

SWITZERLAND



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NATIONAL POLICY

Although Switzerland and its territory have thus far been largely spared the direct devastating effects of international terrorism, there have been several occasions on which Swiss nationals have been the victims of terrorist crimes. As a sign of co-operation and international solidarity, the fight against terror has long been one of the major social and political issues in Switzerland.

Owing to its geographical situation in the heart of Europe, Switzerland is an important transit country; it is also recognised as occupying an important place in the sphere of international finance. For those reasons, Switzerland is determined to make a stand against this scourge by co-operating closely with the international community. It has a wide range of effective instruments to combat terrorism and the financing of terrorism, organised crime and money laundering. Swiss banking secrecy does not protect terrorists or persons providing support for criminal organisations. Switzerland has effective legislation to permit rapid co-operation in the sphere of mutual legal assistance in criminal matters, in particular for the purpose of blocking funds. It has also introduced a federal law on the allocation of confiscated assets (LVPC),¹ which lays down the procedure for dividing those assets between Switzerland and foreign states.

LEGAL FRAMEWORK

Criminal law

Individual terrorist acts

Outside the sphere of the financing of terrorism,² isolated terrorist acts are in principle dealt with on the basis of the generally applicable provisions of the Swiss Criminal Code³ and the associated criminal legislation. The relevant provisions are, in particular, those governing the offences of homicide and

¹ LVPC, RS 312.4; the text of this Federal law is available, in three languages, at the following address: http://www.admin.ch/ch/f/rs/312_4/index.html.

² See the section entitled "Prevention of the financing of terrorism".

³ CP, RS 311.0; the text of the Federal law is available at the following address: http://www.admin.ch/ch/f/rs/c311_0.html.

offences against the person,⁴ the penalty for which may extend to life imprisonment; offences against freedom;⁵ serious or minor offences which create danger to the public;⁶ public health offences;⁷ public order offences;⁸ and also offences against the administration of justice.⁹ Where the offender had a particularly odious intention, for example where the offence was committed with terrorist motives, the court may take that into account when determining the sentence.¹⁰

Penalties are also laid down for any person convicted of participating in those offences by incitement or complicity¹¹ and also for attempting to commit such offences.¹² In the case of a series of serious offences,¹³ a penalty may be incurred even before an attempt is made to commit the act: the criminal provisions cover preparatory acts,¹⁴ in respect of which a person may be sentenced to a maximum of five years' imprisonment.

Criminal or terrorist organisations

Under Article 260^{ter} of the Criminal Code, anyone convicted of participating in a criminal organisation or of providing support for such an organisation may be sentenced to a maximum of five years' imprisonment or to detention. In relation to the normal criteria of Swiss criminal law, that offence may be committed before the stage at which the organisation becomes a criminal organisation. Anyone who generally supports the activity of a

⁴ Article 111 et seq. Criminal Code; in particular, Articles 111, 112, 122, 123 and 129.

⁵ Article 180 et seq. Criminal Code, in particular Articles 181, 183, 184 and 185; the penalties may be up to 20 years' imprisonment.

⁶ Article 221 et seq. Criminal Code; in particular, Articles 221, 223, 224, 226, 226^{bis} and 226^{ter}; the penalties may be up to 20 years' imprisonment.

⁷ Article 230^{bis} et seq. Criminal Code; in particular, Articles 230^{bis} and 231; the penalties may be up to 10 years' imprisonment.

⁸ Article 258 et seq. Criminal Code; in particular, Articles 258, 259, 260^{bis} and 260^{quater}; the penalties may be up to 5 years' imprisonment.

⁹ Article 303 et seq. Criminal Code; in particular Articles 305^{bis} and 305^{ter}; the penalties may be up to 5 years' imprisonment.

¹⁰ Article 63 Criminal Code.

¹¹ Article 24 and 25 Criminal Code.

¹² Attempt and failure to commit an offence; Articles 21 and 22 Criminal Code.

¹³ For example murder, serious physical injury, abduction, hostage-taking.

