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LADB Staff

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Colombian Extradition Law Passes Without Retroactive Provisions

by LADB Staff

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After more than a year of debate, on Nov. 25 the Colombian Congress finally passed a constitutional amendment to allow extradition. However, by the time the bill was passed, it had been weakened considerably, limiting extradition to those who commit crimes after the law's passage. That, coupled with a new bill that could put top drug lords now in prison back on the streets, has increased the likelihood of a third successive US decertification. After lifting the constitutional ban on extradition, legislators voted 119-38 to prevent its application retroactively, defying Washington, powerful Colombian business leaders, and the Samper administration. The measure also excludes anyone sought for committing a "political" crime.

Extradition was constitutionally banned in 1991 at the height of a campaign of terror waged by late Medellin cartel boss Pablo Escobar. Public opinion on the issue is very divided, with many Colombians opposing extradition, especially retroactively, as an imposition of US demands that violate Colombia's sovereignty. Under the new extradition law, for the first time since 1991, Colombian nationals can legally be extradited to stand trial abroad. But the law applies only to crimes committed after it goes into effect, sparing six jailed capos of the Cali cartel, led by Miguel and Gilberto Rodriguez Orejuela.

The US Justice Department requested the extradition of the Rodriguez Orejuela brothers two years ago. Ingrid Betancourt, a legislator from Samper's governing Partido Liberal who supported retroactivity, said the drug cartels flooded Congress with payoffs before the vote, and some legislators are acting in the interests of the drug lords. "There are cases of people who arrived [in Congress] without a peso, and now they are millionaires because they defended drug trafficking," Betancourt said in an interview. "This is an accord among criminals."

President's commitment to extradition questioned

The vote, which drew fierce criticism from Washington, came despite impassioned pleas from President Ernesto Samper, Foreign Minister Maria Emma Mejia, and other top government officials to pass the bill without any conditions (see NotiSur, 04/25/97). For many political analysts, however, the administration did not do all it could to convince legislators to pass the retroactive provision, given that Congress is dominated by the governing party. "When the government has wanted something passed by Congress, it has passed without difficulty," said the president of the Asociacion Nacional de Industriales (ANDI), Luis Carlos Villegas.

After the vote, Samper emphasized the positive aspects of the bill, saying that, although he had wished for a stronger law, the weaker measure was still "historic," and the US should respect it. "What we have achieved, without firing a single shot, without a single bomb, without even one death, is to bring back this concept [of extradition]," Samper said. "All that we can expect from the US government is that it respect a decision that is strictly an internal matter."

In Washington, State Department spokesperson James Foley criticized the bill as "flawed." Foley suggested that Colombia's failure to subject current convicts to extradition would hurt the chances for certification in President Bill Clinton's annual review on March 1. "I can't speculate on what that certification decision will be next year, but this is not helpful," Foley said. "If it [retroactivity] is added and incorporated two months from now, three months from now, of course we would be pleased. But this is not obviously a step in that direction."

Despite anti-drug trafficking efforts by Colombia's police that have won praise from US officials including drug czar Barry McCaffrey, retroactive extradition could be the only factor that counts when certification comes up again (see NotiSur, 10/24/97). For the past two years, the US has denied Colombia certification that it was cooperating in the drug war, and, although possible economic sanctions were not applied, a third decertification would most likely carry economic penalties. "I am sad and concerned," said Miguel Gomez, president of the Asociacion Colombiana de Productores de Flores (Asocolflores), the sector that would be most affected by any US economic sanctions. "I believe we have lost an international opportunity to demonstrate that we are committed in the fight against drug trafficking."

Congress makes more concessions to drug lords

Further complicating matters, on Dec. 3, the House of Representatives unexpectedly passed a bill to reduce the sentences of common criminals, drug traffickers, and politicians accused of ties to drug trafficking. To receive the reduction, prisoners must have served 60% of their sentence, but they could also receive reductions for work or study. The proposed legislation dismayed those who successfully fought early this year to raise jail terms for drug lords to a minimum of at least 20 years.

Federal Prosecutor Alfonso Gomez said it was unthinkable that, after approving legislation to increase penalties for drug trafficking, the legislators were now going to reduce them. "We were simply looking at how to ease the situation of 43,000 prisoners in the country, without examining particular cases," said Justice Minister Almabeatriz Rengifo. The 168 Colombian prisons have a capacity for 29,000 prisoners, but actually have more than 43,000, and some prison populations are more than twice capacity. In addition, just over half the prisoners have been tried, convicted, and sentenced. Rengifo was widely criticized for backing the bill, with loud calls for her resignation.

After admitting that she made "a political mistake" in supporting the House version of the bill, Rengifo said the government would propose amendments to toughen the legislation. She made the announcement after she and other senior Cabinet and law-enforcement officials met with President Samper. If the House version of the bill is approved by the Senate, Rengifo said Samper would refuse to sign it into law.

Proposal would increase time off for good behavior

The current law, which the US has criticized as too lenient, allows "model" prisoners to have 50 days cut from their sentence for every 100 days of work or study in prison. The new bill would increase the reduction to 66 days cut for every 100 worked. The bill would also grant conditional liberty, or furloughs of up to 15 days, to inmates who have completed 40% of their sentences, and it would allow anyone sentenced to less than four years in jail to serve their time doing community service instead of behind bars.

The only convicts not eligible for sentence reductions under the bill are those convicted of homicide, terrorism, kidnapping, and extortion. Jailed cartel bosses and former congressional representatives and government officials serving time for drug-related "illicit enrichment" would benefit from the legislation. While the measure was justified as an attempt to reduce the serious overcrowding in penal institutions, it brought a new outcry that lawmakers were in the pockets of the cartels.

And, critics of Samper accused him of seeking to aid corrupt politicians and drug bosses who helped him get elected. "This is yet another example of the marriage between politics and drug trafficking," said Noemi Sanin, a former foreign minister who is running for president. "Such an initiative would be a serious step backwards in Colombia's effort to reform its judicial system and combat the problem of impunity,"

US State Department spokesperson James P. Rubin said. "It has always been our position that criminals, including the drug kingpins currently incarcerated in Colombia, should serve sentences commensurate with their crimes, and that the already inadequate sentences given to the kingpins should not be reduced in any way." [Sources: Spanish news service EFE, 11/13/97; Agence France-Presse, 11/24/97; Inter Press Service, 11/26/97; Associated Press, 11/12/97, 12/03/97, 12/04/97; The Miami Herald, 11/26/97, 11/27/97, 12/04/97; Clarin (Argentina), 12/04/97; Reuter, 11/12/97, 11/27/97, 12/03/97, 12/09/97; El Nuevo Herald, 11/23/97, 11/27/97, 11/28/97, 12/09/97; Notimex, 11/26/97, 12/10/97; El Tiempo (Colombia), 11/28/97, 12/09-11/97]

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