



Status as at 1 January 2007

## Information sheet on the transfer of persons sentenced in Switzerland after issue of an order for their deportation or return to the frontier

### based on article 3 of the Additional Protocol of 18 December 1997 to the Convention on the Transfer of Sentenced Persons

The Council of Europe Convention of 21 March 1983 on the Transfer of Sentenced Persons (hereinafter Transfer Convention) allows persons sentenced outside their home state to a punishment (penalty or order) involving personal restraint to return to their home state to serve their sentence, should they so wish, and on certain conditions. This option is designed to promote their reintegration into society.

Supplementing the Transfer Convention, the Additional Protocol to it (hereinafter: AP) specifically allows a sentenced person to be transferred to their home state *without their consent*, to serve the rest of their sentence there when the person in question, once released, would no longer be permitted to stay in the territory of the sentencing country, because of a deportation order or order for return to the frontier<sup>1</sup> or any other measure with the same effect issued concerning them (AP Article 3).

In principle, the provisions of the Transfer Convention also apply to a transfer which takes place in accordance with the AP provisions. However, in areas where the rules of the Convention are incompatible with those of the AP, the AP takes priority over the Convention. It must be stressed, however, that even the AP *in no way binds ratifying states to grant a transfer request*.

This information sheet gives a general appraisal of the content and scope of the Convention. It cannot cover every conceivable detail of each individual case. For fuller information, please refer to the authority below:

Federal Office of Justice FOJ  
Extraditions Unit  
Bundesrain 20  
3003 Bern  
Switzerland  
Tel. + 41 58 462 11 20, fax + 41 58 462 53 80  
e-mail: [irh@bj.admin.ch](mailto:irh@bj.admin.ch)

General information on the transfer of sentenced persons can also be found on the Internet<sup>2</sup>.

<sup>1</sup> In Switzerland: a decision on deportation or return to the frontier taken by the immigration authorities.

<sup>2</sup> [www.bj.admin.ch](http://www.bj.admin.ch) (Topics: Security, International Mutual Legal Assistance, Mutual Legal Assistance in Criminal Matters, Transfer of sentenced persons)

## The transfer process in Switzerland

### a) Advice to the cantonal authorities

The Federal Office of Justice (FOJ) may be consulted by the cantonal authorities for specialist advice, which it may give verbally or in writing.

### b) Request to open a transfer process

The cantonal penalty enforcement authority may send the FOJ a request to open a transfer process. This request must state reasons and be backed by the following information and appendices:

- first name, surname, date and place of birth of the sentenced person and, where applicable, their previous address abroad;
- the request and the reasons for it;
- a certified copy of the judgment with confirmation of its enforceable status; copies of the legal provisions applied; a statement of the facts giving rise to the punishment, when not stated in the judgment; the legal nature and duration of the punishment, stating what proportion has already been served, time in custody before judgment, any penalty reductions, etc;
- a copy of the return or deportation order from the immigration authorities on the basis of this sentence or any other measure with the same effect;
- the report of the hearing of the sentenced person;<sup>3</sup>
- other relevant information; and
- any translations according to FOJ standards.

### c) Check by FOJ on receipt

FOJ checks the cantonal request to make sure it is complete and admissible – unless this has already been covered by a check in the context of the advice under a). If the request is incomplete, the canton is asked to supply the missing documents or information.

### d) FOJ transfer request and decision

Based on the documents listed under b), and on any further information as per c), FOJ decides whether:

- to send a request for continued criminal enforcement to the sentenced person's home state; and
- once that state has given its consent, whether to return the sentenced person to it.<sup>4</sup>

The person concerned may *appeal* to the Federal Criminal Court against the FOJ decision.

Any appeal made against the decision to issue a request to the home state has no suspensive effect. The *transfer request* (accompanied by the necessary documents and information) will thus be forwarded to the foreign authority without delay.<sup>5</sup> Such a request asks the state concerned for the following documents:

- confirmation of the sentenced person's nationality;
- a binding statement of the home state's acceptance of transfer of the sentenced person and specifying what sentence will be enforced;

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<sup>3</sup> It is a matter for the cantonal authorities to appoint a free counsel where applicable.

<sup>4</sup> The FOJ decision is against the sentenced person, but it does not oblige the Swiss authorities actually to transfer them abroad.

<sup>5</sup> If the Federal Criminal Court grants the sentenced person's appeal, a transfer request already passed to the foreign authority will, of course, be withdrawn.

- copies of the home state's statutory provisions, proving that the offence committed would also be punishable there; and
- information on how the penalty will continue to be served (especially any possibility of conditional release).

As a rule, the FOJ informs the foreign authority that the Swiss authorities reserve the right, on receipt of these documents, to decline to transfer the sentenced person (especially if the penalty, after commutation or adjustment, seems too mild).

**e) Documents and consent from abroad; implementation of transfer**

The FOJ examines the documents supplied by the foreign country and, where applicable, requests any missing items. It forwards the documents to the canton concerned, which it asks to provide a definitive statement on whether or not it wishes to proceed with the transfer. If the canton's reply is affirmative, the foreign country is informed of Switzerland's final consent and transfer takes place. Otherwise, the foreign authorities are informed that Switzerland has withdrawn its transfer request.