¹⁴ Article 260^{bis} Criminal Code: "... specific provisions of a technical or organisational nature".

criminal organisation commits an offence, without there being any need for a direct link between that support and a specific offence. "Support" for a group is considered to consist in making any decisive contribution which reinforces the organisation, for example by providing an element of the logistic infrastructure. For the purposes of criminal law, an organisation is an association of several persons which is kept secret from the outside world, on a permanent basis and with a hierarchical structure, whose aim is to commit criminal acts of violence or to obtain funds by criminal means.

Article 260^{ter} of the Criminal Code is in principle applicable to terrorist organisations. According to the practice of the Federal Court in this matter, the Italian Red Brigades, the Basque group ETA or the international network Al-Qaida, among others, are criminal organisations for the purposes of that provision.

Procedural rules

Criminal procedure

In Switzerland offences committed with terrorist aims are dealt with according to the same procedural rules as ordinary offences. Thus one of the 29 Codes of Procedure¹⁵ currently in force will apply. Those laws are in the process of being reviewed. Parliament is currently examining a draft Swiss Code of Criminal Procedure, which would replace the numerous existing codes.¹⁶ The aim is not to alter the allocation of jurisdiction between the Confederation and the cantons, but to ensure that the same rules apply both at Confederation and at cantonal level. Isolated offences committed with terrorist aims will continue to be prosecuted and tried by the cantons, while the prosecution and punishment of terrorism linked with organisations will remain within the jurisdiction of the Confederation.

The draft Swiss Code of Criminal Procedure provides for measures of protection for persons participating in proceedings, in particular for witnesses and accused persons, where there is reason to fear that the lives or physical safety of those persons, or one of their close relatives, might be in serious danger or that they might be exposed to some other serious harm.¹⁷ The protective measures set out in the draft code are not exhaustive: they include ensuring the anonymity of the person to be protected, altering his/her appearance or his/her voice, and hearing the

persons concerned in camera or in the absence of the parties. The draft code also provides that the cantons or the Confederation may take protective measures outside the proceedings.

Investigative methods

Undercover agents

Under the Federal Law on secret investigations (LFIS),¹⁸ police officers may be employed under a borrowed identity as undercover agents in order to obtain information about particularly serious offences. Other persons may be appointed as undercover agents on a provisional basis in order to perform an investigative role. Other information may be obtained by persons who are prepared to assist the authorities responsible for the investigation by disclosing information which came to their knowledge, in return for an assurance that their co-operation will remain confidential and that their anonymity will be respected.

Surveillance:

Conventional surveillance outside dwelling places or surveillance using special technical equipment¹⁹ may be carried out in the context of particularly serious offences.

Monitoring:

The monitoring of telecommunications – including monitoring of portable telephones, fax or electronic messaging – may be ordered by the courts. It is also possible, still under a court order, to obtain details on the location of the apparatus used or the number of the calling card.

DNA:

Samples may be taken at the scene of the crime and examined according to molecular genetics methods and compared with DNA material taken from suspects. Switzerland has a national data bank containing profiles of suspects and samples.

Assistance to victims

Victims of offences committed on Swiss territory, whose physical, mental or sexual integrity has been harmed as a result of this offence, are entitled, on certain conditions, to support provided for in the Federal Law on assistance to the victims of offences (LAVI).²⁰ This law provides for counselling, protection and the rights of the victim in criminal proceedings, and pecuniary and non-pecuniary compensation. As regards counselling, consultation centres are responsible for providing victims with assistance, in particular medical, psychological and legal assistance. The victim's close relatives are

¹⁵ 26 cantonal codes of procedure and 3 laws of procedure at federal level.

¹⁶ Message from the Federal Council of 21 December 2005 on the unification of criminal procedure, FF 2006 1057, may be downloaded at the following address: <http://www.bj.admin.ch/bj/fr/home/themen/sicherheit/gesetzgebung/strafprozess.html>.

¹⁷ Article 146, para. 1, of the draft code.

¹⁸ LFIS, RS 312.8; may be downloaded at the following address: http://www.admin.ch/ch/fr/rs/c312_8.html.

¹⁹ Audio or visual equipment, satellite positioning system.

