

Country Report: Switzerland



2022
Update



Acknowledgements & Methodology

The 2022 update of this report was written by Adriana Romer, Laura Rezzonico, Lucia Della Torre, and Esther Omlin, legal unit of the Swiss Refugee Council, and was edited by ECRE.

This report draws on jurisprudence of the Federal Administrative Court, publicly available statistics by the State Secretariat for Migration (SEM), press releases of the SEM and the Federal Council, information and statistics provided by the SEM upon request, newspaper articles, documents from the political process, and the experience of the Swiss Refugee Council from its daily work in different functions, especially the coordination of the different legal advisory offices.

The Swiss Refugee Council would like to thank the organisations and authorities that provided us with information for the purpose of this report.

The information in this report is up-to-date as of 31 December 2022, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. It covers 23 countries, including 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, and SI) and 4 non-EU countries (Serbia, Switzerland, Türkiye, and the United Kingdom). The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Glossary & List of Abbreviations

AsyIA	Asylum Act Loi sur l'asile (LAsi) Asylgesetz (AsylG) Legge sull'asilo (LAsi)
AFIS	Automated Fingerprint Identification System
AOZ	Asyl-Organisation Zurich, running some of the federal asylum centres
AS	Official Journal of Swiss law (<i>Amtliche Sammlung</i>)
BIP	Beneficiaries of international protection
Cantons	Members states composing the Swiss Confederation (26 cantons)
CFA/BAZ	Federal asylum centre Centre federal d'asile Bundesasylzentrum (BAZ) Centro federale d'asilo
CoE	Council of Europe
DRMP	Dublin Returnees Monitoring Project
Eurodac	European fingerprint database
FAC	Federal Administrative Court Tribunal administratif federal Bundesverwaltungsgericht (BVGer) Tribunale amministrativo federale
FDJP	Federal Department of Justice and Police Département fédéral de justice et police (DFJP) Eidgenössisches Justiz- und Polizeidepartment (EJPD)
FNIA	Foreign Nationals and Integration Act Loi fédérale sur les étrangers et l'intégration (LEI) Ausländer und Integrationsgesetz (AIG) Legge federale sugli stranieri e la loro integrazione (LStrI)
GRETA	Council of Europe's Group of Experts on Action against Trafficking in Human Beings
KSM	Coordination Unit against the Trafficking and Smuggling of Migrants Koordinationsstelle gegen Menschenhandel und Menschenschmuggel
NCPT	National Commission for the Prevention of Torture
NEE/NEM	Dismissal without entering on the merit (Nichteintretensentscheid NEE Non entrée en matière NEM Non entrata nel merito NEM)
ORS	ORS Service AG, running some of the federal asylum centres
OSAR	Swiss Refugee Council Organisation suisse d'aide aux réfugiés Schweizerische Flüchtlingshilfe Organizzazione svizzera d'aiuto ai rifugiati
SCSA	Swiss Conference for Social Assistance
SCHR	Swiss Centre of Expertise in Human Rights Centre suisse de compétence pour les droits humains (CSDH) Schweizerisches Kompetenzzentrum für Menschenrechte (SKMR)
SEM	State Secretariat for Migration Secrétariat d'état aux migrations Staatssekretariat für Migration Segreteria di Stato della migrazione
SODK	Conference of Cantonal Directors of Social Services (CDSS) Conférence des directrices et directeurs cantonaux des affaires sociales (CDAS) Konferenz der kantonalen Sozialdirektor:innen Conferenza delle direttrici e dei direttori cantonali delle opere sociali (CDOS)
Temporary admission	Admission provisoire Vorläufige Aufnahme Ammissione provvisoria Protection granted to persons whose removal cannot be executed because deemed illicit (it would constitute a breach of international law), impossible or unreasonable (humanitarian reasons including medical). It exceeds the scope of subsidiary protection, which does not exist in Swiss law.

TF Federal Supreme Court | Tribunal fédéral | Bundesgericht (BGer) | Tribunale federale

TRACKS Project on Identification of Trafficked Asylum Seekers' Special Needs

UN-CAT United Nations Committee Against Torture

Statistics

Overview of statistical practice

The State Secretariat for Migration (SEM) publishes detailed statistics on the number of asylum applications and types of decisions on a monthly and a yearly basis. SEM statistics include figures on the application of the Dublin Regulation.¹

Based on the yearly statistics provided by the SEM, the figures below, especially the asylum and temporary admission rates, are the result of a calculation methodology that differs from that used by the Swiss authorities. The Swiss Refugee Council calculates recognition rates based only on the number of decisions on the merits rendered by the SEM at first instance, without considering the inadmissibility decisions or the “radiations” cases for the total of decisions, insofar as these do not include an examination on the merits of these asylum claims.²

Applications and granting of protection status at first instance: 2022

	Applications in 2022	Pending at end of 2022 ³	Asylum status	Temporary admission ⁴	Rejection	Asylum rate	temporary admission rate	Rejection rate
Total	24,511	12,239	4,816	4,454	1,943	45%	36%	18%

Breakdown by countries of origin of the total numbers

Afghanistan	7,054	3,837	573	2,780	77	19%	79%	3%
Türkiye	1,830	3,229	1,743	142	250	82%	6%	12%
Eritrea	1,830	260	1,168	329	148	72%	19%	9%
Algeria	1,362	228	7	6	169	4%	1%	95%
Syria	1,252	436	530	350	43	59%	36%	5%
Burundi	1,191	988	5	6	0	45%	55%	0%
Georgia	735	280	4	28	143	3%	5%	92%
Iran	551	433	89	109	120	31%	28%	42%
Irak	504	337	66	100	115	26%	28%	46%
Somalia	484	180	98	160	12	42%	52%	5%

Source: SEM, asylum statistics (7-20), available at: <https://bit.ly/418U0Yk>.

¹ SEM, asylum statistics, available at: <https://bit.ly/413SYgk>.

² This calculation method is also used by the Organisation 'Vivre Ensemble', available at: <https://bit.ly/3LSeGws>.

³ SEM, asylum statistics (6-10), available at: <https://bit.ly/44rdaeN>.

⁴ Subsidiary protection status as such does not exist in Switzerland, the numbers here are the numbers of persons receiving temporary admission (as refugee or foreigner).

* Statistics on decisions cover the decisions taken throughout the year, regardless of whether they concern applications lodged that year or in previous years.

* “Rejection” only covers negative decisions on the merit of the application.

* “Applicants in year” refers to the total number of applicants, and not only to first-time applicants.

Gender/age breakdown of the total number of applicants: 2022

	Number	Percentage
Total number of applicants	24,511	100%
Men	18,017	74%
Women	6,494	26%
Children	9,513	39%
Unaccompanied children	2,450	10%
Accompanied children	7,063	29%

Source: SEM, asylum statistics (7-20), available at: <https://bit.ly/418U0Yk> and statistics on unaccompanied minors, available at <https://bit.ly/3VDzMF7>; and data provided by the SEM, 1 May 2023.

[Note: The gender breakdown (Men/Women) applies to all applicants, not only adults.]

Comparison between first instance and appeal decision rates: 2022

Statistics on second instance were not available at time of publishing.

Overview of the legal framework

Main legislative acts relevant to asylum procedures, reception conditions and detention

Title (EN)	Original Title (FR/DE/IT)	Abbreviation	Web Link
Asylum Act	Loi sur l'asile (LAsi) Asylgesetz (AsylG) Legge sull'asilo (LAsi)	AsylA	http://bit.ly/1GpuAld (FR) http://bit.ly/1FjUQQe (EN)
Federal Act on Foreign Nationals and Integration	Loi fédérale sur les étrangers et l'intégration (LEI) Ausländer und Integrationsgesetz (AIG) Legge federale sugli stranieri e la loro integrazione (LStrI)	FNIA	http://bit.ly/1Bfa0LT (FR) http://bit.ly/1Bfa26s (EN)
Federal Act on Administrative Procedure	Loi fédérale sur la procédure administrative (PA) Verwaltungsverfahrensgesetz (VwVG) Legge federale sulla procedura amministrativa (PA)	APA	http://bit.ly/1lhNNtx (FR) http://bit.ly/1BQdG52 (EN)
Federal Constitution of the Swiss Confederation	Constitution fédérale de la confédération suisse Bundesverfassung der Schweizerischen Eidgenossenschaft Costituzione federale della Confederazione svizzera	Constitution	http://bit.ly/1dHqBgj (FR) http://bit.ly/1HNtIPO (EN)

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention

Title (EN)	Original Title (FR)	Abbreviation	Web Link
Asylum Ordinance No. 1 on procedural aspects	Ordonnance 1 sur l'asile relative à la procédure	AO1	http://bit.ly/1ejpzYG (FR)
Asylum Ordinance No. 2 on Financial Matters	Ordonnance 2 sur l'asile relative au financement	AO2	http://bit.ly/1FjVey4 (FR)
Asylum Ordinance No. 3 on the processing of personal data	Ordonnance 3 sur l'asile relative au traitement de données personnelles	AO3	http://bit.ly/1GJx1ql (FR)
Ordinance on the Enforcement of the Refusal of Admission to and Deportation of Foreign Nationals	Ordonnance sur l'exécution du renvoi et de l'expulsion d'étrangers	OERE	http://bit.ly/1IGDUs6 (FR)

Ordinance on Admission, Period of Stay and Employment	Ordonnance relative à l'admission, au séjour et à l'exercice d'une activité lucrative	OASA	http://bit.ly/1GJzYaB (FR)
Ordinance of the FDJP on the on the management of federal reception centres in the field of asylum and accommodation at airports.	Ordonnance du DFJP relative à l'exploitation des centres de la Confédération et des logements dans les aéroports		https://bit.ly/3blQoUl (FR)
Directive III on the Field of Asylum	Directive III sur le domaine de l'asile		http://bit.ly/1TpuYgF (FR)
Ordinance on Measures Taken in the Field of Asylum due to Coronavirus (Ordinance COVID-19 asylum) ⁵	Ordonnance sur les mesures prises dans le domaine de l'asile en raison du coronavirus (Ordonnance COVID-19 asile)	Ordinance COVID-19 asylum	https://bit.ly/3hc0KU4 (FR)

⁵ Valid (at least) until 30 June 2024.

Overview of the main changes since the previous report update

The report was last updated in **May 2023**.

International protection

- ❖ **Key asylum statistics:** in 2022, there were 24,511 applications for international protection in Switzerland, including 7,054 applications by Afghan nationals; this is a stark increase of 64% from a total of 14,928 applications in 2021. This also included 2,450 applications from unaccompanied minors, mostly from Afghanistan (2,001), compared to a total of 989 applications in 2021 (148% increase). Of 11,213 applications examined on the merits, the overall protection rate stood at 81% (45% refugee status, 36% temporary admission). Despite the increase in applications, the overall length of procedure slightly decreased to 106 days (124 in 2021), but with significant variations: 72 days for the accelerated procedure (up from 55 in 2021), 254 in the extended procedure, 964 in the old procedure). Moreover, 12,239 cases were still pending at first instance at the end of 2022. Concurrently, of 3,703 applications for humanitarian visas, 142 were accepted (mainly Afghan nationals, 98) and 641 persons were resettled (mainly Syrian nationals, 436).

Asylum procedure

- ❖ **Rising numbers:** The Swiss asylum procedure is already highly accelerated and rushed. As there was a certain rise in asylum application in autumn 2022, legal protection has been working at full capacity. The weaknesses of accelerated procedures became more visible as numbers went up. More persons were assigned to the extended procedure. The Swiss Refugee Council has stressed that also under these extraordinary circumstances, the correct conduction of asylum procedures and procedural rights of asylum seekers must be guaranteed.⁶
- ❖ **Unaccompanied minors:** Due to the increased number of arrivals of asylum seekers in the second half of 2022, a significant number of them unaccompanied minors, the SEM introduced acceleration measures in the asylum procedures of unaccompanied minor asylum seekers.⁷ The Swiss Refugee Council emphasised that standards in favour of refugees should be respected despite the exceptional situation. In particular, child protection must be guaranteed in accommodation, care and asylum procedures: unaccompanied children and adolescents must have access to a person of trust and be accommodated separately from adults at any time.
- ❖ **Dublin Croatia:** In a reference judgment⁸ of March 2023, the Federal Administrative Court assumed that persons will have access to the asylum procedure in Croatia, regardless of whether they are transferred to Croatia by means of a take back or take-charge procedure. The court denied the existence of systemic deficiencies in the Croatian asylum system and clarified that a transfer should only be waived in exceptional cases if it can be shown that the general assumption does not apply in the individual case.
- ❖ **Dublin Italy:** Taking into account the changes in the Italian legislation introduced by the Salvini Decree (Decree 132/2018), the Court has in 2019 extended the need to obtain individual guarantees from the Italian authorities to the cases of applicants with serious health problems: such guarantees include both adequate accommodation and immediate access to medical care.⁹ Following that jurisprudence, a number of cases were referred back to the SEM for further instruction with the

⁶ Swiss Refugee Council, press release of 1 November 2022, available in French (and German) at: <https://bit.ly/3jtp5pU>.

