



Extradition

1. Definition

Extradition means the *surrender by force of a wanted person by the requested state to the requesting state for the purpose of prosecution (1) or the execution of a sentence (2)*:

1. The investigating authorities make inquiries about a person suspected of committing several white-collar crimes. The person concerned does not appear for a hearing, so they are put on the wanted list in Switzerland. A search request is also submitted to other countries. If the person is arrested abroad, their extradition may be requested with a view to concluding prosecution and to bringing them to court for trial.
2. A drug dealer, convicted and sentenced to several years in prison, escapes from the facility where he is being held. He is then put on the wanted list at home and abroad. If arrested abroad, extradition may be requested in order that the drug dealer can serve the remainder of his prison sentence.

Extradition should be distinguished from *expulsion* and – where the foreign national fails to leave the country as ordered – from *forced deportation* by the police. Such action on the part of the immigration authorities is taken in the interests of the security of the country in which the person is staying. Their expulsion is ordered independent of any request from a third state.

2. Extradition proceedings in Switzerland

Search and detention

An extradition case generally begins with a request from another state for a wanted person to be located. This request will take the form of a notice in the Schengen Information System (SIS), from a national Interpol bureau or directly from a ministry of justice. The Federal Office of Justice (FOJ, Extraditions Unit) then examines whether or not the request contains all the necessary information and extradition is actually possible in the case in question. If the individual's abode in Switzerland is known, the FOJ will order the competent police force

Extradition

directly to detain the wanted person. If their abode is not known, the FOJ may have the person entered in the RIPOL automatic search system for arrest (unless the person concerned is already entered in the SIS).

When the wanted person is detained, evidence and goods acquired as a result of the offence will also be seized. The cantonal authorities will inform the FOJ immediately of the detention and of any evidence or goods which have been secured. The cantonal authorities will give the detainee a legal hearing to respond to the foreign country's search request, and will inform them of their right to contact the consulate of their home country in Switzerland, as well as to appoint a lawyer of their choice.

Simplified proceedings apply if the wanted person declares at the hearing that they agree to be extradited immediately. In such cases, the FOJ may approve the extradition immediately and arrange for its execution. A simplified extradition may be completed within a few days.

Regular extradition procedure

If the wanted person opposes their extradition, the FOJ will generally issue an extradition warrant. At the same time, it will also invite the requesting state to submit a formal extradition request. In the absence of any treaty provisions to the contrary, the requesting state must submit the formal extradition request to the FOJ within 18 days. This time limit may be extended up to 40 days. If the formal extradition request is received by the FOJ in due time, the wanted person will remain in custody until the extradition proceedings have been concluded. This rule enables Switzerland to fulfil its extradition obligations under international treaties. If the extradition request is not received within the deadline, the detainee will be released.

The competent cantonal authorities will issue an extradition warrant on behalf of the FOJ and give the person concerned a legal hearing to respond to the extradition request. The wanted person may appeal against the extradition warrant to the Federal Criminal Court. Both the wanted person and the FOJ may appeal against its decision in turn to the Federal Supreme Court. The wanted person also has the right to make a petition for release from custody at any time during the extradition proceedings.

Based on this hearing and any statement made by the wanted person's lawyer, the FOJ will take an *extradition decision* in its capacity as a court of first instance. The FOJ will examine whether or not the formal and material conditions for extradition are fulfilled. Specifically, it will clarify whether the offence that the request alleges has been committed would also be

Extradition

punishable under Swiss law. Questions of guilt and facts are not examined as part of extradition proceedings, i.e. the FOJ does not examine whether or not the wanted person actually committed the offence.

The wanted person may lodge an appeal with the Federal Criminal Court within 30 days of the extradition decision being served. This court will rule on the appeal after the FOJ has stated its position. An appeal against the decision may be lodged with the Federal Supreme Court in “particularly important” cases – specifically where there are indications of significant shortcomings in criminal procedure in the requesting country.

Execution

The FOJ will order the extradition to be carried out if the extradition decision has become legally enforceable or if the wanted person has not given notice of an appeal against the decision within five days of it being served. In the case of neighbouring countries, the wanted person will generally be handed over at the border. Extraditions to other countries will take place by air. Evidence or goods acquired as the result of an offence will be handed over at the same time.

Regular proceedings may take up to a year or more, especially in complex cases and when all possible channels of appeal are used.

3. Swiss extradition requests

The FOJ (Extraditions Unit) will submit Swiss requests to other countries at the request of a cantonal or federal prosecution or enforcement authority. It distributes search requests via the SIS or Interpol. If the wanted individual's whereabouts are known or suspected, the search request may be sent directly to the state where they are thought to be.

If the wanted person is arrested, the FOJ must submit the formal extradition request to the requested state within the prescribed time. Depending on the treaty provisions which apply, the request will contain information on the wanted person, a warrant for their arrest or a legally valid and enforceable judgment, the applicable provisions of criminal law, any evidence, and a translation of the documents. The FOJ advises the competent Swiss authorities on putting these documents together.

Extradition proceedings abroad are governed by the law of the state in question. Only a small

Extradition

number of countries have a simplified extradition process like that in Switzerland.

4. Principles governing extradition

Swiss extradition proceedings are governed by the Federal Act on International Mutual Assistance in Criminal Matters (IMAA). The Act permits extradition even where no corresponding treaty obligation exists. Cooperation with European and many non-European states is based largely on the European Convention on Extradition, as well as on bilateral extradition treaties. These treaties oblige the states concerned to extradite wanted persons if the corresponding conditions are met. One of the most important conditions is the seriousness of the offence. For example, the European Convention on Extradition provides for extradition if the offence is punishable by a custodial sentence of at least one year. Furthermore, the actions of the perpetrator must be punishable in both states (*principle of dual criminality*). However, the offence does not have to be defined in the same terms in both states: for example, what is classified as theft abroad may be regarded under Swiss law as embezzlement.

