

The Extradition of Colombians from the Perspective of the Foundation for the Defense of Colombians with Orders of Extradition (DECOPEX)

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ABSTRACT

The purpose of this article is to present an analytical approach on the process of the extradition of Colombians as requested by international courts of justice, with reference to the author's professional experience in the Foundation for the Defense of Colombians with Orders of Extradition (DECOPEX). This non-governmental organization was a space for the relatives of the persons arrested as a result of the extradition request from a state. The prisoners themselves were held in Pavilion Seven of the maximum security prison of Combita. The primary activities of DECOPEX were focused on four strategic areas: 1] the defense of the fundamental rights of the inmates and their families; 2] the development of a legal strategy at the national and international levels; 3] the lobbying of government bodies with the aim of regulating the legal procedure of extradition; and 4] making known to the members of society the problem that some people had been wrongfully arrested.

Key Words: extradition, legal proceedings, international cooperation, non-governmental organization, DECOPEX Foundation

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OVERVIEW

The aim of this article is to present the result of an analysis of the issue of extradition of Colombians requested by international courts of justice taking as reference their own experiences in the framework of the extradition process in Colombia under the direction of a non-governmental organization known as the *foundation for the Defense of Colombians Orders in extradition* (DECOPEX). This document does not intend to present any criticism to the extradition or as an instrument of international cooperation or as an administrative procedure in the national territory, the aim is to generate a document that will serve as a reference source for future academic research.

In order to comply with the purpose path, in the first section of the document provides an overview of the extradition as an instrument of legal cooperation, presenting a brief transnational conceptual analysis on extradition and on the types of existing extradition. In the second section of the article presents the historical evolution of the extradition in Colombia, similarly discusses the legal principles that govern the handling of the extradition, listed below are the phases through which the proceedings take place in the national territory and the institutions that are part of this process.

The final section of the article focuses its attention on presenting the experiences in the professional experience in the management of the Foundation DECOPEX where they sought to protect the respect for the fundamental rights of persons requested extradition held in the Pavilion Seven maximum-security prison Combita, as well as the development of a legal strategy in the national and international level which was led to the bringing of legal actions of habeas corpus and guardianship in order to find that the Supreme Court of Justice of Colombia, to consider legally each of the cases and not given simply the administrative formalities that performed until now for your approval. For its part the strategy in the international arena was based in filing a claim before the Inter-American Court of Human Rights.

The methodology designed for the development of this document was divided into two phases. The first of them on an experimental basis taking as a reference the professional experience of its own in the direction of DECOPEX, where there was an engagement with the process of hundreds of Colombians requested in extradition to which they represented before governmental agencies by ensuring their fundamental rights. The second phase of this document was focused on the collection of written

material in the direction of the Foundation DECOPEX and on a review of literature on the subject with the purpose of in favor of the drafting of an article that had a scientific rigor in the area of international relations.

THE PROCESS OF EXTRADITION IN THE INTERNATIONAL ARENA

The processing of the extradition has two main protagonists. The first of them is represented by the *requesting State*, which is requesting the delivery of an individual who seeks to have in their possession for submission to a criminal process. The second protagonist is the *requested State* that is requesting the delivery of that individual (San Martín 2014).

The extradition was conceived as a mechanism for international cooperation to combat crime and eradicate impunity; it is subject to a special procedure that concludes with the issuance of an administrative act of a complex nature, because for their preparation and execution attend various State organs belonging to both the Executive Branch and the Judicial Branch of public power (Judgment C-243/09, Constitutional Court).

The extradition is requested, grants or offers in accordance with public treaties and in the absence of these will address the provisions of the domestic law, taking this a residual character in relation to the extradition treaties signed by the States. Extradition is an instrument of assistance and international solidarity, generally governed by international treaties and, in the absence of the latter, by domestic law (Judgment C-243/09, Constitutional Court).

Historical Background of the Extradition

According to Pollack (1993) the first known case of extradition, goes back to ancient times and is the one that occurred between the Hittites and Egypt (1271 A.C.) where a peace treaty was signed between Hatusie, “Great Chief of Haïttí-Ramses”, Grand Chief of Egypt in whose clauses was established the extradition, of both Egypt and the Hittites (Pollack 1993).

In the middle ages, the extradition was a highly secure way to protect the assets of both the kings and the feudal lords, since there was a convention signed by them to ensure the safeguarding of your properties, by means

of this agreement is delivered to each other the personal enemies, that trying to flee, were sheltering in different territory which could be extradited either by the king to the feudal lord and vice versa (Penton 2014).

In the modern age, with the French Revolution is placed in the center of discussion the rights of hombre and, by this route, in point to international law and extradition –already with the current contents of your term– the need to demarcate the political persecution susceptible of the right of asylum and the persecution by common crime, own of the extradition. Since the Convention of 29 September 1765 between Carlos III of Spain and Luis XV of France, speaks of the delivery of the common criminal by serious crimes, but always without excluding delivery for political reasons (Penton 2014).

