



Colombia: Extradition Law and Process

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COLOMBIA
EXTRADITION LAW AND PROCESS

Executive Summary

Extradition in Colombia is decided by the executive power, through the Ministry of Justice with the advice of the Supreme Court, which verifies that the extradition request meets the formal requirements established by law. The law provides guidelines to determine the order of precedence in case of more than one extradition request for the same person, but it is the executive that has the final decision on which of the multiple extradition requests will be granted.

I. Introduction

The extradition process in Colombia is a mixed system that assigns the executive power the authority to grant or deny an extradition request with the prior advice of the Supreme Court on the request's compliance with formal requirements.¹ The role of the Supreme Court is not jurisdictional, since it does not pass judgment on the substance of the crime allegedly perpetrated but only on the formal validity of the documentation submitted with the request.²

II. Legal Framework

The legal framework for extradition is found in the Political Constitution (*Constitución Política*, CP)³ and the Code of Criminal Procedure (*Código de Procedimiento Penal*, CPP).⁴ The CP provides that extradition may be requested, granted, or offered according to international treaties or, in their absence, according to the law.⁵ The extradition of Colombian nationals by birth is granted for crimes perpetrated abroad if those crimes are also considered crimes under Colombian law. Political crimes are not a valid ground for extradition.⁶

¹ P. VARGAS VARGAS & T. LONDONO HERRERA, *PROCEDIMIENTO PENAL DE COLOMBIA* 789 (Ediciones Doctrina y Ley Ltda., Bogotá, 2002).

² III J. LOPEZ MORALES, *NUEVO CÓDIGO DE PROCEDIMIENTO PENAL* 447 (Ediciones Doctrina y Ley Ltda., Bogotá, 2006).

³ CONSTITUCIÓN POLÍTICA DE COLOMBIA [CP], July 26, 1991, available at http://www.secretariassenado.gov.co/senado/basedoc/cp/constitucion_politica_1991.html (official source).

⁴ CÓDIGO DE PROCEDIMIENTO PENAL [CPP], Law 906 of Aug. 31, 2004, available at http://www.secretariassenado.gov.co/senado/basedoc/ley/2004/ley_0906_2004.html (official source).

⁵ CP art. 35.

⁶ *Id.*

The government, through the Ministry of Interior and Justice, is the authority empowered with granting the extradition of a person convicted or indicted abroad, except for political crimes or those crimes perpetrated before December 17, 1997.⁷ The granting of extradition is at the government's discretion but has to have the prior favorable assessment of the Supreme Court.⁸

The substantive requirements for granting extradition are set by article 493 of the CPP, as follows:

- (1) The actionable basis of the extradition must also be a crime under Colombian law and sanctioned with imprisonment of at least four years; and
- (2) The requesting country's court must have at least issued an accusation or its equivalent.⁹

The government may set conditions for granting extradition that it deems appropriate. In any case, it may require that the requested individual not be tried for a prior action different from the one that caused the extradition request, nor to be subject to sanctions different from those imposed in his or her conviction.¹⁰

If, under the domestic laws of the requesting country, the crime that gives rise to the extradition petition is punishable with the death penalty, the individual will only be handed to the requesting country if such penalty is commuted (substituted by another penalty), and if the individual would not be subject to forced disappearance; torture; cruel, inhumane, or degrading treatment; exile; life imprisonment; or complete property confiscation.¹¹

The CPP provides that the actual extradition process¹² begins with a diplomatic request submitted to the Ministry of Foreign Affairs¹³ by the requesting state, with supporting documents that include: (1) an authenticated copy of the conviction or the accusation; (2) an exact description of the actions that are the basis of the extradition petition; (3) all data available to establish the identity of the individual requested to be extradited; and (4) an authentic copy of the applicable criminal provisions. The documents must be translated into Spanish.¹⁴

The Ministry of Foreign Affairs refers the petition, its supporting documentation, and the assessment that determines if the extradition, if granted, should proceed based on an international treaty or the CPP, to the Ministry of Interior and Justice, which examines the documentation for

⁷ CPP art. 491.

⁸ CPP art. 492.

⁹ CPP art. 493.

¹⁰ CPP art. 494.

¹¹ CPP art. 494, 2nd para.

¹² CPP arts. 490-514.

¹³ CPP art. 496.

