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OVERVIEW OF THE COLOMBIAN CRIMINAL LAW SYSTEM



Cette publication est aussi disponible en français sous le titre :
Aperçu du système de droit pénal colombien

Este documento también está disponible en Español con el título:
Panorama del sistema penal colombiano

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Cat. No. FR5-183/2022E-PDF

ISBN 978-0-660-42226-8

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This publication is not intended to provide legal or other advice and should not be relied upon in that regard. The reader is encouraged to retain a lawyer, if arrested or detained, and to supplement this information with independent research and professional advice. Laws are subject to change at any time.

CONTEXT

This document is intended to give you basic information on how the Colombian criminal law system functions. It is not a substitute for legal advice, which can only be provided by a lawyer qualified to practise in Colombia. It should also be read in conjunction with the document [A Guide for Canadians Detained Abroad](#).

If you break the laws of another country, you are subject to the judicial system of that country. Being a foreigner or not knowing the local laws is not an excuse. Global Affairs Canada can neither protect you from the consequences of your actions nor override the decisions of local authorities.

The Colombian and Canadian criminal law systems are significantly different. This can increase the stress and practical problems arising from arrest and imprisonment in Colombia.

The Government of Canada will take appropriate steps to ensure you receive equitable treatment under the local criminal justice system. It will seek to ensure that you are not penalized for being a foreigner and that you are neither discriminated against nor denied justice because you are Canadian. It cannot, however, seek preferential treatment for you or try to exempt you from the due process of local law. Just as a foreign government cannot interfere in Canada's judicial process, the Government of Canada cannot interfere in the judicial affairs of another country.

For further information on the services consular officers can and cannot provide, please consult [A Guide for Canadians Detained Abroad](#) and the [Canadian Consular Services Charter](#).

Your choice of legal representation in Colombia can be critically important and should be made with care. Consular officials can provide a list of lawyers who practise in the area of law related to your particular type of case and who may have represented Canadians in the past. They cannot, however, recommend specific lawyers. You may prefer to hire a lawyer who is not on the list. **This decision remains your responsibility.** For further information, please consult the section on hiring and working with a lawyer in [A Guide for Canadians Detained Abroad](#).

ARREST AND DETENTION

Please note: Colombia is an [INTERPOL member country](#). You may be subject to an [INTERPOL notice](#).

If you are caught committing a crime in Colombia, anyone who witnesses the incident may arrest you. Under Colombian law, local authorities must inform you of your rights upon your arrest and you must be brought before a judge within 36 hours in order to validate the arrest in a preliminary hearing. The prosecution may decide to press charges immediately, in order to request a “measure of restraint” (see below). After the prosecution presses charges, the case should be sent to a particular unit of the Office of the Attorney General based on the type of crime committed.

You must inform the authorities if you want them to contact the Canadian embassy in Bogotá to inform the embassy of your detention or arrest. However, should you have any questions concerning the legal aspects of your arrest, contact your lawyer. Consular staff cannot give legal advice.

Under Colombian law, individuals can only be arrested when caught while committing a crime or under a warrant issued by a judge. Judges often issue arrest warrants for foreign nationals as they are considered a flight risk.

MEASURES OF RESTRAINT

If charges are pressed before an arrest takes place, the prosecution may request that a judge impose various measures of restraint on the accused during the preliminary hearing. These measures may be physical, such as imprisonment in a detention centre, or involve electronic surveillance, financial guarantees, or obligations not to leave the country. The judge may impose more than one measure of restraint.

The necessity of these measures is determined according to certain criteria, such as if the person is a flight risk, is a threat to society and/or the victims of the crime under investigation, or is likely to damage or destroy evidence or to intimidate witnesses. Judges will base their decision to impose these measures or not on the available evidence.

These restraining measures may be imposed until a verdict is issued. This could be a long period of time.

Imprisonment is only used as a measure of restraint when the charges that are brought before judges deal with certain subjects, including all narcotics-related charges, and when the felony carries a minimum prison time of 4 years. A request may be made to substitute imprisonment with house arrest on the basis of various circumstances, such as the age of the defendant (over 65 years old), serious illness as subject to the opinion of official physicians, and single mothers or fathers who are heads of their household.¹

A request for substitution of imprisonment cannot be made for certain charges pressed, such as migrant smuggling, aggravated theft, or domestic violence, among others.

