

Information about Switzerland

Detention

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w2eu.info/switzerland.en/articles/switzerland-detention.en.html

If you are or are facing any form of detention, we strongly advise you to get legal help and political support (see [contacts](#)). Furthermore, it is crucial, that you know in which detention you are. A legal aid center can help you to find out. The different forms of detention always depend on a specific article of the law. The articles have been provided below for you to be able to find out in which detention you are.

Criminal Detention

Detention because of illegal stay (Art. 115 AuG)

According to Swiss law, entering or staying in Switzerland without a valid status is considered a crime, even if you are just passing through. If the police control you and you cannot show a valid status, they may report you for illegal stay in Switzerland. The penalty varies, but in case of repeated conviction jail time can be up to one year. If this should happen to you, it is strongly advised to seek legal advice (see: contacts). There are numerous technicalities that need to be considered by the prosecutors to rightfully convict someone for illegal stay or entry into Switzerland. Often these technicalities are ignored, and it is possible to avert a conviction, if you have a lawyer. There is a maximum of one year that you can be convicted for illegal stay or entry in Switzerland. In some cantons, the courts try to convict people of more. In any case, we strongly advise you to seek legal help.

Administrative Detention

In Switzerland, there are several possibilities to take you into prison even if you did not commit a crime. This is called



administrative detention. The Global Detention Project gives you a lot of information on it. There, you will also find links to some groups working on this matter: [link](#) (only English and last update 2011).

Administrative detention is imposed by the cantonal authorities. Whenever you are taken into detention, you have the right to be informed about the reason for which you are being taken into detention and to inform your lawyer. Again, it is important if you are in criminal or administrative detention.

If you were taken into detention, you have the right for a judicial review. Either your lawyer can ask for judicial review, or you can also do it by yourself. In order to receive a judicial re-view of the grounds of your detention, you have to write a letter (in the language of your can-ton) to the cantonal compulsory measures court (“Zwangsmassnahmengericht”). The letter needs to contain a date and your signature as well as you need to write that you contest your detention. You should also send a copy of the deportation decision that you contest.

There are four major reasons why you can be taken into administrative detention in Switzerland:

Dublin Detention (Art. 76a AuG)

If you receive a Dublin decision, that means if another member of the Dublin convention is considered responsible for your asylum procedure, Switzerland has 6 months to deport you to this country (12 if you are in criminal detention and 18 if you abscond). In order to guarantee that your transfer to the country now responsible for your asylum procedure, you can be taken into detention for:

- a maximum of seven weeks, if you were already taken into detention during the preparation of your Dublin decision.
- a maximum of five weeks, if there is a Remonstrationsverfahren (that means the two countries do not agree who is responsible for your asylum procedure).
- a maximum of six weeks, in order to execute the Dublin decision and deport you to the country considered responsible (starting to count with the date of the decision by the SEM – or the federal administrative court in case you appealed the decision).
- a maximum of three months, if you actively resist your deportation.

The SEM or local authorities need to proof that there were concrete signs of a considerable danger of you going into hiding. The following things can be such ‘concrete signs’

- if you ignore an instruction of the authorities (in particular by not stating your identity or not showing up for meetings)
- if your behavior in Switzerland or abroad indicates that you are not willing to be transferred.
- if you file multiple asylum claims under different identities.
- if you ignore a containment or exclusion order.
- if you ignore an entry ban to Switzerland.
- if it is clear that you asked for asylum only to prevent your deportation.
- if you are a danger to others and are being prosecuted because of your behavior.
- if you have been convicted of a felony.
- if you actively deny having asked for asylum in another Dublin member state or had obtained a Visa for a Dublin member state.

Importantly, you cannot be taken into detention, only because you received a Dublin decision or have asked for Asylum already in another country. Yet, they can already take you into detention, even if your Dublin decision has not yet been taken.

If you are taken into detention in a Dublin procedure, you are entitled to a judicial review of your detention. Please find [here](#) a template to do so. A judicial review is free of charge, has no other consequences for your procedure and needs to be answered within 96 hours.

Preparation detention (Vorbereitungshaft, Art. 75 AuG)

You can be taken into detention already during the preparations for a decision about a residence permit for a maximum of six months, in order for you not to be able to prevent a (potentially) pending deportation. This can be prolonged to 6 months.

- if you refuse to state your identity, lodge multiple asylum claims under different identities or repeatedly ignore the authorities’ instructions.
- if you have ignored a containment or exclusion order.
- if you have ignored an entry ban to Switzerland
- if you ask for asylum after your residence permit in Switzerland was revoked because you were considered a threat to public order and safety.
- if you ask for asylum after you have been expelled from Switzerland already.
- if they think you only ask for asylum in order to avoid another deportation.
- if you have been convicted or are being prosecuted because you have been a danger to life and limb of someone else.
- if you have been convicted of a felony.

Deportation Detention (Art. 76 AuG)

If you have received a removal order (see [deportation](#)) and stay in Switzerland longer than the set final day of departure (“Ausreisedatum”), the cantonal migration office can put you in detention (this will then be done by the police). In most cantons, you will be in a normal prison, but some cantons also have special immigration detention prisons. Treatment in immigration detention is very similar to prison (except for that you are, for example, allowed more visits).

The usual form of detention is ‘detention pending deportation’ (“Ausschaffungshaft”), which can be given to you for a maximum of 12 months. The migration office orders the detention. The requirements for the detention are that you don't leave the country, that the deportation is possible and a certain likelihood, that you can be deported sometime soon.

Coercive Detention (Durchsetzungshaft, Art. 78 AuG)

The coercive detention is only meant to make your life uncomfortable and change your behavior so that you leave Switzerland ‘voluntarily’. Coercive detention is usually given for 1 month and then renewed for 2 months at a time. You can be given 6 months of coercive detention in total. The migration office orders the detention, for which the only requirements are that you do not leave the country and proportionality.

Maximum length of detention (Art. 79 AuG)

Dublin detention, detention for the preparation of departure, coercive detention and detention pending deportation, cannot exceed 18 months together. If you are in prison for 18 months or more, you have to be set free. If you are a child, the maximum is 12 months.

Containment orders (“Eingrenzung”, Art. 74 AuG)

Containment orders ban you from leaving (or entering) a specified area. Usually, the area is the territory of the municipality in which you live. You can be given a containment order, if you have a final removal order and have not left Switzerland by the set final day of departure or there are concrete signs that you will not have left by said date. Containment orders aim to make life for people without a legal right to stay in Switzerland intolerable, in order for them to leave “voluntarily”. Even if you cannot be deported by force to your country of origin, the possibility for a ‘voluntary’ return is enough to receive a containment order.

Containment orders are legally not a form of detention, however, for many people experience them as similarly grave intrusions into their liberty. It is important, that you seek legal advice, if you receive a containment order. For this you need a written appointment with a lawyer or a legal counsel. Otherwise you may be sentenced for violating the containment order with a fine or even imprisonment. Appointments with a lawyer or a doctor are the only two exceptions to the containment order that allow you to leave the area. Both need to be confirmed in writing.

If you violate the order and leave the area which you have been assigned to, you can face very harsh punishment. In total you can receive up to three years in prison.