

CHILD SEXUAL EXPLOITATION IN TRAVEL AND TOURISM:

A Guide to Extraterritorial Jurisdiction to Hold Perpetrators Accountable in Switzerland



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Swiss criminal law provides for extraterritorial jurisdiction over offenses related to trafficking, sexual exploitation, and abuse of children. On January 1, 2007, Switzerland introduced a general universal jurisdiction provision to fight impunity for sexual acts committed abroad against children. This special rule provides a particularly broad universal jurisdiction and goes beyond any prescription contained in international conventions ratified by Switzerland, such as the Optional Protocol to the UN Convention on the Rights of the Child of 25 May 2000, on the Sale of Children, Child Prostitution and Child Pornography¹ and of the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse.^{2,3}

Swiss law recognizes that child trafficking and abuse of children in travel and tourism are serious crimes. Several sexual offenses committed abroad can be prosecuted in Switzerland, provided that the offender is found in Switzerland and does not need to be extradited. Special units at the Federal Office of Police (Fedpol) have been set up to investigate child sexual abuses in travel and tourism and cases of trafficking in human beings. Fedpol is also the central agency for international police cooperation.⁴

This guide explores the criminal offenses against children over which Swiss courts have extraterritorial jurisdiction, the civil remedies available, and the procedural protections available to child victims. The purpose of this publication is to provide practical guidance to organizations supporting children sexually exploited or abused in travel or tourism by Swiss perpetrators or any person who is found in Switzerland.

Switzerland could be seen as a pioneer in the field of universal jurisdiction for these types of crimes. However, considering the low number of prosecutions and cases reported in Switzerland, the universal jurisdiction of Swiss courts remains an exception and strongly depends on close cooperation between countries to be effective.

Cases involving Swiss offenders have arisen in Austria, Belgium, Cambodia, Haiti, India, Madagascar, Morocco, the Philippines, Thailand, and Sri Lanka. But there is no concrete data on the actual scale of child sexual exploitation in travel and tourism (SECTT) in Switzerland. In 2015, the UN Committee on the Rights of the Child and the Council of Europe both called on Switzerland to improve its data collection system for victims of child trafficking and to study child trafficking.⁵ More recently, in 2021, UNICEF Switzerland encouraged the authorities to develop methods and procedures for a more systematic collection of data on violence against children to ensure extensive monitoring.⁶

Switzerland made efforts to follow the international recommendations by issuing a report on *Exploitation of Minors in Switzerland in the Context of Human Trafficking* in December 2022.⁷ The report, prepared on behalf of Fedpol, provided some insight into the extent and forms of child trafficking in Switzerland and identified challenges that must be addressed. The report was helpful in leading to concrete proposals in the *2023-2027 Swiss National Plan of Action Against Human Trafficking*, but it did not address the existing legal challenges or provide data on child sexual exploitation in travel and tourism.⁸

1. RS 0.107.2, entered into force on October 19, 2006.

2. RS 0.311.40, entered into force on July 1, 2014.

3. Commentaire romand Code pénal I, Cassani/Villard, 2021 ad. Article 5 SCC.

4. Fedpol, Child sex tourism: <https://www.fedpol.admin.ch/fedpol/en/home/kriminalitaet/kindersextourismus0.html>; Fedpol's mission: <https://www.fedpol.admin.ch/fedpol/en/home/fedpol/mission.html>

5. Committee on the Rights of the Child, *Concluding Observations on the Report Submitted by Switzerland Under Article 12, Paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, child prostitution and child pornography*, CRC/C/OPSC/CHE/CO/1, 26 February 2015. Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland*, GRETA(2015)18.

6. UNICEF Switzerland and Liechtenstein, *Alternative Report 2021 on the Implementation of the United Nations Convention on the Rights of the Child in Switzerland*, 2021.

7. Swiss Center of Expertise in Human Rights, *Exploitation des mineurs dans le contexte de la traite des êtres humains en Suisse*, Berne, 2022.

8. More information about the 2023-2027 National Action Plan is available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-92239.html>

1. Criminal Prosecution

SWISS CRIMINAL LAW

In Switzerland, the sexual exploitation and abuse of children is a criminal offense and subject to prosecution under the Swiss Criminal Code. Generally, Swiss law applies only to offenses committed on Swiss territory or whose result occurs in Switzerland (territoriality principle) or offenses committed by or against a Swiss national (active and passive personality principle). However, the law provides for some exceptions to this general principle such as in cases of child sexual abuse committed abroad.⁹

Extraterritorial Jurisdiction for Sexual Offenses Against Minors

Article 5 of the Swiss Criminal Code provides for universal jurisdiction over offenses related to child sexual abuse. Switzerland is one of a few countries with domestic legislation applying the principle of universality for such

cases.¹⁰ Under universal jurisdiction, Swiss courts can assert extraterritorial jurisdiction over any person who committed a sexual crime against a child, wherever it was committed, based solely on the presence of the perpetrator on Swiss territory.¹¹ This applies even where the presence of the perpetrator is in the transit zone of a Swiss airport.