²⁰ LAVI, RS 312.5; may be downloaded at the following address: http://www.admin.ch/ch/fr/rs/c312_5.html.

essentially treated in the same way as the victim. Subject to certain conditions, assistance under the LAVI may also be obtained where the offence was committed abroad.²¹ Assistance may also be available even where no criminal proceedings are brought or where no one is convicted.

Human rights and the fight against poverty

The fight against terrorism must be conducted in the first place with the aid of the legal arsenal which the country has at its disposal for the purpose of combating crime, while ensuring respect for human rights and international law. As the depositary of the Geneva Conventions, Switzerland makes an effort to continue to reinforce the instruments which ensure respect for the law. It is essential that the measures adopted to put an end to the activities of terrorist groups respect the fundamental principles which form the basis of our societies, such as justice, the dignity of the human person and religious tolerance.

Furthermore, Switzerland considers that international security cannot be ensured on a lasting basis unless states strengthen their co-operation with a view to eradicating poverty, preventing and resolving conflicts and effectively promoting human rights and the rule of law. Without improvements being made in populations' living conditions and without universal respect for fundamental freedoms, the long-term effectiveness of a measure adopted against terrorism cannot be guaranteed. Closer dialogue between civilisations is encouraged by Switzerland and is an essential requirement, since mutual understanding between different cultures and religions will inevitably help to prevent conflicts and terrorist acts.

Prevention of the financing of terrorism

Following the attacks of 11 September 2001, Switzerland adopted measures to ensure that the existing legislation on money laundering would also cover the financing of terrorism. The Swiss Criminal Code, which already made it an offence to participate in or to support a criminal organisation,²² was supplemented by a provision which made the financing of terrorism an offence.²³

In addition to those criminal provisions, and also to the provisions on seizure and confiscation, other preventive rules make it possible to ensure that funds intended for the financing of terrorism are not transferred via Switzerland. The Law on money laundering (LBA)²⁴ requires any financial

intermediary²⁵ which has valid grounds for suspecting that a criminal organisation has the right to dispose of assets to report the matter promptly to the Swiss Money Laundering Reporting Office. In such circumstances, the financial intermediary must also block the assets entrusted to it. The Money Laundering Reporting Office must promptly report duly confirmed cases to the prosecution authorities.

In its Ordinance Concerning the Prevention of Money Laundering (OBA-CFB),²⁶ moreover, the Federal Banking Commission (CFB)²⁷ specifically placed a ban on financial intermediaries having business relationships with terrorist organisations. This declaration of principle is based on the fact that accepting the assets of criminal or terrorist organisations also constitutes an act of money laundering. Thus, a financial intermediary which does so deliberately could itself be guilty of supporting a criminal organisation. The ordinance also imposes a specific obligation on financial intermediaries to alert the Swiss Money Laundering Reporting Office in the event of a connection between a customer and a terrorist organisation. This is a specific instance of the duty of communication of the LBA where there is an indication of links with terrorist activities. All the lists of persons suspected of having links with terrorist circles are rapidly and regularly communicated to financial intermediaries by the competent supervisory authorities.

Money transmitting services are without exception subject to the LBA and to its requirements. Entities which provide that type of services are required either to become affiliated to a recognised self-regulating body supervised by the Money Laundering Control Authority or to obtain authorisation from that authority. In the event of unlawful activity, the Control Authority may order sanctions extending to the liquidation of the establishment concerned. The most important players in the not-for-profit bodies sector are subject to State or private supervision. If cases of abuse on the part of not-for-profit bodies which tend to favour the financing of terrorism come to light in the course of a fiscal inspection, the cantonal or federal authorities have at their disposal a legal framework which allows them to disclose their suspicions to the competent criminal authorities.

Switzerland has therefore developed a comprehensive and effective mechanism to combat

²¹ This happened, for example, in the case of the Luxor attack in 1997.

²² Article 260^{ter} Criminal Code; see above.

²³ Article 260^{quinqüies} Criminal Code, entered into force on 1 October 2003.

