

Introduction

The Swiss Confederation has a long tradition of asylum and has signed and ratified all international conventions that relate to the subject [1]. Bilateral agreements bind the Swiss to the EU (as well as, Norway, Iceland and Liechtenstein) rules concerning the implementation, application and development of the Schengen area and the Dublin area, forcing the Confederation to transpose regimes and regulations, including rules regarding the biometric database Eurodac. Furthermore, as Switzerland is a landlocked country between EU Member States, its policy on asylum - and, inevitably, its law - are strictly influenced by all the EU rules on asylum and on the regime of aliens.

Since the 1990s public opinion, politics and Swiss legislation has been engaged in a negative discourse on foreigners and there has been a continuous tightening in reception and treatment of asylum seekers. One of the most harmful consequences of this ideological wave is a continuous flurry of legislative revisions, which destabilizes the existing system and affects the legal security of those who should be the beneficiaries [2]. A new policy of restrictions on entry into the country, which should be adopted in the following three years, was finally approved by referendum 9 February 2014.

Up to 1980 asylum in Switzerland was governed by the Federal Act on Residence and Establishment of Foreign Nationals, whose first version dates back to 1931. Since 1981 however it is governed by a specific piece of legislation, the Asylum Act. The text currently in force - which governs, more generally, the right to international protection - is the Asylum Act of 26 June 1998, last amended by the Federal Law of 14 December 2012 [3]. However, the Federal Act on Foreign Nationals of 16 December 2005, last amended by the Federal Law of 14 December 2012 [4], continues to govern certain aspects of the right to international protection, especially with regard to the entry into Switzerland, to the Schengen space and Eurodac, to provisional admission to stay and to coercive measures, including detention. These two Acts are implemented by a number of orders, directives and circulars [5].

Of particular interest for coercive measures in respect of persons seeking international protection is also the Act on Use of Force of 20 March 2008 [6] and the different orders implementing it [7].

A view of the asylum procedure

Under the provisions of the Asylum Act any alien or stateless person who considers himself in need of international protection may apply for asylum in Switzerland. If he asserts a ground of persecution under the Geneva Convention, eventually he may be granted refugee status [8]. If the applicant invokes another type of general and serious danger such as a situation of war or civil war or other forms of generalized violence, a temporary protection status may be eventually granted to him as long as he remains exposed to the danger.

The asylum application does not require a particular form and may be oral or written. It must be submitted in person at the checkpoint of a Swiss airport or at the time of entry into Switzerland through an open border crossing point [9] or, if the person is already in Swiss territory, at a registration and processing centre [10]. Any application is immediately sent, by the department which received it, to the Federal Office for Migration (FOM). This is the competent authority for its examination - that must be preceded by a meeting between the FOM and the applicant - and for any concerning decision, including an eventual removal order of the applicant out of Switzerland. Cantonal authorities are however responsible for the enforcement of the removal orders.

The examination of the claim is held according to the rules of the Asylum Act. It can be concluded with a positive decision, by which the refugee status or a temporary protection is granted to the claimant; with a decision to dismiss the application (“*décision de non-entrée en matière*”), by which the FOM, on the basis of the preconditions of the claim [11], declines to examine its merits; with a negative decision by which the application is rejected on substantive grounds [12]. After decisions dismissing or rejecting the application, a legally binding removal order is issued [13].

Against any adverse decision the applicant may file, sometimes with very short deadlines [14], an appeal to the Federal Administrative Court [15]. Appeals have suspended effect unless the decision was adopted under the Dublin regulation; in this case the judicial authority, on the applicant's request, may assign a suspensive effect pending the appeal. The appeal process is generally supported by the state, including the costs of the proceedings and the costs of legal aid.

As for the length of the asylum claim procedure: the law “as a general rule” indicates “deadlines of order” - therefore non-binding, but extremely short deadlines. However, these deadlines are entirely theoretical; according

to federal authorities the average effective length of the FOM procedure exceeds 232 days (350 for decisions on the merits); the average duration of the appeal procedure can vary between 524 and 860 days [16].

Throughout the procedure, and if necessary, until the voluntary return or the removal enforcement, the claimant either is required not to leave the transit area of the airport or remains specifically allocated [17] to a registration and processing centre. Where the maximum duration of these allocations have expired or are likely to expire, he is allocated to a canton, which specifically allocates him as a general rule to a cantonal centre and then, where appropriate, to a municipality.