⁷ SEM, press release of 25 October 2022, available at: <http://bit.ly/3ZjHyUY>.

⁸ Federal Administrative Court, Decision E-1488/2020, 22 March 2023, available in German at: <https://bit.ly/40Z7d5V>; press release of the Federal Administrative Court in English (and German, French, Italian) available at: <https://bit.ly/44qowQf>; press release of the Swiss Refugee Council available in French (and German) at: <https://bit.ly/40UVB3S>.

⁹ Federal Administrative Court, Reference Decision E-962/2019, 17 December 2019, para 7.4.3.

requirement of obtaining individual guarantees from Italian authorities.¹⁰ In 2022, this obligation was lifted again regarding take charge procedures. For take back procedures, guarantees are still required. The Court justified this distinction with the risk of being excluded from accommodation in take back cases.¹¹

- ❖ **BIPs from Greece:** For persons with international protection status in Greece, the Swiss authorities are generally of the opinion that the person can be transferred back there. For families with children, the Court considered the execution of the removal order to be reasonable only if favourable conditions or circumstances exist. The legal presumption of the reasonableness of enforcing removal was no longer upheld by the Court in the case of persons who, due to their particularly high vulnerability, run the risk of being permanently placed in severe distress if they return to Greece, because they are not in a position to claim the rights to which they are entitled on the spot by their own efforts. The Court therefore considered the removal of extremely vulnerable persons entitled to protection, such as unaccompanied minors or persons with serious mental or physical health problems, to be unreasonable in principle, unless there are particularly favourable circumstances on the basis of which it can exceptionally be assumed that the removal is reasonable.¹²

Reception conditions

- ❖ **Reception crisis:** In autumn 2022, the increase in asylum applications led to a tense situation also regarding reception. Although the overall number of asylum applications was not that high compared to other years, together with the persons fleeing from Ukraine, challenges became visible in terms of accommodation, care and support. In the view of the Swiss Refugee Council, the conditions in some federal asylum centres became untenable, especially in the regions of north-western and western Switzerland.¹³
- ❖ **Temporary federal asylum centres:** In order to increase reception capacity, the SEM reallocated some spaces in the ordinary centres into dormitories and opened about 20 temporary federal asylum centres, increasing the capacity at federal level to over 10,000 places.¹⁴ At the same time, the SEM took measures to reduce the number of residents in federal centres: it implemented measures to accelerate asylum procedures and exceptionally attributed some asylum seekers to the cantons.¹⁵ The premises for most temporary asylum centres opened by the SEM belong to the army and consist in either military barracks or military multi-purpose or sports halls. In the latter case, curtains have been installed to provide for smaller dorms, but the personal and family sphere cannot be adequately respected in such big spaces that were not planned as accommodation. Furthermore, in at least two of the six asylum regions, the SEM has resorted to underground civil protection shelters as temporary federal asylum centres. On 16 December 2022, the SEM communicated again that more military buildings were to be temporarily used as reception centres and that the army was going to provide for further support in the areas of logistics and transportation, but not assistance nor security. Given

¹⁰ Federal Administrative Court, Decisions D-4067/2019, 14 January 2020; D-1869/2019, 22 January 2020; D-552/2020, 5 February 2020; E-6810/2016, 11 March 2020; F-2751/2019, 17 March 2020; D-5952/2020, 4 December 2020. Case concerning a pregnant woman who was considered vulnerable: Federal Administrative Court, Decision F-2393/2020, 13 July 2020. However, pregnant women do not automatically fall under vulnerable applicants according to the Court, see Decisions E-406/2015, 2 April 2015; D-4978/2016, 6 September 2016 and E-1026/2020, 4 March 2020. In one case, the Court also stated that the unborn child cannot rely on the Convention on the Rights of the Child, Decision E-406/2015, 2 April 2015. Case concerning a victim of trafficking: Federal Administrative Court, Decision E-543/2020, 16 March 2020.

¹¹ Federal Administrative Court, Decision D-4235/2021, 19 April 2022, available in Italian at: <https://bit.ly/41hfthZ>.

¹² Federal Administrative Court, Decision E-3427/2021, E-3431/2021, 28 March 2022, available in German at: <https://bit.ly/42vOm3C>.

¹³ Swiss Refugee Council, press release of 1 November 2022, available in French (and German) at: <https://bit.ly/3jtp5pU>.

¹⁴ SEM, *Asile : la situation reste tendue*, press release, 22 December 2022, available in French (and German and Italian) at: <https://bit.ly/40qS66k>.

¹⁵ SEM, *Les centres fédéraux pour requérants d'asile frôlent la saturation – des départs anticipés pour les cantons s'imposent*, 25 October 2022, <https://bit.ly/3vy75gt>. The early attribution during the asylum procedure stopped on 15 December 2022.

the acute lack of personnel, civil servants are also providing support in assistance tasks.¹⁶ At its meeting of 1 February 2023, the Federal Council adopted the corresponding report for the parliament's attention,¹⁷ which agreed on the involvement of the army until end of March 2023..¹⁸

- ❖ **Unaccompanied minors:** In its last report drawing conclusions on the visits conducted in 17 federal asylum centres between 2021 and 2022, the National Commission for Prevention of Torture (NCPT) expressed high concern for the situation of unaccompanied minors, who are not able to get any personalised support at least since February 2022. The situation of girls is of particular concern: given their small number, they are often accommodated with adults and left to themselves. The NCPT clearly stated that the treatment of minors is in violation of the Convention on the Rights of the Child (CRC) because the best interests of the children are not considered enough and their rights to protection, rest, leisure, play and recreational activities are not guaranteed. According to the NCPT, the current system of support for unaccompanied minor asylum seekers must be reviewed and adapted so that professional and continuous assistance for all children is guaranteed even in the event of a large influx.¹⁹

Detention of asylum seekers

- ❖ **External contact:** Since June 2022, the FNIA provides for a new possibility of restraining the opportunities for detainees to have contact with specific persons or groups in cases where the person concerned is assumed to pose a specific risk to internal or external security, and even ordering solitary confinement if the restrictions have proven inadequate to counter such security risk.²⁰
- ❖ **Places of detention:** Despite a rather new tendency to centralise immigration administrative detention in fewer facilities that can better comply with national and international norms, almost all detention facilities used are either ordinary prisons or former prisons. In many of them, immigration detainees are held under the same roof as convicted or remand prisoners, mostly in separated sections, but sometimes also in cells that are not specifically foreseen for this form of detention.

Content of international protection

- ❖ **Waiting period family reunification:** In November 2022, the Federal Administrative Court decided in a leading judgment²¹ that for persons with a temporary admission, the statutory waiting period of three years is no longer strictly and automatically applicable. Applications for family reunification must already be examined after one and a half years if further waiting is disproportionate in individual cases. The judgment has immediate effect. In ruling so, the Federal Administrative Court adapted its case law to a ruling of the ECtHR.²²

Other developments

- ❖ **Political change:** Since January 2023 a new Federal Council is in place in the Federal Department of Justice and Police FDJP, which the State Secretariat for Migration SEM is part of. Instead of Karin Keller-Sutter from the liberalist party FDP, Elisabeth Baume-Schneider from the left socialist party SP is now head of FDJP.

¹⁶ SEM, *L'armée met des places d'hébergement supplémentaires à la disposition du SEM*, 16 December 2022, available in French (and German and Italian) at: <https://bit.ly/3HhNGWo>.

¹⁷ Federal Council, *Soutien au SEM: le Conseil fédéral adopte le message relatif au service d'appui de l'armée dans le domaine de l'asile*, press release, 1 February 2023, available in French (and German and Italian) at: <https://bit.ly/3lwQcB3>.

¹⁸ Voting on 6 March 2023. For further information see on the Parliament website: <https://bit.ly/3AXdMeA>.

¹⁹ NCPT, Report on federal asylum centres 2021-2022, available in German at: <https://bit.ly/42pPPZh>, 19 and ff. Article 81(5) and (6) FNIA.

²¹ Federal Administrative Court, Decision F-2739/2022, 22 November 2022 (in French): <https://bit.ly/3PYVvf1>; press release available in English (German, French and Italian) <https://bit.ly/3WMIkZr>.

²² ECtHR, Application no. 6697/18, *M.A. v Denmark*, 9 July 2021, available at: <http://bit.ly/3HAjLKs>.

- ❖ The SEM informed the cantons on 24 January 2023 on their prognosis for 2023 in terms of numbers, which lies between 24'000 and 40'000 new asylum applications.²³
- ❖ **Visas for Türkiye and Syria:** As a reaction to the devastating earthquakes in parts of Türkiye and Syria in February 2023, Switzerland decided to prioritise visa applications from those regions in order to enable the victims of these disasters to quickly find accommodation with close relatives in Switzerland. Following a steady decline in the number of applications in recent weeks, priority treatment will be discontinued on May 12, 2023.²⁴

Status S

The information given hereafter constitute a short summary of the 2022 Report on Status S, for further information, see [Annex on Status S](#).

- ❖ **Key status S statistics:** in 2022, there were 74,959 applications for status S registered before the SEM, of which 72,611 received a positive decision. 7,621 persons ended their status S in 2022 and a further 1,542 persons' status were under review regarding potential termination at the end of the year. 74,661 permits were delivered in 2022. As of 31 December 2022, there were 62,820 persons benefitting from status S in Switzerland.
- ❖ **Protection for persons displaced from Ukraine in Switzerland:** Swiss asylum law provides the possibility to grant temporary protection ("protection provisoire", "S permit") to persons in need of protection during a period of serious general danger, in particular during a war or civil war as well as in situations of general violence.²⁵ It was activated for the first time in the context of the war in Ukraine by the Federal Council on 11 March 2022.²⁶ The status shows some parallels to the EU Temporary Protection Status.²⁷ It is provided to a certain category of persons (see Qualification for Status S) without undergoing an asylum procedure.

Status S procedure

- ❖ **Procedure:** Persons who fall under the scope of status S should register in one of the federal asylum centres and without undergoing an asylum procedure, will be granted a permit.
- ❖ **Scope of protection:** Protection status S applies to the following categories of persons according to the Decision of the Federal Council on 11 March 2022:²⁸
 - (a) Ukrainian citizens seeking protection and their family members (partners, underage children and other close relatives and who were fully or partially supported at the time of the escape) who were resident in Ukraine before 24 February 2022;
 - (b) Persons seeking protection of other nationalities and stateless persons as well as their family members as defined in letter a who have applied for international or national protection status in Ukraine prior to 24 February 2022;
 - (c) Protection seekers of other nationalities and stateless persons as well as their family members as defined in letter a, who are in possession of a valid short stay or residence permit

²³ SEM, *Prévisions en matière d'asile pour 2023 : le SEM a informé les cantons*, 24 January 2023, available in French (and German and Italian) at: <https://bit.ly/3T77DVL>.

²⁴ Federal Council, press release of 2 May 2023, available in French (and German and Italian) at: <https://bit.ly/3pdprUg>.

²⁵ Art. 66 – 79(a) AsylA.

²⁶ Federal Council, *Ukraine: le Conseil Fédéral active le statut de protection S pour les Ukrainiens*, press release, 11 March 2022, available in French (and German and Italian) at: <https://bit.ly/3XaEDgK>.

²⁷ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001] OJ L 212/12, available at: <http://bit.ly/409uJhu>.

²⁸ Federal Council, *Ukraine: le Conseil Fédéral active le statut de protection S pour les Ukrainiens*, press release, 11 March 2022, available in French (and German and Italian) at: <https://bit.ly/3XaEDgK>.

giving them a valid right of residence in Ukraine and who cannot be returned to their home countries in safety and permanently.

Content of status S

- ❖ **Duration of protection:** The Federal Council decided on 9 November 2022 that the protection status S will be maintained at least until March 2024.²⁹ The cantons extend the documents annually, ; after the Federal Council's decision now until at least March 2024. If protection status is not revoked after five years, a residence permit may be issued. If protection status is not revoked after ten years, a settlement permit can be issued.³⁰
- ❖ **Rights available to status S beneficiaries:** Those who receive status S are entitled to social benefits and universal health insurance. In addition, the freedom to travel (in Switzerland and for 2 months also abroad, except to Ukraine)³¹ is guaranteed. Anyone who finds a job in Switzerland is allowed to work. Self-employment is also possible. However, the salary is then credited to the social benefits.³²

²⁹ Federal Council, *No lifting of protection status S*, press release, 9 November 2022, available in English (as well as French, German and Italian) at: <https://bit.ly/3iElxkf>.

