



Description of extradition procedures in Switzerland

(art. 17 of the Decree on International Mutual Assistance in Criminal Matters)

1. Extradition treaties (bilateral treaties, European Convention on Extradition etc.) are generally taking precedence over national law, especially over the Federal Act on International Mutual Assistance in Criminal Matters (IMAC), dated 20 March 1981. Treaties govern the Contracting States duties in extradition matters. IMAC applies if it provides a more favourable disposition for the granting of legal assistance or if, in a particular case, no treaty exists. IMAC and the Decree on International Mutual Assistance in Criminal Matters (O-IMAC) both apply to the extradition procedure itself. The most important dispositions of IMAC and O-IMAC are described herein (pertinent articles are cited in parentheses). The integral texts of the relevant treaty as well as of IMAC and O-IMAC are available in German, French or Italian upon request.

While the Federal Office of Justice (FOJ) is the competent authority for extradition matters, cantonal authorities assist in conducting extradition procedures (art. 16 IMAC).

2. You have the right to appoint a trial attorney of choice to act on your behalf (21 IMAC).

You are personally responsible for your lawyers fees. However if for some reason you are not in a position to pay these fees, you or your lawyer may apply for assistance from the FOJ. We can supply you or your lawyer with the appropriate application form. If you have already agreed to a simplified extradition according to Article 54 IMAC and in so doing have had the services of a lawyer, you may still make an application. Remuneration of the appointed legal counsel is determined by law and is limited to essential acts of representation. The appointment of legal counsel is only valid for the extradition procedure before the FOJ. In an appeal procedure, such appointments are made by the competent Court of Appeal. Please be informed that the appointment of legal counsel in the context of a cantonal or national court case has no relevance for the extradition procedure.

In the exceptional case that the accused person does not appoint a lawyer to represent him or is physically or psychologically unable to do so, then the FOJ can appoint a legal counsel when it is in the interests of the accused.

Upon request, contact with the consular representative of your country can be arranged (16 O-IMAC).

3. In extradition matters, detention is the rule (art. 50 para. 3 and art. 51 IMAC). Conditions for provisional release are stricter than in cases of detention pending trial for Swiss charges. However, if the formal request for extradition is not submitted within the deadline provided for in the applicable treaty or IMAC, the FOJ will order your immediate release.

Against a warrant of arrest pending extradition or any other FOJ decision concerning the arrest, an appeal may be lodged within 10 days to the Appeal Chamber of the Federal Penal Court (art. 48 para. 2 IMAC and art. 28 para. 1e Federal Penal Court Act).

4. A request for extradition must contain as detailed information as possible on the person subject to proceedings. It must also contain the name of the requesting authority, the subject matter, the reason for the request as well as the legal qualification of the alleged offense. Furthermore, the request must be accompanied by a summary of the relevant facts of the case, a copy of the relevant penal dispositions in the Requesting State and an original or officially certified copy of the final judgment or the warrant of arrest (art. 28 and art. 41 IMAC).
5. A request for extradition will be granted if at least one of the offences charged is considered punishable and extraditable both in Switzerland and the Requesting State.

A request for extradition will be denied if the foreign procedure does not meet the standards set out in the European Convention for the Protection of Human Rights or if it is carried out to prosecute or punish you on account of your political opinions, your belonging to a certain social group, your race, religion or nationality (art. 2 IMAC). Extradition will also be denied if the charge against you is of a political nature, if it concerns your not fulfilling your military duty or appears to be directed against the national defense or military strength of the Requesting State (art. 3 IMAC). However, the denial for political reasons may not be possible in certain cases (art. 3 para. 2 IMAC). Extradition will also not be granted if you were acquitted in Switzerland for the same offences or if you were already sentenced and have served the penalty.

Where no other rules have been set down (see chapter one), extradition can be denied if the alleged offence is subject to the jurisdiction of the Swiss courts (art. 35 and 36 IMAC), if the offence is time-barred (art. 5 IMAC) or if the accusation is an offence presumably aiming at reducing fiscal dues or infringing regulations concerning currency-, trade- or economic-political measures (art. 3 para. 3 IMAC). Under certain conditions an extradition can be granted for tax-fraud (art. 3 para. 3b IMAC). Extradition can also be refused, if you are able to immediately and conclusively furnish evidence that you were not at the scene of the offence when it allegedly occurred (art. 53 IMAC).

6. If you are opposed to extradition, the reasons for your objection may be raised during your personal interrogation (art. 52 IMAC). Questions of guilt and facts are not examined in extradition procedures. Before the FOJ renders a decision regarding the request for extradition, reasonable time will be given to you for written comments (art. 55 IMAC). Additionally the FOJ may use your personal property to cover procedural costs (art. 62 para. 2 IMAC).

7. If you are willing to consent to an extradition and explicitly renounce to the formal extradition procedure, the FOJ may grant simplified extradition (art. 54 IMAC). For reasons of proportionality and if such waiver is made early after the arrest, the FOJ may renounce to raise procedural costs.

8. The FOJ renders decisions on extradition matters (art. 55 para. 1 IMAC).

The Federal Penal Court renders decisions regarding the objection of political character (art. 55 para. 2 IMAC).

9. The decision of the FOJ is subject to appeal to the Appeal Chamber of the Federal Penal Court within 30 days from notification (Art. 25 IMAC).

Appeals against decisions of the Federal Penal Court are only admissible if the matter is of particular significance (art. 84 Supreme Court Act). The FOJ may also appeal against decisions of the Federal Penal Court.

Extradition may be executed if you renounce to lodge an appeal or if you do not inform the FOJ within five days after notification of a decision granting extradition (either from the FOJ or the Federal Penal Court) that you have the intention to lodge an appeal (art. 56 IMAC). Extradition may also be executed if you do not respect the deadlines for an appeal.

10. An extradition is subject to the rule of specialty. This means that the Requesting State may only detain, prosecute or sentence you for the offences extradition was requested and granted for (art. 38 para. 1 IMAC). You may choose to waive the application of this rule. It does also not apply to offences you may commit after extradition. If you have not left the territory of the Requesting State within 45 days after your conditional or final release or if you return to this territory after leaving, the rule of specialty no longer applies (art. 38 para. 2 IMAC).

A request for extradition may also be granted for further offences if the Requesting State sends a corresponding extension request (art. 39 IMAC).