



Status as at October 2015

Information for foreign citizens sentenced in Switzerland

based on the

European Convention on the Transfer of Sentenced Persons of 21 March 1983

The Convention on the Transfer of Sentenced Persons of 21 March 1983 (referred to below as the 'Convention') enables persons given a sentence which deprives them of liberty (custodial sentence or restriction of liberty order) outside their home state to return to their home state to serve that penalty, subject to the fulfilment of certain conditions. It is designed to make it easier for these individuals to reintegrate into society. However, the Convention *does not impose any obligation on member states to grant a request for the transfer of a sentenced person.*

This information sheet is aimed at foreign nationals who have been given a sentence in Switzerland that restricts or deprives them of liberty, and who would like to serve out the remainder of that custodial sentence or restriction of liberty order in their home state. It contains a general overview of the content and application of the Convention, but cannot take the particular aspects of a specific case into consideration. The Federal Office of Justice in Switzerland (see point 3a for the address), or the competent authorities in the home state (also referred to below as the 'administering state') may be able to provide further information.

General information on the transfer of sentenced persons is also available on the internet¹.

1. General conditions of transfer

A transfer requires the following conditions, in particular, to be met:

- As a rule, citizenship of the administering state
- The Swiss criminal judgment must be final and enforceable
- When the request for transfer is received, there will generally be at least six months of the sentence still to be served
- The criminal acts or omissions concerned would also be punishable under the law of the administering state
- The competent Swiss and foreign authorities agree to the transfer, which both expect to help the sentenced person reintegrate more successfully into society
- The sentenced person consents to the agreed transfer.

¹ General information: www.bj.admin.ch (Topics: Security – International mutual legal assistance – Mutual legal assistance in criminal matters – Transfer of sentenced persons). Information sheets and legal foundations: www.rhf.admin.ch (Strafrecht – Wegleitungen und Checklisten / Rechtliche Grundlagen) (d/f/i)

2. Effects of the transfer

a) *Determining the remaining sentence to be served after transfer*

The scope of the penalty which must still be served after transfer depends on the procedure that the administering state uses to enforce the Swiss criminal judgment. The Convention essentially provides for two possible approaches here:

Continued enforcement

If enforcement is continued, the nature and duration of the sentence passed in Switzerland will generally be adopted unchanged by the administering state. The remaining sentence that must be served in the administering state following the transfer thus corresponds to that which would still have to be served in Switzerland.

Example: In Switzerland, the person concerned has been given a five-year custodial sentence for dealing several kilos of cocaine. They have already served two years of this sentence when they are transferred. In this case, the remaining three years of the sentence will be enforced after the transfer.

However, if the nature and duration of the sentence handed down in Switzerland is incompatible with the law of the implementing state, the sentence may, as an exception, be amended to the highest penalty provided for such offences under the law of that state.

Conversion of the sentence

With this procedure, the competent authorities in the administering state conduct judicial or administrative proceedings to convert the original Swiss sentence into a judgment passed by the implementing state (conversion / exequatur proceedings). In such proceedings, they are bound by the facts of the criminal offence, in so far as they can be determined from the Swiss judgment, but both the nature and severity of the penalty may be set independently. The status of the sentenced person under criminal law may not be impaired, however.

Example: In the sentencing state (Switzerland), the person concerned has been sentenced to three years in custody for repeated theft. The administering state now commutes the original penalty into a custodial sentence of two and a half years. If, at the time of transfer, one and a half years have already been served, for example, then a remaining sentence of one year will be enforced in the administering state, up to the final end of the sentence.