³⁰ Articles 76 and 74 AsylA.

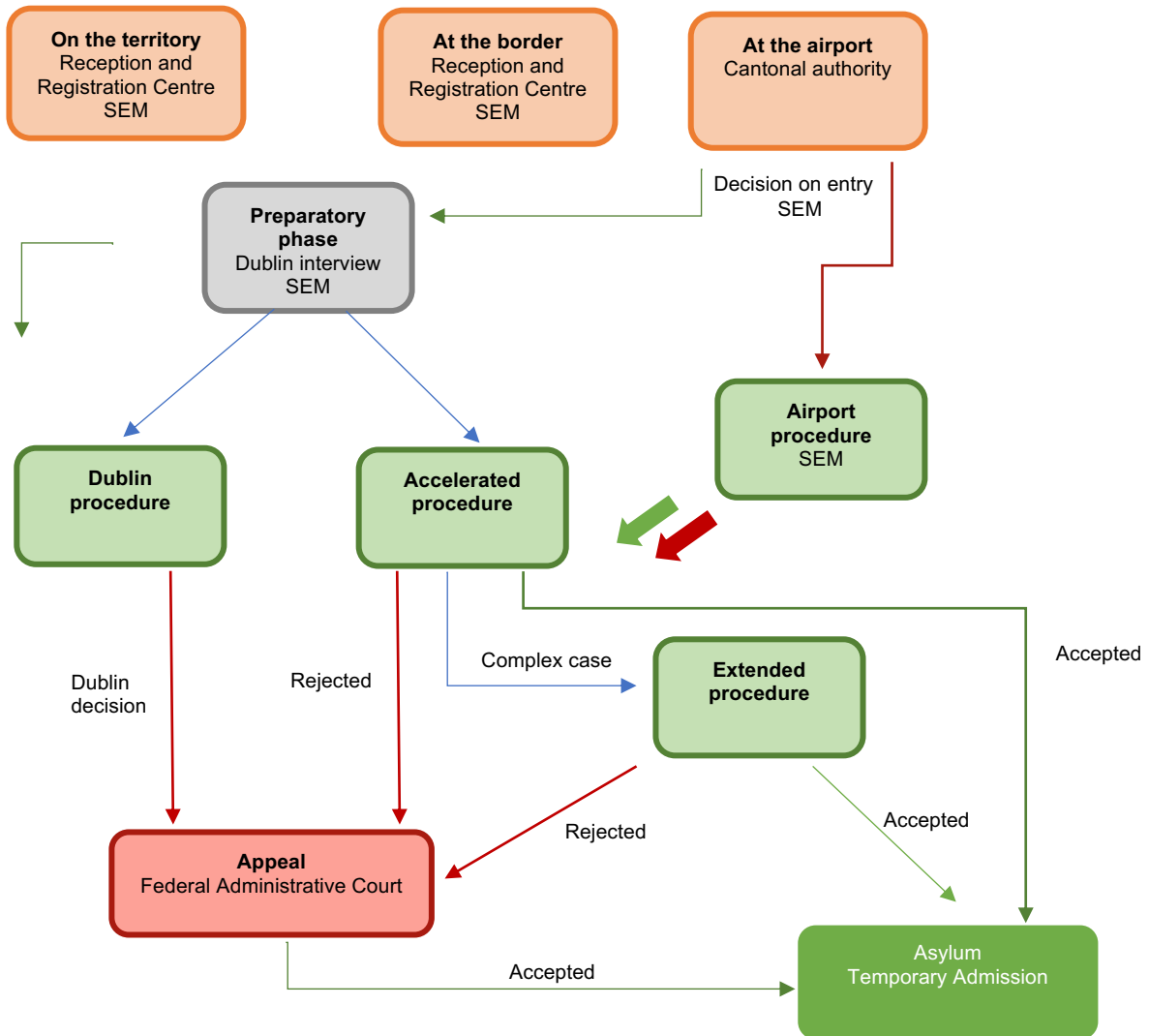
³¹ Practice of the SEM regarding Article 79 AsylA and Article 78(1)(c) AsylA.

³² Article 85 AsylA.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

- | | | |
|--|---|--|
| ❖ Regular procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ³³ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ³⁴ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Dublin procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Admissibility procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Border procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Accelerated procedure: ³⁵ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Are any of the procedures that are foreseen in the law, not being applied in practice? Yes No

All asylum applications submitted since 1 March 2019 are processed according to the restructured Swiss asylum procedure that significantly reduced the foreseen duration of procedures. The majority of the procedures have to be concluded within 140 days (including appeal and removal procedure) while asylum seekers are accommodated in federal asylum centres located in one of the six asylum regions. If the case is a complex one requiring further clarifications and cannot be decided within 8 days after the interview on the grounds for asylum, the SEM must order that the case be assigned to the extended procedure. These procedures shall last a maximum of one year in total (including appeal procedure and enforcement of removal in case of a negative decision). After the assignment to the extended procedure, asylum seekers are attributed to a canton that is responsible for organising accommodation.

In order to compensate for the acceleration of the procedure, asylum seekers receive free counselling and free, state-independent legal representation right after their asylum application.

3. List of authorities that intervene in each stage of the procedure

Stage of the procedure	Competent authority (EN)	Competent authority (FR)
Decision on / denial of entry		
❖ At the border	Border police	Police des frontières
❖ At the airport	Airport police	Police aéroportuaire
❖ After lodging asylum claim at the airport	State Secretariat for Migration SEM	Secrétariat d'Etat aux migrations SEM
Application	State Secretariat for Migration SEM	Secrétariat d'Etat aux migrations SEM
Dublin (responsibility assessment)	State Secretariat for Migration SEM	Secrétariat d'Etat aux migrations SEM
Refugee status determination	State Secretariat for Migration SEM	Secrétariat d'Etat aux migrations SEM
Airport procedure	State Secretariat for Migration SEM	Secrétariat d'Etat aux migrations SEM
Appeal procedure	Federal Administrative Court FAC	Tribunal administratif fédéral
Subsequent application	State Secretariat for Migration SEM	Secrétariat d'Etat aux migrations SEM

³³ For applications likely to be well-founded or made by vulnerable applicants.

³⁴ Accelerating the processing of specific caseloads as part of the regular procedure.

³⁵ Labelled as "accelerated procedure" in national law.

4. Number of staff and nature of the first instance authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the determining authority?
State Secretariat for Migration (Asylum Department)	650	Federal Department of Justice and Police	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Source: SEM, 1 May 2023.

The State Secretariat for Migration (SEM) is responsible for examining applications for international protection and competent to take decisions at first instance. It falls under the responsibility of the Federal Department of Justice and Police. The guidelines and circulars of the SEM relating to the asylum procedure are publicly accessible and can be consulted online.³⁶

The SEM employs 1,277 officials, who work not only on asylum but also other areas in the field of migration such as immigration or integration. Out of them, 650 officials worked in the Asylum Department as of December 2022. 22 officials work in the COI department, 9 officials in the LINGUA department. The number of caseworkers examining applications for international protection in the six asylum regions is 242. In the headquarters in Bern, 53 officials work in the field of asylum procedures, 16 officials in the field of the Dublin regulation. Every single asylum decision is double checked by the head of unit or their deputy. There is also a Quality Management team at the main offices in Bern, but they only check a representative selection of decisions in order to improve the processes and contents of decisions, and the results of such monitoring are not public.

Where?	SEM	Asylum Department
Bern (Headquarter)	841	243
Federal Asylum Centre Bern	55	55
Federal Asylum Centre Altstätten	62	59
Federal Asylum Centre Basel	67	64
Federal Asylum Centre Boudry	108	105
Federal Asylum Centre Chiasso	57	54
Federal Asylum Centre Zurich	75	70
Airport Zurich	9	--
Airport Geneva	3	--

5. Short overview of the asylum procedure³⁷

³⁶ SEM, *Guidelines and circulars*, available in French (and German and Italian) at: <https://bit.ly/2IRH7nn>. A Handbook on Asylum and Return for SEM employees providing useful information on Swiss law and practice is also available online in French (and German) at: <https://bit.ly/2J0U22t>.

³⁷ Here is some information provided by the SEM in several languages regarding the asylum procedure: <https://bit.ly/3Wo1hSx>.

The restructured Swiss Asylum System³⁸ entered into force in 2019, it aims to significantly speed up asylum procedures.³⁹ To this end, the reform brought together all the main actors of the procedure “under the same roof”. Asylum procedures are carried out in federal centres located in **six asylum regions** in Switzerland. There are three procedures (accelerated, extended, Dublin) strictly limited in time. In order to ensure fair procedures according to the rule of law, asylum seekers are entitled to free counselling, as well as free and independent legal representation from the very beginning of the procedure (see [Regular procedure](#)).

Application for asylum: A person can apply for asylum in a federal asylum centre with processing facilities, at a Swiss border or during the border control at an international airport in Switzerland.⁴⁰ The Swiss asylum procedure is organised as a single procedure.

In most cases, asylum applications are lodged in one of the six asylum centres with processing facilities run by the SEM (for an overview on the centres, see [Reception Conditions - Housing](#)). If this is not the case, the concerned asylum applicants are directed to one of those centres within 72 hours of filing the application for asylum. Even if they apply in one of the federal centres, asylum seekers can be transferred to one of the five other centres located in another region. As a result, they cannot choose in which region their application will be examined. See below for the proceeding if an application is filed at the international airports of Zurich and Geneva.

Preparatory phase: The preparatory phase (“*phase préparatoire*”) starts after the lodging of the application and lasts a maximum of 10 days in the case of a Dublin procedure and a maximum of 21 days for other procedures. The purpose of the preparatory phase is to carry out the preliminary clarifications necessary to complete the procedure, in particular to determine the State competent to examine the asylum application under the Dublin Regulation, conduct the age assessment – if the minority is doubted –, collect and record the personal data of the asylum seeker, examine the evidence and establish the medical situation.⁴¹

During the preparatory phase, a first interview is held mainly to determine whether Switzerland is competent to examine the merits of the asylum application (**Dublin interview**).⁴² The interview is conducted in the presence of the applicant’s legal representative and is usually translated over the phone by an interpreter. It collects information on the identity, the origin and the living conditions of the applicant and covers the essential information about the journey to Switzerland. The applicant is granted the right to be heard regarding possible reasons against a transfer to a Dublin member state⁴³ but the grounds for the asylum application are not discussed.

Cancellation and inadmissibility decision: On this basis, the SEM decides whether an application should be examined and whether it should be examined in substance. If the application cannot be considered as an asylum claim according to the Asylum Act or if the application is not sufficiently justifiable and/or the asylum seeker withdraws his or her application, the latter is cancelled without a formal decision.⁴⁴ Similarly, the application of asylum seekers will be cancelled without a formal decision if they

³⁸ Swiss Asylum Law has undergone a series of changes in the last few years and substantial modifications entered into force in March 2019 after a test phase conducted between 2014 and 2019. The Asylum Act and the Federal Act on Foreign Nationals and Integration (FNIA) as well as different relevant ordinances have been entirely or partially revised. Before the entry into force of the new asylum system throughout the country in March 2019, SEM implemented a test phase in the federal asylum centre of **Zurich** (with a centre without processing facilities in Embrach) between 2014 and March 2019. Thereafter, a second test phase was conducted in **Boudry** (with a centre without processing facilities in Chevilles/Giffers) from April 2018 to February 2019, in order to set up the appropriate processes and test the new accelerated procedure.

³⁹ SEM, *Asylum procedures* available in English (as well as German, French and Italian) at: <https://bit.ly/33NaCcb>. SEM, *Asylum procedures* available in English (as well as German, French and Italian) at: <https://bit.ly/33NaCcb>.

⁴⁰ Article 19 AsylA.

⁴¹ Article 26 AsylA.

⁴² Article 26 AsylA.

⁴³ Article 36(1) AsylA.