In 2018, in a case involving universal jurisdiction of international crimes (war crimes and crimes against humanity), the Federal Criminal Court explained that the condition of presence in Swiss territory should not be interpreted too restrictively. The Court held that prosecuting authorities could commence an investigation even in cases where the alleged perpetrator has never entered Swiss territory, if there are grounds to believe that the individual will enter Swiss territory in the near future. The same reasoning could arguably also be applied for cases based on Article 5 of the Swiss Criminal Code.¹²

UNIVERSAL JURISDICTION FOR CHILD SEXUAL ABUSE

Article 5 of the Swiss Criminal Code extends the universal jurisdiction to:¹³

1. [A]ny person who is in Switzerland, is not being extradited and has committed any of the following offenses abroad:
 - a. trafficking in human beings (Article 182), indecent assault (Article 189), rape (Article 190), sexual acts with a person incapable of proper judgment or resistance (Article 191) or encouraging prostitution (Article 195) if the victim was less than 18 years of age;
 - b. sexual acts with dependent persons (Article 188) and sexual acts with minors against payment (Article 196);
 - c. sexual acts with children (Article 187) if the victim was less than 14 years of age;
 - d. aggravated pornography (Article 197 para. 3 and 4) if the items or performances depict sexual acts with minors.
2. Unless the offense involves a gross violation of the principles of the Federal Constitution and the European Convention on Human Rights (ECHR), the person concerned is not liable to further prosecution in Switzerland for the offense if:
 - a. he has been acquitted of the offense abroad in a legally binding judgment;
 - b. the sentence that was imposed abroad has been served, remitted, or become time-barred.
3. If the person concerned has been convicted of the offense abroad and if the sentence imposed abroad has been partly served, the court shall take the part served into account in the sentence to be imposed. The court decides whether a measure ordered abroad but only partly executed there must be continued or taken into account in the sentence imposed in Switzerland.

9. CASSANI, Ursula. *Article 5 CP : infractions commises à l'étranger sur des mineurs*. In: Roth, Robert et Moreillon, Laurent (Ed.). *Code pénal I : Article 1-110 CP*. Bâle : Helbing & Lichtenhahn, 2009. p. 52-61. (Commentaire romand)

10. ECPAT International, *Extraterritorial Jurisdiction and Extradition Legislation as Tools to Fight the Sexual Exploitation of Children*, 2022, p. 3.

11. José Hurtado Pozo, Thierry Godel, *Droit pénal général Théorie - Tableaux synoptiques - Méthodologie de résolution de cas pénaux Lexique pénal - Répertoire des termes allemands*, DEUXIÈME PARTIE LOI PÉNALE / CHAPITRE 7 APPLICATION DE LA LOI PÉNALE DANS L'ESPACE 3^{ème} ed. § 188

12. Federal Criminal Court, Judgment of November 14, 2018, TPF BB.2018.167, para. 2.3.

13. Official translation. Article 5 SCC accessible at: https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en#art_5

Lower courts and the Swiss supreme court (Tribunal Federal), the second level of appeal, have tried a limited number of cases in Switzerland applying extraterritorial jurisdiction to sexual offenses against children committed abroad (see examples below, [Appendix A](#)). However, the number of cases brought using extraterritorial jurisdiction has remained low.

Double Criminality

Notably, double criminality – the requirement that the crime must be illegal both in the prosecuting country and in the jurisdiction where the crime occurred – is not a requirement for child sexual crimes, including trafficking in human beings.¹⁴ The perpetrator may be prosecuted regardless of the foreign law. This is a special rule which extends jurisdiction, removing the main legal obstacles and facilitating the prosecution of traveling child sexual abuse perpetrators.

In doing so, Swiss law is in line with the recommendation of the United Nations Committee of the Rights of the Child, which encourages “States parties [to] remove the requirement of double criminality, making it possible to exercise extraterritorial jurisdiction over offenses covered by the Optional Protocol committed in another State even if the relevant offense is not criminalized in that State. The principle of double criminality creates a gap in the law which enables impunity and should not be applied.”¹⁵ In addition, as highlighted by Swiss lawmakers, the prosecution of an offense committed in another country is simplified in that it is not necessary to first obtain detailed information on the law applicable in the country in question.¹⁶

Prohibition of Extradition of Swiss Citizens and Foreign Nationals

The Swiss National Constitution prohibits the extradition of Swiss citizens from Switzerland without their consent.¹⁷ By contrast, under the Swiss Federal Act on International Mutual Assistance in Criminal Matters,¹⁸ Switzerland may extradite foreign nationals to a foreign state for prosecution or a custodial sentence in that state. If Switzerland has not concluded a mutual assistance treaty with the requesting state, it will, as a rule, only grant the request if the requesting state guarantees reciprocity.¹⁹

Delegated Authority

It is possible to prosecute in Switzerland the perpetrator of an offense committed abroad, when the foreign state, in a particular case, delegates to Switzerland the prosecution of this offense. This is generally the case when the offender is in Switzerland (principle of delegation of criminal prosecution). The reverse is also true, and Switzerland can delegate to a foreign country the prosecution of a criminal offense committed in Switzerland when the alleged offender is abroad.

Like Switzerland, many states do not extradite their own nationals. In order to ensure that offenders are held accountable for crimes committed abroad, states can apply to have proceedings transferred or to assume proceedings on behalf of another state.

In Switzerland, the transfer of proceedings abroad is governed by the Federal Act on International Mutual Assistance in Criminal Matters (Article 85). The prosecution of an offense can only be transferred if both states have jurisdiction over the case in question.

14. Article 64 of the Federal Act of March 20, 1981, on International Mutual Assistance in Criminal Matters.

15. United Nations Committee on the Rights of the Child (2019), *Guidelines Regarding the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*. CRC/c/156. Para. 84.

16. Message CF, Modification CP, 1999, p. 1800. Travaux préparatoire concerning the amendment of the Swiss Criminal Code (general provisions, entry into force and application of the Criminal Code).

17. Article 25 of the *Federal Constitution of the Swiss Confederation*.

18. Article 32 of the *Federal Act on International Mutual Assistance in Criminal Matters*.

19. Gossin, Pascal, *International Mutual Legal Assistance in Switzerland*, Resource Material Series No. 77.

WHAT ARE THE CRIMINAL PENALTIES?