The whole claim process is characterized by the principle that, as a general rule, the claimant is permitted to stay in Switzerland until the final decision on the claim is adopted. This right is subject to strict obligations which are punished for breaches. The claimant must always remain available to the authorities and actively cooperate in the establishment of his identity, of his journey to Switzerland and of facts and situations qualifying and surrounding his persecution and the risks he faces. The lack of cooperation can lead to prolonged detention measures against the applicant from the beginning of the claim process and could irreparably prejudice the final decision on his application [18].

a) The airport procedure

Once an asylum application is filed at the airport, the migrant may not leave the transit area. The authorities have two days to collect his personal data and first statements on journey and reasons for living his country, fingerprints, photograph and possibly enter other biometric data. Within this same period FOM decides whether these early collected data are sufficient to establish the jurisdiction of Switzerland for examining the claim under the Dublin regulations; if they are, FOM allows the entry of the applicant into the territory and allocates him to a registration and processing centre where the merits of the claim are examined. If, on the contrary, the initial collected data is not enough to establish the jurisdiction of Switzerland, within the two-day deadline FOM notifies the applicant of a provisional denial of entry into Switzerland. He is then required to stay in the transit area of the airport, where he remains held [19].

In this case the examination of the asylum claim continues at the airport, but FOM must notify the applicant of a final decision within 20 days of filing of the application. If this decision is favourable, the applicant is granted refugee status or a provisional protection; if on the contrary this decision dismisses the claim on preconditions or rejects it for reasons of merits, a legally binding removal order is issued and the migrant is required not to leave a specific place of stay until his expulsion. This specific place of stay remains, in general, the transit area of the airport until the expiry of the maximum period of 60 days from filing the asylum claim. If the removal takes longer, the dismissed applicant, once expired the 60 holding days in the transit area, is allocated to a canton [20].

If may happen that the period of 20 days is not enough for FOM to issue a final decision. In this case, as the claim processing continues, the applicant - before the expiration of the 20 days - is allocated to a canton [21].

b) The procedure at the border crossing point and at the registration centre

The migrant who submits his application at a border crossing point is immediately allocated to a registration and processing centre. It is the same for the migrant who submits an application directly to a registration centre [22]. At the border the applicant receives a pass valid only for travel to the centre in the following working day. In case of lack of places at a centre, the applicant may be allocated to a 'delocalized site', as a transit centre or a makeshift shelter; if in the centre or in the delocalized site the claimant is considered as a 'kicker' (trouble-maker) applicant [23], he may be allocated to a 'special centre' – whose operation and management rules are much more stringent [24].

In the centre the examination process of the claim starts with a meticulous preparatory phase of collecting information that FOM deem necessary. Once this phase is completed (as a rule, it should not last more than three weeks) - FOM decide about the jurisdiction of Switzerland for examining the merits of the claim under the Dublin regulation. If they find that Switzerland is not the competent country, they issue a decision dismissing the claim and a legally binding removal order [25] to send the applicant to the competent country of the Dublin area; generally an appropriate departure deadline of between seven and 30 days is set, but an immediate departure may also be imposed. If on the contrary FOM estimate that Switzerland is the competent country, they proceed to examine the merits of the case. After further investigative action, they issue a decision either granting the applicant refugee status (or a temporary protection), or dismiss the claim for preliminary purposes other than those arising from the Dublin regulation [26], or reject the application. With these decisions (dismissing or rejecting the claim) a legally binding removal order is set and the migrant is required to move out of Switzerland either within an appropriate deadline or even immediately. Sometimes FOM may however grant the rejected applicant a provisional admission in the country if, given the specifics of the case, the execution of his removal is prohibited by international law, is not possible or cannot reasonably be required.

The length of stay in a registration and processing centre may not exceed 90 days; in a special centre 140 days; in delocalized sites 12 months. Once these deadlines have expired, if the examination process of the claim is not yet completed, the applicant is meanwhile allocated to a canton [27] where the procedure continues followed, when necessary, by removal proceedings.

