

Clemency in criminal cases

FACT SHEET

Ministry of Justice

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By exercising clemency, the Government may pardon a convicted person or reduce their sentence. Clemency is for use in exceptional situations. The Government decides whether or not to grant clemency after an independent assessment in each individual case. Clemency is therefore not a right.

What can clemency involve?

A clemency decision can mean that the convicted person is pardoned or that their sentence is reduced, so that, for example, a prison sentence is shortened or is changed to probation, a suspended sentence or a fine. In certain cases the convicted person is granted a stay of enforcement of the sentence or an interruption of enforcement for a certain time. However, stays of enforcement are primarily a matter for the Swedish Prison and Probation Service (see the fact box on stay of enforcement).

Clemency can also mean a pardon from or mitigation of another legal consequence of a criminal act, such as an expulsion order issued by a court on account of a criminal offence. However, from 1 September 2013 new procedures apply for examining residence permits for persons expelled on account of a criminal offence and the cancellation of such expulsion orders. Under the new procedures, residence permit matters are only examined in the ordinary migration process – i.e. in the first instance by the Swedish Migration Board – and the Government no longer examines these matters. This does not limit the Government's right to grant clemency in the case of expulsion orders imposed for criminal offences. However, clemency is for use in purely exceptional situations. An alien who has been expelled on account of a criminal offence and who wants to apply for a residence permit should therefore contact the Swedish Migration Board (see the section on expulsion on account of a criminal offence).

The question of guilt cannot be reviewed

Only a court can examine the question of whether a person is guilty of a crime. The Government can never review the question of guilt in a criminal case.

Matters that are not open to clemency procedures

The Government can never review the question of guilt in a criminal case.

Damages and costs to be paid by the convicted person do not come within the scope of clemency.

Further, clemency cannot pertain to matters concerning the enforcement of sentences, such as prison placement, whether enforcement can be by means of intensive supervision using electronic monitoring (an electronic ankle tag) or whether the convicted person can be considered for some transitional measure (parole, a stay in care, a stay in a half-way house or extended parole). Decisions on such matters are taken by the Swedish Prison and Probation Service. Anyone wishing to know whether a sentence can be served by being fitted with an electronic ankle tag should therefore contact the Swedish Prison and Probation Service.

Clemency does not apply to electronic ankle

The question of whether a prison sentence can be enforced through intensive supervision using electronic monitoring (an electronic ankle tag) can never be the subject of clemency. This means that the Government cannot examine this question.

Any individual wishing to know whether a sentence can be served by being fitted with an electronic ankle tag should contact the Swedish Prison and Probation Service instead.

How are decisions on clemency made?

In the large majority of cases it is the convicted person himself or herself who applies for clemency. However, anyone can apply for clemency for a convicted person.

An application for clemency is to be submitted to the Ministry of Justice. The application should be in writing and contain:

- the name of the convicted person, personal identity number, address and telephone number
- the judgment concerned: the name of the court, the date of the judgment and the case number;

- the decision sought from the Government; and
- the grounds cited in support of clemency.

If the application has been written in a foreign language, the applicant himself or herself should try to have it translated into Swedish.

The application should be signed by the applicant. If a representative is engaged, a power of attorney must be submitted along with the application.

The documents filed in a clemency case become official documents. This means that the details in the clemency case will, in principle, be accessible to the public. Under the Public Access to Information and Secrecy Act, details about the individual are only confidential if there are special grounds for this.

In the main, a written procedure is followed. It is up to the applicant to submit the documents on which he or she wants the Government's decision to be based. Any documents that the applicant wants to adduce should be submitted along with the application.

When the clemency case is ready for a decision, it is presented to the Minister for Justice, who in turn presents it to the Government. It is the Government that takes the decision in the case.

Clemency exists for purely exceptional situations and no one has a right to clemency. An independent assessment is made in each individual case. Clemency is not a matter of reviewing the judgment in the criminal case; instead, it is an extraordinary examination focusing primarily on circumstances that have arisen after the judgment and could not reasonably have influenced the court's decision. Usually it is a matter of facts relating to the convicted person's personal circumstances that the court was unaware of at the time of the judgment.

Grounds that generally do not lead to clemency

- The convicted person claims to be innocent.
- Sentencing practices have changed.
- The convicted person is expecting a decision on a new trial.
- The convicted person has lodged a complaint with the European Court of Human Rights and is awaiting the Court's decision.
- The offence was a one-off occurrence.

Depression at the prospect of imprisonment or anxiety about one's financial and employment situation are not in themselves sufficient grounds to grant clemency. A prison sentence can rarely be served without social and financial consequences for the convicted person and his or her family.

Government decisions in clemency cases are taken at the weekly government meetings. These meetings are not open to the public. A written decision is sent to the convicted person. If the application has been made by some other person, that person receives

a copy of the decision. Irrespective of whether an application for clemency is rejected or approved, no reason is ever given for the decision.

Processing times for clemency cases vary, but they usually take several months.

Persons sentenced to life imprisonment

Under the Act on the Commutation of Life Sentences, a person who has been sentenced to life imprisonment can apply to Örebro District Court to have the life sentence commuted to a fixed-term sentence. Such an application can be made when the convicted person has served at least ten years of the sentence.