But it is not until the nineteenth century and with the history of the French Revolution and the modern State of law that, on the basis of the “Peace Treaty of Amiens” (1803) between France, Spain and England, where clearly speaks of common crime and no mention is made of the policy and, on the basis of the Ley Belgian internal October 1833, outlined the formal structure and material of the laws of current extradition, referring exclusively to the delivery of offenders (Penton 2014).

This means that extradition is an institution which has a vast history of fashioned as legal mechanism that facilitates the judicial cooperation between various countries. In this way, States have requested historically to individuals who are in another territory with the aim of opening or continue a criminal procedure against this.

Conceptual Analysis of the Extradition

Before submitting a study of extradition as a figure of international cooperation is necessary to analyze it making allusion to some fundamental conceptual basis. Under this understanding, it will proceed to mention the concept of extradition and the types that can be identified from the practice of this procedure.

Initially it may be noted that the word extradition comes from Greek *ex*, *outside* and the Latin *traditionis*, that means action to deliver specifically to one or more persons (Pollack 1993).

In the same vein, the Dictionary of the Royal Spanish Academy defines it as “the procedure by which the authorities of a State to make delivery of a person to another that the claim for that can be prosecuted criminally this second or fulfilled in him a penalty already imposed” (SAR 2016).

On the other side, the portal world reference defines the extradition

“as delivery of refugee or detained in a country to the authorities of another which claim” (WF 2016).

In Colombia, in the decade of the eighties, important jurists developed important conceptual contributions to the extradition as a legal figure, owing to the debate a result of the implementation of the extradition as the fight against drug trafficking. Attorney Carlos Mario Molina Arrubla said that the institution of extradition, arose in the light of Public International Law and is a valuable instrument of battle that must be used by the States, in its campaign against crime, provided that in such a battle face, in isolation, to an enemy of international dimensions (Molina 1980).

Another important contribution is made by the eminent panelist Alfonso Reyes Echandía, who pointed out at the time that the extradition is a phenomenon which consists basically in the request, offer or delivery of a prosecuted or sentenced to a State makes to another to continue against him a process initiated or to make effective in its connection to a judgment of conviction for offense committed (Kings 1970).

Similarly, Luis Carlos Pérez claims that “Extradition is the act by means of which the State in whose territory has been refugee responsible for an offense committed abroad, delivery that subject to state where you ran the infringement or the State to which belongs the offender” (Pérez 1984).

Finally, it is important to note that in recent years there is an important conceptual contribution in the year 2008 where it gives you an approach to the term extradition to the field of international cooperation. In this regard, the Judgment C-460 of 2008 of the Constitutional Court, the Judge Nilson Pinilla said that “Extradition is understood as a mechanism for international cooperation that seeks to combat the crime and avoid impunity” (Judgment C-460 of 2008).

The Extradition as an Instrument of Legal Cooperation Transnational

The mechanism of extradition is a mechanism of international judicial cooperation that many governments around the world have adopted it. It is understood by International Judicial Cooperation collaboration or mutual assistance between States, to advance necessary steps in the development of a process outside the territory of the requesting State (Ministry of Foreign Affairs of Colombia 2016).

In the field of International Judicial Cooperation are used as international instruments those documents through which should raise requests, for

the fulfilment of the various steps necessary within the judicial or administrative proceedings of the case. These can be: letters or dispatches, and notes to various judicial authorities, whether they are national or foreign (Ministry of Foreign Affairs of Colombia 2016).

The procedure for the extradition is framed within the ideal of the principle of universal criminal justice resulted in a mutual recognition of judicial decisions and absolute respect for the judicial interpretation of the domestic law of each state where to ensure respect for the fundamental rights and guarantees procedural legal-judicial procedure of all States (Calaza 2015).

In this regard, the International Committee of the Red Cross (ICRC) said that the obligation of States to cooperate in the field of extradition is inherent to the *aut dedere aut judicare obligation* of the mechanism of repression that stipulated in the Geneva Conventions of 1949 for the “grave breaches” of these treaties. The State, in whose territory or power are the accused persons, has the possibility of judging them or handing it over to the judge another High Contracting Party concerned. This possibility provides an opportunity for the State to fulfill its obligation to prosecute or extradite (ICRC 2015).

This option is upheld in the text of article 88, paragraph 2, of the 1977 Protocol I additional to the Geneva Conventions, which stipulates explicitly that, when circumstances permit, the High Contracting Parties shall cooperate in the field of extradition. This duty implies the obligation to consider favorably any extradition requested by a country that justifies his legal interest in the prosecution, if the requirements are met by the law of the requested State (ICRC 2015).

In the past two decades, the extradition in its broadest sense is understood as a mechanism for international cooperation that seeks to combat the crime and avoid impunity. This concept is reflected in the existence of a formal and solemn act by means of which a State provides grants or request the delivery of an accused or convicted person, national or foreign, to another State, for the alleged commission of a crime in the territory of the requesting State (Calaza and Lopez 2014).