The Swiss authorities require that the procedure to determine the custodial sentence or order that is still to be served in the administering state be conducted before any transfer takes place. This is the only means of ensuring that all concerned are clear about the nature and scope of this remaining sentence. Exceptions to this rule would appear justified only in those cases in which it can be ruled out that a remaining sentence or order determined only after transfer will place the sentenced person in a much better position. Indeed, a situation in which someone has their sentence significantly reduced simply because they have been transferred cannot be justified in comparison with those individuals who have had to serve their entire sentence in Switzerland.

b) *Specific questions*

- Any remissions of sentence granted by Switzerland prior to transfer will be taken into consideration. Time spent on remand in Switzerland, which is deducted from the final sentence, will generally also be deducted in the administering state.
- After the transfer has taken place, both Switzerland and the administering state are able to pronounce pardons, amnesties, etc.
- Following transfer, the sentence is enforced according to the law of the administering state. For example, the conditions for release on parole are governed by this law, even if parole would have been possible at an earlier stage in Switzerland.
- The authorities in the administering state are generally able to detain a person in custody, prosecute and sentence them for offences which are not related to their transfer.
- Should new facts come to light which justify a review of the criminal judgment, only Switzerland is able to decide on any application to reopen a case.
- If the sentenced person is granted a full release in the administering state, for example after serving the remainder of their sentence, or as the result of a pardon or amnesty, and they then return to Switzerland, the sentence passed here, or the remainder of it, no longer needs to be served.

3. Transfer procedure

a) *Request for transfer*

Competent authorities

The request to be transferred may be submitted to the following authorities:

- The cantonal authorities responsible for enforcing the criminal judgment
- The Federal Office of Justice FOJ, Extraditions Unit, Bundesrain 20, 3003 Bern
- The competent authority of the administering state, for example through the diplomatic or consular representation of that state in Switzerland.

Content of the request for transfer

Requests to the Federal Office of Justice should be made by completing the enclosed application form truthfully.

If the application is to be submitted to the competent authority in the administering state, the enclosed application form may help with wording if that authority does not provide its own specific application form.

b) *Exchange of information and transfer documents*

If a transfer is being considered in a specific case, the competent authorities in Switzerland and the administering state will exchange the information they need to make their decision, such as personal details, the specific points of the judgment, information on how the sentence has been enforced in Switzerland to date, and on any further enforcement in the administering state.

c) Decision

In Switzerland, responsibility for the decision on transfer lies with the Federal Office of Justice, in cooperation with the competent cantonal authorities.

However, *no obligation on member states to grant a request for the transfer of a sentenced person can be derived from the Convention*. Furthermore, neither the Convention nor Swiss law provides for any right of appeal against a refusal of the request. The competent authorities in Switzerland and the administering state may therefore reject a request a request for transfer without stating their reasons.

Should it emerge from the exchange of information and documents that both states support a transfer, the sentenced person will then be informed of the details. As soon as the sentenced person has given their consent on the basis of the information they have been supplied, the Federal Office of Justice will issues a formal transfer decision and the transfer becomes enforceable. From this point onwards, the person who is to be transferred can no longer revoke their consent.

d) Execution of the transfer decision

Once the transfer has become enforceable, the details of its execution (date, location of transfer, etc.) will be arranged with the administering state.

e) Duration of proceedings

Transfer proceedings may involve time-consuming investigations. Such proceedings will generally take between several months and one year to complete.

f) Costs

The national law of the administering state may provide that the sentenced person must pay a share of the costs, such as those incurred for the transfer proceedings, for execution or for travel.

g) Other orders

Transfer to serve out other orders may not be possible in dealings with certain states owing to a lack of legal basis or the appropriate facilities. In some cases, it may be feasible only after long and detailed investigations.

Request for transfer

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from Switzerland to (home state or state of previous residence)

Personal details

Surname:

First name:

Date of birth:

Place of birth:

Home state:

Last place of residence prior to arrest:

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Current address:
(prison, internal prison reference)

Details of the judgment / sentence

Date of arrest:

Ruling court:

Date of judgment:

Criminal offences underlying judgment:

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Penalty:

Final release date;
(i.e. not including parole)

Reasons for application

(Reasons supporting more effective social reintegration in the home state: information on personal and family relationships with the home state, etc.)

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Place, date:

Signature of applicant:

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