

Ext 1,085

Cesare Battisti Extradition: Decision to Extradite an Alien at the Request of another Country

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

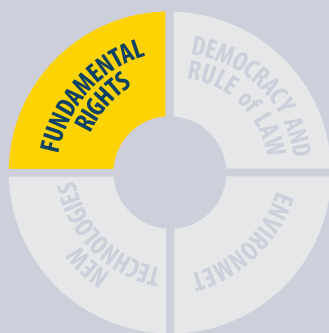
Rapporteur:

Justice Cezar Peluso

Decision Date:

December 16, 2009

Matter:



CASE SUMMARY

Italy filed this Extradition Request (Ext) seeking the surrender of Cesare Battisti, an Italian citizen imprisoned in Brazil and convicted of four counts of murder in his country of origin. The defense claims that these proceedings are null because they are based on political persecution. The Federal Supreme Court concluded that the extraditee had been convicted in his home country of common crimes without political overtones, in a trial that complied with the due process of law. Thus, there was no evidence of a current risk of political persecution against him. For these reasons, the Court approved the extradition.

Despite the STF's decision, the President of the Federative Republic of Brazil denied the extradition. Upon further request, the Court clarified that the ultimate decision on extradition is a discretionary political act of the President, who is only obliged to comply with what the international treaty states on the matter.

LEGAL REASONING

1. In extradition proceedings, the Judicial Branch is responsible only for analyzing the validity of the acts supporting the request and compliance with due process of law. The Judicial Branch does not have the power to impose the decision to handover the extraditee to the Head of State. The Executive Branch, in turn, exercises political judgment in the case and assesses security, humanitarian matters, and international relations issues.
2. Extradition is an act of sovereignty carried out by the Head of State in accordance with article 84, item VII of the 1988 Federal Constitution. The decision to extradite a person to another country is a political-administrative act that falls to the President of the Republic.

DECISION OF THE COURT

The Federal Supreme Court granted the request to release Cesare Battisti and upheld the decision of the President of the Republic of Brazil to deny extradition, as it was an act of sovereignty.

ADDITIONAL NOTES

Cesare Battisti was a member of the Italian militant group Armed Proletarians for Communism (PAC). During the 1970s, a period known in Italy as the “Years of Lead”, the PAC was accused of committing violent crimes as part of its political struggle against the Italian State. The final act of the President of the Republic of Brazil, who refused to extradite Battisti to Italy, took place in 2010. The case changed course in 2018, after the elections, when the new President of the Republic revoked the denial. Battisti fled Brazil but was captured in Bolivia in 2019 and extradited directly to Italy.