⁴⁴ Article 25a AsylA.

fail to cooperate without valid reason or if they fail to make themselves available to the authorities for more than 20 days – or more than 5 days if the asylum-seeker is accommodated in a federal centre. In such circumstances, the persons concerned cannot lodge a new application within 3 years, unless this restriction would amount to a violation of the Refugee Convention.⁴⁵

In certain cases, the SEM will take an inadmissibility decision (so-called NEM (French) or NEE (German)), which means that it decides to dismiss the application without examining the substance of the case. Such a decision is for example taken if the asylum application is made exclusively for economic and medical reasons. In practice, the most frequent reason for such a decision is the possibility of the applicant to return to a so-called safe third country or if according to the Dublin III Regulation another State is responsible for conducting the asylum and removal procedures.⁴⁶

Dublin procedure: If preliminary investigations indicate that another Member State might be responsible for processing the asylum application according to the Dublin III Regulation, a request to take charge or take back is submitted to the relevant State. Under the Asylum Act, a Dublin procedure formally begins with the submission of the request to take charge or take back and lasts until the effective transfer to the competent Dublin State or the decision of SEM to examine the application on the merits in a national procedure.⁴⁷ In case of a Dublin procedure, the SEM has to examine whether grounds exist to make use of the sovereignty clause. If so, Switzerland takes over the responsibility for examining the application even if another Member State would be responsible according to the Dublin Regulation. In all the other cases where a decision to dismiss the application without examining the substance of the case has been taken, the SEM examines if the transfer to the receiving State is lawful, reasonable and possible.⁴⁸

Accelerated procedure: Unless a Dublin procedure is initiated, the accelerated procedure begins right after the preparatory phase.⁴⁹ It lasts a maximum of eight working days,⁵⁰ and includes the following stages:⁵¹

- ❖ Preparation of a second interview regarding the grounds of asylum;
- ❖ Conduct of the second interview and/or granting the right to be heard;
- ❖ Assessment of the complexity of the case and decision to continue the examination of the asylum application under the accelerated procedure or proceed to the extended procedure;
- ❖ Preparation of the draft decision;
- ❖ If negative, legal representative's statement⁵² on the negative draft decision within 24 hours;
- ❖ Notification of the decision;

After the second interview, the SEM carries out a substantive examination of the application. It starts by examining whether the applicants can prove or credibly demonstrate that they fulfil the legal criteria of a refugee. As laid down in law, a person able to demonstrate that he or she meets these criteria is granted asylum (B permit) in Switzerland.⁵³ If this is the case, a positive asylum decision is issued.

If the SEM considers however that an applicant is not eligible for the refugee status or that there are reasons for their exclusion from asylum,⁵⁴ it will issue a negative asylum decision. In this case, the SEM

⁴⁵ Article 8-bis AsylA. This reservation indicates that the prohibition to file an asylum application within 3 years cannot be applied if it would constitute a violation of the Convention, in particular of the right to seek protection.

⁴⁶ Article 31a AsylA.

⁴⁷ Article 26b AsylA.

⁴⁸ Article 44 AsylA; Article 83 FNIA.

⁴⁹ Article 26c AsylA.

⁵⁰ Article 37 (2) AsylA.

⁵¹ Article 20c AO1.

⁵² In consideration of this statement, the SEM can adjust its decision. The idea of the statement is that the facts are properly established and that the decision will be correct and comprehensible in terms of formality and in the merits.

⁵³ Article 49 AsylA.

⁵⁴ Asylum is not granted if a person with refugee status is unworthy of it due to serious misconduct or if he or she has violated or endangered Switzerland's internal or external security (Article 53 AsylA). Further, asylum is not granted if the grounds for asylum are only due to the flight from the applicant's native country or country of origin or if they are only due to the applicant's conduct after his or her departure, so-called subjective post-flight grounds (Article 54 AsylA).

has to examine whether the removal of the applicant is lawful, reasonable and possible.⁵⁵ The result of this examination is communicated in the same decision as the negative asylum decision.⁵⁶ If the removal is either unlawful, unreasonable or impossible, the applicant will be admitted temporarily to Switzerland (F permit). A temporary admission constitutes a substitute measure for a removal that cannot be executed. It can be granted either to persons with refugee status that are excluded from asylum or to persons who have not been recognised as refugee but the removal cannot be executed. The scope of the temporary admission as foreseen in national law exceeds the scope of the subsidiary protection foreseen by the EU recast Qualification Directive, as it covers both persons whose removal would constitute a breach of international law, as well as persons who cannot be removed for humanitarian reasons (for example medical reasons).

Extended procedure: If it appears from the interview on the grounds for asylum that a decision cannot be taken under an accelerated procedure, the application is processed further in an extended procedure and the asylum seeker is allocated to a canton. This occurs in particular when a procedure cannot be concluded within eight working days because additional investigative measures are necessary.⁵⁷ In addition to a possible additional interview, other investigative measures can relate to the identity and origin of the person, medical examinations, documents submitted or credibility of the allegations.

Appeal: If an applicant has not been granted asylum, they can submit an appeal against the decision of the SEM to the Federal Administrative Court.⁵⁸ The latter is the first and last court of appeal in asylum matters in Switzerland. An applicant has thus only one possibility to appeal against a negative decision in the asylum procedure (except for extraordinary proceedings such as application for reconsideration or revision and proceedings under international instances). An appeal can be made against inadmissibility and negative in-merit decisions.

Time limits for depend on the type of the contested decision and proceedings in which the decision was issued. The time limit is five working days in the case of an inadmissibility decision, a decision in the airport procedure, or if the applicant comes from a so-called safe country of origin⁵⁹ and is evidently not eligible for refugee status and his or her removal is lawful, reasonable and possible. In an accelerated procedure, the time limit for appeal is seven working days but was temporarily extended to 30 days with the Ordinance COVID-19 Asylum (in force at least until 30 June 2024)⁶⁰. In an extended procedure, the deadline for appeal is 30 days for in-merit decisions. As for regards incidental decisions (e.g. attribution to a canton), the deadline for appeal is 5 days in the accelerated and 10 days in the extended procedure.⁶¹ The deadline starts one day after the lawful opening of the decision.⁶²

Removal: The cantonal authorities are in charge of the execution of the removal of an applicant, regardless of whether the measure concerns a Dublin transfer or a removal to a country of origin.⁶³

Airport procedure: If the asylum application is lodged at the border in the transit area of an international airport, special rules apply.⁶⁴ As a first step, the SEM has to decide whether entry into the territory should be allowed. In case entry is provisionally refused to an applicant, the whole asylum procedure is generally carried out in the transit area of the airport. The denial of entry may be contested until notification of the asylum decision.⁶⁵ The SEM must then issue the asylum decision within a maximum of 20 days after the

⁵⁵ Article 44 AsyIA; Article 83 FNIA.

⁵⁶ This fact may lead to confusion for the persons concerned as the decision reads “1. *Your asylum application is rejected, you have to leave Switzerland*; 2. *The return to your country of origin is considered unlawful, therefore you are granted a temporary admission*”.

⁵⁷ Article 26d AsyIA.

⁵⁸ Article 105 AsyIA.

⁵⁹ According to the list of the Federal Council, see [Safe countries of origin](#).

⁶⁰ Press release of the Federal Council, *Coronavirus : prolongation des mesures de protection dans le domaine de l’asile*, 16 December 2022, available in French (and German and Italian) at: <https://bit.ly/3XbLxkY>.

⁶¹ Article 108 AsyIA.

⁶² Article 20 APA.

⁶³ Article 46 AsyIA.

⁶⁴ Articles 22 and 23 AsyIA.

⁶⁵ Article 108(4) AsyIA.

asylum application has been lodged. If that time limit is not met, the SEM allocates the applicant to one of the six federal asylum centres with processing facilities where he will undergo the regular procedure. The time for lodging an appeal against a negative asylum decision within the airport procedure is five working days.⁶⁶ In practice, this procedure is only applied at the airport of **Geneva**, in Zurich, the persons are sent to the federal asylum centre of Zurich after a short security check.⁶⁷

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? Yes No
2. Is there a border monitoring system in place? Yes No
3. Who is responsible for border monitoring? National authorities NGOs Other
4. How often is border monitoring carried out? Frequently Rarely Never

There is no reported case of push backs known to the Swiss Refugee council in 2022.

Legal access to the territory (beyond family reunification)

Third country nationals can apply for a **humanitarian visa**. The Swiss Red Cross used to run a counter for counselling on humanitarian visas which was closed down in December 2021 due to the restrictive practice in Switzerland.⁶⁸ In 2022, out of 3,703 applications only 142 were accepted. The most relevant countries in terms of applications were Afghanistan (1,759 applications, 98 accepted), Iran (849 applications, 3 accepted) and Syria (745 applications, 12 accepted). Further humanitarian visas were given to 6 persons from Eritrea, 9 from Myanmar, 4 from Sri Lanka, 1 person from Tajikistan and 5 from Türkiye.⁶⁹

The Swiss government offers about 800 places for **resettlement** per year. In view of improving planning, the Federal Council intends to adopt a resettlement programme every two years within the range of 1,500 to 2,000 refugees. On 19 May 2021, the Federal Council approved the admission of up to 1,600 particularly vulnerable refugees for 2022/23.⁷⁰ As of December 2022, the Swiss government has announced a temporary halt to the resettlement program. The government claimed that there were no more capacities to take more people in.⁷¹ In 2022, 641 persons entered Switzerland under the Resettlement programme, most of them from Syria (436), followed by Afghanistan (95) and Sudan (49). For 2023, 1,179 places are available.⁷²

Switzerland participated in 2015 and 2016 on a voluntary basis in the EU **relocation** programmes (relocation from Greece and Italy). Since then, Switzerland has not participated in relocation and neglected any such request.⁷³

Evacuations from Afghanistan 2021: Switzerland declared at the end of August 2021 that its immediate priority was to evacuate and welcome local staff from its temporarily closed Kabul cooperation office, and

⁶⁶ Article 108(4) AsyIA.

⁶⁷ Information provided by Berner Rechtsberatungsstelle für Menschen in Not, 29 December 2022.

⁶⁸ Information on the application for a humanitarian visa can still be found in on their homepage <https://bit.ly/3oIUhGO>.

⁶⁹ Data provided by the SEM, 1 May 2023.

⁷⁰ Communication of the SEM in English available at: <https://bit.ly/3uiTCK5>.

⁷¹ See Infomigrants, *Switzerland freezes admission of resettlement refugees*, 20 December 2022, <https://bit.ly/3YUvHxm>.

⁷² Data provided by the SEM, 1 May 2023.

⁷³ Information provided by the SEM, 1 May 2023.

their immediate families.⁷⁴ Switzerland evacuated its local staff from the Swiss Development Cooperation Office (SDC) in Kabul, which was closed on 13 August 2021 following the Taliban takeover. As a result, 219 SDC staff were evacuated, including 132 local staff and their families. These 132 people were counted towards Switzerland's resettlement quota.⁷⁵ After that, Switzerland ended its evacuation scheme and did not attempt any further evacuations which was criticised by civil society.

2. Registration of the asylum application

Indicators: Registration

1. Are specific time limits laid down in law for making an application? Yes No
❖ If so, what is the time limit for lodging an application?
2. Are specific time limits laid down in law for lodging an application? Yes No
❖ If so, what is the time limit for lodging an application?
3. Are registration and lodging distinct stages in the law or in practice? Yes No
❖ Is the authority with which the application is lodged also the authority responsible for its examination?
4. Is the authority with which the application is lodged also the authority responsible for its examination? Yes No
5. Can an application for international protection be lodged at embassies, consulates or other external representations? Yes No

According to Swiss law, an asylum application can be lodged at a federal asylum centre with processing facilities, an open border crossing or a border control point at an international airport in Switzerland. An application can be lodged only at the Swiss border or on Swiss territory.⁷⁶ Any statement from a person indicating that they are seeking protection in Switzerland from persecution elsewhere is considered as an application for asylum.⁷⁷ If the asylum application is made in front of an authority, which is not responsible, the person must be referred to the authority responsible in bona fides.

No specific time limits are laid down in law for asylum seekers to lodge their application, and persons are not excluded from the asylum procedure because they did not apply for asylum immediately or within a certain time limit after entering Switzerland. However, if the application is not lodged soon after the entry, authorities may demand a reasonable justification for the delay. If there is no justification and the person has not legal right to stay, there might be a procedure for illegal stay.

In general, foreign nationals without a valid permit⁷⁸ of stay in Switzerland need to lodge an asylum application in one of the six federal asylum centres with processing facilities run by the SEM.⁷⁹ If a person requests asylum at the border or following detention for illegal entry in the vicinity of the border or within Switzerland, the competent authorities shall normally assign them to a federal asylum centre. The competent authority establishes their personal data, informs the closest federal asylum centre and issues a transit permit. The person has to present him or herself at that centre during the following working day.⁸⁰

⁷⁴ See [swissinfo.ch, Switzerland divided on taking Afghan refugees](https://bit.ly/3JuO3zE), 26 August 2021, available in English at: <https://bit.ly/3JuO3zE>.

