

**Von:** [REDACTED]@gmail.com [REDACTED]@gmail.com] **Im Auftrag von** Michael Flynn  
**Gesendet:** Donnerstag, 24. Oktober 2013 14:43  
**An:** Feliser Philippe BFM  
**Cc:** Michael Flynn; Rittener-Ruff Odile EDA RTO; Kim Netzell; Victoria Anderica  
**Betreff:** Re: seeking assistance (immigration detention in Switzerland)

Philippe,

Thank you for sending us the completed questionnaires, we appreciate the effort that has been made to do this. However, we are a little confused by some of the answers and thus I was hoping you or a colleague could provide brief clarifications on the following:

1) With respect to the 401 places for administrative detention mentioned on this website [http://www.parlament.ch/d/suche/seiten/geschaeft.aspx?gesch\\_id=20114082](http://www.parlament.ch/d/suche/seiten/geschaeft.aspx?gesch_id=20114082)

Are all these places used only for administrative detention of migrants or also for other forms of administrative detention? Also, can these places of detention be located in any prison/police facility or only dedicate administrative detention facilities?

Generally, these places are used only for the detention of foreigners under aliens legislation. As mentioned in the reply of the Swiss Federal Council to the interpellation 11.4082, some cantons have detention facilities with flexible partitioning, which allows to vary the number of places used for the detention of foreigners under aliens legislation within a relatively short term.

What does the label “Ausserkantonale Haftplätze” stand for?

Some cantons don't have detention facilities used for the detention of foreigners under aliens legislation. These cantons therefore “rent” places from other cantons; it is mentioned in the reply, in which cantons the places are located.

With respect to the 121 additional places mentioned on that website: In what premises are they located? According to the website, these 121 places are for short confinement. What is the maximum length of detention permitted in these places? Is this regulated by a specific law?

The 121 additional places are located for example in regional prisons or remand prisons. The maximum length of detention permitted in these places depends on the cantonal legislation and in particular jurisprudence (Court of Coercive Measures).

2) In your answer to question two of the first questionnaire, you mention the number of people “arrested” for violations of the foreign nationals act. Should we assume that all these people were placed in immigration detention? Also, we have found that most countries in Western Europe provide statistics on what specific violations of their foreigners act people were detained/arrested. Can you provide statistics on which specific violations of the act people were arrested.

The question two of the first questionnaire was about **administrative detention** and not penal incarceration. Generally, administrative detention of foreigners under aliens legislation is not ordered on the basis of a criminal conviction due to a violation

(exceptions: art. 75 (1) g/h, art. 76 (1) b,1) . Administrative detention is ordered to facilitate the conduct of removal proceedings (art. 75), to ensure the enforcement of the removal decision (art. 76, art. 77) or to ensure the obligation to leave Switzerland, if the expulsion order cannot be enforced due to the personal conduct of a person (art. 78).

Detailed Statistics of detention orders (*maybe a better term to “arrest orders”*):

**2011:**

7'540 detention orders: 294 (art. 75), 7'122 (art. 76, art. 77), 124 (art. 78).

Average duration of detention: 23 days

**2012:**

6'806 detention orders: 260 (art. 75), 6'519 (art. 76, art. 77), 27 (art. 78).

Average duration of detention: 20 days

Regarding statistical data on **penal incarcerations** due to violations of the Foreign Nationals Act (for example art. 115, art. 119), the FOM is not competent. Further information on convictions to imprisonment (including Federal Act on Foreign Nationals) can be found in the attached statistical data from the Federal Statistical Office (FSO).

3) Question 3 of the first questionnaire asks for the number of asylum seekers placed in detention, but you have provided us with the number of applications per year. Should we assume that all these asylum seekers were detained?

According to Footnote III of the first questionnaire, I should also provide “*the numbers of asylum seekers places in secure reception centers...*”. Therefore, in addition to the number of detention orders, I also sent you the number of of asylum applications submitted at the reception and procedure centres. As I already clarified in the questionnaire, these centres in Switzerland are not by any means detention facilities. Generally, most asylum applications are filed directly at one of the reception and procedure centres, operated by the FOM ( “normal process” of the Swiss asylum procedure).

According to Article 22 of the Swiss Asylum Act, “Asylum seekers may be held at the airport or exceptionally at another location for a maximum of 60 days. On the issue of a legally enforceable removal order, asylum seekers may be transferred to a prison specifically for deportees.” Do you have statistics on the number of asylum seekers detained under this provision?

No. The number of persons detained under this provision is covered by the statistics of detention orders.

Additionally, the the foreigners law provides for detention measures in cases were asylum requests are rejected; if asylum seekers refuse to cooperate with authorities; if

their application is considered to be abusive; if they have committed a criminal offence; or if there is evidence to suggest that they will refuse to comply with being returned to their home country (Articles 73-81 of the Federal Law for Foreigners). Can you provide statistics on the numbers of asylum seekers detained under any of these provisions.

see Answer 2.

4) Last question: We understand the explanation given regarding the federal government's apparent lack of knowledge of detention centres used in the country for immigration reasons. However, although the cantons are responsible for enforcing detention and removal, ultimately it is the federal government that would be held responsible for any violations of the rights of these people, including for instance in front of the European Court of Human Rights. Thus, we find it surprising that the federal government would not provide some kind of oversight of this activity to ensure that the nation is abiding by fundamental rights. As far as we are aware, there is only one other country in Europe, Germany, where the federal government provides a similar explanation for not having comprehensive knowledge of the treatment of foreign nationals on its territory. Thus, our question to you is whether Swiss federal government intends at any time to develop an oversight mechanism over this policy and keep track of where people are being detained?

Compared to most of the other European countries, Germany and Switzerland are federalist states. This implies, that the federal states dispose of a certain degree of autonomy (also in some parts of legislation or jurisprudence). Nevertheless, it should be noted that the cantons are bound by the Foreign Nationals Acts regulations regarding the conditions of detention (art. 81) and the jurisprudence of the Swiss Federal Supreme Court concerning this matter.

The FOM considers, that the existing statistics and data (as well as the existing exchange platforms) are adequate to get an overview over the policy of administrative detention and the treatment of foreigners under aliens legislation, which are detained.

Philippe, thanks again for all your assistance, and apologies for the additional questions. We just want to make sure we have as clear of a picture as possible regarding Swiss detention policies. You've been a big help so far.

Cordially,

Mike