Under the *principle of speciality*, the extradited person may be prosecuted, held in custody or extradited on to a third state only for those criminal offences that were committed prior to their extradition and on the basis of which the extradition was approved. Once extradition has taken place, the requested state may nonetheless approve an extension to the criminal prosecution on the basis of a subsequent application. Some states also permit the wanted person to waive the principle of speciality.

If the same person is sought by several states, extradition may be granted to all of those states, provided that the requirements are fulfilled. The extradition treaties do not rule conclusively on the state to which the wanted person will be handed over first. The requested state must take into account the seriousness of the offence(s), where the offence(s) was(were) committed, the dates of the extradition requests or the possibility of onward extradition. The offender's native country is not generally given priority if it does not extradite its own nationals.

5. Refusal of extradition

Switzerland does not grant extradition for *political offences*, such as membership of an illegal

Extradition

party. Genocide, the hijacking of aircraft or the taking of hostages are expressly not considered to be political offences. Where the wanted person claims that they are being pursued on political grounds, the Federal Criminal Court will decide, upon application from the FOJ as the court of first instance, on whether or not the political offence defence can be accepted. The same jurisdictions apply if indications emerge while the extradition request is being processed that criminal proceedings are being brought forward for the sole purpose of persecuting the wanted person on political grounds.

Extradition is also refused if proceedings abroad contradict the principles of the European Convention on *Human Rights*, or if they are carried out to prosecute or punish a person on account of their political opinion, their membership of a certain social group or nationality, their race or religion. However, it is not sufficient for the wanted person to claim that they are at threat because of a generally sensitive human rights situation in the requesting state. Rather, the person must demonstrate that they, specifically, would be subject to an inhuman or degrading sentence or inhuman or degrading treatment if they were to be extradited. Where a minimal residual risk exists that the fundamental rights of the wanted person might be violated if they were extradited, the FOJ will demand effective and verifiable guarantees from the requesting state, such as permission to make unannounced prison visits and to have criminal proceedings monitored by the Swiss representation.

Although the possibility of political persecution is examined in extradition proceedings, the asylum authorities decide on any application for asylum in separate proceedings. Where asylum proceedings are in progress, a wanted person's extradition to their country of origin will be approved only once a decision rejecting their request for asylum has become legally enforceable. In certain individual cases, asylum proceedings may be referred to the Federal Supreme Court so that parallel asylum and extradition proceedings can be handled together at this level, thereby avoiding contradictory asylum and extradition rulings.

Purely *military offences* are also excluded from extradition. Military offences are, for example, insubordination or desertion. An ordinary criminal offence (such as rape) committed by a member of the armed forces is not considered a military offence.

Extradition on the grounds of *fiscal offences* will be approved only in particularly serious cases. The terms of cooperation under the Schengen Agreement also provide for extradition owing to offences in the realm of consumer taxes, value-added tax and customs duties. A fiscal offence is not deemed to have been committed in cases in which perpetrators of subsidy fraud have money which is not due to them paid out to them under false pretences

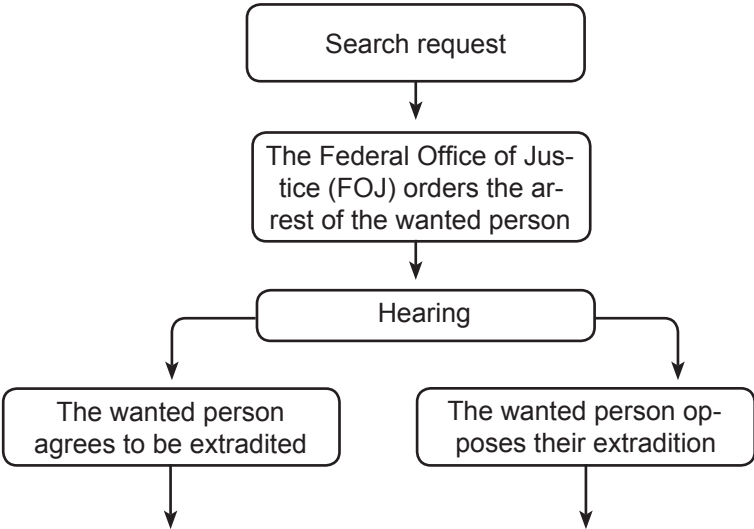
Extradition

by the tax authorities, for example.

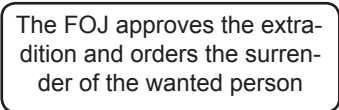
Like many other states, Switzerland reserves the right to refuse to extradite its *own nationals*. To avoid a prosecution loophole in such cases, the requesting state may ask the wanted person's home state to conduct criminal proceedings on its behalf (see "Criminal prosecution on behalf of another state" factsheet).

As a rule, criminal proceedings that are already pending in the requested state for the same offence take precedence over extradition. Furthermore, an existing conviction for the same offence in the requested state rules out extradition, in accordance with the "non bis in idem" principle. Extradition will be granted in the case of prosecution or sentence execution relating to offences for which the statute of limitations has already expired in the requesting state only if corresponding provision is made in the treaty between the two states concerned.

Extradition proceedings in Switzerland



Simplified proceedings



Ordinary proceedings