⁷⁵ Information shared by Swiss Refugee Council, November 2021, see also ECRE, *Afghans seeking protection in Europe*, December 2021, available in English at: <https://bit.ly/3wLVMC0>, 19.

⁷⁶ Article 19 AsyIA. The Swiss Parliament abolished the possibility to lodge asylum applications at Swiss representations abroad from 29 September 2012 onwards (see Parliament, *Objets parlementaires*, 10.052 Loi sur l'asile: Modification, available (in French, German and Italian) at: <http://bit.ly/1R3t815>).

⁷⁷ Article 18 AsyIA.

⁷⁸ Persons with a valid cantonal residence permit who want to apply for asylum have to file the application in one of the federal asylum centres with processing facilities.

⁷⁹ The centres with processing facilities are located in Zurich, Bern, Basel, Boudry, Chiasso and Altstätten. A list of the federal asylum centres with their address and contact data is available at: <https://bit.ly/3kXy79d>.

⁸⁰ Articles 19 and 21 AsyIA; Article 8(1)-(2) AO1.

There was no specific obstacle to registering an asylum application in 2022. Registration offices within federal asylum centres remained open at all times during the year.

Swiss law provides for exceptions to this rule for children under 14 years of age joining their parents in Switzerland, as well as for persons in prison (administrative detention or execution of a sentence). Children under 14 years do not have to lodge an application in a federal asylum centre. The cantonal authority (of the canton where the parents live) directly issues them an “N permit” (which certifies that an asylum application has been lodged and allows the applicant to remain in Switzerland until the end of the asylum procedure), after having confiscated the travel and identity papers. The cantonal authority then informs the SEM about the asylum application.⁸¹

If a person is **in detention (criminal or administrative)**, it is also the cantonal authority (from the canton that has ordered the detention or the execution of a sentence) that accepts the asylum application (the same procedure applies to **status S applicants**). The cantonal authority establishes the personal data of the concerned person, takes pictures, confiscates the travel and identity papers and takes the fingerprints if necessary. The cantonal authority then informs the SEM about the asylum application. In case the applicant is released, they are issued an N permit by the cantonal authority.⁸² In 2022, the SEM has decided that the granting of free legal protection should also apply to persons who file an asylum application from detention, thus changing its long-term practice. Beforehand, the Federal Administrative Court had already clarified in several judgments (no leading case decision) that the fact that the person concerned had lodged her asylum application while in detention does not dispense the competent authority of its duty to duly investigate the application in accordance with the law in force, in particular to ensure the right to free legal advice and representation.⁸³ Accordingly, the SEM considers asylum applications from detention as an independent procedure, whereby the rules and deadlines of the accelerated asylum procedure (Art. 102f para 1 AsylA) do not apply. In analogy to the extended procedure, in the view of the SEM this task should fall within the scope of the legal advice centres of the canton that ordered the detention. In November 2022, the SEM sent the mandate holders contract supplements to sign. These are supposed to be applicable from 1st January 2023 and include in particular the financial compensation as well as the scope of the services covered (counselling and representation in connection with the Dublin, asylum and readmission procedures).⁸⁴

Asylum applications from detention are given priority by the SEM. As far as possible, the decision shall be opened before the release from detention (Dublin procedure or national procedure). As soon as the SEM receives an asylum application from detention, it sends the applicant a letter informing them of their entitlement to free legal protection. The letter also states that legal protection is guaranteed by the legal advice centre of the canton that ordered the detention. In addition, the asylum-seeking person is informed of the possibility of waiving legal protection. Without any message from the asylum-seeking person within five days, the SEM assumes that they wish to make use of the legal protection. If the asylum seeker expressly waives the right to free legal protection by signing the declaration attached to the above-mentioned letter, the SEM will notify the legal advice centre concerned in writing that their legal protection mandate is ending. The signed declaration of waiver is attached to this letter. In the event of a short period of detention (less than one month), the SEM shall request the asylum-seeking person to return to the competent federal asylum centre after their release from detention. There they are entitled to assistance from the free legal protection in the centres (pursuant to Article 102f et seq. AsylA).

Once informed, it is up to the asylum seeker and the legal advice centre to get in contact with each other and to sign a power of attorney. Obstacles in accessing prison facilities are to be discussed with the cantonal authorities concerned. The SEM will just while informing the cantons about the restructured procedure make them aware of the need to facilitate access.

⁸¹ Article 8(4) AO1; Directive III Field of Asylum, *Das Asylverfahren*, para 1.1.1.3.

⁸² Article 8(3) AO1; Directive III Field of Asylum, *Das Asylverfahren*, para 1.1.1.4.

⁸³ Federal Administrative Court, Decision D-5705/2019, 25 November 2019.

⁸⁴ According to SEM, this shall also apply to persons seeking temporary protection («status S»). Further, this procedure only applies to first asylum applications, not to subsequent applications or re-examination requests.

The legal advice centre of the canton where the asylum seeker is detained, and that is mandated by the latter, must be involved in all decision-relevant steps in the first instance proceedings (in particular, conducting hearings on the grounds for asylum, granting the right to be heard and submitting submissions that contribute significantly to establishing the facts of the case). This also applies to Dublin proceedings and readmission proceedings. The deadlines for the accelerated, phased-in procedure do not apply. When scheduling hearings, the SEM take into account the availability of the legal advice centres “as far as possible”, meaning that hearings may also take place even if the legal council is not able to attend, which is highly criticised by the legal advice centres. The SEM does not submit a draft decision in the case of asylum procedures in detention. The opening of the decision and the possible preparation of an appeal are not considered as decision-relevant steps, which is highly criticised by the legal advice centres and the Swiss Refugee Council.

If the SEM does not receive a signed power of attorney granting a representation mandate to the legal advice centre, the decision is opened to the asylum seeker. The organisation of counselling interviews and the translation costs fall under the responsibility of the legal advice centres. Such counselling sessions must take place outside the hearing of the asylum seeker organised by the SEM.

103 asylum applications were lodged from detention in 2022.⁸⁵

If an application is lodged at a border control point at an international airport, the competent cantonal authority establishes the personal data of the concerned person and takes a picture, as well as fingerprints in order to check possible matches in the automatic fingerprint identification system (AFIS) or Eurodac. The SEM is immediately informed about the application. The applicant will be channelled through the airport procedure (see section on [Border Procedure](#)),⁸⁶ which also provides access to free counselling and legal representation.⁸⁷ In practice, this procedure is only applied at the airport of Geneva, in Zurich, the persons are sent to the federal asylum centre of Zurich after a short security check.⁸⁸

As described above, depending on the situation, the respective competent cantonal or federal authority can register an application for asylum. Nevertheless, in all the cases the SEM is responsible for examining the application. After the asylum application is registered, the person concerned is issued a so called “N permit” which certifies that an asylum application has been lodged and allows the applicant to remain in Switzerland until the end of the asylum procedure.

By virtue of the Dublin Association Agreement,⁸⁹ Switzerland applies the Dublin III Regulation. Therefore, the SEM has to examine whether Switzerland (or another state) is competent for examining an application (see section on [Dublin](#)).

According to the Asylum Act, asylum seekers are obliged to cooperate in the establishment of the facts during the asylum procedure (duty to cooperate).⁹⁰ Asylum applicants who fail to cooperate without valid reason or who fail to make themselves available to the authorities for more than 20 days lose their right to have the asylum procedure continued. This rule also applies to persons who fail to make themselves available to the asylum authorities for more than five days in a federal centre without a valid reason. The applications are cancelled without a formal decision and the persons concerned cannot file a new application within three years – except if this would amount to a violation of the Refugee Convention.⁹¹

⁸⁵ Information provided by the SEM, 1 May 2023.

⁸⁶ Article 22ff AsylA.

⁸⁷ Article 22(3bis) AsylA.

⁸⁸ Information provided by Berner Rechtsberatungsstelle für Menschen in Not, 29 December 2022.

⁸⁹ Agreement between the Swiss Confederation and the European Community regarding the criteria and mechanisms to determine the responsible state for examining an asylum application introduced in a member state or in Switzerland, 26 October 2004, available at : <https://bit.ly/3kOQldq>.

⁹⁰ Article 8(1)-(3) AsylA. Asylum seekers are obliged to cooperate in establishing the facts. They must in particular reveal their identity; hand over their travel documents and identity papers; state at the interview why they are seeking asylum; indicate any evidence in full and submit this without delay or, as far as this seems reasonable, endeavour to acquire such evidence within an appropriate period; cooperate in providing biometric data; undergo a medical examination ordered by SEM (Article 26a AsylA).

⁹¹ Article 8(3-bis) AsylA.

This provision is problematic with regard to access to the asylum procedure, as well as to the right to an effective remedy.⁹² So far, the Federal Administrative Court has not clarified whether there is a right to an appeal against the decision to cancel the application in these cases. However, in practice, according to the knowledge of the Swiss Refugee Council, usually asylum seekers who reappear within a few months are reintegrated in the procedure.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

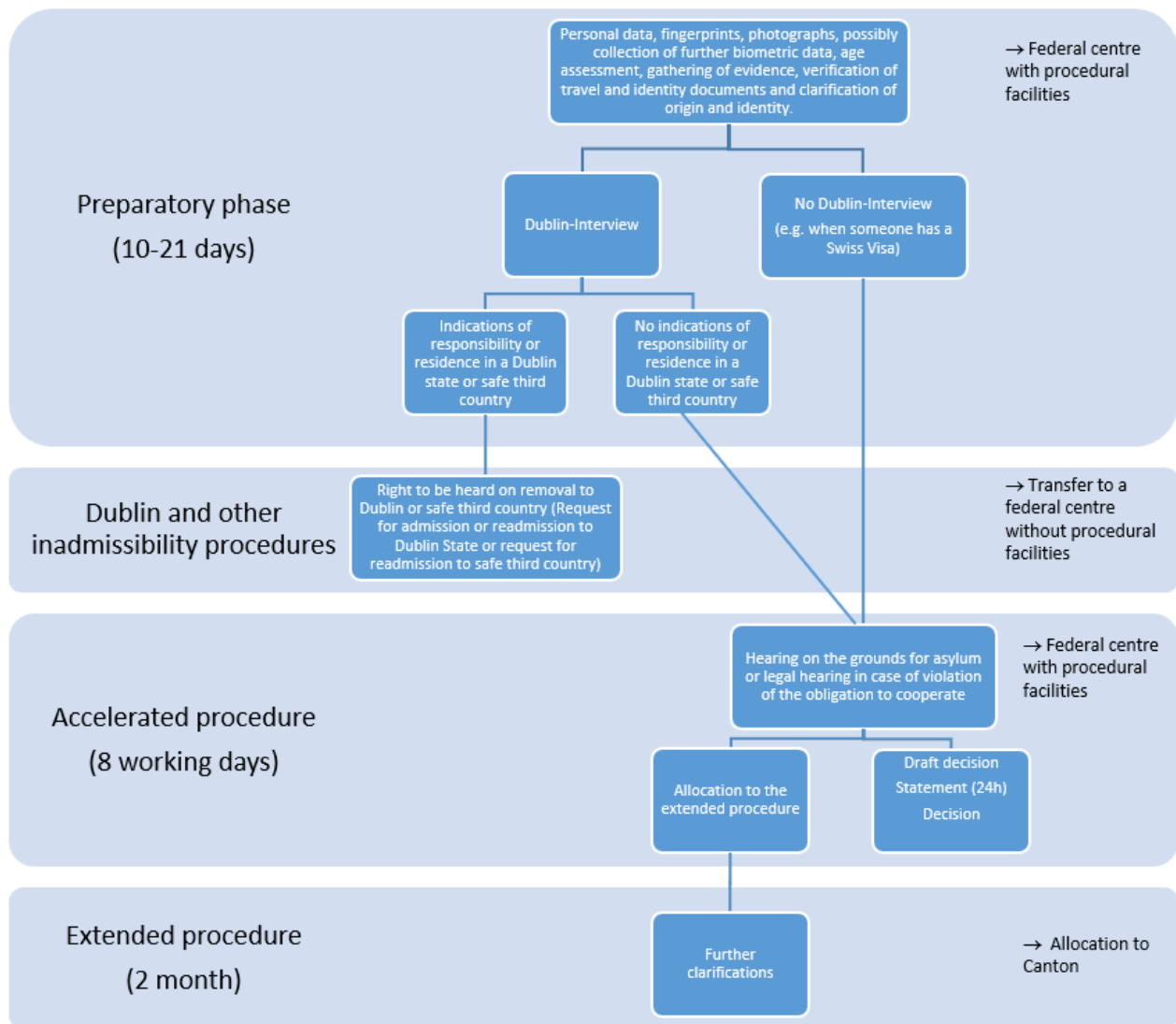
Indicators: Regular Procedure: General

- | | |
|--|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: | Depends on type of procedure |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance as of 31 December 2022: | 12,239 ⁹³ |
| 4. Average length of the first instance procedure in 2022: | 106 days ⁹⁴ |

⁹² Seraina Nufer, *Die Abschreibung von Asylgesuchen nach dem neuen Art. 8 Abs. 3bis AsylG*, ASYL 2/14, 3.

