

## **MEASURES TAKEN BY PERU IN THE AREA OF EXTRADITION AS A TOOL OF COOPERATION**

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Extradition is a mechanism of international judicial cooperation, by virtue of which through a formal request, one State obtains from another State the surrender of a person charged or convicted for an ordinary offense in order to judge the person in a penal court or to execute the imposed penalty. In Peru, extradition is governed by bilateral and multilateral treaties, Law 24.710 and Supreme Decree 044-93-JUS, and by the principle of reciprocity. However, in order to bring the scope of domestic legislation governing extradition into line with the requirements of international legal instruments signed and ratified by Peru, some important reforms have been made. The first, covered by Supreme Decree 031-2001, stipulates the time limits that public agencies must observe in active extradition by the Peruvian State; while the second, incorporated into Book VII of the new Code of Penal Procedure, dealing with international judicial cooperation, not only revises the powers of the national institutions involved in this procedure but also broadens the legal basis for extradition and the assumptions on which it may be performed. Similarly, a special procedure has been included for the surrender of persons in the context of cooperation with the International Criminal Court.

Depending on the vision of extradition, the procedure followed will be different: on one hand, it may be a purely process-driven mechanism, i.e. a mechanism of judicial aid between countries, to determine the procedure for surrendering defendants or convicts; or the procedure may include a concern to safeguard the rights of the wanted person, by establishing a guarantee that no person will be surrendered except in the cases and under the circumstances stipulated by treaties.

The consequences of adopting one or other vision are important. Under the first, where the principal objective and purpose of the extradition treaty is to secure the surrender of defendants or convicts, where the beneficiaries are essentially the states parties, the interpretations may be as broad as necessary to achieve surrender of the wanted person. The situation will be different under the second vision. The requirements of substance and form established in the treaty as prerequisites for granting extradition will be intended not only to facilitate surrender but also to ensure the seriousness of requests and to safeguard the rights of the wanted person. Thus, the function of the authorities upon receipt of a request for extradition will be different, depending on the concept. In schematic terms, we may compare the "Euro-continental" model with the "Anglo-Saxon" rule of prima facie evidence. In the first case, the nature of extradition is limited to a simple act of international judicial assistance, with no regard to such fundamental principles as the presumption of innocence or the prohibition of double jeopardy;

in the second case, by contrast, the requirement of proof is the determining factor, and the request must include evidence of the wanted person's possible culpability.

The Peruvian extradition system follows the Anglo-Saxon model; however, the expansion of the grounds for granting extradition, as formulated in the new CPP and the various treaties signed by Peru on this matter, serve to strengthen judicial cooperation between Peru and other countries.

## I. THE PERUVIAN EXTRADITION SYSTEM

Extradition is granted only by the Executive Branch, with the advice of the Supreme Court, pursuant to the law, treaties and the reciprocity principle. The rights of the person extradited are protected through the principle of cross-examination and the appeals that the wanted person may pursue against extradition. Similarly, the formal conditions, i.e. the documents that must accompany the extradition request, are mandatory and if they are defective the wanted person may be released. However, the requesting State has the possibility of rectifying such deficiencies.

Law 24.710 establishes the requirements, conditions and procedure for extradition, both active (when the Peruvian State requests another country to surrender a criminal located in that territory) and passive (when the Peruvian State receives a petition from another country asking it to surrender a criminal located in Peru). Supreme decree 044-93 JUS determines the scope of the provisions contained in articles 37 and 38 of Law 24.710, governing in general the conduct of the courts and government in active extradition, incorporating the functions of the various authorities involved in this form of extradition, specifying the rules, the rights of wanted persons, and the obligations of the public agencies.

### 1) *REQUESTS FOR EXTRADITION*

Extradition is requested through diplomatic channels by the government of the State where the charges have been laid or the conviction rendered.

The extradition request must be based on a conviction or prison sentence that establishes with clarity and certainty the place and date of the crime, with the necessary details; information on the filiation of the wanted person, and indicators or circumstances that serve for his identification. The documents that must accompany the extradition request are the following:

- Copy of the conviction or the prison sentence.
- Full copy of the texts of laws relating to the crime committed, the applicable penalty, and the time limit for penal action.
- Proof that the crime was committed.

- Proof that the wanted person was involved.

## 2) *CONDITIONS OF EXTRADITION*

The granting of extradition requires that:

- The requesting State has jurisdiction or competence to try the offense.
- The wanted person has not been acquitted, convicted, pardoned or granted amnesty.
- The time limit for prosecuting the crime or imposing the penalty has not expired, pursuant to the laws of Peru or the requesting State, provided the time elapsed does not exceed the limit established in Peruvian legislation.
- The wanted person will not be brought before an exceptional court in the requesting State.
- The penalty imposed for the offense is not less than one year imprisonment.
- The offense is not actionable *ex parte*, except in cases of rape.
- There are guarantees of fair administration of justice in the requesting country.
- A previous request for extradition by the requesting State to a third State has not been rejected on grounds that it was politically inspired.

