

THE EXTRADITION PROCESS IN EL SALVADOR

The process of extradition consists in the surrender by one country to another of an individual who is accused of an offense or who has been convicted for an offense, so that the latter State may try the person or enforce the sentence. Extradition finds its basis in international cooperation among states so that crimes will not go unpunished when their perpetrators have fled the country in which they were committed.

From the viewpoint of the State, extradition may be either active or passive: it is active when a State requests extradition by another State, and thereby becomes the "requesting State", and it is passive when it is the State that is asked to perform extradition, and thereby becomes the "requested State".

In Salvadoran legislation, extradition is governed by the Constitution (article 28 and 182 (3)) and by the international treaties to which El Salvador is a State party.

When El Salvador is the requesting State, the procedure is as follows:

For active extradition, it is the responsibility of the Prosecutor General of the Republic (*Fiscalía General de la República*, FGR) or the judge hearing the case to order extradition of a person located in the territory of the other State. There are two channels that may be used:

1. The FGR presents to the corresponding judge a formal request for extradition of the wanted person, the judge evaluates it and issues a resolution: if favorable, the judge prepares a formal request addressed to the competent authority of the requested State and sends it to the Supreme Court of Justice.
2. The judge in charge of the case acts *ex officio* to request extradition of the wanted person and also prepares a formal request addressed to the competent authority of the requested State, and sends it to the Supreme Court of Justice.

Pursuant to the Constitution (article 182 (3)), the Supreme Court of Justice is empowered to "grant extradition." This means that in extradition matters the Supreme Court of Justice has jurisdiction to evaluate the extradition request, in light both of domestic law and of international law, to which El Salvador, as a member of the international community, is subject.

The International Technical Advisory Unit of the Supreme Court of Justice receives the request and examines it in light of national and international law. If it is found lawful, it is submitted with the prior opinion of the criminal chamber to the full court, which must assess its contents and determine whether the request for extradition should be sent. In the affirmative, it will be handled in accordance with the procedure stipulated in the applicable treaty between the parties, and if there

is no treaty it will be sent by diplomatic channels: it will be remitted to the Ministry of Public Safety and Justice, which will send it to the Ministry of External Relations for transmittal to the Salvadoran Embassy in the requested State or to the Embassy of the requested State in El Salvador, for delivery to the Ministry of External Relations of the requested State.

As a general rule, extradition requests are sent by diplomatic channels to the requested State.

When El Salvador is the requested State, the procedure is as follows:

The request is received either through diplomatic channels or by the central authority for transmission to the Supreme Court of Justice. Pursuant to the Constitution (article 182 (3)), the Supreme Court of Justice is empowered to "grant extradition." This means that in extradition matters the Supreme Court of Justice has jurisdiction to evaluate the extradition request, in light both of domestic law and of international law, to which El Salvador, as a member of the international community, is subject.

The measures ordered by the full court may be appealed by the person whose extradition is sought, through action for *amparo*, for violation of his constitutional rights and of habeas corpus.

El Salvador requires "double criminality" for extradition requests. Extradition requests must be presented in the Spanish language.

Salvadoran law requires that all the documents on which the extradition request is based be duly legalized, unless an international treaty establishes that they are valid when submitted via diplomatic channels or any other route.

It must be recalled that in El Salvador extradition cannot be ordered in the case of political crimes, even if they result in ordinary crimes, and the death penalty is not accepted, which means that when extradition is sought to a State where the crime is punishable by death, this may be authorized only on condition that the death penalty will not be imposed.

If there is no extradition treaty, extradition may be requested on the basis of international cooperation, reciprocity, and the general principles of law, as there is no rule in international law that prohibits extradition in the absence of a treaty, which means that states must set clear rules for handling extradition.