

## DESCRIPTION AND GENERAL EXPLANATION OF THE EXTRADITION SYSTEM

Extradition is the act whereby a state delivers an individual to another state that has requested that person in order to submit him to a criminal trial or to serve a sentence. Active extradition refers to the situation of the requesting state and passive extradition to that of the requested State.

Bolivian law regulates extradition both in its substantive and procedural codes. Article 3 of the Criminal Code in force establishes that: “No person subject to the jurisdiction of Bolivian law may be delivered by extradition to another state, unless otherwise provided for under an international treaty or convention of reciprocity. The Supreme Court shall decide whether the extradition has a legal basis or is unfounded. In the case of reciprocity, extradition may not proceed if the act for which it is sought does not constitute a crime pursuant to the law of the state requesting the extradition and that of the state asked to grant it.”<sup>1</sup>

The requirements for proceeding with extradition can be gleaned from the foregoing: 1) there must be a treaty or agreement of reciprocity, duly approved by national legislation according to procedures established in the State’s Political Constitution; and 2) the act must constitute a crime in Bolivia and in the country requesting extradition. Moreover, the competent court to decide cases of extradition is the Supreme Court of Justice, and the powers of that Court are specifically established in Article 154 of the Code of Criminal Procedure.

The Code of Criminal Procedure regulates the procedure governing all extradition matters; it indicates the steps to be taken by the Foreign Ministry of the Republic, and gives the highest national court of justice the power to decide on the viability of the matter.<sup>2</sup>

**With a legal basis:** Extradition is admitted for crimes that, pursuant to the laws of both states, are punishable by sentences of imprisonment for which the legal minimum is two or more years, and in the case of nationals, where the legal minimum is two years.

**Without a legal basis:**

- 1) There is probable cause to assume that the extradition is requested to prosecute or punish a person because of his political opinions, race, sex, religion, nationality, or ethnic origin, or that the person will be subjected to cruel, inhumane, or degrading treatment or punishment.
- 2) The judgment for the crime for which the extradition is requested has already been executed in the Republic of Bolivia; and

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<sup>1</sup> Criminal Code, Law N° 10426 of August 23, 1972.

<sup>2</sup> Code of Criminal Procedure, Law N° 1970 of March 25, 1999.

- 3) In accordance with the laws of the requesting or requested state, a statute of limitations or amnesty is applicable to the crime for which extradition is requested, or the requested person has been pardoned.

The State of Bolivia has adopted the principle of individualization or nationality, according to which Bolivia does not grant extradition in the case of persons who are nationals, except for crimes that are violations of International Criminal Law, such as activities related to drug trafficking.<sup>3</sup>

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<sup>3</sup> On the principle of nationality, see: Art. 1(3) of the Criminal Code which establishes: "For crimes committed by a Bolivian in another country, provided that person is on national territory and has not been punished in the place where the crime was committed;" Art. 1(6): "Crimes committed in another country by public officials in the service of the Nation, while performing their duties or functions;" Art. 1(7): "Crimes that the Republic is obligated to punish under a treaty or agreement, even when they were not committed in its territory."