The foregoing, with a view to advancing a process against the person required or seek the enforcement of a penalty already imposed. However, it is important to point out that this mechanism cannot be equated with a criminal process itself and in this regard, the authorities involved in the process to achieve the handing over for extradition of a person do not advance a judgment in relation to the innocence or guilt of this in respect of the offense for which it has been or has been sentenced

in the syndicated applicant State (Calaza and Lopez 2014).

The international judicial cooperation is based, on the one hand, in the fight against the crime of States cooperating with the ultimate aim of avoiding that one of these States to become an area of impunity to the perpetrators by the mere fact of being in its territory when they are accused by another State and on the other, in respect for the fundamental rights and guarantees procedural legal-of each State (Calaza 2015).

The international judicial cooperation requires a greater rapidity in the persecution and prosecution of the perpetrators of the offenses set forth in the criminal legislation of the various international legislative bodies, difficulty it is worsening, still more if it is by the circumstance of the inevitable double jeopardy to which they were subjected who, having committed crimes in a given country are, by the circumstance that is, in the territory of another State (Calaza 2015).

THE PROCESS OF EXTRADITION IN COLOMBIA

Since a few years ago, the figure of the extradition has framed one of the most important processes in Colombia with regard to the fight against various offenses such as drug trafficking, however, still today many do not know how this procedure is performed in the Colombian territory, therefore in this section of the article presents the historical evolution of the extradition in Colombia, similarly discusses the legal principles that govern the handling of the extradition, listed below are the phases through which the proceedings take place in the national territory and the institutions that are part of this process.

Historical Evolution Extradition in Colombia

Extradition is a mechanism for international cooperation, and therefore it is necessary the conclusion of bilateral agreements for their implementation or the existence of internal rules concerning the procedure. Colombia has concluded bilateral treaties on extradition with twelve States represented in Belgium, Brazil, Chile, Costa Rica, Cuba, France, Mexico, Nicaragua, Panama, Peru, and United Kingdom. Similarly, has signed two multilateral treaties represented in the Agreement on Extradition, held in Caracas on 18 July 1911 and the Convention on extradition held in Montevideo on 26 December 1933 (Ministry of Foreign Affairs of Colombia 2014).

It is important to start by pointing out that Colombia was, since the

nineteenth century, one of the first countries to sign international treaties on combating crime, aware that the offense had to be attacked beyond its borders and to prevent our country outside refuge of criminals, according to the reasons provided at that time.

In 1888, Colombia endorses a multilateral treaty on extradition, where for the first time mentioned the traffic in controlled substances as a crime and a ground for extradition secures the extradition by administrative authority as a mechanism applicable (*The Time* 2014).

In the twentieth century in 1936 enters Colombian law, for the first time, the subject of the extradition to update and adapt what is already in international treaties. The extradition of nationals is dealt with in the Criminal Code that year (*The Time* 2014).

But it is up to the year 1979 when the term extradition was known by the majority of Colombians when the then Ambassador of Colombia in Washington, Virgilio Barco Vargas, subscribes to the extradition treaty with the United States. In this treaty is established that the Government may extradite prior concept of the Criminal Chamber of the Supreme Court of Justice (*The Time* 2014).

Extradition as a tool in the fight against transnational organized crime by the national government begins to be used in firm from the year 1984 following the assassination of the Minister of Justice Rodrigo Lara Bonilla in the north of Bogotá. Since that time begin extraditions in firm, especially toward the United States for crimes related to drug trafficking and money laundering. It is as well as the 5 January 1985 are extradited the first five Colombians was United States, including the sports leader Hernán Botero Moreno (*The Time* 2014).

The President Virgilio Barco in the year 1989, through a decree of a state of siege, secures the extradition by administrative authority. That is to say, the Government autonomously will assume and decide on requests for extradition to the United States, by suspending for the duration of the state of emergency, the rules of the Criminal Code and procedure on extradition. The decree establishing the extradition by administrative authority is issued on August 18, coinciding with the murder of Luis Carlos Galán (*The Time* 2014).

In the year 1991 the Constituent Assembly, for the first time in the legal history and politics of Colombia, raises the extradition to constitutional rank and prohibits the surrender of nationals. The extraditions in the pipeline are denied and prisoners recovered their freedom. In the year 1997 resets the extradition of nationals by a law adopted in fourth debate by the plenary of the House of Representatives, a situation which remains

in force until our days (*The Time* 2014).

At present, the procedure of extradition is regulated in Article 35 Constitution of Colombia (Art. 1 Legislative Act 01 of 1997), where it is said that “Extradition may be requested to grant or offer in accordance with public treaties and, in their absence, with the law”.

Classes of Extradition Recognized by the Colombian Government

The Ministry of Foreign Affairs of Colombia recognizes six classes of extradition: active extradition, passive extradition, re-extradition, extradition in transit, extradition deferred, simplified extradition procedures, which are explained below:

Active extradition

This type of extradition is called active extradition to the process essentially jurisdictional through which substance the request that a State to another State for a person to be delivered is deprived of his liberty with the object of being subjected to process or to fulfill a custodial sentence already imposed by judicial authorities of the requesting State (Ministry of International Relations of Colombia 2014).

