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Fugitive Mensalão Convict Caught in Italian Extradition Limbo

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Henrique Pizzolato, former director of the Banco do Brasil embroiled in the mensalão scandal, is caught in an extradition tug of war between the Brazilian and Italian governments. Pizzolato was convicted along with 12 co-conspirators in Brazil’s largest public-sector scandal of recent memory. He was sentenced to 12 years and seven months in prison. While his former colleagues all voluntarily surrendered to the federal police, Pizzolato fled the country.

Currently in the custody of Italian authorities, Pizzolato’s extradition was suspended until June 3, the latest in a saga that has extended for two years. His case remains in legal limbo because of an extradition treaty that Italy agreed to but Brazil has not. It allows for Brazilian citizens to be tried in Italian courts and vice versa. Italy intends to make Pizzolato serve his sentence locally, while Brazil wants him to serve in a Brazilian prison. Complicating matters, the convicted Italian anarchist Cesare Battisti remains at large in Brazil, having never been extradited to Italy to serve a life sentence for four homicides as a former member of the Armed Proletarians for Communism, a leftist militant group.

The mensalão scandal was a vote-buying scheme that became public in 2005. Key figures in the administration of former President Luiz Inácio Lula da Silva were accused of making monthly payouts to congressional deputies to secure votes on legislation (NotiSur, June 24, 2005, Sept. 9, 2005, and Sept. 14, 2007). The Banco do Brasil was the source of many withdrawals for the payouts, which implicated then director Pizzolato in bribery and money laundering. He was convicted along with the other mensalão conspirators in 2013, following a major trial headed by Joaquim Barbosa, then president (chief justice) of the Supremo Tribunal Federal (STF).

Pizzolato saga drags on for two years

The STF ordered Pizzolato’s arrest on Nov. 15, 2013. Only then was it discovered that he had fled the country in September 2013. He traveled overland to Paraguay using the Italian passport of his deceased brother, who died in 1978. The children of Italian immigrants to Brazil, both Pizzolatos were Italian citizens. The living brother then traveled on to Buenos Aires from where he flew to Spain and finally Italy to seek a new trial.

Considered an international fugitive by Interpol, Pizzolato was arrested on Feb. 5, 2014, by Italian police in his nephew’s apartment in Maranello. He was taken to Modena to await extradition. Under a bilateral treaty, Italy will consider extradition requests for Brazilian-Italian dual citizens. However, an appellate court in Bologna overturned the extradition request on Oct. 28, 2014, because of the inhumane conditions of the Brazilian prison system.

On Feb. 12, an Italian court of cassation overturned the appellate court ruling and reauthorized Pizzolato’s extradition. He was imprisoned the same day and has remained in custody since. His extradition was originally scheduled for May, but Pizzolato’s lawyers argued that a treaty signed by
Italy, but not yet ratified by Brazil, permits Italian citizens convicted in Brazil to serve their prison sentences in Italy.

With the extradition now suspended until June 3—and future postponements entirely possible—the legal debate hinges on the validity of this claim. In fact, it was the Pizzolato case and the likelihood of an Italian citizen serving for a decade plus in a Brazilian prison that hastened the Italian legislature to approve the law in parliament. Approximately 40 Italian parliamentarians have taken on the Pizzolato case as a cause célèbre.

While Pizzolato’s lawyers have indicated that their client has expressed a willingness to serve his sentence in Italy, they have also hedged their bets by laying out reasons that the Brazilian trial should be invalidated and he be retried in Italy. It was a single trial without possibility of appeal, and defense lawyers claim that key documents were not made available. Finally, they constantly reiterate that serving in a Brazilian prison is tantamount to a human rights violation (NotiSur, July 15, 2011).

Case of Cesare Battisti complicates Brazil’s extradition request

Italy’s refusal to extradite Pizzolato bears a striking resemblance to an inverse case from 2010, when President Lula refused to extradite Cesare Battisti to Italy with just hours left in his presidency. Battisti fled to Brazil in 2007 after trials in Italy and France that led to a life on the run since his first arrest in 1979 and prison escape in 1981. He was given political refugee status, and the STF effectively punted the issue to Lula with a reading of the Constitution that gives the executive final say on extradition decisions.

Battisti remains at large in Brazil, living and working as a realtor. He has spoken periodically about his former life as a leftist militant but has largely tried to keep a low profile. The Battisti case infuriated Italian authorities, and some suspect that may have influenced the sequence of events in the Pizzolato case. Battisti’s lawyers used photo evidence to argue that Italian prisons were not equipped to ensure the health and safety of their client, while Pizzolato’s have presented visual documentation of Brazilian prison conditions. As of late, Pizzolato’s arguments that mensalão convicts would be at risk of assassination have not proven true in the case of his co-conspirators.

However, the STF decision to grant the executive final say was considered a strange interpretation of Brazilian constitutional law and has not been repeated. By contrast, the Italian judiciary has followed a rigorous and impartial process that may ultimately involve the Italian executive branch but has not yet reached that point.

The Pizzolato case has shined a new light on Battisti’s situation, which remains complicated. In March, a Brazilian judge overturned his political asylum status from a 2010 ruling and ordered his deportation. A deportation order is not the same as extradition, meaning that, if enforced, Battisti will not necessarily go to Italy. Rather, he could be sent to Mexico or France, where he resided before his arrival in Brazil.

Battisti’s lawyers are expected to appeal the decision, and it could take years before reaching the STF for final arbitration. His asylum was upheld by the STF in 2013, and he received permanent residency the same year, but prosecutors argued that convicted felons are not entitled to permanent residency under Brazil’s Lei de Estrangeiro.
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