Article 5 of the Swiss Criminal Code grants extraterritorial jurisdiction to Swiss courts for the following offenses against minors:

Human trafficking (Art. 182)

- a. Elements: Engaging in the trafficking of a human being for the purpose of sexual exploitation, exploitation of his or her labor or for the purpose of removing an organ or soliciting a person for these purposes.
- b. Sentence: Where the victim is a minor, the penalty is a custodial sentence of no less than one year. A monetary penalty may also be imposed.

Indecent assault (Art. 189)

- a. Elements: Using threats, force or psychological pressure on another person or making that other person incapable of resistance in order to compel him or her to tolerate a sexual act similar to intercourse, or any other sexual act.
- b. Sentence: An offender who has committed indecent assault can receive a custodial sentence of up to ten years and/or a monetary penalty. If the offender acts with cruelty, e.g., if he or she makes use of an offensive weapon or any other dangerous object, the penalty is a custodial sentence of no less than three years.

Rape (Art. 190)

- a. Elements: Forcing a person of the female sex to submit to sexual intercourse by using threats or violence, psychological pressure or by rendering such person incapable of resistance.
- b. Sentence: An offender can receive a custodial sentence of one to ten years. If the offender acts with cruelty, e.g., if he or she makes use of an offensive weapon or any other dangerous object, the penalty is a custodial sentence of no less than three years.

Sexual acts with a person incapable of proper judgment or resistance (Art. 191)

- a. Elements: Having sexual intercourse or committing an act similar to sexual intercourse or any other sexual act with a person who is incapable of judgment or resistance knowing that such person is incapable of judgment or resistance.
- b. Sentence: An offender can receive a custodial sentence of up to ten years and/or a monetary penalty.

Encouraging prostitution if the victim is less than 18 years of age (Art. 195)

- a. Elements: Inducing or encouraging a minor into prostitution with the intention of securing a financial advantage, inducing a person into prostitution by exploiting his or her dependence or a financial advantage, restricting a prostitute's freedom to act by supervising

him or her in the course of his or her activities or by exercising control over the location, time, volume or other aspects of his or her work as a prostitute, or making a person remain a prostitute against his or her will.

- b. Sentence: An offender can receive a custodial sentence of up to ten years and/or a monetary penalty.

Sexual acts with dependent persons (Art. 188)

- a. Elements: Committing a sexual act by exploiting a relationship with a minor over the age of 16 who is dependent on the offender on account of a relationship arising from the minor's education, care or employment or another form of dependent relationship; or encouraging a minor to commit such a sexual act.
- b. Sentence: An offender can receive a custodial sentence of up to three years and/or a monetary penalty.

Sexual acts with minors against payment (Art. 196)

- a. Elements: Carrying out sexual acts with a minor or inducing a minor to carry out such acts and making or promising payment in return.
- b. Sentence: An offender can receive a custodial sentence of up to three years and/or a monetary penalty.

Sexual acts with children if the victim is less than 14 years of age (Art. 187)²⁰

- a. Elements: Engaging in a sexual act with a child under 14 years of age or inciting a child to commit such an act, or involving a child in a sexual act.
- b. Sentence: An offender can receive a custodial sentence of up to five years and/or a monetary penalty. (No penalty may be imposed if the age difference between the perpetrator and the victim is three years or less.)

Aggravated pornography if the items or performances depict sexual acts with minors (Art. 197 paras 3 and 4)

- a. Elements: Recruiting or causing a minor to participate in a pornographic performance; producing, importing, storing, marketing, advertising, exhibiting, offering, showing, passing on or making accessible to others, acquiring, or procuring or possessing via electronic media or otherwise performances showing sexual acts with minors.
- b. Sentence: An offender can receive a custodial sentence not exceeding three years and/or a monetary penalty. If the items or performances contain genuine sexual acts with minors, the penalty is a custodial sentence not exceeding five years and/or a monetary penalty.

20. If the offender acts under the misconception that the child is 16 years of age or older but would not have made this error had he or she exercised due care, the penalty is a custodial sentence not exceeding three years and/or a monetary penalty.

CAN A PERPETRATOR WHO HAS BEEN PROSECUTED ABROAD ALSO BE PROSECUTED IN SWITZERLAND?

Under Article 5, an offender is not liable for further prosecution in Switzerland if (i) he or she has been acquitted of the offense abroad in a binding judgment or (ii) the sentence imposed abroad has been served, remitted, or become time-barred—unless the offense involves a gross violation of the principles of the Swiss Federal Constitution and the European Convention on Human Rights.²¹ This carveout has never been applied by the Swiss courts as it represents an extremely high threshold.

If an offender's sentence imposed abroad has been partly served, the Swiss court is required to take the portion served into account when determining the sentence in Switzerland. It is in the court's discretion to determine whether a measure ordered abroad but executed only partly must be continued or taken into account in the sentence imposed in Switzerland.²²

A recent case illustrates the complexities of applying Article 5 when child sexual abuse is committed abroad and then again in Switzerland. Authorities arrested a Swiss couple in India in 2000 for taking photos and filming naked street children in a hotel room. Child abuse material from previous trips to India, as well as Sri Lanka and the Philippines, was also found on their laptop. The couple—an auditor and a nurse who were in their fifties—were found guilty of six charges, including kidnapping, outraging the modesty of young children, attempting to destroy evidence and criminal intention to induce children to perform immoral acts. In 2003, the

couple was sentenced by an Indian court to seven years imprisonment for sexually abusing street children. They were also ordered to pay compensation to two girls aged 9 and 11 who approached them for food and money and were found in the hotel room when the couple were arrested.