⁹³ SEM, asylum statistics (6-10), available at: <https://bit.ly/44rdaeN>.

⁹⁴ Data provided by the SEM, 1 May 2023.



Preparatory phase: The preparatory phase (“*phase préparatoire*”) starts with the lodging of the application and lasts a maximum of 10 days in the case of a Dublin procedure, 21 days for other procedures. The purpose of the preparatory phase is to carry out the preliminary clarifications necessary to complete the procedure, in particular to determine the State competent to examine the asylum application under the Dublin III Regulation, conduct the age assessment – if the minority is doubted –, collect and record the personal data of the asylum seekers, examine the evidences and establish the medical situation.⁹⁵ During the preparatory phase, a first interview is held mainly to determine whether Switzerland is competent to examine the merits of the asylum application (see [Personal interview](#)).⁹⁶

On 15 September 2021, the Swiss Parliament allowed immigration officials to access people’s mobile data if it is the only way to verify their identity. The Swiss Refugee Council and UNHCR criticised the measure as disproportionate and an assault on privacy rights.⁹⁷ In the context of the asylum procedure, no data from mobile phones were analysed in 2022. A corresponding procedure, according to which electronic data carriers can be analysed during the asylum procedure, is only being developed.⁹⁸ At its meeting on 10 March 2023, the Federal Council opened the consultation on the amendments to the ordinance necessary for implementation. The new ordinance provisions determine which personal data on the data carriers of asylum seekers may be analysed by the SEM. In addition, the offices responsible

⁹⁵ Article 26 AsylA.

⁹⁶ Article 26 AsylA.

⁹⁷ Swiss Refugee Council, Le Parlement restreint encore les droits fondamentaux des personnes en quête de protection, press release of 15 September 2021, available in French (and German) at: <https://bit.ly/3q21ZqH>; see also the communication of ECRE available in English at: <https://bit.ly/3oprHU6>.

⁹⁸ Information provided by the SEM, 1 May 2023.

for the analysis within the SEM are designated and the procedure for analysing the data carriers is regulated. Further amendments concern, among other things, the intermediate storage of personal data and the use of software. The provisions also stipulate that the persons concerned are to be comprehensively informed by the SEM about the evaluation. They are to be informed of the possibility of evaluating electronic data carriers at the beginning of the asylum procedure. In addition, the persons concerned are to be informed in detail about the procedure and in particular about the consequences of a refusal to evaluate the data carriers. The consultation will last until 19 June 2023.⁹⁹

Cancellation and inadmissibility decision: On the basis of the findings in the preparatory phase, the SEM decides whether an application should be examined and whether it should be examined on the merits. For inadmissibility grounds see sections on [Admissibility procedure](#), and in particular [Dublin](#).

Dublin procedure: If the preliminary investigations indicate that another Member State might be responsible for processing the asylum application according to the Dublin III Regulation, the Dublin procedure will be activated, for further information see section [Dublin: General](#).¹⁰⁰

Accelerated procedure: Unless a Dublin procedure is initiated, the accelerated procedure itself starts as soon as the preparatory phase is completed.¹⁰¹ It lasts a maximum of eight working days¹⁰² and includes mainly the following stages:¹⁰³

- ❖ Preparation of a second interview regarding the grounds of asylum;
- ❖ Conduct of the second interview and/or granting the right to be heard;
- ❖ Assessment of the complexity of the case and decision to continue the examination of the asylum application under the accelerated procedure or proceed to the extended procedure;
- ❖ Preparation of the draft decision;
- ❖ If negative, legal representative's opinion on the negative draft decision¹⁰⁴ within 24 hours.
- ❖ Notification of the decision

After the interview on the grounds for asylum, the SEM carries out a substantive examination of the application. It starts by examining whether the applicant can prove or credibly demonstrate that they fit the legal criteria of a refugee. As laid down in law, a person able to demonstrate that they meet these criteria is granted asylum in Switzerland.¹⁰⁵ If this is the case, a positive asylum decision is issued.

If the SEM considers however that an applicant is not eligible for refugee status or that there are reasons for their exclusion from asylum,¹⁰⁶ it will issue a negative asylum decision. In this case, the SEM has to examine whether the removal of the applicant is lawful, reasonable and possible.¹⁰⁷ If the removal is either unlawful, unreasonable or impossible, the applicant will be temporarily admitted (F permit) in Switzerland. A temporary admission constitutes a substitute measure for a removal that cannot be executed. It can be granted either to persons with refugee status who are excluded from asylum or foreigners (without refugee status). The scope of temporary admission as foreseen in national law exceeds the scope of the subsidiary protection foreseen by the EU recast Qualification Directive, as it covers both persons whose removal would constitute a breach of international law, as well as persons who cannot be removed for humanitarian reasons (for example medical reasons).

⁹⁹ Federal Council, press release, 10 March 2023, available in French (and German and Italian) at: <https://bit.ly/42f8Ygc>.

¹⁰⁰ Article 44 AsylA; Article 83 FNIA.

¹⁰¹ Article 26c AsylA.

¹⁰² Article 37 (2) AsylA.

¹⁰³ Article 20c AO1.

¹⁰⁴ In consideration of this statement, the SEM can adjust its decision. The idea of the statement is that the facts are properly established and that the decision will be correct and comprehensible in terms of formality and in the merits.

¹⁰⁵ Article 49 AsylA.

¹⁰⁶ Asylum is not granted if a person with refugee status is unworthy of it due to serious misconduct or if he or she has violated or endangered Switzerland's internal or external security (Article 53 AsylA). Further, asylum is not granted if the grounds for asylum are only due to the flight from the applicant's native country or country of origin or if they are only due to the applicant's conduct after his or her departure, so-called subjective post-flight grounds (Article 54 AsylA).

¹⁰⁷ Article 44 AsylA; Article 83 FNIA.

Currently, the duration of the accelerated procedure exceeds the one foreseen in the law. The average time between the asylum application and decision-taking under the accelerated procedure in 2022 was 72 days,¹⁰⁸ while per law it should not be more than 29 days.

According to statistics provided by the SEM in 2021, out of 4,145 decisions on the merits issued within the accelerated procedure, 2,123 (51%) resulted in the granting of asylum and 1,293 (31%) of a temporary admission, while a total of 729 (18%) rejections were issued with a removal order. This suggests that accelerated procedures do not necessarily result in the issuance of negative decisions, as was initially feared by critical observers before the asylum reform entered in force. Statistics on 2022 were not available at time of publication.

Extended procedure: If it appears from the interview on the grounds for asylum that a decision cannot be taken under an accelerated procedure, the application is channelled into an extended procedure and the asylum seeker is allocated to a canton. The switch to an extended procedure occurs in particular when a procedure cannot be concluded within eight working days because additional investigative measures prove necessary¹⁰⁹ or if the maximum length of stay of 140 days in a federal centre is reached.¹¹⁰ In addition to a possible additional interview, other investigative measures with regard to the identity and origin of the person, the alleged medical problems, the documents submitted or the credibility of the allegations may be taken.

The decision to proceed with the extended procedure is an “incidental decision”¹¹¹ that cannot be appealed before the final decision is issued so as to avoid lengthy procedures.

In a landmark decision of June 2020, the Federal Administrative Court ruled that, in light of the different applicable appeal deadlines, a wrong assessment as to whether a case is to be considered as complex or not - and based on which it will therefore be channelled into the extended procedure or not - may constitute a violation of the right to an effective remedy.¹¹² The Court clarified that a case should be considered as complex and must be channelled into an extended procedure if a complementary interview on the grounds for asylum is necessary,¹¹³ if the applicant has submitted a large amount of evidence or if further clarifications need to be mandated in the country of origin.¹¹⁴ The extended procedure also needs to be ordered when the deadlines cannot be met, for example when the medical situation of the applicant could not be sufficiently assessed, and especially if the asylum seeker is still residing in a federal asylum centre after 140 days.¹¹⁵

During the preparation of the reform, the SEM estimated that approximately 40% of procedures would be conducted under the extended procedure. This estimate later changed to 28%.¹¹⁶ At the beginning of the reform, however, very few cases were attributed to the extended procedure, approximately 19% of all

¹⁰⁸ Data provided by the SEM, 1 May 2023.

¹⁰⁹ Article 26d AsyIA.

¹¹⁰ Article 24(4) AsyIA.

¹¹¹ “Zwischenverfügung” in German or “*décision incidente*” in French.

¹¹² Federal Administrative Court, Decision E-6713/2019, 9 June 2020. On this jurisprudence see also: Lucia Della Torre and Seraina Nufer, *Between Efficiency and Fairness: The (new) Swiss Asylum Procedure*, in: Journal of Immigration, Asylum & Nationality Law, Vol. 34 No. 4 2020, 317.

¹¹³ Administrative Court, Decision E-4534/2019, 25 September 2019, para 7.5.1; E-4367/2019, 9 October 2019 para 7; E-4329/2019, 7 November 2019, para 7; E-5624/2019, 13 November 2019, para 5.3.2.

¹¹⁴ Federal Administrative Court, Decisions E-3447/2019, 13 November 2019, para 5.3.2; E-244/2020, 31 January 2020, para 3.7; E-5850/2019, 21 January 2020, para 8.4; 9; D-6508/2019, 18 December 2019, para 5.6.

¹¹⁵ See for example Federal Administrative Court, Decision E-3447/2019, 13 November 2019 or E-5490/2019, 5 November 2019.

¹¹⁶ See SEM <https://bit.ly/3WR04mE> and also, Swiss Refugee Council, *Prise de position de l'OSAR sur l'évaluation externe des nouvelles procédures d'asile*, <https://bit.ly/3YXfgAw>.

applications.¹¹⁷ In 2022, the SEM took 12% of the decisions under the restructured procedure within an extended procedure, 32% within an accelerated procedure and 25% within a Dublin procedure.¹¹⁸

Length of procedure: The Asylum Act sets time limits for making a decision on the asylum application at first instance. In an accelerated procedure, the decision should be notified within 8 days following the end of the preparatory phase whereas this period is extended to 2 months under the extended procedure.¹¹⁹ However, the procedural deadlines set in Swiss law are not binding but rather give a general temporal scope. There are thus no legal consequences arising from not respecting them and no legal action can be taken.

In 2022, the average duration of the procedures (excluding those conducted under the old procedure) from the application to the first instance decision was 67 days for Dublin procedures, 72 days for accelerated procedures and 254 days for extended procedures. These lengths are significantly higher than those foreseen in the law (namely a maximum of 29 days for accelerated procedures and approx. 80 days in the extended procedure). The average duration of procedures that were concluded in 2022 under the old procedure was very high - 964 days.¹²⁰

12,239 applications¹²¹ were pending at first instance on 31 December 2022, of which 104 were still from the old procedure (referring to the asylum system in Switzerland before March 2019) and 248 were applications for re-examination.¹²²

The decision-making at first instance should be consistent. Therefore, the SEM coordinates between the six asylum regions. Possible differences could be corrected on court-level, as there is only one – national – instance for asylum cases in Switzerland. However, in practice the jurisprudence of the Court is not always consistent according to the observations of OSAR.

1.2. Prioritised examination and fast-track processing

In October 2022, the fast-track procedures were re-introduced¹²³ for certain countries of origin: Morocco, Tunisia, Algeria¹²⁴ and the safe countries of origin (see the relevant chapter [Safe country of origin](#)). These procedures are specifically about merging the normally separate procedures of the Dublin-interview and the interviews according to Art. 26 and Art. 29 AsylA in the national asylum procedure for these selected countries. According to the SEM, this should enable the asylum procedure to be completed more quickly.¹²⁵

Under the Asylum Act, asylum applications lodged by unaccompanied minors are examined as a matter of priority.¹²⁶ In addition, SEM defines an asylum processing strategy in which it determines an order of priority.¹²⁷ In March 2019, SEM communicated its new strategy for processing asylum applications that takes several elements into account, namely (i) the situation in the country of origin, (ii) the credibility of the asylum request and (iii) the asylum seeker's personal behaviour.¹²⁸ Applications that can be

¹¹⁷ SEM, *Fiche d'information: chiffres clés relatifs aux procédures d'asile accélérées*, 13 July 2020, available in French (and German and Italian) at: <https://bit.ly/3EaTRIk>.

