



As at 25 May 2016

Description of extradition procedures in Switzerland

(Art. 17 of the Ordinance on International Mutual Assistance in Criminal Matters)

1. Extradition treaties (bilateral treaties, the European Convention on Extradition etc.) take precedence over national law, specifically over the Federal Act of 20 March 1981 on International Mutual Assistance in Criminal Matters (IMAC, SR 351.1). Treaties set out the contracting states' duties in extradition matters. The IMAC applies where it extends beyond such instruments to enable legal assistance to be granted more easily or if no treaty exists in a particular case. The IMAC and the Ordinance on International Mutual Assistance in Criminal Matters (O-IMAC, SR 351.11) both apply to the extradition procedure itself. The most important provisions of both the IMAC and the O-IMAC are described in this guide, with the relevant articles given in brackets. The full texts of the international treaty applicable to your case, and the O-IMAC, are available in German, French or Italian upon request. The English text of the IMAC is available online in the Swiss government's [classified compilation of legislation](#).

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

All submissions and appeals in connection with extradition proceedings must be made in an official language of the Swiss Confederation: German, French or Italian.

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

You are personally responsible for your lawyer's 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 simplified extradition under Article 54 IMAC, and in so doing have had the services of a lawyer, you may still make an application. The fees that the FOJ will pay for the appointed legal counsel are determined by law and are limited to essential acts of representation. FOJ approval for legal aid in this way is only valid for the extradition procedure before the FOJ. In an appeal procedure, such decisions are made by the competent court of appeal. Please note that the court appointment of legal counsel in the context of a cantonal or national prosecution has no relevance for the extradition procedure.

In exceptional cases in which the accused person decides not to appoint a lawyer to represent them, or is physically or psychologically unable to do so, the FOJ may still appoint a legal counsel if this is in the interests of the accused.

Contact with the consular representative of your country in Switzerland can be arranged upon request (Art. 16 O-IMAC).

3. Detention pending extradition 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 the IMAC, the FOJ will order your immediate release.

An appeal against a warrant of arrest pending extradition or any other FOJ decision concerning such detention may be lodged within ten days with the Appeals Chamber of the Federal Criminal Court (Art. 48 para. 2 IMAC and Art. 28 para. 1e Federal Criminal Court Act (FCCA, SR 173.71)). Furthermore, you may submit an appeal to the FOJ against the warrant of arrest at any time (Art. 50 para.3 IMAC).

4. A request for extradition must contain information on the person subject to proceedings that is as detailed and comprehensive as possible. It must also contain the name of the requesting authority, the subject matter, the reason for the request, as well as the legal term for the alleged offence. Furthermore, the request must be accompanied by a summary of the relevant facts of the case, a copy of the relevant criminal provisions in the requesting state, and an original or an officially authenticated copy of the enforceable judgment or the warrant of arrest (Art. 28 and Art. 41 IMAC).
5. A request for extradition will generally be granted if at least one of the offences charged is considered punishable and extraditable in both Switzerland and the requesting state.

A request for extradition will be denied if the foreign legal proceedings do not meet the standards set out in the European Convention on Human Rights or if they are 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 obligation to perform military service or appears to be directed against the national security or military defence of the requesting state (Art. 3 IMAC). However, denial for political reasons may not be possible in certain cases (Art. 3 para. 2 IMAC). Extradition will also not be granted if you have been acquitted in Switzerland for the same offences, or if you have been convicted for those offences and have already served your sentence.

Where no other rules have been set down (see section 1), extradition may 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 which appears to be aimed at reducing fiscal duties or taxes, or which violates regulations on currency, trade or economic measures (Art. 3 para. 3 IMAC). Under certain conditions, extradition may be granted for tax fraud (Art. 3 para. 3b IMAC). Extradition may also be refused if you are able immediately furnish conclusive evidence that you were not at the scene of the offence when it allegedly occurred (Art. 53 IMAC).

6. If you are opposed to your extradition, you may state the reasons for your objection for the record when you are interviewed (Art. 52 IMAC). Questions of guilt and facts are not examined in extradition procedures. Before the FOJ issues a decision regarding the request for extradition, you will be given reasonable time to make a written statement of your position with regard to the request (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 extradition and expressly waive formal extradition proceedings, the FOJ will approve your simplified extradition (Art. 54 IMAC). If such waiver is made soon after the arrest, the FOJ may decide not to charge costs if doing so would result in a disproportionate amount of additional work.

8. Extradition decisions lie with the FOJ (Art. 55 para. 1 IMAC).

Decisions regarding the political nature of the offence of which you are accused lie with the Federal Criminal Court (Art. 55 para. 2 IMAC).

9. The decision of the FOJ may be challenged before the Appeals Chamber of the Federal Criminal Court within 30 days of notification (Art. 25 IMAC).

Appeals against decisions of the Federal Criminal Court are admissible only in “particularly important” cases (Art. 84 of the Federal Act of 17 June 2005 on the Federal Supreme Court [Supreme Court Act, 173.110]). The FOJ may also appeal against decisions of the Federal Criminal Court.

Extradition may be executed if you expressly waive 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 Criminal Court) that you intend to lodge an appeal (Art. 56 IMAC). Extradition may also be executed if you do not respect the deadlines for an appeal (30 days and 10 days for appeals to the Federal Criminal Court and the Federal Supreme Court respectively).

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 for extradition was requested and granted (Art. 38 para. 1 IMAC). You may choose to waive the application of this rule. It also does 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 be granted subsequently for further offences if the requesting state sends a corresponding extension request (Art. 39 IMAC).