A view of the removal procedure

When FOM issue a legally binding removal order the applicant must leave the territory of the Confederation immediately or within the imposed deadline [28]. The award canton, or - if any – the canton designated by the removal order, is responsible for the enforcement. The unsuccessful applicant is still required to cooperate, including in obtaining valid travel documents. To make sure that in the meantime he cannot flee the competent authority may also require him to report to an authority, to provide adequate financial security and to deposit travel documents he already has. It may, on the other hand, provide return assistance and advisory services for the return.

If the unsuccessful claimant does not leave Switzerland within the imposed deadline, the cantonal authorities implement his forced removal.

Several measures limiting the freedom of movement of asylum seekers are provided for by law to ensure that an enforceable removal order can be effectively performed. These measures may be decided and implemented not only after the adoption of a final removal order, but also before, throughout the course of the examination and appeal procedures.

Different forms of restriction of freedom of movement

In this context the frequent amendments to the Asylum Act since the late twentieth century reflect a compulsive worry about bogus asylum seekers and an ever increasing power to respond to removal orders.

This constant concern seems to have affected the spirit of the asylum procedure: instead of aiming primarily to ensure the recognition of a right to protection of persecuted people, it seems mainly directed to the return of bogus claimants. To a great extent, the restriction of the freedom of movement is left to the discretion of the administration. Ambiguity characterizes the system of allocation to a centre, to a place of stay or to a housing management; allocation in which is sometimes difficult to distinguish the purpose of reception from those of control and of holding.

Measures of important or less important limitation of the freedom of movement of asylum seekers throughout the asylum process are: temporary detention, allocation to a place in the airport, allocation to a registration and processing centre, to a delocalized site or a special centre, imposition of compulsory residence or ban from entering a specific area, allocation to a residence or lodging, detention in preparation for departure.

Thereafter, when a removal order has been adopted and notified, the competent authority may submit the unsuccessful applicant to detention pending deportation or to coercive detention.

1. Temporary detention

According to the Federal Act on Foreign Nationals, any person without documents authorizing his entry and permanence in Switzerland may be temporarily detained for a maximum of three days without any formal decision to detain being taken, just for the time needed to notify him of a decision in connection with his residence status or to determine his identity or nationality as far as his personal cooperation is required. The claimant has, under the Asylum Act, the obligation to cooperate to this end.

The claimant is entitled to be informed of the reason for his detention and to request a judicial ex post review of its legality.

The duration of temporary detention shall not be deducted from the duration of any possible detention in the preparatory stage, or pending expulsion.

2. Allocation to a centre or to a place of stay

To allocate to a centre or a place of stay are the typical expressions covering the ambiguity between hosting measure, organizational measure and holding measure. The asylum seeker may stay in Switzerland throughout the FOM and appeal procedure, but FOM and cantonal authorities may allocate him to mandatory places of stay or lodging [28]. In any case he may not engage himself in gainful employment during the first three months following his claim and this prohibition may be extended up to six months if during the first three months a negative decision on the claim has been adopted [30].

The applicant who is unable to support himself from his own resources may receive either social benefits (for an amount less than that granted to the local population) as long as a legally binding removal order has not been issued to him; if a legally binding removal order has been issued but not yet executed he may claim for emergency aid (amounting to less than social benefits). However, as social benefits and emergency aid shall be provided, wherever possible, in the form of non-cash benefits, in fact allocating to a centre is generally the form in which the assistance (in form of non-cash benefits) are provided [31]. As a result, on the one hand the applicant is required to stay in the centre as long as his exit may be refused under the law and internal regulations, on the other hand, at least for three to six months in the majority of cases he would not have means to survive out of a centre, even if and when he would be entitled to leave.

3. Allocation to a place of stay in the airport

When the asylum application is filed at the checkpoint in an airport, the holding of the applicant shall not exceed two days; his provisional residence status is decided in this period, depending on the information collected for establishing the jurisdiction of Switzerland to decide on the claim. It must be noted that unless a final decision on the asylum application – either favourable, or dismissing or rejecting the claim - the applicant may not leave the transit area (where he is "housed") for a maximum period of 20 days. If within this period a final negative decision (dismissing or rejecting the claim) matched by a legally binding removal order is issued, the unsuccessful applicant may again be forced not to leave the transit area for up to 60 days of the filing of his claim [32]. If within the 20 days no final decision (positive, dismissing or rejecting the claim) is taken the claimant is allocated to a canton, where the examination procedures continues.

