

Brazil: Law on Extradition of Citizens

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According to the Brazilian Constitution, everyone is equal before the law, without distinction, guaranteeing to Brazilians and foreigners residing in the Country the inviolability of the rights to life, liberty, equality, security, and property.¹ The Constitution also provides that no Brazilian may be extradited except for a naturalized Brazilian, if extradition is requested for a common crime committed prior to naturalization or for proven involvement in unlawful traffic in narcotics and similar drugs, as provided by law.² Additionally, no foreigner can be extradited for a political or ideological offense.³ The Brazilian Federal Supreme Court has original jurisdiction to try and decide extradition requests from foreign States.⁴

Extradition in Brazil is regulated by Decree-Law No. 394 of April 28, 1938.⁵ Article 1 determines that in no case will a foreign state's request for the extradition of a Brazilian citizen be granted.

Law No. 6,815 of August 19, 1980⁶ defines the legal situation of the immigrant in Brazil and further regulates extradition. Article 77(I) determines that extradition must not be permitted when it involves Brazilians, unless the acquisition of nationality takes place after the fact that motivates the extradition request.

Law No. 6,815 is regulated by Decree No. 86,715 of December 10, 1981. Article 110 of this Decree provides that the Department of Federal Police, upon a decision by the Ministry of Justice, has jurisdiction to arrest a person to be extradited⁷ and to deliver the person to the State to which extradition has been granted.⁸

Constitutional provisions preventing extradition of nationals can also be found in Angola, Azerbaijan, Croatia, Guinea Bissau, Iraq, Kazakhstan, Mozambique, Portugal, São Tomé e Príncipe, Ukraine, and Yemen, among other countries. A chart covering 157 countries indicating whether they allow or deny extradition of their citizens and the corresponding legal provision follows.

¹ CONSTITUIÇÃO FEDERAL, art. 5, http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm.

² *Id.* art. 5(LI).

³ *Id.* art. 5(LII).

⁴ *Id.* art. 102(I)(g).

⁵ Decreto-Lei No. 394, de 28 de Abril de 1938, http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del0394.htm.

⁶ Lei No. 6,815, de 19 de Agosto de 1980, arts.76–94, http://www.planalto.gov.br/ccivil_03/LEIS/L6815.htm.

⁷ Decreto No. 86,715, de 10 de Dezembro de 1981, art. 110(I), http://www.planalto.gov.br/ccivil_03/decreto/Antigos/D86715.htm.

⁸ *Id.* art. 110(II).