



Procuración  
Penitenciaria de la Nación



## USEFUL INFORMATION FOR FOREIGN CITIZENS DEPRIVED OF THEIR LIBERTY IN ARGENTINA



Av. Callao 25 4° piso C1022AAA C.A.B.A.

www.ppn.gov.ar info@ppn.gov.ar

0800-333-9736

To call us collect (reverse charge) from phones located inside prison dial 19, \*19 or #19 and wait for the tone. Once you hear the tone, dial our toll-free number.



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The Procuración Penitenciaria de la Nación (Prison Ombudsman's Office, PPN) is an independent and autarchic Argentine public authority operating within the scope of the Legislative Branch. Its mission is to protect the human rights of persons deprived of liberty in facilities such as prisons, town halls, police stations, institutions and gendarmerie sites. In addition, it protects the rights of persons prosecuted and sentenced by the federal justice system who are held in provincial facilities.

The PPN has a specific department dedicated to issues affecting foreigners deprived of liberty within the scope of the federal penitentiary system. One of the goals of the Office for Extranjeros en prisión y Argentinos privados de su Libertad en el exterior (Foreigners in Prison and Argentines Deprived of the Liberty Abroad) is to protect the human rights of foreign prisoners as a group.

### “Defending prisoners human rights”



## TRANSFER OF SENTENCED PERSONS + DEPORTATION UNDER MIGRATIONS LAW 25.871

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4124-7100



All foreign persons tried and sentenced by an Argentine court have 2 options for returning to their country of origin or habitual residence: **deportation** and the **transfer of sentenced**

### **Deportation under Migrations Law 25.871**

Deportation is a migratory penalty applicable to any foreign person who is not a legal resident of Argentina. In the case of sentenced persons deprived of liberty, it involves the possibility of returning to their country of origin or habitual residence after having served half of their sentence, extinguishing the remainder of the sentence and banning re-entry into Argentine territory for a period equal to or greater than the imposed sentence.

#### **Are all foreigners deported or are there exceptions?**

There are exceptions. Any foreign person sentenced to prison who can prove to having strong roots in the country can allege such roots as grounds for avoiding deportation (for example, if he or she is married or has children who are residents of Argentina, or is the father/mother, son/daughter or spouse of an Argentine citizen, provided the marriage was celebrated at a date prior to the events that led to the conviction). The final decision depends on the assessment of the Dirección Nacional de Migraciones (National Directorate of Migration). It is important to report such roots upon receipt of the initial notification.

#### **What is the deportation procedure like?**

Once the judgment is final, the Court must notify the DNM who, based on that judgment, initiates an administrative procedure for deportation. The person concerned may also initiate the process by sending a letter to the DNM including: name(s), last name(s), date of birth, country of origin, passport number and/or identification number, date of judgment and years of sentence. Deportation does not require consent from the person concerned; therefore, a person may be deported against his or her will.

#### **What is the rest of the process like?**

Once the deportation process is initiated, the person will receive a notification. If the person concerned does not wish to be deported, it is essential to express their desire to remain in the country at the beginning of the process and to request free legal assistance from the Comisión del Migrante de la Defensoría General de la Nación (Commission for Migrants of the Public Defender's Office) (011 4328 – 3266). The deportation process has two stages: one administrative and one judicial.

The administrative procedure, during which evidence can be submitted and appeals can be filed, ends with a decision from the DNM about whether or not the deportation is admissible.

The DNM's administrative decision regarding the deportation can, at the same time, be challenged before a contentious administrative federal judge. At this time, you are entitled to legal counsel from the Defensoría Pública Oficial ante los Juzgados Federales de Ejecuciones Fiscales Tributarias (Official Public Defender before the Federal Courts of Fiscal Tax Foreclosures) (011 4124-5100).

If, instead, you agree to be deported, we advise that you note your consent upon notification from DNM and indicate that you will not be filing an appeal.

#### **What can you do with the salary received in Argentine currency for the work conducted in prison?**

Before deportation, every person has the right to exchange their salary into the currency of the country to which they are being deported. In general, the courts responsible for the execution of the sentence authorize the currency exchange either through the Prison Administration or at the airport. Once the deportation process begins, we recommend that you submit a request for the currency exchange in writing before the applicable Court.

#### **When and how is the deportation conducted?**

Once the deportation order is final and consented, the DNM will request from the competent judge an "extrañamiento" (estrangement) order. The judicial authority must ensure that there are no other pending criminal trials and that half of the sentence has been served. After that, it issues the corresponding estrangement order authorizing the deportation and notifies the affected person and the DNM. The affected person may be transferred to a jail that is located near the place from which he or she will be deported.

### **Transfer of Sentenced Persons**

Argentine law provides that a foreign person can serve the sentence imposed by a national court in his or her country of origin or legal residence. This is known as transfer of sentenced persons.

#### **Who may request the transfer?**

Foreigners sentenced in Argentina to:

- Prison or restriction of liberty
- Probation
- Security measures

#### **Can persons of all nationalities request transfer?**

Yes, the Ley 24.767 de Cooperación Internacional en Materia Penal (Law #24,767 on International Cooperation in Criminal Matters) stipulates that all persons, of any nationality, may initiate transfer proceedings, regardless of whether the States in question have signed a specific treaty to that effect. In such cases, the proceedings in question are subject to the other country's acceptance of the request and pending agreement with Argentina of the terms for said transfer.

There are specific treaties with many States for such transfers. Upon the enactment of Law #26,980, by which the Inter-American Convention on Serving Criminal Sentences Abroad was locally approved, there is a multilateral obligation of cooperation that enables the transfer of sentenced persons between Argentina and Ecuador, the United States, Guatemala, India, Nicaragua, and Czech Republic, among others.

In addition, transfer is also possible if there is a specific bilateral or multilateral treaty in effect, as is the case with Bolivia, Brazil, Canada, Chile, Costa Rica, Dominican Republic, Spain, Mexico, Paraguay, Peru, Panama, Venezuela and the member States of the MERCOSUR treaty.

#### **How is the process initiated?**

In all cases, the "transfer request" can be initiated by the concerned person or a family member or friend, by providing as much information as possible about the sentenced person, including: full name, identification number, holding facility, acting court, date and place of birth, among others.

This information must be submitted to the Dirección Nacional de Cooperación Internacional Jurídica y en Sistemas Judiciales del Ministerio de Justicia y Derechos Humanos de la Nación (National Directorate for Cooperation in International Legal and Judicial Systems of the Ministry of Justice and Human Rights) [at Sarmiento 329, 2do Piso (Anexo) Ciudad Autónoma de Buenos Aires C1041AAG; phone: (+5411) 5300-4040; e-mail coopinternacional@jus.gov.ar].

For the purpose of submitting a petition, a visit to the prison where the person is being held can be requested from the Procuración Penitenciaria de la Nación (Prison Ombudsman's Office) to pick up the written request.

Please note:

- The request or writ of transfer is not subject to specific formalities.
- Legal counsel is not necessary. The interested person may be represented by an attorney if he or she wishes; i.e. the Public Defender.
- In the event that the request is submitted by a friend or family member, the sentenced person will have to consent to the initiation of the transfer proceedings.
- Once initiated, the transfer will be admissible if both States authorize the request.

Transfer costs are covered by each of the States involved; in other words, neither the concerned person

#### **Once transferred, how is the sentence carried out in the country of origin or habitual residence?**

The transfer does not involve any changes for the duration of the sentence; the sentence imposed by the acting Argentine court is upheld. However, in principle, service of the sentence is subject to change in accordance with the laws of the receiving country.