²⁴ LBA, RS 955.0; may be downloaded at the following address: http://www.admin.ch/ch/f/rs/c955_0.html.

²⁵ The following, in particular, are deemed to be financial intermediaries: banks, fund managers, life assurance institutions, dealers in securities, gaming establishments, credit establishments, providers of payment transfer services, issuers of credit cards and travellers' cheques, bureaux de change, traders in precious metals or primary materials, asset managers and investment advisers.

²⁶ OBA-CFB, RS 955.022; may be downloaded at the following address: http://www.admin.ch/ch/f/rs/c955_022.html.

²⁷ CFB.

money laundering. This mechanism was the subject of a mutual evaluation by the Financial Action Task Force on Money Laundering²⁸ in 2005.

Other relevant legislation

Prohibition of Al-Qaida and extension of the duties to inform:

In 2001 the Federal Council, relying on the Federal Constitution, banned Al-Qaida and organisations which might emanate from, support or act on behalf of that organisation. Furthermore, in the exercise of the power conferred on it by the Federal Law introducing measures aimed at maintaining internal security (LMSI),²⁹ the Federal Council, by means of a limited ordinance, extended the duties to inform of the authorities and organisations performing public service tasks and granted them a right to communicate with the aim of improving preventive information gathering. The main purpose of this extended information gathering is to identify the members and structures of terrorist organisations present in Switzerland.

Maintenance of internal and external security:

The LMSI regulates the preventive protection of the State in Switzerland. A current draft revision is primarily intended to improve information gathering in order to permit an assessment of the security policy situation and the adoption of appropriate measures. The Federal Council will approve the draft for the attention of Parliament, probably in 2006.

The Federal Police Office, in accordance with the Federal Law on the residence and establishment of aliens,³⁰ may prohibit the entry to Swiss territory of persons who might jeopardise the internal or external security of the country. This measure makes it possible to prohibit the entry into or residence in Switzerland of known or presumed members of organisations dedicated to violence. Only in rare cases has the Federal Council had to expel persons, in accordance with the Constitution, who threatened the internal or external security of Switzerland.

According to the Law on asylum,³¹ asylum is to be refused to refugees who have committed reprehensible acts or who have jeopardised the internal or external security of Switzerland or threatened to do so. The principle of protection of sources means that the Federal Office of Police is not always able to provide details of the position which it has adopted to the other offices

concerned.³² The Office may nonetheless communicate its knowledge of a possible case of a threat to the security of the country in the form of a recommendation. It is then for the other offices to decide on the effect which that information will have on the decision to grant asylum. The complexity of the asylum procedures and the associated remedies sometimes allows the applicants in question to remain in Switzerland for a certain period.

Practical application

At present, at federal level, a large-scale police investigation is being conducted, mainly for participation in or providing support to a criminal organisation, and a number of proceedings are at the most advanced stage of the preparatory investigation or at the final committal stage. The investigations carried out in Switzerland have mainly concerned not participation in a criminal organisation but support, whether financial or logistical, for terrorist organisations.

INTERNATIONAL CO-OPERATION

Mutual legal assistance and extradition

In the sphere of *mutual legal assistance* in criminal matters, the procedure is governed by the Federal Law on International Mutual Legal Assistance in Criminal Matters (EIMP).³³ The Federal Office of Justice is the competent authority for receiving and transmitting foreign requests for assistance from and to other countries. As regards terrorism, the Federal Office entrusts the Public Prosecutor's Office of the Confederation with implementing foreign requests for mutual legal assistance, since that authority is competent for prosecuting such offences in Switzerland. Decisions of the Public Prosecutor's Office of the Confederation may be challenged before the Federal Court.

In recent years Switzerland has implemented several requests for mutual legal assistance in connection with terrorism. The Federal Court has had to rule on two occasions on the admissibility of requests for mutual assistance in connection with terrorism following actions brought by persons affected by the measures in question. The Federal Court upheld the implementation of the requests for mutual assistance and the co-operation afforded to the requesting States.

²⁸ FATF.

²⁹ LMSI, Article 13, RS 120; may be downloaded at the following address: <http://www.admin.ch/ch/fr/rs/c120.html>.

