

EXTRADITION

General. - Documents describing Extradition Procedures

EXTRADITION PROCEDURES

As a general rule, it is important to note that the Political Constitution of Nicaragua¹ establishes that extradition for political crimes or common related offenses, as determined by Nicaragua, does not exist. Extradition for common crimes is regulated by the law and international treaties.

Nicaraguans may not be extradited from the national territory.

DESCRIPTION OF THE MODEL EXTRADITION REQUEST PROCEDURE

Applicable legal system. In the absence of a treaty or convention signed and ratified by Nicaragua as a sovereign nation, the conditions, procedures, and effects of extradition are determined by the provisions of this Code, which also applies to aspects that have not been covered by the treaty or convention in question.²

Scope. Extradition is active or passive, and covers persons accused and convicted as authors, accomplices, or partners in crime of criminal offenses committed within or outside the national territory. Nicaraguans may not be the subject of extradition from the national territory.³

Jurisdiction. The Criminal Chamber of the Supreme Court of Justice has the authority to grant or deny extradition, but the requesting or requested state will be notified of the decisions it hands down by the Executive Branch of government. Such notification must include the same documents and comply with the same formalities and procedures as those required of all requesting countries pursuant to this law.⁴

Active extradition. When it comes to light that a person who has been charged with a crime by the Ministerio Público [Office of Public Prosecutor] and against whom the competent judge has issued a precautionary measure of deprivation of freedom, or a person who is supposed to be serving a prison sentence, is located in another country, the Fiscalía General de la República will send a request for extradition to the Criminal Chamber of the Supreme Court of Justice, with a copy of the records on which the request is based.⁵

¹ Article 43 Cn.

² Article 348 CPP [Code of Criminal Procedure].

³ Article 349 CPP.

⁴ Article 350 CPP

⁵ Article 351 CPP.-

The Criminal Chamber of the Supreme Court of Justice has thirty days counting from receipt of the relevant documents to decide whether the extradition request is in compliance or not; if so, it will forward the case to the Fiscalía General de la República, attaching all the necessary documents required by the requested country for these purposes.

Request for precautionary measures and processing. The Executive Branch may request the state where the requested person is located to place him in preventive detention and to retain the objects related to the crime, on the basis of the request formulated by the Ministerio Público, pursuant to the provisions of this Code.⁶

The Ministry of Foreign Affairs will certify and perform any necessary translations, and will present the request to the foreign state within a maximum period of sixty days.

Passive extradition. If a foreign government requests the extradition of a person located in Nicaraguan territory, the Fiscalía General de la República will send the request to the Criminal Chamber of the Supreme Court of Justice along with the documentation received.⁷

Concurrence of extradition requests. If two or more states request the same individual for different offenses, preference will be given to the more serious offense pursuant to national law; if the offenses are equally serious, the states with which there is an extradition treaty or convention will be given preference.⁸

If different requests are made for the same offense, preference will be given to the state where the crime was committed and, in all cases, the state where the requested person is a subject or citizen, without prejudice to the preceding rule on conventions.

Urgent informal extradition. Extradition may be requested by any means of communication provided there is an arrest warrant against the accused and the promise of the requesting country to comply with the stipulated procedural requirements.⁹

In this case, the documents referred to in the subsequent article must be presented to the Embassy or Consulate of the Republic within ten days counting from the arrest of the accused. Notice must immediately be given to the Criminal Chamber of the Supreme Court of Justice and the documents sent to it so that it may hear and resolve the case.

⁶ Article 352 CPP

⁷ Article 353 CPP

⁸ Article 354 CPP

⁹ Article 355 CPP

If the procedures ordered herein are not complied with, the detainee will be released and his extradition may not be requested again by this expedited procedure.

Processing. When extradition is requested, the following steps will be taken: ¹⁰

1. The requested person will be placed under the responsibility of the Criminal Chamber of the Supreme Court of Justice, which will designate a public defender or court-appointed attorney for the accused, if he does not have one.
2. While the extradition is being processed, the requested person may be in preventive detention for up to two months.
3. The requesting state must present the following:
 - a) Information on the identification of the accused or the prisoner;
 - b) Proof of a judicial order or order for detention or judicial custody or, if appropriate, the final judgment of conviction issued;
 - c) An authentic copy of the court records, that provide proof or at least reasonable evidence of the guilt of the person in question; and
 - d) An authentic copy of the legal provisions describing the act, the participation attributed to the accused, the applicable sentence, and the statute of limitations.

The authentic copies referred to in this article must be presented following the requirements of common legislation. If the documents are submitted without observing these formalities or requirements, or are incomplete, the court will request the missing documents by the most expeditious means.

4. Once this process is over, the accused, his defender, and the public prosecutor will have a hearing for up to twenty days, with ten days for proposing evidence and the remainder for actually presenting it.
5. Any incidental motions or pleas that occur during these proceedings will be decided by the Chamber, which will immediately reject any motion that is not relevant or that, in its opinion, would encumber or slow down the proceedings.
6. It will issue a decision either granting or denying extradition within ten days of the previously indicated time periods, and it may make said decision conditional in any way it deems appropriate. In all cases, it must request and obtain from the requesting country a formal promise that the extradited person will not be tried for

¹⁰ Article 356 CPP

a previous offense or subject to punishment different from the punishment pertaining to the crime or imposed by the respective conviction, a copy of which will be sent to our courts by the requesting country.

7. An appeal for reversal of the decision of the Criminal Chamber may be filed within three days, counting from the day following notification.

Procedure for delivering the person. When extradition is denied, the prisoner will be released; if it is granted, the person will be placed under the orders of the Ministerio Público and the National Police, for delivery to the requesting country. This must be done together with the objects that were in his possession or that were the product of the criminal offense, along with the documents and elements that may serve as evidence, provided that by so doing, there is no damage to third parties.¹¹

Deadline for receiving the extradited person. If the requesting state does not have at its disposal the accused person or prisoner within two months of the corresponding order, the person will be released.¹²

Res judicata. If extradition of a person is denied on its merits, the request may not be repeated for the same crime.¹³

Responsibility for costs. The costs of detention and delivery will be payable by the requesting state¹⁴

¹¹ Artículo 357 CPP

¹² Artículo 358 CPP

¹³ Artículo 359 CPP

¹⁴ Artículo 360 CPP