

## White Collar Crime - Brazil

### Cooperation or conflict? Challenges of extraditing white collar criminals

Contributed by **Delmanto Advocacia Criminal**

March 03 2014

**Extradition treaties**

**White collar crime**

**Interpol red notice**

**Recent cases**

During the 1970s, there was a common perception that when criminals were on the run from justice, they could take refuge in Brazil (especially after UK trainrobber Ronnie Biggs's escape to Rio). However, in the intervening years – with the help of Interpol and its 'red diffusion' alert system,<sup>(1)</sup> as well as numerous formal extradition treaties<sup>(2)</sup> – the situation is now somewhat different.

#### Extradition treaties

The rules relating to extradition from Brazil are largely uniform. The foreign country must make a request for extradition along with the relevant supporting documents, translated into Portuguese. The Brazilian Supreme Court judges will then analyse whether:

- the person is a political refugee at risk of torture or death;
- the actions considered a crime abroad for which the arrest warrant has been issued are also considered a crime in Brazil (in this regard, Brazil is a member of almost all international treaties focused on punishing transnational crimes);
- there is probable cause for the charge and arrest order (under certain circumstances, Brazil can extradite someone who has not yet been convicted) or the conviction is reasonably justified by the foreign court;
- the Brazilian Penal Code applies a milder penalty to the crime, in which case the foreign country must accept a reduction in the penalty to bring it into line with Brazilian standards – for example, as Brazil does not have a death penalty and sentences cannot be longer than 30 years, before a US citizen sentenced to death or life imprisonment can be extradited, the penalty must be reduced; and
- in light of the Brazilian rules on statutes of limitations, the state power to punish is still enforceable both in Brazil and abroad.

However, according to the Constitution, Brazilian-born citizens cannot be extradited, even if they have dual citizenship. Under Article 7 of the Penal Code, if such a citizen commits a crime abroad and re-enters Brazil, he or she must face prosecution in Brazil. This makes punishment difficult, as the Brazilian judicial authorities will face greater obstacles in making a case for the prosecution and hearing witnesses than would be the case if the trial took place in the country in which the crime occurred.

#### White collar crime

Brazil is a party to:

- the 2000 Palermo Convention on organised crime;
- the 2003 Merida Convention on corruption; and
- the 1988 Vienna Convention on money laundering involving drugs.

Foreigners who face prosecution or have already been convicted can be extradited for the crimes covered by these conventions. Where no treaty has been signed with the country that requests the extradition, a promise of future reciprocity via diplomatic means will usually suffice. For example, in 2013 Brazil extradited a Serbian citizen accused of drug trafficking. Where an extradition treaty has been signed, the process is much simpler and the request can be addressed directly to the Brazilian Ministry of Justice.

### **Interpol red notice**

If the local police discover that a person in Brazil is the subject of a red notice, Interpol must immediately be informed so that it can contact the foreign authority that issued the arrest order. However, as of 2013, before such a person can be arrested, a request for his or her provisional imprisonment must be sent from the foreign country to a Brazilian Supreme Court justice for analysis. The country must also state that extradition will be formally requested in 90 days, thereby allowing the necessary time for all relevant papers to be prepared and translated into Portuguese. If the papers fail to arrive within this timeframe, proceedings will be dropped.

As a result, no one can be jailed in Brazil simply because of a red notice against them in the Interpol database and no Brazilian judicial authority can issue an arrest order without a formal request from the country that issued the imprisonment order. Until this happens, the person is free to leave Brazil if he or she so wishes, since no crime has been committed there. However, even if the foreigner marries a Brazilian citizen and has children in Brazil, this will not provide him or her with immunity from extradition.

