

EXTRADITION PROCEDURE IN GUATEMALA.

CONCEPT

Act by which the State of Guatemala, pursuant to a treaty in force, delivers an individual to a state that requests him for the purpose of subjecting him to criminal proceedings or to serve a sentence, or requests a person for the same reasons.

TYPES OF EXTRADITION

ACTIVE EXTRADITION:

The situation when the State of Guatemala requests another state to surrender such a person.

PASSIVE EXTRADITION:

The situation when the State of Guatemala receives a request from another state for surrender of a fugitive from justice who is located on Guatemalan territory.

APPLICABLE LEGISLATION:

POLITICAL CONSTITUTION OF THE REPUBLIC OF GUATEMALA:

Article 27, second and third paragraphs: "Extradition is governed by the provisions of international treaties.

Guatemalans may not be extradited for political crimes, nor may they be surrendered to a foreign government under any circumstances, except under treaties or conventions pertaining to crimes against humanity or against international law."

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CRIMINAL CODE:

Article 8: "Extradition may only be requested or granted for common crimes. In cases involving extradition covered by international treaties, it may only be granted if there is reciprocity.

In no case may extradition be sought or granted for political crimes or for related common crimes."

EXTRADITION AGREEMENTS AND TREATIES SIGNED BY GUATEMALA

BILATERAL

- Belgium: Treaty on Extradition of Criminals signed in Guatemala on November 20, 1897, amended by an additional agreement to the Extradition Treaty dated April 26, 1934, and subsequently by the Additional Protocol to the Extradition Convention of October 21, 1959.
- Spain: Extradition Treaty signed in Guatemala on November 7, 1895.
- United States of America: Extradition Treaty signed in Washington, DC on February 27, 1903, amended by the Supplementary Convention to the Extradition Treaty dated February 20, 1940.
- Great Britain: Extradition Treaty signed in Guatemala on July 4, 1885, amended by the Additional Protocol to the Extradition Treaty dated May 30, 1940, and subsequently by the Exchange of Notes for Extending the Provisions of the Extradition Treaty to Certain Territories under the mandate of Great Britain of May 21, 1929.
- Mexico: Treaty for Extradition of Criminals signed in Guatemala on May 19, 1894.

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MULTILATERAL;

- Convention on Extradition, signed at the Seventh International American Conference in Montevideo, on December 26, 1933;
- Convention on Extradition, signed in Washington, DC on February 7, 1923, in effect for Costa Rica, El Salvador, Guatemala, and Nicaragua.

GENERAL REQUIREMENTS FOR ADMISSION OF AN EXTRADITION REQUEST.

- That the requesting state have jurisdiction to judge the criminal act with which the requested individual is charged;
- That the act for which extradition is requested be defined as a crime and punishable by a minimum term of one year in prison, pursuant to the laws of the requesting state and the requested state;
- That the criminal proceeding and the sentence have not exceeded the statute of limitations;
- That the accused has not served the sentence in the country where the crime was committed or has not received amnesty or been pardoned;
- That the individual requested is not being prosecuted by the requested state for the offense of which he is accused and which is the basis for the extradition request;
- That the offense is not a political crime or a related offense;

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- That the crime is not a military offense or an offense against religion;
- That the crime was committed within the territory of the state requesting extradition.

REQUEST FOR PROVISIONAL DETENTION FOR PURPOSES OF
EXTRADITION

- This can be done by wire or by mail. Once the accused is detained, the state has 40 days and three months to present the formal extradition request, with supporting documents.
- In the request for provisional detention, the following must be provided: proof of a judicial decision ordering the detention; the appropriate international instrument; and, personal data permitting identification of the person to be extradited.
- In addition, assurances must be provided that the formal extradition request will be presented within the term stipulated in the respective agreement or treaty, starting from the time the diplomatic mission of the requesting state is notified of the subject's detention.

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PROCEDURE FOR THE FORMAL EXTRADITION REQUEST

ADMINISTRATIVE PHASE:

- Presentation of the formal extradition request to the Ministry of Foreign Affairs;
- Transfer of the documentation to the Secretariat of the Supreme Court of Justice, which designates the court where the hearing is to be held.

JUDICIAL PHASE:

- Once the documents of the case are received from the Supreme Court of Justice, the judge analyzes the request to determine whether it is compliant.
- If the request is acceptable, the judge issues a resolution in which he refers it for hearing of arguments.
- The judge advises the detainee of the extradition request against him, allows him to appoint defense counsel, holds a hearing for the extraditable person, and a hearing for the diplomatic mission of the requesting country and the Ministerio Público, for a period of two days.

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- If the arguments presented in the incidental proceeding refer to factual questions, the judge, once the period for the hearing has expired, will resolve by ordering receipt of the evidence offered by the parties during the incidental proceeding or the hearing, in no more than two hearings that will take place within the following ten working days;
- Once the previous phase has been concluded, the judge, without any further proceedings, will issue a decision within three days, granting or denying the extradition.
- Once the extradition has been declared as having merit, the judge will, in the same decision, place the detainee at the disposal of the Ministry of Foreign Affairs, for the following purposes.

SECOND ADMINISTRATIVE PHASE

- In the case of a Guatemalan national, the requested person will be placed at the disposal of the Executive, so that the President of the Republic may decide on the surrender of the person, since normally nationals do not have to be surrendered.

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- The President of the Republic will make the decision to surrender the requested person, by a governmental agreement in the Council of Ministers. Once surrender has been decided, the person is placed at the disposal of the Ministry of Foreign Affairs, which is in charge of procedures for carrying out the extradition, in coordination with the appropriate diplomatic mission, and for setting the date and time of delivery. Before that, the mission in question, at the request of the Executive, must guarantee on behalf of its government that the extraditable person will enjoy all the rights and guarantees accorded under its country's constitution, and especially that he will be considered as innocent until proven guilty, that the trial will be completely impartial, that he will be provided with an attorney for his defense, without any cost to him, if he is unable to pay for counsel, that he will not be judged for crimes other than those for which extradition was requested, and that he will not be subject to the death penalty, in the event that he is found guilty of the crime with which he is charged.