Passive extradition

The passive extradition refers to events in which a State is required, due to his being a fugitive in its territory the accused or prosecuted for an offense committed in another State or with effects on it, with a view to its delivery (Ministry of International Relations of Colombia 2014).

Re-extradition

This figure attends to a mechanism that takes place when the State that has managed to obtain the extradition of a person, it receives a new request by a third State, to that same subject is prosecuted or forced to serve a sentence in its territory (Ministry of International Relations of Colombia 2014).

Extradition in transit

Extradition in transit, implies a situation in which a State would allow the passage through its territory, from the requested State to the Requesting State, a person requested in extradition (Ministry of International Relations of Colombia 2014).

Deferred extradition

Under the terms of Article 504 of the Code of Criminal Procedure, extradition deferred refers to the faculty of which provides for the National Government to postpone the delivery of the required person until it is judged and meets the penalty or until by preclusion of the instruction or acquittal has finished the process, in the event that the required has committed in Colombia (Ministry of International Relations of Colombia 2014).

Simplified extradition

The simplified extradition is a type of extradition created by Law 1453 of 2011, whose article 70, amending article 500 of the Law 906 of 2004 provided the following: “The person sought for extradition, with the intervention of his counsel and the Public Prosecutor may renounce the procedure laid down in this article and to request the Criminal Cassation Chamber of the Supreme Court of Justice of plane the corresponding concept, which shall within twenty (20) days if you meet the budgets to do so. [...]” (Ministry of International Relations 2014).

Principles of Extradition in Colombia

According to the Ministry of Foreign Affairs of Colombia and the Foundation DECOPEX the extradition is governed by ten principles derived from the internal rules applicable and the extradition treaties concluded by the Colombian State and that you must adhere to the full. It is important to note that these principles arise from the commitments made internationally by Colombia. Below in the table 1 are presented these principles.

Table 1. Principles of extradition in Colombia

| | |
|---|--|
| Principle of Legality | This principle establishes the obligation to dedicate expressly in the internal law of each State or in a treaty, the offense for which extradition is requested. |
| Principle of the Specialty | The requesting State may not extend the prosecution or sentencing to facts other than those which specifically have given rise to the extradition. |
| Principle of the Jurisdiction or natural judge | In accordance with the principle of Jurisdiction, the required person can only be judged by the natural judge of the case and not by courts of exception. |
| Principle of the prohibition of double criminality | The crime for which they are made the request for extradition shall be established both in the Requesting and the requested State. |
| Principle of the switching or the prohibition of capital punishment | In the event that the legal system in the requesting State as authorized to execute the death penalty against the person sought for extradition, must be offered sufficient guarantees to ensure his non-imposition in the specific case. |
| Principle of 'non bis in idem' | In accordance with the principle of non bis in idem, you cannot judge nor impose a penalty that is two times to a person for the same act. |
| Principle of reciprocity | The reciprocity alludes so essential to the notion of the "application by the other Party". |
| Prohibition of delivery for political crimes or crimes of opinion | Under this principle, it is prohibited the extradition for political crimes or crimes of opinion. |
| Non-refoulement | In virtue of this figure the States are under an obligation not to transfer to an individual to another State when you verify that such action could become a risk of exposing the individual to serious violations of their human rights. |
| The obligation to extradite or prosecute | The alternative obligation of States to extradite or prosecute those suspected of the commission of an offense. |

Source: Foundation DECOPEX 2010 (own preparation).

Procedures in the Process of Extradition in Colombia

According to the Department of International Legal Affairs of the Ministry of International Relations the process of extradition in Colombia is fulfilling the following six phases presented in the table below.

Table 2. Extradition procedure in Colombia

| Phase | Description of the Procedure |
|-----------|---|
| Phase I | By a note verbal, foreign authorities are applying to the Colombian authorities have issued warrant of arrest for purposes of extradition for the purpose of enforcing the arrest warrant issued by the court of that country. |
| Phase II | The Chancellery receives from the Ministry of Justice and the law a request for the extradition of the person required. The respective injunction is carried out by the competent judicial authority, namely, a judge or a prosecutor. |
| Phase III | <ul style="list-style-type: none"> • The Colombian judicial authority to present the request for extradition of the accused or convicted person before the Ministry of Justice and the law. • The Ministry of Justice and the Law examines the documentation submitted and to comply with the legal requirements, sends it to the Ministry of Foreign Affairs, which shall send to the respective diplomatic representation. • The diplomatic representation presents the documentation to the Ministry of Foreign Affairs of the requested State. |
| Phase IV | If the language of the requested State is not the Spanish, the Chancery will request, the translation of documentation into the language of the requested State. |
| Phase V | The Direction of International Legal Affairs of the Ministry of Foreign Affairs, by memorandum addressed to the respective Embassy of Colombia in the exterior, will present the documentation that supports the formal request for extradition or preventive detention for purposes of extradition, to the Ministry of Foreign Affairs of the Requested State. |
| Phase VI | The Direction of International Legal Affairs of MRE refers communications which are to take between the respective Embassy of Colombia and the requested State, to the competent national authorities, through the Ministry of Justice and the law. |

Source: Department of International Legal Affairs of the Ministry of International Relations 2014 (own preparation).