¹¹⁸ Data provided by the SEM, 1 May 2023.

¹¹⁹ Article 37 AsylA.

¹²⁰ Data provided by the SEM, 1 May 2023.

¹²¹ SEM, asylum statistics (6-10), available at: <https://bit.ly/44rdaeN>.

¹²² Data provided by the SEM, 1 May 2023.

¹²³ Following the entry into force of the restructured asylum procedure in 2019, the previous accelerated procedures (i.e. fast-track and 48-hour procedures) were not used anymore.

¹²⁴ Aargauer Zeitung, «Die Asyllage ist sehr angespannt»: Bundesrätin Keller-Sutter interveniert bei der EU-Kommission – mit erstaunlichem Erfolg, 15 October 2022, available in German at: <https://bit.ly/3l2A368>.

¹²⁵ Information provided by the SEM, 7 October 2022.

¹²⁶ Article 18 (2bis) AsylA.

¹²⁷ Article 37b AsylA.

¹²⁸ SEM, *Demandes d'asile priorité aux procédures Dublin et aux procédures accélérées*, 9 May 2019, available in French (and German and Italian) at: <https://bit.ly/2u0JQ22>.

processed under the Dublin procedure or under an accelerated procedure are given priority treatment,¹²⁹ as well as those lodged by nationals originating from countries with a low rate of recognition. The list of countries considered as having a low chance of success is available online and was last updated in October 2019 (and is still relevant at the time of publication).¹³⁰

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? Yes No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? Yes No
3. Are interviews conducted through video conferencing? Frequently Rarely Never
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender? Yes No
 - ❖ If so, is this applied in practice for interviews? Yes No

The SEM carries out the whole first instance procedure. It is therefore also responsible for conducting the interviews with the applicants during the asylum procedure in both accelerated and extended procedures.

During the preparatory phase, the applicants undergo a short preliminary interview during which they are accompanied by their legal representative. This interview is mainly held to determine whether Switzerland is competent to examine the merits of the asylum application and is called Dublin interview (see section on [Dublin: Personal interview](#)).

In case the SEM intends to take an inadmissibility decision (see section on [Admissibility Procedure](#)), the applicant is granted the right to be heard, be it orally during the interview or later in writing. The same applies if the person deceives the authorities regarding their identity and this deception is confirmed by the results of the identification procedure or other evidence, if the person bases their application primarily on forged or falsified evidence, or if they seriously and culpably fails to cooperate in some other way.¹³¹ In those cases, there is no second interview.

Unaccompanied minors do not undergo a Dublin interview but are subject to a first interview for unaccompanied minors, during which they are accompanied by their person of trust who is as well their legal representative. The interview serves to gather information about their person, family and journey in order to prepare the next steps of the procedure, which sometimes include an age assessment (see [Age assessment of unaccompanied children](#)).

According to the SEM, data on the duration of the interviews is not collected.¹³²

Interview on the grounds for asylum: If the SEM declares the application admissible, the accelerated procedure begins and the applicant undergoes a second interview (so-called interview on the grounds for asylum).¹³³ On this occasion, the applicant has the possibility to describe their reasons for fleeing and, if available, to submit evidence. In addition to the person in charge of conducting the interview and the person who draws up the minutes, asylum seekers are accompanied by their legal representative and, if necessary, a translator. The applicant may also be accompanied by a person of their choice and an

¹²⁹ SEM, *Strategy for processing asylum requests: Fast-tracking of unjustified applications*, 17 July 2019, available in English (and German, French and Italian) at: <https://bit.ly/2uQOaS2>.

¹³⁰ The list of countries with a low recognition rate is available in English at: <https://bit.ly/2Tm0Z0t>.

¹³¹ Article 36 AsyIA.

¹³² Information provided by the SEM, 31 May 2023.

¹³³ Article 29 AsyIA.

interpreter.¹³⁴ In 2022, the SEM conducted 6,091 interviews on the grounds for asylum (and 595 additional interviews, see below). The SEM also conducted 19 interviews on the grounds for asylum under the old procedure and 30 complementary interviews under the old procedure.¹³⁵

COVID-19-measures: The Ordinance on Measures taken in the Field of Asylum due to Coronavirus (Ordinance COVID-19 Asylum), which entered in force on 2 April 2020 and is valid until at least 30 June 2024,¹³⁶ allows the limitation of the number of persons present in the same room during the interview.¹³⁷ As of January 2021, interviews mainly took place in large rooms allowing for all participants to attend them in the same room. If one of the participants belonged to a category of higher risk regarding COVID-19 or if there was no such large room available, the interview took place in two separate rooms. On 30 March 2022, the Federal Council repealed the last measures of the Ordinance COVID-19 as of 1 April 2022. The SEM protection concept was lifted on 6 April 2022. Since 6 April 2022, there is no longer a mask requirement in the SEM. The division of the hearings in Wabern into two rooms was abolished. The Plexiglas partitions have been removed. Protective provisions apply to particularly vulnerable persons.¹³⁸

The Ordinance also states in Article 6 that in case the legal advisor cannot participate in the interview due to circumstances related to the coronavirus, the interview can be conducted and is legally effective. This provision has been strongly criticised by the Swiss Refugee Council and other organisations¹³⁹ as well as in an academic legal note concluding that interviews carried out without the legal representative are to be considered formally invalid.¹⁴⁰ As a consequence, this provision has not been used in practice, except in a few cases at the beginning of the pandemic.

During the interview on the grounds for asylum, the following main topics are discussed:

- ❖ Educational background, training and career paths
- ❖ Places of residence in the country of origin and possible stays in other countries
- ❖ Family and social environment
- ❖ Identity documents
- ❖ Itinerary before arrival in Switzerland
- ❖ Grounds for claiming asylum
- ❖ Pieces of evidence
- ❖ Health conditions¹⁴¹

Under the accelerated procedure, SEM may subsequently decide to carry out a complementary asylum interview and assign the applicant to the extended procedure if additional investigative measures are necessary. In 2022, the SEM conducted 595 such complementary asylum interviews.¹⁴² This decision is only up to the SEM, however the legal representative can suggest its suitability, for example if not all the relevant topics have been discussed or if they have more questions to add. Interviews conducted by SEM under the extended procedure satisfy the same conditions and requirements as those carried out under the accelerated procedure. In principle, the applicant is invited to an interview, at which they are accompanied by their legal representative. The interview takes place in the federal asylum centre where the first stages of the person's asylum procedure are carried out.

¹³⁴ Article 29 AsylA.

¹³⁵ Data provided by the SEM, 1 May 2023.

¹³⁶ Press release of the Federal Council, *Coronavirus : prolongation des mesures de protection dans le domaine de l'asile*, 16 December 2022, available in French (and German and Italian) at: <https://bit.ly/3XbLxkY>.

¹³⁷ Article 4 of the Ordinance COVID-19 Asylum.

¹³⁸ Information provided by the SEM, 1 May 2023.

¹³⁹ Swiss Refugee Council, *Covid-19 Adaptation des procédures d'asile : la protection juridique doit être garantie en tout temps*, 1 April 2020, available at: <https://bit.ly/36W9B3e>. A more detailed and recent statement of 20 November 2020 can be accessed at: <https://bit.ly/2USrAIE>.

¹⁴⁰ Thierry Tanquerel, *Note relative aux mesures prises dans le domaine de l'asile en raison du coronavirus*, 20 April 2020, available in French at: <https://bit.ly/3l00Zhc>.

¹⁴¹ Further information about the interview on the grounds for asylum and the quality criteria to be followed by SEM employees in charge of the interviews is available in French in the Handbook of the SEM on Asylum and Return, chapter C6.2, at: <https://bit.ly/35WrShA>.

¹⁴² Data provided by the SEM, 1 May 2023.

According to article 17(2) AsylA in relation to article 6 AO1, if there are concrete indications of gender-related persecution or if the situation in the State of origin allows the inference that such persecution exists, the asylum seeker shall be heard by a person of the same sex. This rule also applies to the other participants of the interview such as the interviewer, the interpreter and the legal representative and represents a right for the asylum seeker. Non-compliance with this provision constitutes a violation of the right to be heard. The applicant is, however, free to renounce this right. In this case, a formal right to be heard must be granted. Interviews are also generally adapted for LGBTQI+ applicants, however this is done out of goodwill, it is not a right of the applicant.¹⁴³

In practice, the official in charge of the case may of their own initiative decide to conduct an interview with persons of the same sex as the applicant, or the legal representative may so request. However, it may also happen that this obligation is not complied with in practice, which implies the intervention of the legal representative, who should then require the cancellation of the interview and its conduct with an appropriate interview team composition. In case of male applicants victims of gender related persecution, this provision is implemented in a more open and pragmatic way, asking the asylum applicant which team composition he prefers.¹⁴⁴

1.3.1. Interpretation

According to Swiss asylum law, the presence of an interpreter during the personal interviews is not an absolute requirement, as an interpreter should be called in “if necessary”.¹⁴⁵ Generally, it is only in exceptional cases that no interpreter participates in the interview. According to the SEM, the interview always takes place with an interpreter, unless the knowledge of an official Swiss language by the applicant is considered sufficient.¹⁴⁶ The SEM issued a code of conduct applicable for its interpreters, specifying their role, the expected impartial and neutral conduct and emotional detachment during translation.¹⁴⁷ The code of conduct has a binding character and is handed over to the interpreters together with the contract. In case of misconduct, various measures may apply, also the ending of the contract. Interpreters are usually recruited by the SEM. The principles of confidentiality are described in detail in the documents «General Terms and Conditions of the SEM Fee Contract» and «Declaration of Confidentiality». These two documents are attached to the fee contract for interpreters and are signed by the interpreters.¹⁴⁸

Even if, in general, an interpreter is present during the interviews, some problems have been identified with regard to simultaneous translation. Internal, unpublished surveys on procedural problems conducted by the representatives of charitable organisations attending interviews regarding the grounds for asylum in the procedure before 2019 (coordinated by the Swiss Refugee Council) regularly highlighted difficulties relating to simultaneous translation, such as partially incorrect translations, difficulties in comprehension taking into account the cultural context and the corresponding references. In this respect, the systematic presence, in principle, of an interpreter and a legal representative during the interview should reinforce the right of asylum seekers to be able to express themselves in a language of which they have a sufficient command. If significant communication problems arise between the interpreter and the asylum seeker, the interview must be cancelled. In any case, issues related to translation should be mentioned in the minutes so as to be considered by the Court in case of appeal.

The representatives of charitable organisations also pointed out that several interpreters are not impartial, sometimes even have close ties to the regime in the country of origin, or that they lack professionalism

¹⁴³ Information by the Swiss Refugee Council, January 2023.

¹⁴⁴ SEM, Handbook on Asylum and Return, chapter D2, 18. Available in French at: <https://bit.ly/35UBQAg>.

¹⁴⁵ Article 29(1-bis) AsylA.

¹⁴⁶ SEM, Handbook on Asylum and Return chapter C6.2, available in French at: <https://bit.ly/3FeHLPJ>, 8; Asylum Appeals Commission, Decision EMARK 1999/2 of 27 October 1998, para 5.

¹⁴⁷ SEM, *Role of the interpreter in the asylum procedure*, January 2016, available in English at: <https://bit.ly/2IUogEp>; see also SEM, *Requirements for interpreters and translators* (no date), available in English at: <https://bit.ly/3l1nfqQ>.

¹⁴⁸ Information provided by the SEM, 1 May 2023.

(i.e. imprecise, no literal translation but a summary, lacking linguistic competence).¹⁴⁹ Problems have also been identified in relation to the difference in accent or dialect between the interpreter and the applicant, especially in cases where the applicant's mother tongue was Tibetan, Kurdish of Syria or Dari.

While from time to time there may be a temporary shortage of interpreters for a specific language, it appears, particularly in view of the drop in asylum applications in recent years, that the quantitative needs are generally covered.

1.3.2. Recording and report

Neither audio nor video recording of the personal interview is required under Swiss legislation. The recording of interviews with asylum seekers is a long-standing demand of charitable organizations, which has so far not been implemented by the federal authorities.¹⁵⁰ In a letter of January 2020, sixty-six experts in asylum law requested the introduction of audio recording of asylum interviews, to which the SEM answered vaguely that it needed to examine a series of aspects before considering such a measure.¹⁵¹

However, written minutes are taken of the interview and signed by the persons participating in the interview at the end, after a translation back into the language of the applicant (carried out by the same interpreter who had already translated during the interview).¹⁵² Before signing the minutes, the applicant and legal representative have the possibility to make further comments or corrections to the minutes.

