

Police controls and arrests

1. Anyone living in Switzerland without a valid residence permit may be questioned by the competent authorities. If so, only the police have the right to ask to see an identity document. Not having a valid permit or a visa is sufficient grounds for an arrest.

2. If you are stopped in the street, you will generally be taken to the police station. There you will be interviewed. In principle, the police do not have the right to search an arrested person, except if he/she has committed a serious crime or if security conditions justify it. However, in practice, it is often difficult to refuse to allow one's clothes, handbag or backpack etc. to be searched.

3. Except if there are specific reasons, the police do not have the right to expect you to strip merely to check your identity. If they insist on it anyway, the search must be done by a person of the same sex. A body (vaginal or anal) search must be carried out by a medically qualified person of the same sex. The police may only require this in order to search for objects linked to a crime, drugs for example.

4. The police do not have the right to enter a person's home or search the premises without an authorization from a judge (the examining magistrate or "juge d'instruction").

5. At the interview or if the police or an examining magistrate ask you questions, it is important that you should understand clearly what is happening. If you do not speak French, an interpreter must be present. It is important for you to demand an interpreter in order to be able to understand what you are signing. Before signing the record of what you have said always read it through carefully – never sign something you do not understand. Do not sign anything which you consider to be incorrect.

6. Any person arrested and suspected of an infringement under Article 115 of the Foreigners Act (LEtr) by the police, who does not have an "exclusion order" ("ordre de refoulement") or a "deportation order" ("ordre d'exécution d'un renvoi") of the Cantonal Population Office (OCPM) against him/her, should always be informed of his/her rights, by being given an explanatory note in a language he/she understands. These rights are as follows:

- If he/she is not released, he/she must be placed within 24 hours at the disposal of the examining magistrate. The magistrate in turn has a maximum of 24 hours to interview him/her and either to release

him/her or to issue an arrest warrant against him/her.

- He/she may at any time during his/her interview and when leaving the police premises ask to undergo a medical examination. The police may also ask for a medical examination to be carried out.
- He/she may learn the charges being brought against him/her and what acts he/she is supposed to have committed.
- He/she may not be compelled to bear witness against him/herself or to confess his/her guilt.
- He/she may inform a member of his family, a friend or an employer that he/she is being detained, except if there is a risk of collusion or if doing so would endanger the investigation.
- He/she may inform his/her Consulate that he/she is being detained.
- He/she has the right to receive a visit from a lawyer and to confer freely with him/her as soon as his/her interview with the police is finished and, at the latest, at the first business hour following the 24hour period as of the beginning of his/her hearing by the police.
- If he/she does not know a lawyer, he/she has the right to have one appointed for him/her.
- If necessary he/she may call upon legal aid, under conditions defined by law.
- He/she may learn under what conditions he/she will receive a "carte de sortie" (leaving notice) including the notice period by which he/she must leave.

7. We recommend those who have been arrested with the risk of immediate expulsion to:

- contact a lawyer or, as the case may be, the trade union having issued the "Procuration";
- ask for any formal decision of the authorities having jurisdiction (OCPM) to be given to him/her in writing, with information on the possibilities to file an appeal, pursuant to Article 64 of the Foreigners Act (LEtr).
- Beware! The period for lodging an appeal is extremely short (5 days). Thus it is imperative to contest the decision without further delay.

8. We also recommend those who have been arrested to draw the attention of the police during the interview to any or all of the following circumstances, which are likely to plead against immediate expulsion:

- plans for marriage or a living together with a person who has a Swiss residence permit;
- children in Geneva or expected birth;
- pending legal or administrative proceedings;
- money owed to you by an employer, or contemplated or pending proceedings before the labour court ("Prud'hommes");
- need to get additional time to take steps before the social insurance agencies (refund of AVS contributions and of your savings in the "LPP" occupational pension plan scheme);
- status of a "victim" as defined in the Act on help and compensation for crime victims (LAVI);
- victim of human trafficking;
- ongoing procedures at the cantonal population office (OCPM) intended to legalize your stay;
- children at school in Geneva;
- risk to be exposed to violations of human rights in his native country in case of expulsion;
- health disorders.

As a general rule, provided that they have not committed any other crimes and infringements, workers without a legal status in Geneva will not be immediately expelled after being controlled by the police. The police will hear them and report to the Cantonal Population Office, that will issue its decision after examining their conditions of residence. During that examination period, **we recommend that you seek help from the legal services or the unions mentioned herein, so that your rights are defended in your best interest.**

The "Procuration" (Power of attorney)

The "Procuration" is a document drawn up on your behalf by a trade union ("syndicat"). Through this document you authorize the union to represent you and act in your interests with the police and administrative authorities, so as to prevent you being immediately deported if arrested. For this reason every person without legal status should always have the "Procuration" with him or her.

To obtain a "Procuration", go to one of the addresses shown below so that a file may be opened in your name. Several

items of personal information will be needed: date of arrival in Geneva, names and addresses of your employers, salary, etc. We therefore advise you to take with you your passport and if relevant your AVS card and salary slips. It is essential to note that no information you will give to the union will be transmitted to the police or to the Cantonal Population Office (OCP). All information will remain strictly confidential!

In addition, the "Procuration" means that you and your family are taking part in a process of claiming collective regularization. The unions concerned, as part of the "Collectif de soutien aux sans-papiers", have officially asked for collective regularization. The first list of those requesting collective regularization was handed in in August 2003, and there have been two more lists handed in since then. The files of any further people who have registered with the unions and other organizations and who have given their agreement to this process are also included in the request. Please take note that the "Procuration" is not a substitute for a residence or work permit; it is a way of defending your rights if you are controlled by the police. It is valid on the Geneva territory only and will be useless in the other cantons or in France.

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