Within this process involves the Colombian authorities that are presented in the next section indicating what its main functions are:

Authorities Involved in the Process of Extradition in Colombia

There are five Colombian authorities on which rests the extradition procedure in Colombia. These are the Office of the Prosecutor General of the Nation, the Ministry of Justice and the Law, the Ministry of Foreign Affairs, the Criminal Cassation Chamber of the Supreme Court of Justice and the Office of the Attorney General of the Nation.

The office of the attorney general of the nation

This Organ is responsible for sorting the capture, where precedent, persons whose extradition is sought in the requesting State, joined to this is added the work you put at the disposal of the authorities of the foreign State to that person, after assortment step relevant (DECOPEX 2010).

Ministry of Justice and the Law

This Ministry plays the work to determine, through administrative act if offers or extradite a person required by a foreign State. Its role involves a degree of constant interaction with the Ministry of Foreign Affairs and the Supreme Court of Justice (DECOPEX 2010).

Ministry of Foreign Affairs

During the processing of formalization of the request for extradition, it shall be the responsibility of the Ministry of Foreign Affairs advancing the role of legalization of the documentation issued by the requesting State (DECOPEX 2010).

Supreme Court of Justice - court of criminal cassation

The jurisdiction of the Supreme Court of Justice comprises the judicial review to be carried out in Colombia the extradition proceeding where it is checked that the procedure does not violate the principles of extradition in Colombia (DECOPEX 2010).

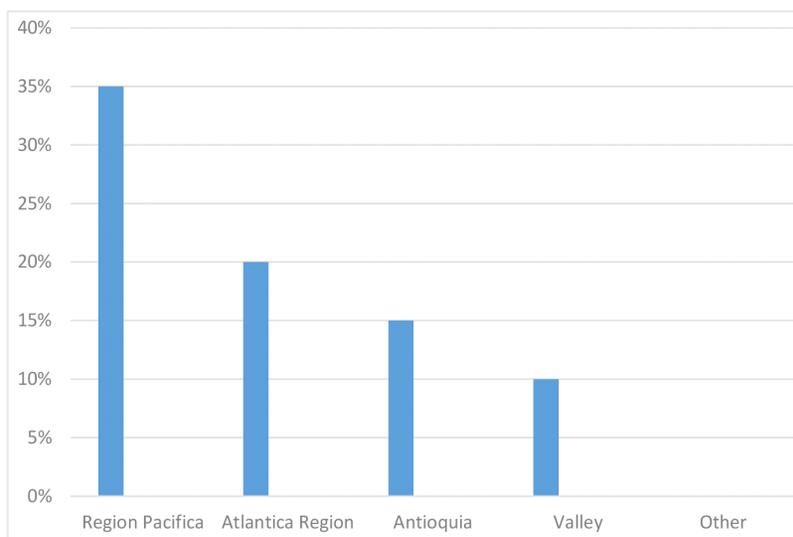
Public Ministry

Acts as a guarantor of human rights and of the fundamental rights of the requested in extradition (DECOPEX 2010).

Recent Reality of Colombians Requested in Extradition

The recent reality of Colombians requested in extradition is far from what you think the vast majority of Colombians, accustomed to relate the term “extraditable criminal” with the group led by the members of the Medellin Cartel in the 1990s. The profile of the extraditable today goes from fishermen of Choco until brokers with titles abroad.

In the visits every fifteen days in the framework of the visit of men who are carried out every Saturday at the Maximum Security Prison of Combita is was able to detect the origins of prisoners requested in extradition during the period 2007-2011. The most outstanding groups came from the region of the Colombian Pacific coast especially of Tumaco and Buenaventura with almost 35% of the prison population awaiting extradition, followed by born the Atlantic Coast and San Andres and Providencia with a 20% and from the Department of Antioquia a 15% and the Valle del Cauca 10% and 20% from the rest of the country (DECOPEX 2011).

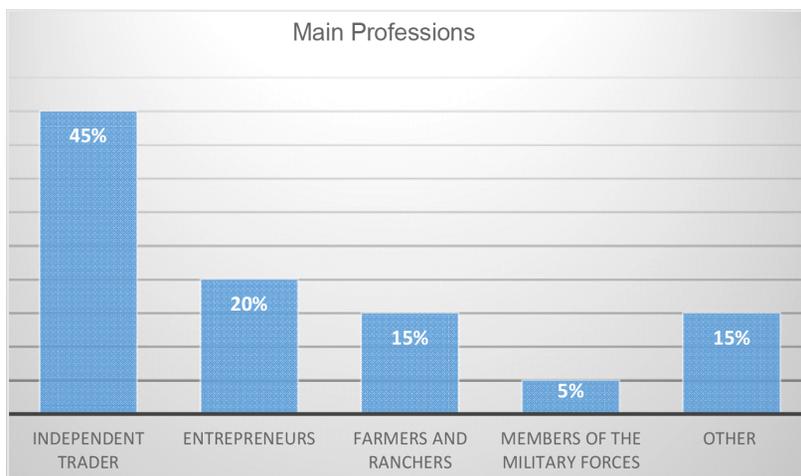


Source: DECOPEX (own preparation).