4. Allocation to a registration and processing centre

Even the allocation to a registration and processing centre is simultaneously a measure of reception, organization, control and, sometimes, unacknowledged holding of the applicant. The applicant is required to report at the centre and remain there at least until his personal and biometric data, information about his identity, on his journey to Switzerland, on threats and risks he cites in support of his claim have been collected. Subject to certain schedules and procedures for the control of entries and exits, theoretically he may get out of the centre, but in fact at any moment his exit may be refused - even without a formal decision [33] - relying on his obligation to cooperate with the authorities, in particular to establish his identity and facts, or on organizational needs of the centre. Personal and travel documents, electronic products as well as most of his financial values are seized from him, after a personal search if this is deemed necessary.

In short, the fact that the allocation to the centre is the only reception measure offered to the applicant [34] and the fact that during the first three to six months in Switzerland the claimant is prohibited from engaging in gainful activities, are strong elements of deterrence by a voluntary departure from the centre during the claim or the removal process.

The centres are formally reception sites. They are semi-open, often of prison-like appearance; they are not accessible to the public, are governed by specific regulations on schedules and discipline, are monitored day and night by security guards in uniform. Asylum seekers are housed in single-sex dormitories with bunk beds, are required to participate in housework, are fed, receive medical and dental care, benefit from free time programs; telephones and sometimes fax are available.

5. Imposition of compulsory residence and ban from entering a specific area

Cantonal authorities may always, invoking grounds such as safety or public order or others, require an applicant for asylum - who is allocated to a federal or cantonal centre or resides elsewhere by his own means - not to leave the area he is allocated or not to enter a specific area. The same order may be imposed on the migrant subject to a legally binding removal order either if he has failed to observe the departure deadline or on the ground of specific indications leading to the belief that he will not observe that deadline, or if his deportation is delayed for any reason. Against these measures an appeal without suspensive effect may be lodged before cantonal judicial authorities.

Imposition of compulsory residence and ban from entering a specific area are less severe than detention, but their violation is severely punished under the criminal law: the migrant may be sentenced to imprisonment up to three years.

6. Detention

Detention is the most radical form of restriction of the freedom of movement of asylum seekers. In Switzerland, as the rest of Europe, it is a traditional measure of punishment under criminal law; but it is used – with little variation – against asylum seekers as an administrative measure of extreme control, in the absence (in most cases) of criminal behaviour and sometimes even of any infringement [35]. Against asylum seekers its imposition and its implementation are not surrounded by all the safeguards that criminal law provides for criminals. It is imposed and applied at the discretion of the administrative authority without any prior assessment of the judicial authority and the possibility of resorting to other less coercive measures first is rarely considered. Detention entails the internment of the applicant in closed structures and, except in exceptional cases, is decided and implemented by the cantonal authority. Asylum seekers may be submitted from the age of 15. The law provides that detention must take place in suitable premises and, to the extent possible, should avoid the grouping of asylum seekers with criminal detainees. It is not possible to obtain from the authorities a list of structures for the administrative detention of asylum seekers; comparing different sources it appears that of 28 centres widely used for detention of asylum seekers, only 7 [36] are specifically reserved for migrants, 2 [37] are located in airports, and 19 [38] are prisons in which migrants are not always held separately from criminals.

Detention may be imposed on the asylum claimant both during the claim process (detention holding preparatory stage) and after the issue of a legally binding removal order (detention pending deportation) or when time departure has expired (coercive detention).

As for the maximum duration of detention, according to Article 79 of the Foreigners Act as amended by the Federal Decree of 18 June 2010 [39] "1 Detention in preparation for departure, detention pending deportation in accordance with Articles 75–77 and coercive detention in accordance with Article 78 must not together exceed the maximum term of detention of six months. 2 The maximum term of detention may be extended with the consent of the cantonal judicial authority for a specific period, but in no case for more than twelve months and in the case of minors aged between 15 and 18, by a maximum of six months where: a. the person concerned fails to cooperate with the competent authority; b. the provision of the documents required for departure by a State that is not a Schengen State is delayed."

For any form of detention the legality and appropriateness of the first detention order must be reviewed within 96 hours by a judicial authority, usually after a hearing; moreover the detainee, subject to certain conditions, may request by written procedure a review of any extension of his detention.

