

## **Description and general explanation of the Costa Rican extradition system**

In principle, Costa Rica has Extradition Law N° 4795 of July 16, 1971, which contains the basic provisions for processing requests for extradition in cases where our country has not signed an agreement with the countries interested in extradition, or where it has signed agreements, but there are omissions or legal gaps, that are covered by this Law (Article 1); to offers extensive possibilities to our authorities to take legal action in such cases.

The extradition procedure provided for in this law is the basic one, since its fundamental elements are identical to those in international instruments signed by our nation with various countries. Thus, the general process is as follows:

- The procedure is initiated by a request from the requesting state, which must follow the requirements stipulated in either the Extradition Law or the relevant extradition treaty; it is sent by diplomatic channels, to ensure authentication of the documents. All documents are customarily certified by the consular authorities, and translated by official translators recognized by the Ministry of Foreign Affairs.
- Once the consular requirements have been met, the documents are delivered to the Secretariat of the Supreme Court of Justice, which assigns them to the court of the place where the extraditable person is located. Once the case has been referred to that jurisdiction, the responsible court notifies the interested parties and orders the arrest of the extraditable person.

Once the requested person has been detained, all the fundamental guarantees established by the Costa Rican constitutional system are offered for his due defense, including appointment of a public defender in the event he does not have private counsel. The extraditable person is asked to select either a litigious or voluntary process. As of that time, the requesting state has a maximum period of sixty days in which to provide all the documents to support the extradition; if the state fails to comply with this requirement, the detained person will be released once the period has lapsed.

After the relevant documents and evidence have been filed with the court by the requesting state, they are analyzed on the basis of the fundamental principles governing the extradition process, such as the principle of double identity of the norm, the principle of non-surrender of nationals, the principle of minimum punishment, the statute of limitations in criminal proceedings and sentencing, the prohibition applicable to political crimes, the prohibition of conviction in absence, and the principle of commutation (from which the requirement that the requesting country not submit the person subject to extradition to the death penalty or a life term is derived).

The procedures conclude with a judgment in which extradition is granted or denied, a ruling that can be appealed to the Appellate Criminal Court [Tribunal de Casación Penal], which may confirm the decision handed down by the lower court, or revoke it and refer the case back to the lower court for further evidence or the corresponding rectification.

If the extradition is upheld, the relevant court requests the promise contained in the Principle of Specialty, which consists in a pledge to try or prosecute the extraditable person solely for the crimes for which extradition was granted. A period of two months is granted to surrender the person subject to extradition. Once this promise has been made, the requested person is delivered, and transportation costs are incurred by the requesting country.

This description pertains to passive extradition procedures. Since the Ministerio Público of Costa Rica is in charge of active extradition procedures, this entity does not have information regarding the internal procedural mechanisms used by that institution in such cases, and so it is unable to describe them.

## II. - Description and general explanation of the system of mutual judicial assistance

In the area of mutual judicial assistance, Costa Rica has different ways of receiving and processing requests, one at domestic level, and the others for international requests, based on agreements on various subjects that permit reciprocal judicial assistance:

1. - In national legislation, used whenever there is no international agreement in force for such assistance, we have Articles 705 ff. of the Code of Civil Procedure, which, in the chapter on “Effectiveness of foreign decisions and judgments,” establishes a mechanism for providing international judicial assistance.

We also have Law N° 7786 of April 30, 1998 (Law on Narcotics, Psychotropic Substances, Illicit Drugs, and Related activities),<sup>1</sup> amended by Law

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<sup>1</sup> “...Artículo 8°—To facilitate investigations and police or judicial proceedings referring to the crimes described in this Law, the national authorities may provide cooperation to and receive cooperation from foreign authorities for the following purposes:

- a) Taking the deposition of persons or hearing testimony;
- b) Issuing a certified copy of judicial or police documents;
- c) Performing inspections and attachment of property, and ensuring its safekeeping;
- d) Examining objects and places;
- e) Facilitating duly certified pieces of evidence and information;

N° 8204 of December 26, 2001, on the subject of drugs, in which Article 8° briefly and concisely establishes the powers to provide and obtain judicial and police cooperation in these matters. In addition, Article 65 of the Code of Criminal Procedure grants the Ministerio Público the authority to form joint investigative teams with foreign or international institutions.

2. - As for the judicial assistance system provided for under international agreements, it is important to point out that to date, Costa Rica has signed a wide range of treaties on different matters that include mechanisms for providing effective cooperation.

However, despite these diverse provisions, we will refer to the so-called Central American Treaty of Mutual Legal Assistance in Criminal Matters, because it is the instrument signed by all the countries in this area that is most commonly and frequently used, and since it is not confined to any specific matter, its scope is greater than any other to date (Law N° 7696 of October 3, 1997).

The system defined by that Treaty establishes, in principle, the intervention of a central authority with sufficient administrative capacity to process the request for assistance, which is then referred to the competent judicial official, for processing in accordance with the laws in force in the legal system of the requested country.

In the case of Costa Rica, this work is currently performed by the Procuraduría General de la República, in accordance with Article 2 of that international instrument, and it is the Fiscalía General de la República that receives requests within the country for the Judiciary.

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- f) Delivering authenticated copies of the documents and records of the case, including bank, financial, and business documents;
  - g) Identifying or detecting, for evidentiary purposes, the proceeds, assets, instruments, or other elements;
  - h) Forwarding all the sworn statements in the case of a controlled delivery;
  - i) Carrying out any other acts included in the Vienna Convention and in any other international instrument approved by Costa Rica...”.