

## **EXTRADITION IN VENEZUELA: PRINCIPLES AND PROCEDURE**

Extradition is one of the mechanisms for international assistance designed to curb impunity on the part of persons who attempt to evade court proceedings by seeking refuge outside the country where they committed the punishable act. It is based on the commitment assumed by the member states of the international community to mutually surrender those persons who have been tried or judged and who have left the territory of the state where the crime was committed, thereby becoming fugitives from justice.

In Venezuela, extradition is not dependent on the existence of a treaty, since it is legal from the standpoint of conventional and common law, whether it is specifically established in a treaty signed on the subject or is based on principles of international solidarity and reciprocity that require states to cooperate with each other in fighting criminal impunity. The sources of extradition in our country are bilateral or multilateral treaties, principles of international solidarity and reciprocity, and domestic law. In this regard, the Criminal Appellate Chamber of the Supreme Court of Justice stated as follows in its Judgment No. 333 of March 22, 2000:

*“In Venezuela, the institution of extradition is recognized and regulated by the Criminal Code and the Organic Code of Criminal Procedure, and international treaties signed by the Republic with various countries in the international community, as well as being recognized in accordance with the principles of international law.”*

Extradition is optional, as due respect for the independence of every state requires. On this point, the Criminal Appellate Chamber of the Supreme Court of Justice pointed out the following in Judgment No. 1119 of August 3, 2000:

*“With respect to extradition, the Venezuelan State functions with a high sense of responsibility. In effect, on one hand it accepts extradition as a moral obligation under international law, but it reserves the most absolute freedom to determine whether to grant or deny it, taking into account whether the specific case in question would violate the principles of our national legislation and justice system.”*

The underlying cause of extradition is the commission of a punishable offense by the requested person whom the requesting state is responsible for trying or punishing; its purpose is to make it possible for the requested person to be brought to trial or to serve the sentence imposed.

## **PRINCIPLES GOVERNING EXTRADITION IN VENEZUELA**

In granting extradition, the competent authority must verify whether the request complies with the requirements of international doctrine and practice prevailing in this area. In this regard, it is important to refer to the applicable rules or principles in the Venezuelan legal system:

1. - **Principle of non-surrender of nationals.** This is established in Article 69 of the Constitution of the Bolivarian Republic of Venezuela, which prohibits extradition of Venezuelans. Before it was embodied in the Constitution, this principle was already stipulated in Article 6 of the Criminal Code, which stated that extradition of a Venezuelan could not be granted under any circumstances.

Article 345 of the Convention of Private International Law, or the Bustamante Code, contains similar provisions: *“Contracting states are not required to surrender their nationals. Nations that refuse to surrender one of their nationals shall be required to bring that person to justice.”*

Since application of this principle is not intended to allow for the impunity of the national of the requested state, but rather to validate the right of all states to impose their own punishment on their nationals, Venezuela, in adopting it, did so in a way that would not give rise to impunity for Venezuelans for crimes committed in the territory of another state. On this point, Article 6 of the Criminal Code states that a national requested for extradition *“must be tried in Venezuela, at the request of the injured party or the Ministerio Público, if the crime with which he is charged is punishable under Venezuelan law.”*

The principle of non-surrender of nationals extends to naturalized foreigners, since naturalization in Venezuela has as an immediate consequence placing foreigners on an equal footing with nationals insofar as their rights and duties vis-à-vis the state are concerned.

The Constitution of the Bolivarian Republic of Venezuela confers on Venezuelans by naturalization the same rights enjoyed by Venezuelans by birth, except for restrictions established in it and in Venezuelan laws. This being the case, it is just and fair that the principle of non-surrender of nationals provide equal protection for them.

It is important to note that both doctrine and legal precedent are consistent in claiming that this exception is not retroactive, or in other words, that it should not and cannot be extended to cover those cases in which the date of commission of the punishable act occurs prior to the naturalization of its perpetrator.

**2. - Principle of double incrimination.** In extradition matters, it is essential that the act that motivated the request is regarded as a criminal offense in the legislation of both the requesting and the requested states. On this point, Article 6 of our Criminal Code establishes that “*Extradition shall not be granted to a foreigner for any act that is not termed a criminal offense under Venezuelan law.*” This provision is related to Article 49(6) of the Constitution of the Bolivarian Republic of Venezuela, which states:

*“Due process shall be applied to all judicial and administrative proceedings, and, consequently:*

*(omissis)*

*6. No persons may be punished for acts or omissions that were not stipulated as crimes, violations, or offenses in pre-existing laws.”*

**3. - Principle of nonextradition for political crimes.** Pursuant to Article 6 of our substantive law, extradition of a foreigner may not be granted for political crimes or related offenses.

**4. - Principle of denial of extradition in the case of the death penalty, life term in prison, or prison terms over thirty years.** The Venezuelan Criminal Code includes among exceptions to extradition of foreigners stipulated in Article 6 that: “*Extradition shall not be granted to foreigners accused of a crime that is punishable by the death penalty or life in prison under the legislation of the requesting country.*”

This denial is based on the constitutional guarantee of the “inviolability of life,” established in Article 43 of the Constitution of the Bolivarian Republic of

Venezuela, which protects foreigners whatever the crime committed in the other country may be.

