

MODULE VI

CASE STUDY

- 1.- Trial Court no. 15 in Logroño is processing preliminary proceedings for a crime of sexual abuse of a minor, N.M., aged 8 years of age, committed in Logroño, in which the accused is an Italian citizen, Davide Bartola, with address in Perugia, via Giuseppe Piazzi, 55.
- 2.- The investigative steps taken include the examination of the minor, carried out with the intermediation of a specialised team, which diagnosed serious psychological damage. The examination was carried out by two psychologists asking questions suggested by the examining magistrate and the public prosecutor and the minor's replies were recorded on video.
- 3.- The examining magistrate sent a letter rogatory to Italy seeking the testimony of Davide Bartola as the accused. In his statement, assisted by a lawyer, the accused denied the accusations. No lawyer or court attorney has been appointed.
- 4.- After the letter rogatory was returned, duly executed, the examining magistrate considered that the preliminary stage had concluded and was to decide on whether or not to continue with summary proceedings.
- 5.- However, upon receiving the letter rogatory, the Italian Public Prosecutor's Office, considering the criminal jurisdiction of its country is competent, pursuant to its internal legislation, to prosecute crimes committed by Italian citizens abroad, has initiated *indagine preliminare* and sent a letter rogatory to Logroño in which it requests:
 - a.- That all the proceedings carried out, or at least a testimony of the same, be sent to it.
 - b.- That the minor and the witnesses (including the mother of the minor) be called to declare again, with the participation of the corresponding Italian prosecutor.

QUESTIONS ARISING

- 1.- Must the Spanish examining magistrate accept the letter rogatory and comply with its requests? The answer should mention the legal or conventional basis for acceptance or rejection.
- 2.- If the answer to the above is affirmative, to what extent? Could it reject any of the procedures requested? If so, cite the legal basis for any such acceptance or rejection.
- 3.- Would it be appropriate or useful in this case to take recourse to an institution providing support to judicial cooperation? If so:
 - a.- Which institution?
 - b.- What would be asked of it?

c.- With what consequences?

4.- Should the examining magistrate subsequently decide to continue with summary proceedings, would he/she have to send a new letter rogatory?

5.- In line with the replies you have given, you must now draft the corresponding documents.