³⁰ LSEE, RS 142.20; may be downloaded at the following address: http://www.admin.ch/ch/fr/rs/c142_20.html. The Law is in the process of being revised; see the draft Federal Law on aliens (Letr), www.bfm.admin.ch.

³¹ RS 142.31, Article 53; may be downloaded at the following address: http://www.admin.ch/ch/fr/rs/c142_31.html.

³² Federal Office for Migration or Commission for Assistance in Asylum Matters.

³³ EIMP, RS 351.1; may be downloaded at the following address: http://www.admin.ch/ch/fr/rs/c351_1.html; further information is available at the following address: http://www.bj.admin.ch/bj/fr/home/themen/sicherheit/internationale_rechthilfe.html.

The Swiss authority competent for *extradition* is the Federal Office of Justice. The extradition procedure is also governed by the EIMP. In recent years Switzerland has extradited a number of persons suspected of having committed terrorist acts, in particular on the basis of the European Convention on Extradition of 13 December 1957 and the two Additional Protocols thereto, and also the European Convention of 27 January 1977 on the Suppression of Terrorism, the International Convention of 15 December 1997 for the Suppression of Terrorist Bombings and the International Convention of 9 December 1999 for the Suppression of the Financing of Terrorism. In 2005 the most notable case was the extradition of Mohamed Achraf to Spain for an attempted terrorist attack in Madrid.

Measures at international level

Switzerland has signed, ratified and implemented the twelve United Nations conventions on terrorism. It signed the International Convention of 13 April 2005 for the Suppression of Acts of Nuclear Terrorism on 14 September 2005. Switzerland systematically implements the decisions of the

Sanctions Committee of the United Nations Security Council and supplies financial intermediaries with the lists of names of individuals or organisations provided by other countries, being convinced that targeted sanctions are an important tool in maintaining peace and security and also in the fight against terrorism. In order to ensure that member States properly implement sanctions, an essential element is the existence of fair and clear procedures for drawing up lists of sanctions and for removing names from those lists. That question was discussed in general terms in the proceedings held in Interlaken, Bonn-Berlin and Stockholm.³⁴ Targeted sanctions must be consistent with the rules of international law on the protection of human rights if there is to be any guarantee that they will be fully implemented by the member States of the United Nations.

Switzerland is a member of the FATF and supports the work of that organisation in the areas of money laundering and the financing of terrorism.

³⁴ The partnership on targeted sanctions developed in recent years by Germany, Sweden and Switzerland was extended when they launched an initiative to explore means of consolidating the sanctions instrument, while taking care to place greater emphasis on the imperatives related to human rights, in particular the right to a fair hearing. They commissioned the Watson Institute to prepare a study on the matter. The results of the study were presented in New York on 30 March 2006.

| Relevant Conventions of the Council of Europe - Switzerland | Signed | Ratified |
|---|------------|------------|
| European Convention on the Suppression of Terrorism (ETS 90) | 27/01/1977 | 19/05/1983 |
| Amending Protocol (ETS 190) | 15/05/2003 | - |
| European Convention on Extradition (ETS 24) | 29/11/1965 | 20/12/1966 |
| First Additional Protocol (ETS 86) | 17/11/1981 | 11/03/1985 |
| Second Additional Protocol (ETS 98) | 17/11/1981 | 11/03/1985 |
| European Convention on Mutual Assistance in Criminal Matters (ETS 30) | 29/11/1965 | 20/12/1966 |
| First Additional Protocol (ETS 99) | 17/11/1981 | - |
| Second Additional Protocol (ETS 182) | 15/02/2002 | 04/10/2004 |
| European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73) | - | - |
| European Convention on the Compensation of Victims of Violent Crimes (ETS 116) | 15/05/1990 | 07/09/1992 |
| Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141) | 23/08/1991 | 11/05/1993 |
| Convention on Cybercrime (ETS 185) | 23/11/2001 | - |
| Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189) | 15/05/2003 | - |
| Council of Europe Convention on the Prevention of Terrorism (ETS 196) | - | - |
| Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198) | - | - |