Figure 1. Main regions of origin Flag Combita prison 7

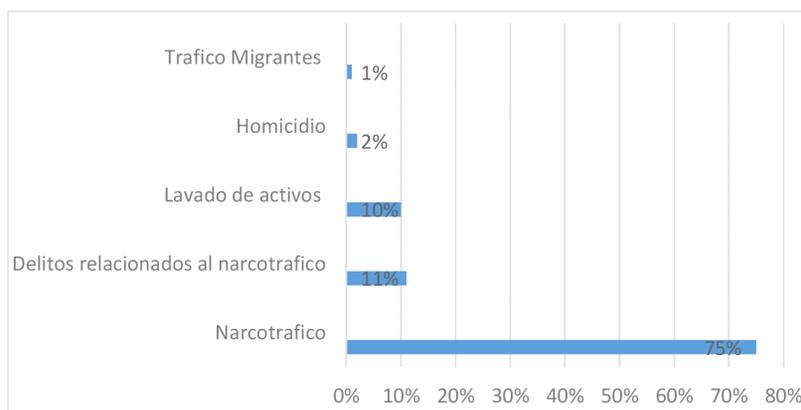
With regard to the professions the more prevalent was the independent trader with 45%, followed by businessman with a 20% and in a smaller proportion were officers and sub-officers of the military and police forces,

members of insurgent groups of the FARC and the ELN and people with professions such as upholsterers, drivers, receptionists, farmers, retirees of banking institutions, street vendors of plantain, being this minority group by the who worked the Foundation DECOPEX.



Source: DECOPEX (own preparation).

Figure 2. Main Professions Colombians requested in extradition



Source: DECOPEX (own preparation).

Figure 3. Principal offenses of extradition requests 2007-2011

Statistics presented by the Ministry of Justice of Colombia (2012) on the evolution of extradition between the years 2000 and 2011 indicate that in this period of time were extradited 1,221 Colombians, being the year 2008 in which more occurred extraditions with 207. The requesting countries with the greatest number of requests were United States, Spain and Peru. With regard to main crimes highlights the drug trafficking with a 75% of Colombians extradited followed by offenses related to drug trafficking with 11%, laundering of assets with 10%, murder 2% and smuggling of migrants 1% (Ministry of Justice in Colombia 2012).

Here are some aspects related to the reality of the Colombian people waiting for his extradition where highlights:

Entrapment

The Dictionary of the Royal Spanish Academy defines trap as: fool; twisting, confuse artificially a business so that it cannot be clarify or resolve. However the term entrapment in the environment of the processing of request for extradition to the stage carried out by the police of some countries, especially in the United States where members of its police intelligence infiltrated into criminal organizations looking for evidence of its actions. The problem of this stage is that in occasions presents what in Colombia is known as “false positives”, that is to say Cases.

According to statistics produced by the Foundation DECOPEX, requests for extradition in come in a 96% by federal courts of Member States mainly for the crimes of drug trafficking and money laundering. In most of these cases the common factor is the so-called entrapment. This entrapment is caused by agents of the United States and Colombia who induce to ordinary citizens to commit crimes to “show results” in the fight against crime.

In that sense, according to an open letter of the inmates in track of extradition, patios, 12 and 16 of the prison and the Pillory of Bogota, addressed to the Senators, Representatives, judicial authorities of Colombia and citizenship in general with date of 22 October 2014 it accuses the government of create sophisticated apparatus for inducing the crime, such as companies and posters. Similarly, argue that the DEA in partnership with Colombian authorities mounted networks of narcotics trafficking and money laundering, for which searches for suitable profiles, proposes attractive business that ends up being an elaborate web to involve innocent in illicit, with which swell their statistics “successful” against the crime.

In most cases, the tests are presented in telephone recording on a CD that is called by the American authorities as “discovery”. On this

CD are the talks intervened to the accused where it is given an interpretation to the desirability of the officials. For example, there were cases of people indicted by a telephone call where reference is made to a bank transaction for a certain amount of money and the American agencies was a drug-trafficking operation in the amount of drugs, i.e. give you the interpretation of the talks to your accommodation.

Request that the extradition is a legal procedure and not administrative

The procedure for the extradition of the majority of Colombians required by international courts takes between 12 and 18 months from the expected to comply with the processing in the various judicial instances in Colombia in the Office of International Affairs of the Office of the Prosecutor General of the Nation, the Supreme Court of Justice and the Ministry of Justice. During this time of waiting for his extradition, these Colombians are held in maximum security prisons (Combita pilloried and) where are confronted to the rigidity of the penitentiary system imposed by the INPEC.