### **Recent cases**

The situation came to a head in 2010 with a confrontation between the Brazilian Supreme Court and former President Lula<sup>(3)</sup> that resulted in a diplomatic crisis between Italy and Brazil. The court had accepted a request for the extradition of Cesare Battisti, a radical left-wing militant who was convicted in Italy for murders that had taken place during the 1960s, but who had escaped to France and then Brazil. However, after the request had been accepted, Lula (on the last day of his mandate) argued that, according to the Constitution, he had the last word. Therefore, based on ideological issues, Lula decided not to send Battisti back to Italy, claiming that he had not received a fair trial and his life would be put in danger.

To complicate matters, Henrique Pizzolato, who was sentenced to 12 years' imprisonment for money laundering and corruption in his role as marketing director of the Bank of Brazil (the bank owned by the Brazilian federal government at the centre of the *Mensalao* scandal),<sup>(4)</sup> is in Italy. It will be almost impossible for Brazil to confirm his extradition, not only because of the events involving Battisti, but also because Pizzolato has dual citizenship – he is both Brazilian and Italian. Although the extradition treaty signed in 1989 does not forbid the extradition of a national (this forms the basis of the Brazilian authorities' case for him to be sent back), the Brazilian Constitution strictly forbids the extradition of a Brazilian national living in Brazil. Therefore, as reciprocity is the basis of this type of international cooperation, Pizzolato (who used false documents to travel to Italy) is not expected to be extradited. Provided that he stays in Italy, he will be free from serving his sentence.

However, the outcomes of such cases are not always as unsatisfactory. Banker Salvatore Cacciola, the former owner of the failed Banco Marka, left Brazil shortly after the bank's collapse in 1999 for Italy, where he lived for almost a decade. Despite being sentenced to 13 years' imprisonment, his extradition request was denied based on his dual Brazilian-Italian citizenship. However, in 2008 Cacciola travelled to Monaco to visit a boat show, where (as a result of an Interpol red notice) he was arrested and, within two months, extradited to Brazil. He is still serving his sentence in a Rio de Janeiro prison.

*For further information on this topic please contact Roberto Delmanto, Jr at Delmanto Advocacia Criminal by telephone (+55 11 3887 6251), fax (+55 11 3051 6382) or email (robertojr@delmanto.com). The Delmanto Advocacia Criminal website can be accessed at [www.delmanto.com](http://www.delmanto.com).*

### **Endnotes**

<sup>(1)</sup> Interpol uses a system of colour-coded international notices and 'diffusions' to share crime-related information with each member country. This information concerns individuals wanted for serious crimes, missing persons, unidentified bodies, possible threats to public safety and criminals' *modus operandi*. A 'diffusion' is a message sent by one member country to other member countries without a formal review being conducted by Interpol. Frequently, the diffusion is sent to disseminate information immediately,

pending submission and approval of the more formal notice.

(2) Brazil has signed extradition treaties with Argentina (1961), Australia (1994), Belgium (1953), Bolivia (1938), Chile (1935), Colombia (1938), the Dominican Republic (2003), Ecuador (1937), France (1996), Italy (1989), Lithuania (1937), the Mercosul countries (1998), Mexico (1933), Paraguay (1922), Peru (2003), Portugal (1991), Romania (2003), Russia (2002), South Korea (1995), Spain (1988), Switzerland (1932), Ukraine (2003), the United Kingdom (1995), the United States (1961), Uruguay (1916) and Venezuela (1938).

(3) 'Lula' is the popular name given to Luiz Inácio Lula da Silva, the former president of Brazil.

(4) '*Mensalao*' – which roughly translates to 'big monthly payment' – is the popular name given by the media to a recent corruption and money-laundering case before the Supreme Court (Penal Action 470) (for further details please see "Supreme Court cracks down hard on corruption and money laundering").

---

The materials contained on this website are for general information purposes only and are subject to the disclaimer.

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at [www.iloinfo.com](http://www.iloinfo.com).

## Author

**Roberto Delmanto Jr**



---

Tweet 2 | LinkedIn Share 2 | +1 0

© Copyright 1997-2014 Globe Business Publishing Ltd

Online Media Partners

