

EXTRADITION PROCEDURE: CONCEPT

Extradition is a mechanism of international judicial cooperation, by virtue of which through a formal request, one State obtains from another State the delivery 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.

KINDS OF EXTRADITION THAT ARE APPLIED IN PERU

ACTIVE EXTRADITION.- When the Peruvian State requests from another country the delivery of a criminal who is found in that territory.

PASSIVE EXTRADITION.- When the Peruvian State receives a petition from another country that requests the delivery of a criminal who is found in our territory.

SOURCES OF EXTRADITION

INTERNATIONAL TREATIES

Extradition is governed by international treaties, bilateral or multilateral, enshrining the legality principle, "*nulla extraditio sine lege*" ["no extradition without a law"] a version of "*nullum crimine nulla pena sine lege*" ["no crime and no penalty without a law"].

EXTRADITION LAW

Article 3 of Law N° 24710 exceptionally recognizes extradition by reciprocity under the principle of respect for human rights. The granting of extradition by reciprocity is not binding but rather discretionary for the requested State. If granted, however, it creates a legal obligation for the requested State.

EXTRADITION AND SURRENDER

Extradition is granted only by the Executive Branch, with the advice of the Supreme Court, pursuant to the law, treaties and the reciprocity principle.

Persons wanted for political offenses may not be extradited. Genocide, assassination of authorities and terrorism are not considered political offenses.

EXTRADITION WILL BE ADMISSIBLE IF:

- The State has competency and jurisdiction to try the offense;
- The person has not been acquitted, convicted or pardoned;
- The prescription term has not expired in either State concerned;
- The penalty is not less than one year;
- The case is not handled by an exceptional court;
- The offense is not of a military or religious nature, or related to politics, the press or opinion;

- The case has not been preferred *ex parte*, except in cases of rape;
- It is not related to violation of taxation or currency laws, unless it constitutes an ordinary crime;
- It is not related to a misdemeanor.

It is important to remember that extradition will not be granted if the offense in question may be considered as political or politically related.

The same principle will be applied if the extradition request is motivated by an offense under ordinary law but has been presented in order to persecute or punish an individual for reasons of race, religion, nationality or political opinions.

DOCUMENTS THAT MUST ACCOMPANY THE ACTIVE EXTRADITION REQUEST

- Extradition request document
- INTERPOL report informing the judicial authority that the defendant has been found in a specified country.
- Final decision of the judicial authority requesting or approving the Active Extradition request and the creation of the extradition file.
- Police certificate and complaint laid by the Public Prosecutor.
- Record of opening of the investigation.
- Document testifying the defendant's absence or fugitive status and the respective search and arrest warrant.
- Charges laid, order to stand trial, and conviction, depending on the stage of the proceedings.
- Evidence for the prosecution and for the defense.
- Proof of personal identity showing that the person sought is the person convicted or wanted for trial.
- Rules of domestic law and any applicable treaties.
- Report of the Supreme Penal Prosecutor.
- Decision of the Penal Chamber of the Supreme Court, approving the extradition.
- Notice from the President of the Supreme Court to the Minister of Justice.

To these documents there will be added in due course:

- Supreme Resolution authorizing the extradition request; and, if it is a State with a language other than Spanish:
- Translation of the procedural documents specified by the Commission in charge of examining Active Extradition requests.
- Also, the Supreme Resolution authorizing the Active Extradition and other relevant documents must be translated.
- If there are exceptions and a request for preventive arrest, the pertinent documents must be attached to the file.

BASIC DOCUMENTS THAT MUST ACCOMPANY THE PASSIVE EXTRADITION REQUEST

- Copy of the conviction verdict, or the arrest warrant issued by the competent magistrate, with indication of the offense and the summons or declaration of fugitive status;
- The place and the date of the offense. Full copies of the legal text criminalizing the offense, the applicable penalty and applicable statute of limitations for the offense.
- Proof that the crime was committed;
- Evidence submitted by the prosecution and defense

COMMISSION TO EXAMINE ACTIVE EXTRADITION REQUESTS

This Commission comprises two representatives of the Ministry of Justice (one of whom shall serve as president) and two of the Ministry of Foreign Affairs. This Commission will prepare a substantiated report issuing an opinion on the extradition request, formulated by the Judiciary, which is submitted to the Justice Minister.

The Council of Ministers will decide whether to grant the active extradition.

REVOCAION OF EXTRADITION

Extradition once granted may be revoked:

In case of error, or if the person extradited has not been removed by the authorized agent of the requesting State within thirty days, the person will be released and may not be arrested again for the same grounds.

UNDERTAKING BY THE REQUESTING STATE

Not to imprison or try the extradited person for an offense other than the offense for which extradition was granted and committed before extradition, unless the person freely agrees thereto, or unless the person remains at liberty in that State two months after acquittal for the crime for which extradition was granted, or fulfillment of the sentence imposed.

Not to increase the penalty for political, military or religious reasons.

To credit the extradited person with the time spent in detention during the extradition proceedings.

Not to surrender the extradited person to a third State, and not to execute the person

PERU HAS SIGNED BILATERAL AGREEMENTS IN EXTRADITION MATTERS WITH THE FOLLOWING COUNTRIES:

Belgium, Brazil, Chile, United States of America, Spain, France, Great Britain (applicable also to Fiji, Nauru, Palestine, Cameroon, Tanganyika, New Guinea, Western Samoa, West Africa, Kenya, Malawi, Bahamas, Canada, Zanzibar, Solomon Islands).

MULTILATERAL TREATIES ON EXTRADITION IN FORCE

Treaty of Montevideo on International Penal Law - 1889.

Extradition Agreement (Bolivarian Congress of Caracas).

Convention on Private International Law (Bustamante Code)

Single Convention on Narcotic Drugs of 1961

Protocol of Amendment to the Single Convention on Narcotic Drugs of 1961

Convention to prevent and punish the acts of terrorism taking the form of crimes against persons and related extortion that are of international significance.

United Nations Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances