

DESCRIPTION OF THE EXTRADITION PROCEDURE

The claims of criminal law enforcement are constrained by the territorial principle that underlies the punitive justice structure of countries. Most states and sovereign entities have decided that the effective scope that any State enjoys to try persons accused of crimes or to enforce a sentence imposed for a crime is inescapably limited by the fact that the State's exclusive jurisdiction coexists with other, similarly exclusive jurisdictions, all based on the idea of the "impenetrability" of the legal order, and thereby preventing the enforcement of domestic criminal law beyond the State's borders. The State itself can accept limits on this impenetrability, by committing itself to comply with the treaties and conventions it has signed. In this way, in the absence of such treaties and without the express consent of the requested State, extraterritorial enforcement is impossible. To avoid impunity, nations avail themselves of extradition, the process by which one State surrenders an individual found on its territory to another State where he is wanted either to stand trial or to serve a penal sentence already pronounced against him

It is important to note that in urgent cases provisional arrest may be requested for extradition purposes. Such a request may be issued through the International Police Organization (Interpol). Our legislation (Law on International Cooperation in Criminal Matters, Law 24.767) allows the acceptance of requests submitted through this channel, for which reason an international arrest warrant issued by a competent authority and conveyed through the Interpol system is fully effective in Argentina. As well, the request for provisional arrest can also be made through diplomatic channels, observing the rules established in each treaty or, in the absence of a treaty, in the Law on International Cooperation in Criminal Matters (24.767).

Finally, formal extradition requests must be transmitted exclusively by diplomatic channels, in accordance with the applicable treaty or, if there is no such treaty, in accordance with Argentine legislation

Description of the process

As noted earlier, the formal extradition request and any other documentation sent subsequently must be transmitted by diplomatic channels. Once the diplomatic representative of the requesting party formulates the request, accompanied by supporting documentation, the General Directorate of Legal Affairs of the Argentine Foreign Office will verify that the request meets the formal requirements of the applicable treaty or, in its absence, of domestic legislation. If so, it may withhold action until the requesting State remedies any formal shortcomings in the request.

If it is decided to entertain the request, judicial proceedings will begin through the public prosecutor's office, which at this stage will represent the extradition

interest. However, the requesting State may intervene as a party in the judicial proceedings, through agents authorized for this evidence.

At any stage of the process, the wanted individual may give free and express consent to be extradited. In this case, the judge will decide the matter without further proceedings.

An extradition case will be heard by the federal judge with penal jurisdiction in the wanted person's place of residence who is on duty at the time. Upon receipt of the request for extradition, the federal judge will issue a warrant to arrest the wanted person if he is not already in custody. Within 24 hours after the arrest, an identification hearing will be held, informing the detainee of the details of the extradition request.

The judge will next issue a summons to an extradition hearing. That hearing will not involve any discussion of the alleged offense or the guilt of the wanted person, but will be restricted to the conditions required by the applicable treaty or, in its absence, by domestic legislation.

The judge will determine whether extradition is appropriate or not. If so, the judgment will be confined to declaring this. If not, the judge will deny extradition. In any case, the judgment may be appealed to the Supreme Court of the Nation.

If the tribunal has issued a firm judgment denying extradition, the Argentine Foreign Office will so inform the requesting State, sending a copy of the judgment. In the contrary case, notwithstanding the tribunal's finding that extradition is appropriate, the Government may decide not to grant extradition if there are special grounds of national sovereignty, security or public order or other considerations in light of which accepting the request would not be in the interest of Argentina.

Once the extradition request has been definitively decided, no new request based on the same offense will be admitted, unless extradition was denied on the grounds that the requesting State lacked jurisdiction to try the crime that motivated the request. In that case, extradition may again be requested by another State that is deemed to have jurisdiction.

If extradition is granted, the requesting State must remove the wanted person within the time limit stipulated in the applicable treaty or, in its absence, within 30 days following official notification by the Foreign Office. Notwithstanding the foregoing, surrender will be postponed if the wanted person is standing trial or serving a prison sentence, until such time as the trial is terminated or the sentence served, or if the removal would be hazardous to the health of the wanted person because of an illness, until that risk is past.

Finally, it should be noted that if the person wanted for extradition is an Argentine national, he may choose to be tried by the Argentine courts, unless a treaty requiring the extradition of nationals is applicable. The wanted person must have been a national at the time the alleged offense was committed, and must still be a national at the time the choice is exercised. If the national exercises this option, extradition will be denied. The national will be tried in Argentina, under Argentine criminal law, provided the requesting State so agrees, renounces its jurisdiction, and remits all the antecedents and evidence needed for trial.