The detainee may designate a contact person resident in Switzerland and may communicate with him, with members of his family and with his consular authority. He is entitled to health care provided within the detention structure and to at least one hour of exercise in the open air per day. According to the case law, when the detention exceeds three months the detainee is entitled, in principle, to be assisted by a defence counsel. The law provides that the implementation of the detention must consider the needs of people to be protected, unaccompanied minors and families with children.

Detention is ended, on request of the person concerned, if the judicial authority notes its illegality, if the reason for the detention no longer exists, or if the deportation is not possible for legal or technical reasons, or if the detainee must undergo a penalty or another sanction depriving him of liberty.

According to The Global Detention Project (GDP) [40] "observers have noted that [in Switzerland] people who cannot be deported are often released just before they have reached the maximum length of detention. However, they are not issued a residence permit, leaving them vulnerable to police checks, criminal sanctions for irregular stay in the country, and re-detention". In general, the criminal sanction for this kind of violation is imprisonment for up to one year.

6. Detention in preparation for departure

Detention in preparation for departure may be ordered at any time during the asylum or removal proceeding if the applicant fails seriously in his duty of cooperation (for instance, he refuses to show his identity, or to provide evidence - including fingerprints - necessary to establish it, or does not indicate with clarity his journey details from his country of origin, or leaves an allocated area or enters an area he is prohibited from entering, or introduces the asylum claim for the sole purpose of preventing or delaying deportation, removal, criminal

proceedings or execution of a sentence, etc.). Detention in a preparatory phase may also be ordered if the claimant is prosecuted for serious threats to others or is convicted of a crime [41].

7. Detention pending deportation

When a legally binding removal order issued by the FOM has been notified, the competent authority, in order to ensure its enforcement, may leave in detention the person concerned when he is already in detention. If he is not yet in detention the competent authority may decide to put him in detention on different grounds, such as if there are specific indications leading to the belief that he will escape the removal; or if he does not comply with his obligation to cooperate (in particular as regards the organization of his return travel and his departure); or if appear new circumstances that would justify a detention in preparation for departure.

8. Coercive detention

If the departure deadline imposed by the removal order has expired, the cantonal authority may detain the rejected applicant on grounds other than those provided for detention pending deportation, in order to ensure that the migrant actually leaves the country, and provided that no other less restrictive measure could lead to the goal.

Detention statistics

In 2011, the Federal Department of Justice and Police, DFJP, published statistics on the decisions on asylum applications adopted between 2008 and 2010 [42] (i.e. before the reform came into force on 1 February 2014). Out of 46,840 decisions adopted, 7,603 granted the applicant refugee status. With regard to decisions that imposed detention (during the asylum or removal proceeding or in the removal period), the figures are the following:

Total: 7,136 detention decisions

Detention in preparation for departure: 132 decisions

Detention pending deportation: 6,804 decisions

Coercive detention: 200 decisions

Average length of detention per person

Detention in preparation for departure: 31 days

Detention pending deportation: 24 days

Coercive detention: 155 days

Maximum period of detention per person

Detention in preparation for departure: 273 days

Detention pending deportation: 547 days

Coercive detention: 519 days

Considering that detention pending deportation or coercive detention in certain cases may be added to the detention in preparation for departure, in statistical terms the length of detention of an asylum seeker could have been respectively of 55 or 186 days if the average duration is considered and of 820 or 792 days respectively if the maximum duration is considered (but now the maximum cumulated duration of detention may not exceed 18 months (circa 548 days). For minors over the age of 15 it may not exceed 12 months.

To the data concerning the detention pending deportation and the coercive detention could be added a maximum of 60 days holding in the transit area of an airport (which are not counted as periods of detention) if the application for asylum was lodged at an airport.

In addition, if despite the period of detention his removal cannot be physically executed, the rejected asylum seeker is finally released, but will then be illegally staying in Switzerland, which is a violation of criminal law. He could then be prosecuted for illegal stay with a penalty of up to one year imprisonment.

Footnotes

1) The European Convention on Human Rights of 1950, the Geneva Convention relating to the Status of Refugees of 1951, the International Covenant on Civil and Political Rights of 1966, the UN Convention against Torture of 1984, the Convention on the Rights of the child of 1989.