Many of these prisoners claim that the role of the Supreme Court of Justice will be more active in the legal process analyzing each of the cases. Because the judges of this Honorable Court all you do in the procedure is to verify that it complies with the requirements of the extradition without legally analyze each case, becoming a systematic program, that monthly extradite between 15 to 20 Colombians.

Prison system inadequate

The Colombians to await extradition are sent to Maximum Security Prison where are confronted with phenomena that affect the entire prison population of Colombia as the overcrowding, inadequate food and the constant violation of fundamental rights on the part of the National Penitentiary Institute INPEC to the displaced and to the relatives who conducted weekly visits.

That is why many Colombians requested in extradition prefer to expedite the process in national soil to be extradited promptly because they know that in many countries requesting are better quality of life at the time of purge their sentences, a situation.

These were the three fundamental reasons why some people affected with the extradition process in Colombia by having relatives and friends suffer from this ordeal decided to take reins in the matter and create a non-governmental organization to ensure respect for these people. Part of the experience in the foundation DECOPEX, is presented in the following section as a contribution to the study of this topic.

EXPERIENCE IN THE DIRECTION OF THE FOUNDATION FOR THE DEFENSE OF COLOMBIANS ORDERS IN EXTRADITION (DECOPEX)

The Foundation DECOPEX was a non-governmental organization that operated between the years 2007 and 2010 with headquarters in Bogota, which sought the defense of the rights of Colombians requested in extradition by international courts and was mainly comprised of relatives of persons who were detained in the Pavilion of the seven high-security prison located in the municipality of Combita, Boyacá.

This NGO was chaired by the author of this article as director and legal representative, being the space where converged the relatives of the persons arrested with request for extradition by any foreign nation.

The primary purposes of this foundation were focused on four strategic areas of management. In the first of them was proposed to ensure respect for the fundamental rights of the inmates and their families; in the second one, the development of a legal strategy in the national and international level; the third one, the realization of lobbying government bodies with the aim of regulating the legal procedure of extradition and the fourth area of management, was focused on the social function before the problem of some people who were wrongfully arrested. These areas of management of the NGO DECOPEX are presented below:

Discussion by the Respect for the Fundamental Rights of Persons Requested in Extradition and of their Families

It is important to highlight that until the year 2012 persons requested in extradition that were awaiting shipment to requesting States were held in the Maximum Security ward of the prison located in the municipality of Combita (Boyacá). This prison is located 20 minutes from the city of Tunja, capital of the department of Boyacá and is considered by experts in security as the most secure of Latin America by its geographical location and the advanced technology with which it has been endowed.

To this prison were sent prisoners requested in extradition pending the approval by the Supreme Court of Justice, this prison has capacity for 1,600 prisoners and made part of an agreement between the Colombian

government and the US, which sought to change the prison system in the country, with resources from the Plan Colombia (INPEC 2016).

This penitentiary is known for the thoroughness of your security system, having three rings of perimeter security (police, army and prison guards) and in the internal part four rings of enclosure, one of which is composed of sensors, which to detect a person in that corridor, will trigger the alarm and reflectors (INPEC 2016).

The Foundation DECOPEX originated a debate with the governmental entities within the Higher Council of Criminology aimed to improve the conditions of detention of the prisoners in the yard seven of the High Security Prison of Combita due to problems of overcrowding, unsanitary conditions, violations of due process and the regime of visiting hours.

Similarly, the relatives who were visits to persons detained in this prison saw as their fundamental rights were violated by the harsh environment of the visits, to perform rows of up to 6 hours in the morning to temperatures below zero degrees Celsius, receiving on occasions abuses on the part of the staff of the National Penitentiary Institute of Colombia (INPEC).

The results of this debate within the Higher Council of Criminology were expressed in a visit to the prison of Combita by the Deputy Minister of Justice at the time, Guillermo Francisco Reyes González, the Ombudsman of Boyacá Gustavo Adolfo Tobo, the Director General of the INPEC Eduardo Morales Beltrán and sent to the Office of the Attorney General of the nation, where they verified the precarious conditions of detention in this prison.

As a result, since 2012 the national government took the decision to relocate to the so-called extraditable offenses in the floor 9 of the flag of extraditable offenses of the prison the pillory, located in the city of Bogota, making it more feasible to visits by family members and lawyers to persons requested in extradition.

The Development of a Legal Strategy with a View to Collective Judicial

The strategy developed at the legal level of the Foundation DECOPEX was developed at both the national and international levels to exercise legal remedies in the national courts and in the inter-American Court of Human Rights.

The internal strategy carried out by the legal team of DECOPEX was directed to the filing of legal figures such as habeas corpus and guardianship in order to find that the Supreme Court of Justice of Colombia, to consider

legally each of the cases of Colombians requested in extradition and not given simply the administrative formalities that performed until now for your approval.

The strategy in the international arena was based in filing a claim before the Inter-American Court of Human Rights on October 26, 2007, using the argument that in the process of extradition of Colombians abroad was a massive violation of the fundamental right of *non bis in idem* to be judged Colombians requested in extradition twice for the same act, one in Colombia and the other in the country which makes the requirement.