The Swiss defendants appealed to the Mumbai High Court. A year later, they were released based on their advanced age after paying around CHF 3,000 to each of the two victims. The couple had only served half of their seven-year sentence. The state's attorney general appealed the case to India's Supreme Court asking for the judgment to be overturned. The couple fled to Switzerland while on bail, despite not having permission to leave the country.

In 2020, the press reported that the couple was under investigation for new conduct occurring after their return to Switzerland. The Frauenfeld Court first rejected the case because of a lack of clarity on the status of the criminal case against the man and his wife in India. The court asked the prosecution to request legal assistance from the Indian authorities.²³ The man was finally sentenced in April 2023 by the Frauenfeld Supreme Court to a 24-month prison sentence on charges involving child pornography in the Philippines. But, according to the press accounts, the Frauenfeld Supreme Court did not take the Mumbai conviction into account.²⁴

21. Article 5(2) of the Swiss Criminal Code.

22. Article 5(3) of the Swiss Criminal Code.

23. Benjamin Pillard, *Le pédophile aux 80 victimes écope de 16 ans en appel*, December 10, 2019. Available at: <https://www.24heures.ch/le-pedophile-aux-80-victimes-ecope-de-16-ans-en-appel-142423395891>; La Gruyère, *Pédophile multirécidiviste jugé dès mardi à Bulle*, February 3, 2018. Available at: <https://www.lagruyere.ch/2018/02/p%C3%A9dophile-multir%C3%A9cidiviste-jug%C3%A9-d%C3%A8s-mardi-%C3%A0-bulle.html>

WHAT ARE THE RIGHTS OF VICTIMS, INCLUDING CHILDREN? DO CHILDREN HAVE TO TESTIFY IN THE COURTS?

Swiss law distinguishes between two types of individuals affected by the crime:

1. a person who suffers any type of direct harm ("lésé" – injured person)²⁵ and
2. a person who suffers direct physical, sexual, or mental harm (victim).²⁶

A victim is therefore part of the sub-category of injured persons but is an individual who has suffered a direct attack resulting in physical, mental or sexual harm.

Due to the specific nature of the injury suffered, the victim benefits from special rights. Spouses, children, parents of victims and other persons who have a similarly close relation to the victim are considered relatives of the victim.²⁷

Article 117 of the Swiss Criminal Procedure Code (CrimPC) sets out a non-exhaustive list of rights enjoyed by a victim, which are applicable to adults and children, including the following:

- Right to refuse to testify: victims of a sexual offense may refuse to answer questions that relate to their intimate sphere.²⁸ However, the right to refuse to testify about intimate matters only allows the victim to refuse to answer certain questions. For the rest, the victim's obligation to appear and give evidence remains. Moreover, this right is double edged, since it might make it more difficult to prove the act, which can lead to the acquittal of the accused and the rejection of the injured party's civil claims, which are discussed in more detail below (Rubin, p. 13 ff; Schmid, Praxiskomm., N 14 ad Article 169 CrimPC). When the victim is a person under the age of 18, priority is given to hearing the child or adolescent, safeguarding the child's psychological interests (Article 154 (4) CrimPC).

- Right to the protection of personal privacy, including restrictions and exclusion of public access to the trial, restriction on the information given to the public, and other general measures aiming to protect victims.²⁹
- Right to be accompanied by a trusted person during the hearings.³⁰
- Right to protective measures:³¹ these measures include hearing the parties in separate rooms, the temporary absence of the accused, modification of the appearance of the voice and/or masking the view of the victim. In the case of minor victims, it is conceivable that a specially trained police officer will ask the questions that the defense intends to raise, but only if that measure is found to be necessary. However, and especially in matters of offenses against sexual integrity, confrontation should only be ordered when the rights of the accused cannot be guaranteed otherwise or when an overriding interest of the criminal prosecution imperatively requires it. Moreover, the victim of an offense against sexual integrity may demand to be heard by a person of the same sex.
- Right to a particular composition of the court: if the case involves sexual offenses, there must be at least one judge of the same gender as the victim, if she or he so requests.³²

Article 117(2) and 154 of the Swiss Criminal Procedure Code contains additional protections for minor victims of criminal offenses. For example, if it is clear that a hearing will have serious psychological implications on a child, the following may apply:³³

- A confrontation hearing with the accused may be ordered only if the child expressly requests it or the accused's right to be heard cannot be guaranteed in any other way; and

24. Beitrag von Aira Flückiger, *Thurgauer (81) gab auf Philippinen Kinder-Sexvideos in Auftrag*, April 11, 2023. Available at: <https://www.nau.ch/news/schweiz/thurgauer-81-gab-auf-philippinen-kinder-sexvideos-in-auftrag-66470755>.

25. Article 115(1) CRIMPC.

26. Article 116(1) CRIMPC.

27. Article 116(2) CRIMPC.

28. Article 169(4) CRIMPC.

29. Articles 70(1)(a), 74(4), and 152(1) CRIMPC.

30. Article 117(1) CRIMPC.

31. Article 117(1)(c), 152 to 154 CRIMPC.

32. Article 117(1)(f) and 335(4) CRIMPC.

33. Article 154 (4) CRIMPC.

- Generally, the child may not be interviewed more than twice during the entire proceeding.
- The child must be heard according to a special procedure designed to avoid suggestibility and “secondary victimization.”

The defense exercises its right to confront the victim through a trained investigator, who conducts the hearing. Thus, there is no right for the parties or their counsel to put questions directly to the child victim. The rights of the accused are nevertheless guaranteed, if the hearing is recorded and legal counsel—who follows the hearing in an adjoining room—has the opportunity to ask questions through the person in charge of the hearing. The rights of the accused are also met when the defendant views the recording during the proceedings and can ask further questions in writing.