2) Between 2002 and 2012, 15 federal legislative acts were successively adopted which have brought with 241 amendments to the provisions of the Asylum Act. To this must be added the numerous changes in the Federal Act on Foreign Nationals also affecting asylum seekers and changes to orders, directives and circulars that implement the provisions of the two laws.

3) Loi du 26 juin 1998 sur l'asile (Lasi), R.S. 142.31, <http://www.admin.ch/opc/fr/classified-compilation/19995092/index.html>. An unofficial English translation is provided for information purposes by The Federal Authority of the Swiss Confederation at: http://www.admin.ch/ch/e/rs/142_31/

4) Loi fédérale sur les étrangers (LEtr) R.S. 142.20, <http://www.admin.ch/opc/fr/classified-compilation/20020232/index.html>. An unofficial English translation is provided for information purposes by The Federal Authority of the Swiss Confederation at: http://www.admin.ch/ch/e/rs/142_20

5) Regarding the Asylum Act see:

- Order 1 on the procedure, OA1, R.S. 142.311 <http://www.admin.ch/opc/fr/classified-compilation/19994776/index.html>;

- Order 2 on the financing, OA2 , R.S. 142.312 <http://www.admin.ch/opc/fr/classified-compilation/19994777/index.html>;

- Order 3 on the data processing, OA3 , R.S. 142.314 <http://www.admin.ch/opc/fr/classified-compilation/19994786/index.html>;

- Order on admission, stay and gainful activity, OASA, RS 142.201 <http://www.admin.ch/opc/fr/classified-compilation/20070993/201401010000/142.201.pdf>.

Moreover, regarding guidelines and circulars, see the website: https://www.bfm.admin.ch/content/bfm/fr/home/dokumentation/rechtsgrundlagen/weisungen_und_kreisschreiben.html.

Of particular interest in the application of the Asylum act is also the Order of the Federal Department of Justice and Police (DFJP) November 24, 2007, RS 142.311.23: <http://www.admin.ch/opc/fr/classified-compilation/20072202/index.html>.

6) Loi sur l'usage de la contrainte (LusC), 364, <http://www.admin.ch/opc/fr/classified-compilation/20042005/index.html>.

7) In particular the Order on the use of force, OLUc, <http://www.admin.ch/opc/fr/classified-compilation/20082337/index.html> and the Order on the expulsion of aliens and its execution, EIRB, <http://www.admin.ch/opc/fr/classified-compilation/19994789/index.html>.

8) But persons are excluded from the granting of this status if in their countries of origin they are persecuted, or fear persecution, for refusing to perform military service or for desertion. However, the Act adds that the provisions of the Convention of 28 July 1951 relating to the Status of Refugees are reserved, which makes incomprehensible the practical scope of the rule.

9) Requests for asylum following detention for illegal entry in the vicinity of the border or within Switzerland, are also to be presented at the border crossing point.

10) Altstätten, Basel, Chiasso, Kreuzlingen, Vallorbe.

11) Especially the competence of Switzerland under the Dublin regulation.

12) FOM may however grant the rejected applicant a provisional admission in the country if, given the specifics of the case, the execution of his removal is prohibited by international law, is not possible or may not reasonably be required.

13) A legally binding removal order enters into force when the deadline for appealing against it has expired without being used or after the unsuccessful conclusion of the appeal.

14) Deadlines are 30 days against substantive decisions ('material decisions'), 5 working days against dismissing decisions, against decisions adopted at the airport and against decisions concerning applicants whose state of origin was declared 'safe'.

15) Cantonal decisions shall be appealed before the cantonal judicial authorities.

16) Federal Department of Justice and Police (DFJP), March 2011, Report on acceleration measurements in the field of asylum, <https://www.bfm.admin.ch/content/dam/data/migration/rechtsgrundlagen/gesetzgebung/asylg-aug/ersatz-nee/ber-beschleunig-asyl-f.pdf>

17) Allocation means obligation not to leave the premises without prior authorization. It includes making available to the applicant 'suitable accommodation'.

18) Among other things, whether the applicant unreasonably fails to comply with his obligation to cooperate or does not make himself available to the competent authorities for more than 20 days, the application shall be dismissed and he will have to wait at least three years in order to submit a new application.

19) Exceptionally the allocated location could be outside the airport. The authority must in any event provide the applicant with 'adequate housing'.

20) See point 2) paragraph 6.

21) See point 2) paragraph 6.

22) According to Article 8.3 of Asylum Act "during the proceedings, the applicant who resides in Switzerland must make himself available to the authorities". Combining this requirement with the need to strictly monitor the applicant as long as a removal order and its implementation have not been excluded, the applicant could remain allocated to a centre (or to another place of stay or residence) as long as a favourable decision on his application has not been adopted.

23) That is to say likely to endanger the security, public order or harm the operation of the centre.

- 24) Subject to the same requirements may be allocated to a “special centre” also “kickers” asylum seekers that have been allocated to a canton.
- 25) Individuals who are the subject of a legally binding removal order are required to cooperate in obtaining valid travel documents.
- 26) Especially if FOM consider that the applicant can return to safe third countries, or where he lived before; or that he can continue his journey to a third country for which he has a visa and in which he may request protection, or that he can continue his journey to a third country in where he has relatives or people with whom he has close links; or that the asylum claim has been lodged exclusively for economic or medical reasons.
- 27) See point 2) paragraph 6.
- 28) If the removal is motivated on the basis of the Dublin regulation, the order may impose an immediate departure or a departure within 7 days.
- 29) See for instance, Povlakic, Centers for asylum applicants in the canton of Vaud, 2011, <http://www.asile.ch/vivre-ensemble/wp-content/uploads/2011/11/2011-Les-centres-pour-requ%C3%A9rants-dasile-Povlakic.pdf>
- 30) After these deadlines he may be granted a work permit, however, only a few well-defined professional activities are open to refugees and indigenous labour has priority.
- 31) After some time, when the applicant or, especially, a family are allocated by a canton to a town it is possible, depending on local availability and practice, they are housed in private apartments.
- 32) This new forced stay in the transit area of the airport is not formally considered a detention in the technical-legal sense of the word, but Article 22.5 of the Asylum Act is expressed in these terms: "The applicant may be held ('retenu' in the official French version, that also call 'retention' the coercive measure translated 'temporary detention' in the unofficial English text) at the airport[...] for a maximum period of 60 days". Involuntarily, the continuous vaulting of the legislation and the inevitable inconsistencies arising, highlight the ambiguity of a reception system used, at the discretion of the administrative authorities, with functions of control and detention.
- 33) If leaving the centre is denied for more than one day or several times in succession, the applicant may lodge an appeal.
- 34) It is the same with regard to the allocation of a place of stay or an accommodation by a canton.
- 35) For a very concise summary of the remarks of international bodies and the European Court of Human Rights on detention in Switzerland, see Implementing conditions consistent with human rights in the areas of detention, police and justice in Switzerland, 2012 http://www.skmr.ch/cms/upload/pdf/120910_resume_detention_police_justice.pdf
- 36) Ausschaffungsgefängnis Basel-Stadt, Bazenheid, Egolzwil, Frambois, Widnau, La Chaux-de-Fonds, Genève Favra.
- 37) Geneva and Zurich Airport Prison, not to be confused with the Zurich Airport transit area detention facility.
- 38) Aarau, Alstätten Regionalgefängnis, Appenzell Ausserrhoden, Untersuchungsgefängnis Basel-Stadt, Berne, Biberbrugg, Cazis, Frauenfeld, Fribourg, Genève Champ Dollon, Gmünden, Porrentruy, Sarnen, Schaffhouse, Solothurn, Stans, Witzwil Gampelen, Zug.
- 39) <http://www.admin.ch/opc/fr/official-compilation/2010/5925.pdf>
- 40) The Global Detention Project (GDP), an inter-disciplinary research project that investigates the role detention plays in states' responses to global migration. See their Switzerland profile here: <http://www.globaldetentionproject.org/?id=697>
- 41) This last hypothesis is still a symptom of the ambiguity or lack of coordination in the legislation: if a claimant is convicted of a crime, criminal sanctions are imposed on him ---- (or, if necessary, prior security measures provided by criminal law), not his administrative detention, which is not a measure of criminal law; and if he has

already served his penalty, there is no reason to add an administrative detention only because he is an asylum seeker.

42) See note 16.