DECREE No. 1860 OF 18 AUGUST 1989

Establishing measures to restore public order

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA,

in exercise of the powers conferred upon him by article 121 of the Political Constitution and pursuant to Decree No. 1038 OF 1984;

WHEREAS:

Decree No. 1038 of 1984,[ 1 ] / which declared public order to be disrupted and martial law established throughout the territory of the Republic, referred to the "persistent drug-trafficking activities of antisocial groups that are seriously disturbing the normal functioning of institutions, in criminal contempt for Colombian society, with consequences for the safety of its citizens, public peace and health and the national economy", activities and disturbances that are still continuing;

Since, by its very nature, drug trafficking is a criminal activity of international dimensions and effects, in order effectively to combat it there is a need for joint action by the authorities of those countries that are afflicted by this terrible scourge, through the use of the legal device of extradition

In its ruling of 17 February 1987, the Criminal Cassation Chamber of the Supreme Court of Justice stated that, in the country's legal tradition, the adoption of administrative procedures in matters of extradition had predominated, and for that reason "the involvement of any other branch of the authorities serves no useful purpose", a position consistently adopted in recent rulings pronounced by the aforesaid Criminal Cassation Chamber;

The crime of drug trafficking has assumed new and increasingly dangerous forms that threaten the core of society and jeopardize the institutional stability of the country, thus calling for special, expeditious and effective legislation to halt its harmful activities and its disastrous consequences for public order;

The legal instruments currently in force do not respond adequately to the need to combat the expansion that this crime has undergone on an international scale;

HEREBY DECREES:

ARTICLE 1.

While public order continues to be disrupted and the national territory remains under martial law, the effects of article 17, subsection 2, of the Penal Code shall be suspended in all matters concerned with drug-trafficking and related offences. Consequently, for the purposes of extradition of Colombian nationals or foreigners sought in connection with those offences, the procedure provided for in the Code of Criminal Procedure may be applied, subject to the amendments laid down in this Decree.
ARTICLE 2.

The granting of extradition of Colombian nationals or foreigners in connection with drug-trafficking and related offences shall not require any prior pronouncement by the Penal Chamber of the Supreme Court of Justice.

ARTICLE 3.

Detained or arrested persons liable to extradition under the terms of this Decree shall be held at the disposal of the Ministry of Justice.

ARTICLE 4.

The provisions contained herein shall apply to extraditions in respect of drug-trafficking and related offences for which the requests are received subsequent to the entry into force of this Decree.

ARTICLE 5.

In the enforceable decision granting extradition, the Government, comprising the President and the Ministers forming part of the National Narcotics Control Board, may order that the extradited person be handed over immediately to the requesting State even if he was being prosecuted in Colombia for any other offence prior to receipt of the extradition request.

With regard to convicted offenders, the provisions of article 660 of the Code of Criminal Procedure shall apply.

ARTICLE 6.

In the cases referred to in this Decree, any person may be extradited even if he is being prosecuted in Colombia for the same crime for which he is being sought, provided that no sentence has been passed.

ARTICLE 7.

Persons whose extradition is sought in connection with drug-trafficking or related offences shall not be entitled to the benefit of conditional release or conditional sentencing in respect of any other legal proceedings being conducted in Columbia.

ARTICLE 8.

The granting of extradition shall be subject to the following restrictions:

(a) If the drug-trafficking or related offence for which extradition is being requested is punished by the death penalty under the laws of the requesting State, extradition shall be granted only if the requesting State guarantees that it will not impose such penalty;
(b) In no circumstances shall the extradition of a Colombian national be granted if the requesting State does not fully guarantee that it will not impose a sentence of imprisonment exceeding thirty (30) years;

(c) The requesting State shall further guarantee that the extradited person's human rights will be respected within the context of his punishment in a non-discriminatory manner in relation to convicted offenders in his own country;

(d) Costs incurred for the translation of documents and for the conveyance of the person sought shall be borne by the requesting State.

ARTICLE 9

The Government may pronounce the decision referred to in article 659 of the Code of Criminal Procedure even if the person sought has not been arrested or detained. However, in such event, prior to the pronouncement of such decision, the Ministry of Justice shall summon that person to prepare a defence in the manner laid down in article 378 of the Code of Criminal Procedure.

ARTICLE 10.

This Decree shall enter into force on the date of its publication and shall supersede any provisions contrary thereto.

TO BE PUBLISHED AND IMPLEMENTED

Bogotá, 18 August 1989