There is no legal minimum age for a child to be questioned in a hearing. However, the child’s age, both at the time of the events and at the time of the hearing, is a determining factor in the amount of detail that can be obtained. Children as young as three can be considered capable of producing a short narrative that will be accurate in relation to particular events the child has experienced. As a result, the age at which a child can be questioned will depend on a number of factors, such as their language skills, their willingness to express themselves, and the limits of their memory capacities.

In addition, all of the offenses listed above fall also under the Federal Law on Victims Assistance (LAVI), which provides additional procedural rights and protections to victims of offenses which result in harm to their physical, psychological or sexual integrity.³⁴

These rights include:

- Immediate help and advice;³⁵
- Longer term help through counselling centers;³⁶
- Contribution to long-term costs (e.g., for therapy or medication);³⁷
- Compensation (e.g., for destruction to property);³⁸
- Moral reparation;³⁹ (see below) and
- Exemption from procedural costs.⁴⁰

However, for crimes committed abroad, the eligibility for these benefits requires the victim to be a resident of Switzerland when the offense was committed and when she or he filed a complaint. Moreover, Swiss law mandates that aid shall be granted only where the State on whose territory the offense was committed does not provide any benefits or provides insufficient benefits.⁴¹

34. Loi fédérale sur l’aide aux victimes d’infractions (LAVI) du 23 mars 2007 (RS 312.5)

35. LAVI, Article 2(a).

36. *Id.*, Article 2(b).

37. *Id.*, Article 2(c).

38. *Id.*, Article 2(d).

39. *Id.*, Article 2(e).

40. *Id.*, Article 2(f).

41. *Id.*, Article 17.

WHAT ARE THE RIGHTS OF PRIVATE PLAINTIFFS, INCLUDING REGARDING CIVIL REMEDIES?

All injured persons, including victims, may file a declaration to become party to the proceedings in the form of private plaintiffs.⁴² Minors can become private claimants if the minor is found to be capable of judgment.⁴³ Being parties to the proceedings, private plaintiffs enjoy extensive procedural rights, including:

- Right to be assisted by a lawyer⁴⁴
- Right to benefit from free legal aid provided that the private plaintiff is indigent and asserts civil claims that are not doomed to fail⁴⁵
- Right to access the case files⁴⁶
- Right to participate in the taking of evidence: when the public prosecutor, judges or other agents of the Courts take evidence, private plaintiffs can be present and put questions to persons who are being questioned⁴⁷
- Right to challenge decisions of investigating and prosecuting authorities: private plaintiffs can challenge the rulings and the procedural acts of the police and the public prosecutor's office⁴⁸

Private plaintiffs also have the right to make a civil claim.⁴⁹ In Switzerland, the criminal and civil legal system are not strictly separate. A civil action may therefore be appended to the criminal case. The intention behind "joining" the two proceedings is (i) to eliminate the risk of inconsistent findings; and (ii) to protect the victim from having to undergo additional questioning (and potentially confront the offender) in a second set of proceedings. The civil action "joined" to the criminal case is governed entirely by the Swiss Criminal Procedure Code.

There are two types of civil remedies available to victims of crime in Switzerland: material and moral damages (translated as "satisfaction" in Swiss law). Material damages are compensation covering all or part of the losses and harm suffered by the victim. Moral damages seek to redress the physical or mental suffering experienced by a person following an attack. Moral damages are also intended to compensate for other non-material damages suffered by the victim.⁵⁰

Switzerland's efforts to tackle cases of child sexual abuse and exploitation in travel and tourism show that international cooperation is essential to investigate crimes committed abroad. It can also ensure that child victims are not left without reparation.

In March 2018, a criminal court in Fribourg convicted a Swiss citizen of trafficking in human beings for the purpose of child sexual exploitation and sentenced him to 16 years' imprisonment. The offenses had been committed in Thailand. The perpetrator, arrested in Switzerland in 2015,⁵¹ forced more than 80 children to engage in explicit sexual acts in order to produce child sexual materials. During the investigation, Switzerland requested mutual legal assistance from Thailand. The court ordered compensation to three Thai victims for moral damages ranging from CHF 40,000 to 50,000 (approximately \$43,000 to \$54,000 U.S. dollars).⁵² This unprecedented sentence in a case of child sexual abuse in travel and tourism was confirmed by the Court of Appeals in December 2019.⁵³

42. Article 118(1) CRIMPC.

43. Article 30 (3) SCC. According to Swiss case law, this depends on the minor's degree of maturity and development. If the capacity of judgment is accepted for young people from 13 - 14 years of age, there is a presumption that younger children (aged between 6 and 10) are incapable of judgment. For those in the intermediate age bracket (11 -12), article 8 of the Swiss Civil Code applies, and it is up to the party on the person claiming capacity or incapacity to discern.

44. Article 127(1) CRIMPC.

45. Articles 136 to 138 CRIMPC.

46. Article 107(1)(a) CRIMPC.

47. Articles 147(1) CRIMPC.

48. Article 382(1) and (2), Article 393(1)(a) CRIMPC.

49. Article 122 CRIMPC.

50. The notion of civil claims also includes other claims such as requests for the prohibition and removal of illicit acts or for protective measures in cases of violence, threats or harassment.

51. The defendant, a 74-year-old Swiss citizen, presented himself to the Swiss Social Service, asking for support because he had to leave Thailand in a hurry, for fear of being arrested by the authorities. Alerted, the Swiss police started an investigation and found out that he was under investigation in Thailand for sexual abuse of boys under the age of 15.

52. Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland*, GRETA(2019)14, p.43. See also *Pédophile de Pattaya: la procureure suivie sur toute la ligne*, 1 March 2018 accessible at: <https://www.20min.ch/ro/news/romandie/story/Le-pedophile-de-Pattaya-ecope-de-16-ans-de-prison-29875218>, TV Programme "Temps Présent," *La traque des pédophiles suisses* accessible at: <https://pages.rts.ch/emissions/temps-present/6776165-la-traque-des-pedophiles-suissees.html#6835684>

53. See *Le pédophile aux 80 victimes écope de 16 ans en appel*, 10 December 2019, accessible at <https://www.24heures.ch/le-pedophile-aux-80-victimes-ecope-de-16-ans-en-appel-142423395891>

ARE THERE OTHER FORMS OF COMPENSATION FOR VICTIMS OF CRIME?

The LAVI⁵⁴ provides for state compensation for pecuniary and non-pecuniary damage (Article 2). The payment of state compensation is granted only if the perpetrator fails to pay or pays only part of the amount (Article 4). This payment is offered in recognition of the victim's suffering, and it is available to victims or close family members of the victim.⁵⁵ However, crimes committed abroad are not eligible. The crime must have taken place in Switzerland (Article 3).

HOW CAN CASES BE REPORTED TO THE RELEVANT AUTHORITIES?

Any person is entitled to report an offense to a criminal justice authority in writing or orally ("denunciation").⁵⁶ However, the denunciator will not benefit from any special rights in the procedure, unlike the injured person and the victim.

Voluntary reporting is an essential first step towards increasing the numbers of prosecutions, as noted by the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography in their 2012 report.⁵⁷ Switzerland is one of the first countries to launch such a reporting system. However, the number of child abuse images on the internet is increasing in Switzerland, and very few cases have reportedly been prosecuted by direct reporting.⁵⁸

<https://www.fedpol.admin.ch/fedpol/en/home/kriminalitaet/paedokriminalitaet/formular.html>

Two Online Platforms Available in Switzerland to Report Child Sexual Crimes

Reporting Child Sex Abuse in Travel and Tourism

Since 2008, an online form is available to the general public to report cases or suspicion of child sex abuse in travel and tourism to the appropriate judicial authorities. The Federal Police can then start an investigation. Information provided will be treated as strictly confidential.

The reporting form is available in French, German, Italian, and English.

<https://www.fedpol.admin.ch/fedpol/en/home/kriminalitaet/paedokriminalitaet/formular.html>

Reporting Online Child Abuse Images or Videos

Two non-governmental organizations Kinderschutz Schweiz⁵⁹ and the Guido-Fluri Stiftung⁶⁰ identified the need for a national hotline in addition to the Federal Police's national online report form. At the time, the Federal Police's form was the only way to report potential Child Sexual Abuse Material in Switzerland. Because people may be reluctant to report directly to the police,⁶¹ the two organizations collaborated to establish the first private Swiss hotline.⁶²

In April 2022, the online reporting platform—[clickandstop.ch](https://www.clickandstop.ch)—is operational and available in English, French, Italian, and German. The online reporting platform allows any person, even children and adolescents, to report anonymously cases of abuse. The reports will then be referred to the Federal Office of Police. If criminally objectionable content is found, the internet service providers will be alerted and asked to remove and block it.

54. See Law on Assistance to Victims of Crimes (LAVI) available at <https://www.fedlex.admin.ch/eli/cc/2008/232/fr>.

55. If the victim is deceased or has suffered an attack on his or her physical integrity to such a degree that his or her close family members perceive it as serious as if he or she were deceased, close family members can receive state compensation. Decision of the Swiss Federal Tribunal 112 II 220; Decision of the Swiss Federal Tribunal 112 II 226.

56. Article 301 (1) CRIMPC.

57. United Nations Human Rights Council, Special Rapporteur on the Sale and Sexual Exploitation of Children, Including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material, *Thematic Study on the Protection of Children from Sexual Exploitation in Travel and Tourism*, A/HRC/22/54, December 24, 2012.

58. Swissinfo, *Online Child Pornography in Switzerland on the Increase*, January 13, 2019, accessible at: https://www.swissinfo.ch/eng/society/police-cooperation_online-child-pornography-in-switzerland-on-the-increase/44677466.

59. See <https://www.kinderschutz.ch/fr/traite-denfants>.

60. See <https://www.guido-fluri-stiftung.ch/de/>.

61. Voluntary reporting remains a challenge. The law does not always protect persons who make a report. See United Nations Human Rights Council, Special Rapporteur on the Sale and Sexual Exploitation of Children, Including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material, *Thematic Study on the Protection of Children from Sexual Exploitation in Travel and Tourism*, A/HRC/22/54, December 24, 2012.

62. Like in France, the Swiss hotline is part of the INHOPE network. <https://www.inhope.org/EN/articles/online-child-protection-in-switzerland>. INHOPE is a global network combating online Child Sexual Abuse Material (CSAM). The network consists of 50 hotlines in 46 countries that provide the public with a method to anonymously report illegal content online with a focus on Child Sexual Abuse Material. For more information see: <https://www.inhope.org/EN/our-story>.

IS THERE A STATUTE OF LIMITATIONS?

The statute of limitations for each criminal offense depends on the maximum length of the applicable sentence. The limitation periods are:⁶³

- 30 years if the offense carries a custodial sentence of life;
- 15 years if the offense carries a custodial sentence of more than three years;
- 10 years if the offense carries a custodial sentence up to three years; and
- 7 years if the offense carries a different penalty.