¹⁴ CPP art. 495.

a period of up to five days.¹⁵ If essential pieces in the file are missing, the Ministry of Interior and Justice returns the file back to the Ministry of Foreign Affairs, which contacts the foreign authorities to request the missing information and documentation.¹⁶

Once the file is completed, the Ministry of Interior and Justice refers it to the Supreme Court, Criminal Section (*Sala de Casación Penal*), which renders an advisory opinion on the petition.¹⁷ The Supreme Court then notifies the requested individual or his or her defender about the extradition petition and he or she is given ten days to produce and submit the evidence that he or she deems necessary.¹⁸ During the subsequent ten days, the evidence is presented as well as all the measures the Supreme Court considers essential to render its opinion.¹⁹ Once evidence has been produced, the process is open for final arguments for five days.²⁰

If the Supreme Court's advisory opinion opposes granting the extradition request, the government is bound by it. If, on the other hand, it is in favor of granting extradition, the government has discretion to act according to the country's national interests and may or may not grant it.²¹

The Supreme Court's opinion is limited to the issues of compliance with the formalities of the documentation submitted with the petition; full proof of the identity of the requested individual; the principle of double incrimination; the equivalence of the foreign court order; and compliance with international treaties, if applicable.²² After the Supreme Court's opinion is rendered, the government has fifteen days to grant or deny the extradition request.²³

If a person is requested on extradition by two or more countries for the same action, the request from the country where the wrongdoing happened takes precedence.²⁴ If extradition of the individual is requested for different actions, the request from the country with the most serious wrongdoing takes precedence. In the case of equal seriousness of the offenses, the country that first submitted the extradition request prevails.²⁵ The government decides the order of precedence in the case of several extradition requests for the same person.²⁶

¹⁵ CPP art. 496-497.

¹⁶ CPP art. 498.

¹⁷ CPP art. 499.

¹⁸ CPP art. 500.

¹⁹ *Id.*

²⁰ CPP art. 500, last para.

²¹ CPP art. 501.

²² CPP art. 502.

²³ CPP art. 503.

²⁴ CPP art. 505.

²⁵ CPP art. 506.

²⁶ CPP art. 506, last para.

The fact that the government, not the Supreme Court, decides the order of precedence in the case of multiple extradition requests was reiterated in the Supreme Court's advisory opinion²⁷ in the case of an Israeli national arrested in Colombia and requested by Peru and Belgium.²⁸ Even though the crime perpetrated in Belgium was the most serious one (murder) and according to the CPP guidelines Belgium's request should have prevailed, the Supreme Court determined that it was not within the competence of the Supreme Court, but rather the national government to decide the order of precedence in the case based on the last paragraph of article 523 (current article 505) of the CPP.

If extradition is granted, the Attorney General (*Fiscal General de la Nación*) orders the individual's arrest if he or she was not already arrested and hands him or her to the authorities of the country that has requested extradition. If the request is denied, the Attorney General orders the release of the detainee.²⁹ Once the extradition process begins, the requested individual has the right to appoint a defender or have a public defender appointed if he or she fails to do so.³⁰

The objects found in the detainee's possession, deposited or hidden in the country related to the crime, or that might be used as evidence are handed over to the requesting country's authorities along with the detainee.³¹ Expenses for the extradition process are paid by each country as incurred within the limits of its territory.³²

The detainee is released unconditionally by the Attorney General if, within sixty days from the date of the arrest, no formal extradition request has been filed or, if after thirty days from the date the requested individual was ready to be transferred to the requesting country, the foreign authorities have not actually formalized the request.³³ The requested individual may, however, be arrested again on the same grounds once the requesting country formalizes the extradition petition or provides for his or her transfer.³⁴

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²⁷ J.C. MEJIA AZUERO, *EL TRAMITE ADMINISTRATIVO DE EXTRADICION EN COLOMBIA* 102, 112 (Universidad Militar Nueva Granada, Bogotá, 2006).

²⁸ Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala. de Casación Penal, Apr. 6, 2005, Re: Extradition No. 22945 (Extradition request of Mr. Itzhak Mualem by the governments of Perú and Belgium), available at [http://www.dmsjuridica.com/JURISPRUDENCIA/SALA_PENAL/docs/2005/22945\(06-04-05\).doc](http://www.dmsjuridica.com/JURISPRUDENCIA/SALA_PENAL/docs/2005/22945(06-04-05).doc).

²⁹ CPP art. 506.

³⁰ CPP art. 510.

³¹ CPP art. 507.

³² CPP art. 508.

³³ CPP art. 511.

³⁴ *Id.*