Under Colombian law, the right to bail does not exist.

YOUR RIGHTS UNDER THE VIENNA CONVENTION ON CONSULAR RELATIONS

If you are detained or arrested abroad and wish to have Canadian consular officials notified, you should communicate that request clearly to Colombian authorities.

Colombian authorities have an obligation, under the Vienna Convention on Consular Relations, to advise you of your right of access to a consular representative. They are not, however, obliged to inform a Canadian government office of your detention or arrest, unless you ask them to do so.

Under the Convention, Colombian authorities are also required to forward to a Canadian consular post any communication you address to the consular post. This is in accordance with your rights to communicate with, and have access to, a consular official. These rights must be exercised in conformity with the laws and regulations of Colombia.

If you choose to talk to Canadian consular officials, any information you give them will remain confidential, **subject to the provisions of Canada's Privacy Act**. Under the *Privacy Act*, personal information may be disclosed in certain circumstances, such as in cases where such disclosure would clearly benefit you, where the public interest in disclosure clearly outweighs any invasion of your privacy, or pursuant to a court order. Please consult the Consular Services Privacy Notice Statement for more details.

At your meeting with a consular official, **please inform them** if the Colombian authorities did not inform you of your right to request that Canadian officials be advised of your arrest or detention, or if at any time they denied you the right to communicate with, or have access to, a Canadian consular official.

¹ In compliance with Colombian law, in all of these events the beneficiary shall sign a document in which they commit to remaining in the place or places indicated, to not changing residence without prior authorization and to appearing before the authorities when required; additionally, an obligation may be imposed to submit to mechanisms of control and electronic surveillance or to a specific person or institution, as determined by the judge.

PRELIMINARY INVESTIGATION

Once the Office of the Attorney General (Fiscalía General de la Nación) learns that a felony may have been committed, it must open an investigation. If it is a minor crime, known as a querrelable in Colombia, the victim must report the crime directly to the Office of the Attorney General by filing a criminal complaint in order for the prosecution to open an investigation.

During the investigation, the prosecution collects evidence to determine if a crime was committed and to determine if the suspect committed the crime. The Office of the Attorney General can decide whether to close the investigation or to press charges based on the results of the preliminary investigation.

All individuals, whether foreigners or Colombian citizens, have the right to an attorney. Lawyers will usually submit in writing their fees and the services they offer before the client hires them. Fee arrangements vary among lawyers. However, firms generally charge a flat fee, divided into several payments according to the progress of the proceedings. If you cannot afford a lawyer, one will be appointed by the state.

You have the right to participate in the investigation as soon as it begins. If you do not speak Spanish, you must have the assistance of a certified interpreter at all times. If you cannot afford an interpreter, one will be provided by the state. The skills of Spanish-English interpreters can vary greatly, and skilled Spanish-French interpreters are not as easily available.

Evidence obtained through private investigation is permitted in Colombian courts. Therefore, both the victim and the defendant may hire investigators to collect additional evidence to support their cases.

If you are arrested under Colombian law, you have the right to:

- remain silent
- not testify against yourself and your immediate family
- a fair and speedy trial
- attend all hearings and speak freely in them
- appeal all decisions that are not favourable, including the conviction
- have sufficient time and means to prepare an adequate defence
- plead guilty or negotiate a plea bargain

The victim has the right to:

- learn who committed the crime and the circumstances under which it was perpetrated
- justice
- obtain an efficient economic reparation
- **appeal all decisions that are not favourable, including an accused's acquittal**
- attend all hearings and speak freely in them (except during cross-examination of witnesses)

Once a conviction is handed down, the victim may choose to request the opening of a final stage in the proceeding called the comprehensive redress incident (incidente de reparación integral) during which damages can be claimed. If the victim chooses to exercise that right, no civil claim may later be brought before the courts. Settlements can take place at any time during this process.

In Colombia, the Office of the Attorney General is responsible for prosecuting most crimes. The Supreme Court and Congress can prosecute crimes on an exceptional basis, but only when committed by high-ranking public officials.

The prosecution relies on two bodies of investigators in order to gather evidence: the Technical Investigation Team (Cuerpo Técnico de Investigación) and the National Police. In each case, the prosecutor in charge of an investigation coordinates the necessary investigators.

The prosecutor in charge of an investigation can order their agents to undertake actions that restrain privacy or other constitutional rights. Investigative actions in Colombia that affect constitutional rights include searches and seizures, wiretapping, and selective searches in databases.

Results of all investigative actions are presented to the prosecutor in charge of the case, who then decides whether to prosecute. The prosecutor will first press charges in a preliminary hearing, and then indict.

EARLY TERMINATION OF THE PROCESS

The Colombian criminal procedure contains several ways in which a process can end without all ordinary procedural stages having occurred.

Thus, if a preliminary investigation does not conclude with the filing of charges, the prosecutor's office may, as previously mentioned, unilaterally **order the case to be closed**.

Similarly, once the prosecutor's office has formulated charges, but does not find merit to indict as a result of its subsequent investigation, it may request the **preclusion of the investigation** before a trial judge.

On the other hand, at different stages of the criminal proceeding, a defendant may plead **guilty** to the charges brought by the prosecutor's office; this will entail a reduction in the penalty established by law according to the procedural moment in which the acceptance was made, and will mean the subsequent issuance of a conviction. Defendants are advised to consult their lawyers on this topic early on in the case. The last chance for a defendant to plead guilty is at the beginning of the trial. For a guilty plea to be accepted, it must be voluntary and well-informed. Once it is accepted by the judge, the sentence will be rendered.

Likewise, the accused may negotiate a **plea bargain** with the prosecution at any time before the trial, in which a specific penalty or a reduction in the quality of perpetration may be agreed upon: this will also entail a subsequent conviction.²

Finally, Colombian law admits the possibility of negotiation in accordance with the so-called **principle of opportunity**. This form of early termination of the process has to be requested by the prosecutor of the case and can proceed for specific circumstances specified in the law, such as full compensation of all damages caused, serving as witness against other defendants, being extradited to another country for the same criminal act, or even being extradited to another country for a different criminal act whose penalty is higher than what is prescribed by Colombian law.

CRIMINAL TRIAL

Until 2004, Colombia's criminal system was inquisitorial in nature, involving written arguments, very strong powers for the prosecution, a high level of secrecy, and lack of clarity on the rights of individuals. However, in 2005 Colombia adopted an adversarial system similar to Canada's. This system is oral and public, with stricter regulations on the activities the judiciary may undertake. **However, crimes committed before January 1, 2005, will still be prosecuted and tried under the older system.**

If charges are pressed, the indictment will be presented within 3 to 6 months, depending on the complexity of the case, after which the trial will begin. **Under Colombian law there are currently no jury trials.** The criminal procedure in Colombia is strictly oral, and the trial takes place in 3 hearings during separate sessions. Nearly all hearings are public.

During the first hearing, the indictment is read, and evidentiary disclosure takes place, during which the defence obtains the prosecutor's evidence. The second is a pre-trial hearing where the admissibility of evidence is discussed, and the prosecutor obtains the defence's evidence. The third is the formal trial where parties present opening arguments, cross-examine witnesses, present evidence and render closing arguments.

Once the trial is over, the judge will produce a verdict, and the corresponding sentence will be read in a hearing approximately 15 working days later.

The conviction and the acquittal may be appealed. The time for the appeals court to hand down a decision may vary but can take more than 6 months. That decision can be brought before the Supreme Court in exceptional cases through an extraordinary action under Colombian law called *casación* (cassation, a form of appeal).

² Both a guilty plea and a plea bargain will have to be verified by a trial judge: the defendant will be asked if their decision was made with free consent and with knowledge of the consequences.

Disclaimer

Colombian law provides for specific deadlines to carry out several of the stages indicated for the criminal process. However, the congestion in the Colombian criminal system has meant that, oftentimes, these deadlines are not complied with and, for that reason, they unfortunately end up being longer than what is set forth in the law.

ABBREVIATED PROCEDURE

Since 2018, Colombian law has admitted that some crimes could be sorted out through an abbreviated procedure, with the aim of speeding up the criminal process.

In this sense, this procedure must be applied for all those crimes previously referred to as *querellables* (minor crimes that require a victim to file a complaint), as well as other crimes such as falsehood in a private document or aggravated theft.

In this shortened procedure, instead of a preliminary hearing where the prosecutor presses charges against a defendant, and afterwards an indictment hearing takes place, the prosecution will simply present a written indictment as well as all evidence to the defendant, without a hearing. Afterwards, a concentrated hearing will be held in which observations will be made on the written indictment and then the admissibility of evidence will be discussed, in the same way that it would happen in a pre-trial hearing in the ordinary procedure.

Finally, the trial will occur under the same rules as in the ordinary procedure: however, instead of the judge reading the sentence in a hearing within 15 working days, they will produce a decision in written form within 10 working days.³

CONSTITUTIONAL ACTION OF TUTELA

The *tutela* action is a mechanism given by the Constitution of Colombia to everyone, through which persons may claim before a constitutional judge the immediate protection of their fundamental constitutional rights when these are violated or threatened by any public authority's action or omission of action.

The criminal procedure entails events that are subject to a strict regulation by Colombian law. Therefore, if by any chance a judge made a mistake in part of the prosecution, your constitutional right to "due process" could be affected.

While the *tutela* action does not need to be presented by a lawyer, it is recommended that an attorney with a deep knowledge of Colombian law and criminal procedure help you with establishing the facts pertaining of a violation to your constitutional rights and, accordingly, present a *tutela* action.

³ An appeal to that decision could be presented within 5 working days in written form.

TRANSFER TO A CANADIAN PRISON

There is no treaty in place between Canada and Colombia for the transfer of offenders to a Canadian prison. You can make a request in writing that Canada enter into an administrative arrangement for transfer with Colombia, which would be subject to the approval of Canadian and Colombian authorities. Transfers are considered on a case-by-case basis and are not automatically granted. For further information on transfer requests, please consult [A Guide for Canadians Detained Abroad](#).

Since 2017, Colombian law has specified a procedure in which a foreign citizen sentenced and imprisoned in Colombia can make a request to the Colombian authorities for the benefit of a transfer to their national country. For this to happen, the convicted person must request the benefit in written form from the Colombian Minister of Justice and Law. The request can be sent by the sentenced person directly, through the Embassy of Canada in Colombia or through the National Penitentiary and Prison Institute (INPEC).

In order for this application to be studied, it must fulfill the following requirements:

- the sentence to be fulfilled does not conflict with the legal provisions of Canada
- the crime for which the Canadian citizen was sentenced is not of political or military nature, nor a crime against humanity
- the crime for which the Canadian citizen was sentenced also constitutes a crime in Canada
- the sentence that condemned the Canadian citizen in Colombia is enforceable and without any recourse
- there are no pending processes in Colombia
- Canada is committed to continuing the enforcement of the sentence, not to modify or cancel it
- Canadian law allows for the transfer without the existence of a treaty in the matter

The processing of a request for transfer is free and does not require intermediaries. The request for a transfer also does not require the intervention of a lawyer, since all documents needed for the study are to be sent from the country of conviction, through diplomatic channels.

A request for transfer can be filed as many times as it may be necessary, as long as the reasons for which it was previously denied have changed.

Keep in mind that the submission of an application does not ensure its approval. Under the discretion of sovereignty, an application may be refused for reasons of national convenience, in spite of complying with the above-noted requirements.

ADDITIONAL RESOURCES

- **A Guide for Canadians Detained Abroad**
www.voyage.gc.ca/publications/imprisonment-emprisonnement-eng.asp
- **Bon Voyage But...Essential Information for Canadian Travellers**
<http://www.voyage.gc.ca/publications/bon-voyage-eng.asp>
- **Canadian Consular Services Charter**
<https://travel.gc.ca/assistance/emergency-info/consular/canadian-consular-services-charter>
- **Consular Services Privacy Notice Statement**
<https://travel.gc.ca/assistance/emergency-info/consular/framework/privacy>
- **Embassy of Canada to Colombia**
www.canadainternational.gc.ca/colombia-colombie/
- **INTERPOL member country**
www.interpol.int/Member-countries/World
- **INTERPOL notice**
<http://www.interpol.int/INTERPOL-expertise/Notices>
- **Privacy Act**
<http://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>
- **Travel advice and advisories for Colombia**
<http://travel.gc.ca/destinations/colombia>
- **Vienna Convention on Consular Relations**
https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf

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