Similarly, extradition will not be granted if the offense for which it is requested is deemed a political or politically related offense. Nor will it be granted when the request is motivated by a violation of ordinary law, but was presented for the purpose of persecuting or punishing an individual for reasons of race, religion, nationality or political opinions.

Finally, in urgent cases, the preventive arrest of the wanted person may be granted through a simple requisition made by any means, including telegraph. The requesting State must however undertake to submit the formal extradition request within 30 days after receipt of the requisition.

## 3) *EXTRADITION PROCEDURE AND PROTECTION OF THE WANTED PERSON'S RIGHTS*

Extradition is considered a juridical institution and a political act. In juridical terms, it is subject to the principle of legality, which translates into a series of requirements for granting or requesting it. However, extradition is also linked to a political interest, and consequently the requested State must consider whether extradition is politically advisable as well as legally possible.

The Peruvian domestic procedure involves four separate stages:

**Penal judge:** once the extradition request has been formalized and the wanted person has been arrested, the local office of Interpol will turn the detainee over to the investigating magistrate on duty. Within 15 days a public hearing must be held, with the attendance of the wanted person, his attorney, the prosecutor, and a lawyer from the Embassy of the requesting country. The parties are authorized to present evidence. The judge may order the provisional release of the detainee, who in all cases retains the right to apply for habeas corpus. Similarly, in urgent cases, provisional arrest may be granted upon simple requisition submitted by any means, and based on the conviction, prison sentence, or the flight of the criminal. The requesting State undertakes in this case to submit the formal request for extradition within 30 days. If it does not do so, the detainee will be immediately released.

**Supreme Court.** Once the hearing has been held, the judge must within three days issue an opinion as to whether extradition is appropriate or not. This is submitted to the Supreme Court which, after hearing from the Supreme Prosecutor, will issue a resolution with advisory effect within five days. However, the judicial resolution is binding if the court rules against extradition.

**Extradition commission.** The record of proceedings is sent to the government, for the Council of Ministers to decide. The commission responsible for examining extradition requests, comprising two representatives of the Ministry of Justice and two representatives of the Ministry of External Relations, must within five days prepare a report giving a substantiated opinion on the extradition request.

**Council of Ministers.** It is up to the Council of Ministers to decide whether to grant or to deny extradition.

It should be noted that extradition, once granted, may be revoked in case of error; moreover if the representative of the requesting State does not remove the person within 30 days, the person will be released and may not be rearrested for the same reason.

Finally, if the government decides not to grant extradition, it may commit the wanted person for trial, in which case it will ask the requesting State to turn over the evidence.

The Peruvian extradition system will be changed with entry into force of the New Code of Penal Procedure (CPP), expanding the grounds on which extradition may be granted.

## **II. EXPANSION OF THE GROUNDS FOR EXTRADITION**

The expansion of these grounds reinforces Peru's commitment to cooperation, first by making the principle of reciprocity a prime and not merely supplementary

and exceptional consideration; second, by integrating a simplified procedure; and third, by regulating the surrender of persons to the International Criminal Court.

In addition, this reform confers new powers on the Office of the Prosecutor General, making it the Central Authority within the domestic system.

### *1. THE PRINCIPLE OF RECIPROCITY*

Extradition is governed by treaties and domestic law, as well as by the principle of reciprocity. However, in the previous (but still valid) system, the principle of reciprocity was considered only exceptionally, pursuant to article 3 of law 24.710: "Extradition by reciprocity shall be recognized exceptionally within a framework of respect for human rights". In its new wording, the applicable rule states, in article 508 of the new CPP, "international treaties signed by Peru and, in their absence, the principle of reciprocity", enshrining the complementary nature of this principle in order to broaden the opportunities for judicial cooperation between Peru and other countries. To give substance to this principle, the new rule establishes an obligation of the Prosecutor General and the Ministry of External Relations to report to the judiciary all cases in which this principle has been invoked or accepted by Peru.

### *2. SIMPLIFIED PROCEDURE*

The new CPP establishes a simplified extradition system and a simplified arrest procedure.

- Extradition: when at any stage of the judicial proceedings the wanted person consents freely and expressly to be extradited, the jurisdictional body will terminate the proceedings and the Penal Chamber of the Supreme Court will issue a favorable advisory resolution.
- Arrest: when a person wanted by the authorities of a neighboring country attempts to enter Peru, the border police must immediately turn the person over to the competent investigating judge, and so advise the provincial prosecutor and the diplomatic or consular officer of the requesting country. The diplomatic or consular officer will have two days to request that the arrest be maintained.

### *3. SURRENDER OF PERSONS TO THE INTERNATIONAL CRIMINAL COURT*

Finally, as a result of Peru's ratification of the statutes of the International Criminal Court, article 89 of which obliges states to surrender persons who are to be subjected to its jurisdiction, the new CPP contains a special procedure for such surrender. In this context, the Prosecutor General, as the central authority, is the sole interlocutor of the Criminal Court.

The procedure followed is very similar to that in the case of passive extradition, with respect to the rights of the fugitive, except that no extradition commission is established, and an open channel of consultation is maintained between the Prosecutor General's Office and that Court.