For the offenses listed in Article 5 of the Swiss Criminal Code, the limitation period runs at least until the victim reaches the age of 25. However, there is no limitation period for the following offenses if committed against children under the age of 12:⁶⁴ sexual acts with children,⁶⁵ indecent assault,⁶⁶ rape,⁶⁷ sexual acts with persons incapable of judgment or resistance,⁶⁸ and exploitation of a person in a position of need or dependency.⁶⁹

The limitation period begins on the day on which the offender committed the offense; or, if the offense consists of a series of acts carried out at different times, on the day on which the final act was carried out; or, if the criminal conduct continues over a period of time, on the day on which the criminal conduct ceases.⁷⁰

What Is the Statute of Limitations for a Civil Action?

Where a civil action is associated with an underlying criminal offense, the limitation period is the same as for the criminal offense.

63. Article 97 of the CCP.

64. *Id.*, Article 101, para 3.

65. Article 187, para 1 of the SCC.

66. *Id.*, Article 189.

67. *Id.*, Article 190.

68. *Id.*, Article 191.

69. *Id.*, Article 193, para 1.

70. *Id.*, Article 98.

Conclusion

Swiss citizens and residents have travelled to countries such as Thailand, Cambodia, India, the Philippines, Madagascar, and multiple European countries to sexually abuse and exploit children. Switzerland has criminal statutes and a universal jurisdiction provision in place that can be used to combat child sexual abuse and exploitation committed abroad. Authorities have made considerable efforts to address these crimes through international cooperation in the investigation and prosecution of transnational cases. However, despite the specific universal jurisdiction for cases involving children, the majority of cases are not reported or prosecuted in Switzerland. Swiss perpetrators are more often prosecuted in the countries where the crime is committed.

There is a need for concrete information regarding the prevalence of child sexual abuse and exploitation committed by Swiss citizens abroad. The Swiss National Action Plan against human trafficking announced that by 2025 the Federal Police will review Swiss case law on human trafficking and will have a discussion on court decisions relevant to law enforcement. By 2026, the Federal Police will complete a summary evaluation of relevant court decisions over the last few years. These measures are intended to provide more guidance on the applicable laws and foster the use of extraterritorial jurisdiction to hold perpetrators accountable in Switzerland.

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Switzerland, like France, does not have an accessible state compensation mechanism for victimized children when the crime is committed abroad. However, as discussed above—thanks to international cooperation efforts—a Swiss court awarded compensation to child victims in an extraterritorial case for the first time in 2019.

As the former UN Special Rapporteur concluded, “the use of extraterritorial legislation can be challenging, labor-intensive and expensive, often requiring the police, the evidence and witnesses to travel in one direction or another (...) it is a fact that only a low number of cases are reported and very few are prosecuted. Lessons learned from case studies show how time-consuming it is to convict travelling child sex offenders, how convictions depend on effective collaboration and the role the media can play when authorities may be reluctant to open a case.”⁷¹

Design: Orrick, Herrington & Sutcliffe LLP

Citation: The Human Trafficking Legal Center and Orrick, Herrington & Sutcliffe LLP, *Child Sexual Exploitation in Travel and Tourism: A Guide to Extraterritorial Jurisdiction to Hold Perpetrators Accountable in Switzerland* (December 2023).

71. United Nations Human Rights Council, Special Rapporteur on the Sale and Sexual Exploitation of Children, Including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material, *Thematic Study on the Protection of Children from Sexual Exploitation in Travel and Tourism*, A/HRC/22/54, December 24, 2012, p. 11.

Appendix A:

RELEVANT CRIMINAL CASES OF SEXUAL EXPLOITATION OF CHILDREN IN TRAVEL AND TOURISM

#	COURT (DATE)	FACTS	COUNTRY OF ABUSE	STATUS (AS OF AUGUST 2021)
1.	<i>Court of Lausanne (December 1996)</i>	A Swiss citizen and former teacher was convicted of child sexual abuses in Sri Lanka, Haiti, and France.	Sri Lanka, Haiti, & France	The defendant was sentenced to two years of imprisonment. ⁷²
2.	<i>Zurich District Court (June 1998)</i>	A Swiss citizen was found guilty of sexually abusing hundreds of children in Sri Lanka between 1984 and 1996. Twelve child victims were identified.	Sri Lanka	He was sentenced to four and one half years imprisonment and psychiatric treatment after being deported by Sri Lanka. ⁷³
3.	<i>Vaud Court of Appeals PE14.011241-/SSE (October 27, 2016)</i>	An Austrian national was acquitted for sexual acts committed in the Czech Republic against his underage daughter because the facts happened before the entry in force of Article 5 of the SCC.	Czech Republic	Acquitted.
4.	<i>Fribourg Criminal Court of Appeal (August 2018, n° 501 2018 13)</i>	A Swiss citizen, was convicted of sexual coercion (Article 189 para. 1 SCC) and sexual acts committed on a person incapable of resistance (Article 191 SCC) in Benin, on the basis of Article 5 al. 1 SCC.	Benin	The defendant was sentenced to 52 months of imprisonment without parole. The sum of CHF 5,000 was granted as satisfaction (compensation for non-material loss) to the victim.
5.	<i>Fribourg Criminal Court of Appeals (December 9, 2019)</i>	A Swiss citizen who had been convicted twice in Switzerland for abusing children in the 1980s and 1990s, was convicted in March 2018 for sexual acts with children and child abuse material. The two-year investigation revealed a case of sexual child abuse and production of child pornography material involving 80 children in Thailand. The Fribourg Court of Appeals confirmed the sentence on December 9, 2019.	Switzerland & Thailand	The court ordered compensation to three Thai children for moral damage ranging from CHF 40,000 to 50,000 (approximately \$43,000 to \$54,000 U.S. dollars). The defendant can still appeal to the Federal Court. ⁷⁴
6.	<i>Supreme Court of the Canton of Bern (November 2021, SK 21 35), confirmed (by the Swiss Supreme Court (August 2022, 6B_1499/2021)</i>	A Swiss citizen convicted of sexual acts with children (Article 187 SCC), sexual coercion (Article 189 SCC) and rape (Article 190 SCC) committed against a nine year-old child in France, Italy, and the United States, on the basis of Article 5 al. 1.	France, Italy, & USA	The defendant was sentenced to seven years of imprisonment.
7.	<i>Vaud Court of Appeals – PE18.01122-PBR (March 12, 2021)</i>	A Portuguese citizen residing in Switzerland was found guilty of sexual coercion (Article 189 SCC) of his nephew during their vacation in Portugal. He was sentenced to three years of imprisonment and ordered to pay CHF 15,000 for moral damage to the child aged 14 years at the time of the crime.	Portugal	Sentenced to three years of imprisonment and ordered to pay CHF 15,000 for moral damage to the child.