Implementation of Lobbying the National Government and the Congress of the Republic in order to regulate the Legal Procedure of Extradition

It is clear that the legal procedure of extradition in Colombia is limited to the study of the Supreme Court of Justice the accomplishment of some basic requirements and its subsequent adoption. This procedure is considered by some jurists as a simple “notarial procedure”.

Seeking to regulate the legal procedure of extradition, the members of the Foundation DECOPEX conducted lobbying activities before some Senators and Representatives to the House of Colombia. This lobby with the purpose of requesting the convening of the Higher Council of Criminology to consider the procedure for the extradition and regulate the procedure of international cooperation on the part of the Colombian government, without much success, because the issue of extradition in Colombia is still subject for public opinion which does not bring about political dividends, but on the contrary is saved mistrust with this topic by the belief that all requested in extradition are large kingpins of drug trafficking.

Social Function

There is the popular belief that all persons requested in extradition are people very wealthy by being involved in drug trafficking or money laundering. However, the reality of some of the people arrested in the Pavilion Seven of the prison of Combita was far from this belief.

In this pavilion converged people with professions as upholsterers, farmers, drivers, retirees of banks, warders that sometimes did not have the economic resources for the displacement of their families and the payment of professional fees for lawyers. In occasions and thanks to

activities organized by the families was reached to raise money to help these people.

Another aspect where they carried out a productive work was in the field of the complaint. One of the main criticisms made the procedure for extradition of Colombians abroad by the Foundation DECOPEX was related to the continuous errors presented in the identification of detainees by the Colombian authorities and the requesting country.

Within the time of management of the Foundation DECOPEX were presented cases very loud in the media on innocent people who were in detention awaiting his extradition and that over time has proved his innocence, to be confused with other people or to give it another interpretation to the meaning of the telephone conversations.

The case more representative was Gabriel Consuegra, the seller of bananas extradited to the United States by mistake and it was baptized by the authorities with the alias of the “banana”. Consuegra was accused by the United States justice as being the holder of several bank accounts, in various countries of the Caribbean basin, which were used to launder assets from the business of drug trafficking. According to the process, his son, then in 23 years and student nurse, had participated in the laundering of dollars in Colombia.

The Lord Consuegra and his son were repatriated to Colombia after paying a penalty of 3 years without finding charges against him and the only evidence submitted by the Government of the United States were a few telephone recording where the involved spoke of “green” when referring to green bananas but the interpretation given by the police authorities of Colombia and the United States is that related to dollars, accusing them of belonging to a structure of money laundering.

Another case was that of Mr. Juan Vicente Gómez Castrillón who was requested by the District Court of the United States for the Southern District of New York and in his physical description was presented as “a Caucasian man” and Mr. Gómez is black. In addition to this error, more other related with their name and age, because man requested was 48 years while Castrillón was close to fulfilling the 70 years, are evidence of the fragility of the system of extradition in Colombia.

CONCLUSIONS

Colombia was, since the nineteenth century, one of the first countries to sign international treaties on combating crime, aware that the offense

had to be attacked beyond its borders and to prevent our country outside refuge of criminals, according to the reasons provided at that time.

The procedure for the extradition is framed within the ideal of the principle of universal criminal justice resulted in a mutual recognition of judicial decisions and absolute respect for the judicial interpretation of the domestic law of each state where to ensure respect for the fundamental rights and guarantees procedural legal-judicial procedure of all States.

In the Colombian legal scope is defined by the Judgment C-460 of 2008 of the Constitutional Court in the following way. "The extradition in its broadest sense is understood as a mechanism for international cooperation that seeks to combat the crime and avoid impunity".

Extradition is governed by ten principles derived from the internal rules applicable and the extradition treaties concluded by the Colombian State and that you must adhere to the full. It is important to note that these principles arise from the commitments made internationally by Colombia.

The procedure for the extradition of the majority of Colombians required by international courts takes between 12 and 18 months from the expected to comply with the processing in the various judicial instances in Colombia in the Office of International Affairs of the Office of the Prosecutor General of the Nation, the Supreme Court of Justice and the Ministry of Justice. During this time of waiting for his extradition, these Colombians are held in maximum security prisons (Combita pilloried and) where are confronted to the rigidity of the penitentiary system imposed by the INPEC.

The primary purposes of this foundation were focused on four strategic areas of management. In the first of them was proposed to ensure respect for the fundamental rights of the inmates and their families; in the second one, the development of a legal strategy in the national and international level; the third one, the realization of lobbying government bodies with the aim of regulating the legal procedure of extradition and the fourth area of management, was focused on the social function before the problem of some people who were wrongfully arrested.

The most outstanding groups of extraditable offenses in the period of operation of the Foundation DECOPEX came from the region of the Colombian Pacific coast especially of Tumaco and Buenaventura with almost 35% of the prison population awaiting extradition, followed by born the Atlantic Coast and San Andres and Providencia with a 20% and from the Department of Antioquia a 15% and the Valle del Cauca 10% and 20% from the rest of the country.

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