Similarly, Article 44(3) of the Constitution of the Bolivarian Republic of Venezuela states that the punishment “*may not go beyond the limits of the convicted person. Sentences to life in prison or offensive or degrading sentences are not permitted. Prison terms shall not exceed thirty years.*”

However, in such cases there is the possibility of granting extradition when the requesting country offers sufficient guarantees that it will not impose such a sentence or, if the person is so sentenced, that it will not be enforced.

**5. - Principle of speciality in extradition.** According to this principle, the requesting state pledges to judge the requested person only for the crime for which extradition was requested, and not for any other.

**6. - Statute of limitations on criminal proceedings or sentencing.** This is another very important aspect to extradition, since it will not be granted if the criminal proceeding or the sentence has exceeded the statute of limitations in the requesting or the requested state.

## **EXTRADITION PROCEDURE IN VENEZUELA**

In Venezuela, extradition is regulated as a special procedure under Section VII of the Organic Code of Criminal Procedure (COPP), known as “The Extradition Process.”

Article 391, the first article in this Section, establishes that the sources of this procedure consist of “*the provisions of this Section, and international treaties, conventions, and agreements signed by Venezuela.*”

As regards extradition requirements, it is important to note that any request of this kind must include a certified copy of the arrest warrant or an equivalent order, in the case of defendants, or a copy of the definitive conviction judgment issued by the competent judicial authority of the requesting state, in the case of convicted persons, in addition to a copy of the legal provisions describing the criminal act and establishing the applicable punishment, as well as a summary of the facts of the case and family information that would make it

possible to personally identify the requested person and his nationality. All of these documents must be translated into the language of the requested country.

Once the procedural and substantive requirements have been examined, and preventive detention of the requested person executed, the requested state may grant or deny the extradition, a decision that must be made by the competent organ, which in the case of Venezuela is the Supreme Court of Justice.

Article 392 of our law regulating Active Extradition establishes that when notice is received that a person charged with a crime by the Ministerio Público, and for whom the judge in charge of supervision [*juez de control*] has issued a precautionary measure of deprivation of freedom, is in a foreign country, that judge will communicate with the Criminal Appellate Chamber of the Supreme Court of Justice to request his extradition. To this end, he will submit to the High Court a copy of the documents supporting his request. It also states that in the event that a person serving a sentence escapes, it is the judge in charge of execution [*juez de ejecución*] who is responsible for proceedings before the Supreme Court of Justice.

In both cases, the Supreme Court of Justice will have a period of 30 days, counting from receipt of the documentation, to decide whether or not it is appropriate to request extradition, after hearing the opinion of the Ministerio Público, authorized under Article 108(16) of the COPP, in accordance with Article 21(13) of the Organic Law of the Ministerio Público, for which purpose the Supreme Court of Justice will ensure the corresponding notification, so that the Ministerio Público may issue the decision in question. In the event that extradition is decided, the Executive Branch, through the Ministry of Foreign Affairs, is responsible for sending the extradition request to the authorities of the foreign country where the requested person is located, within a maximum period of sixty days; to this end, any certifications and translations required pursuant to Article 393 of the COPP will be effected.

The Executive Branch may ask the requested country to place the requested person in preventive detention, and to retain the objects related to the crime, as stipulated in Article 394 of COPP. In this case, the extradition request must be processed within the period stipulated in international treaties or applicable international law.

With regard to **passive extradition**, Article 395 of the COPP establishes that when a foreign government requests the extradition of a person on Venezuelan territory, the Executive Branch will forward the request to the Supreme Court of Justice, along with the documentation received. The diplomatic mission of the requesting state accredited to the national government will forward the request to the Ministry of Foreign Affairs, which in turn will send it to the Ministry of Interior and Justice. If the requested person is in the country, the Ministerio Público will request the judge in charge of supervision to proceed with his preventive detention, for purposes of extradition. If the court so orders, it will forward the case to the Supreme Court of Justice so that it may decide on the appropriateness of the extradition.

In the event that the relevant request is presented without the necessary documentation, but with the offer to produce it subsequently, and with the request that in the meantime the accused be apprehended, the Court of Supervision [*Tribunal de Control*], at the request of the Ministerio Público, may, depending on the gravity and urgency of the case, order a precautionary measure against the accused, and set a firm time period for presentation of the required documents, which may be no longer than sixty (60) calendar days, pursuant to the provisions of Article 396 of the COPP.

Article 397 of the COPP states that once the 60 day period has elapsed and the documents are not produced, the Supreme Court of Justice shall order the detainee to be released, without prejudice to ordering deprivation of his freedom again, if said documents are received subsequently.

Article 398 of the COPP establishes the right of foreign governments to designate an attorney to defend their interests during special extradition proceedings.

Finally, in accordance with Article 399 of the COPP, the Supreme Court of Justice must, within thirty (30) days of notification of the request, convene a hearing to be attended by a representative of the Ministerio Público, the accused, his defense attorney, and a representative appointed by the requesting government to defend its interests, who will all present their arguments. Once the hearing has concluded, the Supreme Court of Justice will issue its decision within fifteen (15) days.