Can the serving of a prison sentence be deferred?

Under new rules that came into effect on 1 September 2013, an application for clemency never automatically entails a stay in the enforcement of a prison sentence.

It is the Swedish Prison and Probation Service that is responsible for the enforcement of prison sentences. Upon application from the convicted person, the Swedish Prison and Probation Service may in some circumstances grant a stay of enforcement (see fact box on stay of enforcement).

If the convicted person does not report to serve his or her sentence at the specified time, the Swedish Prison and Probation Service can request the assistance of the police authority to make the convicted person do so.

Anyone who has any questions about the enforcement of a sentence should, in the first instance, contact the Swedish Prison and Probation Service (the placement service).

Stay of enforcement

If there are special grounds in view of the convicted person's state of health, employment, educational or other circumstances, the Swedish Prison and Probation Service can, upon application from the convicted person, grant a stay of enforcement of the prison sentence for a period of no more than six months from the day on which the judgment became enforceable. If there are exceptional grounds, a further deferral of up to six months may be granted.

Anyone who has any questions about a stay of enforcement should, in the first instance, contact the Swedish Prison and Probation Service (the placement service).

Expulsion on account of a criminal offence

From 1 September 2013, new procedures apply for residence permits for persons expelled on account of a criminal offence or the cancellation of such expulsion orders. Under the new procedures, matters of residence permits for persons expelled on account of a criminal offence are only examined in the ordinary

migration process – i.e. in the first instance by the Swedish Migration Board – and the Government no longer examines these matters. An alien who has been expelled on account of a criminal offence can apply to the Swedish Migration Board for a residence permit (on grounds of protection or other grounds) and for cancellation of the expulsion order.

The scope for re-examination is strictly limited. If an alien who has been expelled on account of a criminal offence and is present in Sweden applies to the Swedish Migration Board for a residence permit or for cancellation of the expulsion order, the Board will only take up the application for an examination in certain situations. These include situations where circumstances exist that can be assumed to constitute lasting impediments to enforcement and that could not be referred to earlier, or where the alien produces a valid excuse for not having referred to them earlier. If the necessary conditions for an examination are not met, the Swedish Migration Board will decide not to grant an examination.

If the conditions for a re-examination are met, the following procedure applies. If the Swedish Migration Board finds that there are no grounds to grant the application, it will be rejected. If the Board finds that the application should be granted, it will not make a decision on the matter but instead will refer the case, along with its own opinion, to the migration court to which the Board's decision on the issue could have been appealed. A negative decision by the Board may be appealed to the migration court.

Decisions of the migration court may be appealed to the Migration Court of Appeal. Leave to appeal is generally required for an appeal to the Migration Court of Appeal.

The migration courts and the Migration Court of Appeal may grant a residence and work permit, or cancel the expulsion order, if there are impediments to enforcement (such as a risk of capital punishment, torture or persecution) or if other exceptional grounds exist. When making the assessment, special attention will be paid to certain circumstances. These include the nature and scope of the criminal activity, the time that has elapsed since the expulsion order was issued, the alien's conduct and the risk of continued criminal activity, and the alien's state of health and other personal circumstances.

A residence permit for a person expelled on account of a criminal offence will generally be temporary. A temporary residence permit is not required if the alien has been granted such a permit for a total of at least five years after the expulsion

order. However, even in such a case, a residence permit may be for a limited time if there are grounds for this.

The new examination procedures do not limit the Government's right to grant clemency in the case of an expulsion order imposed by a general court for a criminal offence. However, clemency is for use in purely exceptional situations. Moreover, the new procedures mean that residence permit matters can only be examined in the ordinary migration process. An alien who has been expelled on account of a criminal offence and who wants to apply for a residence permit should therefore contact the Swedish Migration Board.

Application for a special permit for a short visit to Sweden

As previously, a person who has been sentenced to expulsion and who has left the country can apply to the Swedish Migration Board for a special permit for a short visit to Sweden. The visit has to relate to an exceptionally important matter, such as a visit to a seriously ill relative or attendance at the funeral of a relative. If there are special grounds, such a permit may also be granted when an application is made by someone other than the expelled person. A decision by the Swedish Migration Board to refuse a permit for a short visit cannot be appealed.

More information about the new examination procedures

More information about the new procedures for examining the matter of a residence permit for a person expelled by a general court on account of a criminal offence, and about the cancellation of such expulsion orders, is available in the Government bill 'Transfer of certain aliens cases to the ordinary migration process, etc.' (Govt. bill 2012/13:151). The bill can be found on the Government website: www.regeringen.se (In Swedish only).

Residence permit matters are examined by the Swedish Migration Board

An alien who has been expelled on account of a criminal offence can apply to the Swedish Migration Board for a residence permit (on grounds of protection or other grounds) and for cancellation of the expulsion order. As previously, a person who has been sentenced to expulsion and who has left the country can apply to the Swedish Migration Board for a special permit for a short visit to Sweden.



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Additional copies of the fact sheet can be ordered from the Swedish Ministry of Justice, tel. + 46 8-405 10 00, fax + 46 8-20 27 34 or ju.info.order@gov.se.

The Government's website: www.sweden.gov.se

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