by the accused or intended for him are intercepted or recorded so that the contents of the conversation can be determined (for use as evidence), or to prevent a conversation that may impede the investigation. This item is regulated in article 219 of the Code of Criminal Procedure, which permits intercepting or recording private communications, be they in person, by telephone or using any other means; these communications will be transcribed and added to the evidence. This procedure requires the authorization of the appropriate judge.
6. Inspections	This is the procedure whereby the public prosecutor or the police inspect public places, objects, tracks or traces and material items that may be useful for the investigation or for identifying the persons involved. This form of evidence is regulated in article 202 and following of the Code of Criminal Procedure. Besides inspection of places, our code allows for the inspection of persons, nighttime inspections and vehicle inspections,

	which are regulated in articles 204, 205 and 207, respectively. This type of evidence does not require judicial authorization. In addition to the inspections mentioned above, which are conducted by the public prosecutor or the police, we must also mention judicial inspection, which is the form of evidence in which the judge directly receives material that may be useful in itself to reconstruct the event under investigation and reports on his observations.
7. Searches	Searches are done by the authority (prosecutor or police) for items related to the offence under investigation or that may be used as evidence, or for presumed participants in a dwelling, commercial establishment or locked property or in an inhabited area, whether or not the owner or occupant consents thereto. This procedure is specified in article 210 of the Code of Criminal Procedure, and it requires the authorization of a judge.
8. Denunciation	This item is covered in article 39 of the Code of Criminal Procedure, which establishes the possibility that the accused may have participated in activities of organized crime and may provide the investigation with essential information to: (1) prevent the offence from continuing or other offences from being committed, (2) help elucidate the event being investigated or other related events, or (3) provide useful information for proving the involvement of other accused persons.
9. Anticipated evidence	This is the form of evidence in which the public prosecutor can ask the presiding judge for testimony, expertise, inspection or examination, which by their nature may be considered final and non-reproducible, or which cannot be done during the trial. This procedure is covered in article 307 of the Code.
10. Reports	Procedure whereby corporate entities transmit previously recorded information demanded by the judicial authority. It is a written response from a corporate entity to a judicial demand for pre-existing information that this entity should have on its premises. For the report to be valid, it must be issued by an authorized public official or the representative of a private company. This form of evidence is valid in Venezuelan criminal trials under the principle of freedom of evidence established in article 198 of the Code of Criminal Procedure, even though it is not expressly regulated therein.