72. *Id.*

73. Le Temps, Zürich: *le pédophile Viktor Baumann est condamné à 4 ans et demi de réclusion*, June 26, 1998. Available at: <https://www.letemps.ch/suisse/zurich-pedophile-viktor-baumann-condamne-4-ans-demi-reclusion>.

74. Article from Benjamin Pillard, *Le pédophile aux 80 victimes écope de 16 ans en appel*, December 10, 2019. Available at: <https://www.24heures.ch/le-pedophile-aux-80-victimes-ecope-de-16-ans-en-appel-142423395891>; La Gruyère, *Pédophile multirécidiviste jugé dès mardi à Bulle*, February 3, 2018. Available at: <https://www.lagruyere.ch/2018/02/p%C3%A9dophile-multir%C3%A9cidiviste-jug%C3%A9-d%C3%A8s-mardi-%C3%A0-bulle.html>.

Appendix B:

CRIMINAL ARRESTS AND CASES OF SWISS CITIZENS PROSECUTED FOR CHILD SEXUAL ABUSE IN OTHER COUNTRIES

Conviction in Austria

A Swiss citizen appeared in court in Austria (Krems an der Donau) in January 2023. He was found guilty of child sexual abuse and production of child abuse material. He was sentenced to ten years' probation and sent back to Switzerland, where he will receive psychiatric treatment. An expert opinion certified the man as a paranoid schizophrenic with pronounced delusions.

Source: 2 February 2023: <https://kurier.at/chronik/wien/schizophrener-corona-leugner-wegen-kindesmissbrauchs-verurteilt/402314063>

Conviction in India

A Swiss couple faced charges for child sexual abuses in India in 2000 and after their return to Switzerland. Swiss authorities requested legal assistance from the Indian authorities in 2021. The couple was previously sentenced in 2003 by an Indian court to seven years imprisonment for sexually abusing street children. The public prosecutor recommended a 12-month prison sentence and a fine of CHF 2,000 for the man.

Source: 6 June 2021: <https://www.swissinfo.ch/eng/society/when-switzerland-allowed-fugitivechild-predators-into-the-country/46227030>

Conviction in Belgium

A Swiss priest was found guilty of sexually abusing a nine-year-old boy between 2010 and 2011. Brussels Court of Appeals sentenced the priest to three years of imprisonment in 2017. After living free in Switzerland after being sentenced, he was arrested by the Swiss authorities in 2020 to serve his sentence.

Source: 15 June 2020: <https://www.brusselstimes.com/116844/paedophile-priest-found-free-inswitzerland-after-conviction-in-belgium>

Conviction in Madagascar

A Swiss businessman from Neuchâtel was arrested in 2006 in Madagascar and sentenced by the court of appeal in October 2007 to five years of imprisonment for rape and child sexual abuse. He appealed to the Supreme Court and returned to Switzerland where he was free until 2016. That year, Swiss authorities launched an investigation for the sexual crimes allegedly committed in Madagascar.

Source: 1 April 2016: https://www.lepoint.fr/afrique/affaire-du-pedophile-suisse-a-madagascarenfin-la-confederation-s-en-mele-01-04-2016-2029336_3826.php

Convictions in Cambodia

A Swiss citizen and long-time Siem Reap resident Rudolf Knuchel, chairman of Aseana Hotels and Resorts, was sentenced to two years of imprisonment in 2010 for committing indecent acts against a 14-year-old boy. One year of that sentence was suspended. In 2013, the defendant was arrested for the third time on child sexual charges in Cambodia.

Source: 31 October 2013: <https://www.phnompenhpost.com/national/swiss-pedophile-charged-once-again>

19 January 2001: <https://www.phnompenhpost.com/national/rudolph-knuchel-acquittal-expected>

The Phnom Penh Municipal Court sentenced an 81-year-old Swiss citizen to five years of imprisonment and ordered him to pay USD 500 in compensation to the child victim. The court further ordered that the defendant be expelled from the country after serving the sentence. He was arrested in September 2010 in Thailand on suspicion of molesting a 12-year-old boy at a Thai seaside resort but was later granted bail.

Source: 14 September 2012: <https://www.thelocal.ch/20120914/cambodia-jails-81-year-old-swiss-paedophile>

Arrest in Morocco

A 58-year-old Swiss citizen was arrested by the judicial police in Rabat. Suspected of child sexual exploitation in Switzerland, he was the subject of an international arrest warrant issued by Interpol for child sexual exploitation. No further information on the case was available.

Source: 9 March 2018: <https://www.maroc-hebdo.press.ma/arrestation-a-rabat-dun-pedophile-suisse-faisait-lobjet-dun-mandat-darret-international>



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