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No		
<input checked="" type="checkbox"/>	Judicial	<input type="checkbox"/>	Administrative		
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	Some grounds	<input type="checkbox"/>	No
2. Average processing time for the appeal body to make a decision in 2022:

In the extended procedure:	201 days
In the accelerated procedure:	75 days
In Dublin procedures:	20 days

Swiss law provides for an appeal mechanism in the regular asylum procedure. The sole competent authority for examining an appeal against inadmissibility and in-merit decisions of the SEM is the Federal Administrative Court (FAC, *Tribunal administratif fédéral*).¹⁵³ A further appeal to the Federal Supreme Court is not possible (except if it concerns an extradition request or detention, including in Dublin cases).¹⁵⁴ If there are to welcome the appeal, the Federal Administrative Court can either deliberate on the merits of a case and issue a new, final decision or cancel the decision and send the case back to the SEM for reassessment. Appeals are usually decided upon by three judges, while manifestly founded or unfounded cases are decided upon by one judge (with the approval of a second judge). Leading decisions (or coordination judgements) are taken by five judges.

¹⁴⁹ On the issue of interpretation see in particular: Swiss Refugee Council, *L'interprétariat dans le domaine de l'asile n'est pas une question mineure*, 5 July 2017, available in French at: <https://bit.ly/3lkpv2h> and Le Temps des réfugiés, *Asile: les superpouvoirs des interprètes*; 16 May 2019, available in French at: <https://bit.ly/2wllt9l>.

¹⁵⁰ Le Temps des réfugiés, *Plusieurs Etats européens procèdent déjà à l'enregistrement audio des auditions d'asile. Pourquoi pas la Suisse?*, 4 October 2019, available in French at: <https://bit.ly/3c6jFbG>.

¹⁵¹ Jasmin Caye, *Auditions : une mauvaise traduction et la vie d'un demandeur d'asile peut basculer*, *Vivre Ensemble* 177, May 2020, available in French at: <https://bit.ly/35ZEmFf>.

¹⁵² Article 29(3) AsylA.

¹⁵³ Article 105 AsylA. Most decisions of the Federal Administrative Court can be found at: <http://bit.ly/1NgE8vb>.

¹⁵⁴ Article 83(c)-(d) Federal Supreme Court Act.

An appeal to the Federal Administrative Court can be made on two different grounds: the violation of federal law, including the abuse and exceeding of discretionary powers; and incorrect and incomplete determination of the legally relevant circumstances.¹⁵⁵

It is important to note in this respect that the Federal Administrative Court cannot fully verify asylum decisions of the SEM.¹⁵⁶ The Court can examine the SEM's decisions on asylum only regarding the violation of federal law, including the abuse and exceeding as well as undercutting (but not the inappropriate use) of discretionary powers or incorrect and incomplete determination of the legally relevant circumstances.¹⁵⁷ Even if the Court can still verify the appropriateness of the enforcement of removal (as this part of the decision falls under the Foreign Nationals and Integration Act, as opposed to the decision on asylum, which falls under the Asylum Act and is therefore subject to the limitation of the Court's competence), it is questionable whether the legal remedy in asylum law is effective. The limitation of the Court's competence in asylum decisions seems problematic and unjustified in view of the rights to life, liberty and physical integrity that are at stake. Also, it can lead to incongruities between the areas of asylum and foreigners' law.¹⁵⁸

The appeal must meet a certain number of formal criteria (such as written form, official language, mention of the complaining party, signature and date, pieces of evidence if available). The proceedings in front of the Court should be conducted in one of the 4 official languages,¹⁵⁹ which are German, French, Italian and Romansh. Writing an appeal can be an obstacle for an asylum seeker who does not speak any of these languages. In practice, the Court sometimes translates appeals or treats them even though they are written in English. The Court can also set a new time limit to translate the appeal, but there is no legal basis for this procedure; it depends on the goodwill of the responsible judge. As a service to persons who want to write an appeal themselves, the Swiss Refugee Council offers a template for an appeal with explanations in different languages on its website.¹⁶⁰

In addition, it must be clear that it is an appeal and what the intention of the appeal is. If an appeal does not meet the criteria, but the appeal has been properly filed, the Court should grant an appellant a suitable additional period to complete the appeal.¹⁶¹

The time limit for lodging an appeal against negative decisions on the merits is 7 working days if the decision was issued under the accelerated procedure and 30 days under the extended procedure. As a response to the difficulties caused by the pandemic, the deadline has been temporarily extended to 30 days also for decisions taken under the accelerated procedure (at least until 30 June 2024).¹⁶² No such extension is foreseen for inadmissibility decisions taken without entering on the merit (NEE/NEM), for which the appeal still needs to be filed within five working days. The Court normally has to take decisions on appeals against decisions of the SEM within 20 days in case of accelerated procedure and within 30 days under the extended one.¹⁶³ During the 2022, the 20-day deadline was met in 44% of cases (140 procedures). It exceeded by a few days in 23% of cases, by 10 to 30 days in 20% of cases, and by more than 30 days in 57% of cases.¹⁶⁴ Nevertheless, the average procedural duration in front of the Court was 75 days in the accelerated procedure, which constitutes an acceleration in comparison with the average

¹⁵⁵ Article 106 AsyIA.

¹⁵⁶ Article 106(1) AsyIA. Appropriateness of a decision means situations in which the determining authority has a certain margin of appreciation in which it can manoeuvre. Within this margin of appreciation, there can be decisions that are "inappropriate" but not illegal because they still fall within the margin of appreciation and they respect the purpose of the legal provision, but the discretionary power was used in an inappropriate way.

¹⁵⁷ For a more detailed analysis of the discretionary power of the determining authority and the competence of the Federal Administrative Court, see Federal Administrative Court, Decision E-641/2014, 13 March 2015.

¹⁵⁸ For a more thorough analysis of the changed provision in the Asylum Act, see Thomas Segessenmann, *Wegfall der Angemessenheitskontrolle im Asylbereich (Art. 106 Abs. 1 lit. c AsyIG)*, ASYL 2/13, p. 11.

¹⁵⁹ Article 33a APA.

¹⁶⁰ Swiss Refugee Council, *Instructions for filing and appeal and Appeal template*, available (in several languages) at: <https://bit.ly/39cydHU>.

¹⁶¹ Article 33a and 52 APA.

¹⁶² Article 10 of the Ordinance COVID-19 Asylum.

¹⁶³ Article 109 AsyIA.

¹⁶⁴ FAC, *Nouveau droit d'asile - Bilan*; 01.03.2019-31.08.2020; statistics available at: <https://bit.ly/3pTfLtm>; press release of 29 October 2020, available in French at: <https://bit.ly/371qeL7>.

duration of an appeal procedure between 2015 and 2017, that was 159 days.¹⁶⁵ On the other hand, the average duration of the appeal procedure in the extended procedure has risen up in 2022 to 201 days. For Dublin procedures it is 20 days.¹⁶⁶

In general, an appeal has automatic suspensive effect in Switzerland.¹⁶⁷

Different obstacles in appeals have been identified. One important obstacle is the fact that the Court may demand an advance payment (presumed costs of the appeal proceedings, usually amounting to 750 Swiss francs (around 755 Euros as of February 2023), under the threat of an inadmissibility decision in case of non-payment. Only for special reasons can the full or part of the advance payment be waived.¹⁶⁸ Appeals filed by legal representatives working for the organisations mandated by the SEM are usually not subject to such advance payment. An advance payment is mostly requested when the appeal is considered as *prima facie* without merit, which may be fatal to destitute applicants in cases of a wrong assessment. Such wrong assessments have been noted by the European Court of Human Rights (ECtHR).¹⁶⁹ No advance payment can be demanded for unaccompanied asylum-seeking children in appeal procedures.¹⁷⁰

Finally, the fact that the appeal procedure is exclusively carried out in writing can represent an obstacle since the appellant has no direct contact with the judges and can only express themselves in written form. The Court has the possibility to order a hearing if the facts are not elucidated in a sufficient manner,¹⁷¹ however in practice, it does not make use of this possibility.

Criticism from UN-CAT: In a decision¹⁷² against Switzerland, the UN-CAT considered that the asylum procedure before the SEM/Federal Administrative Court suffered from significant shortcomings. It stated that the judgment of the Court, given by a single judge, with only an anticipated and summary assessment of the complainant's arguments, based on a questioning of the authenticity of the documents submitted, but without taking measures to verify them, constituted a breach of the procedural obligation to ensure an effective, independent and impartial examination required by Article 3 of the Convention. Regarding the effectiveness of the remedies available to the person concerned - the appeal to the Court and the request for reconsideration - the UN-CAT notes that the Swiss instances had not applied the suspensive effect to these steps and that the demand for the costs of the proceedings, while the complainant was in a precarious financial situation, deprived him of the possibility of turning to the judiciary to have his complaint examined by the judges of the Federal Administrative Court.¹⁷³

¹⁶⁵ Information provided by the Federal Administrative Court, 22 February 2019.

¹⁶⁶ Information provided by the Federal Administrative Court, 31 January 2023.

¹⁶⁷ Article 55(1) APA.

¹⁶⁸ Article 63(4) APA.

¹⁶⁹ For example ECtHR, *MA v Switzerland*, Application No 52589/13, 18 November 2014, available at: <http://bit.ly/3HBI8E>. In this case, the Federal Administrative Court delivered an interim decision in which it declined the applicant's request for legal aid, reasoning that his application lacked any prospects of success. In its preliminary assessment of the case, The Court noted that the applicant was deprived of additional opportunities to prove the authenticity of the second summons and the Iranian conviction before the national authorities because the Federal Administrative Court ignored the applicant's suggestion of having the credibility of the documents further assessed. It did not follow up on the applicant's proposal to submit the copies to the Migration Board for further comments, but instead decided directly on the basis of the applicant's file and his appeal.

¹⁷⁰ Federal Supreme Court, Decision 12T_2016, 16 October 2017.

¹⁷¹ Article 14 APA.

¹⁷² CAT, CAT/C/75/D/972/2019, B.T.M., 9 December 2022, available in French at: <https://bit.ly/3XrB5XA>.

¹⁷³ § 8.7.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 - Yes With difficulty No
 - ❖ Does free legal assistance cover:
 - Representation in interview
 - Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 - Yes With difficulty No
 - ❖ Does free legal assistance cover:
 - Representation in courts
 - Legal advice

Asylum seekers have the right to receive free counselling and legal representation at first instance, regardless of the applicable procedure (accelerated, extended, Dublin).¹⁷⁴ This accompanying measure aims to compensate the overall aim to speed-up the decision-making process. In order to ensure this legal protection, SEM contracted service providers from recognised charitable organisations to carry out these tasks in the federal asylum centres and at the airports of Geneva and theoretically¹⁷⁵ in Zurich. They are paid based on the number of signed powers of attorney. These organisations were selected through a public call for tenders and all of them have solid experience in providing legal support and representation to applicants. They currently comprise 4 organisations which are present in the 6 federal asylum centres, and their mandate has been extended until 28 February 2023. The organisations are as follows:

Organisations providing legal assistance at first instance	
Federal centre	Name of organisation
Altstätten SG	HEKS-Rechtsschutz
Bern BE	Rechtsschutz für Asylsuchende (Berner Rechtsberatungsstelle für Menschen in Not)
Basel BS	HEKS-Rechtsschutz
Boudry (+ airport Geneva) NE	Protection juridique Caritas Suisse & VSJF
Chiasso TI	SOS-Ticino & Caritas Protezione giuridica
Zurich (+ airport Zurich) ZH	Rechtsschutz für Asylsuchende (Berner Rechtsberatungsstelle für Menschen in Not)

Source: Swiss Refugee Council, addresses and contacts available at: <https://bit.ly/3pYFvVt>.

Although mandated by the federal migration authority SEM, independence and confidentiality in the work of legal representation must be guaranteed.¹⁷⁶ UNHCR published a series of recommendations addressed to legal counselors and representatives as well as managers to ensure a legal protection of good quality.¹⁷⁷ The quality of the legal protection was evaluated in an external evaluation mandated by SEM. The results were published in August 2021.¹⁷⁸

¹⁷⁴ Article 102f AsylA.

¹⁷⁵ In practice, in Zurich, the persons are sent to the federal asylum centre of Zurich after a short security check (information provided by Berner Rechtsberatungsstelle für Menschen in Not, 29 December 2022).

¹⁷⁶ SEM, *Asile : attribution des mandats pour le conseil et la représentation juridique dans les centres fédéraux*, 17 October 2018, available in French at: <https://bit.ly/3936CpN>.

¹⁷⁷ UNHCR, *Recommandations du HCR relatives au conseil et à la représentation juridique dans la nouvelle procédure d'asile en Suisse*, March 2019, available in French at: <https://bit.ly/3nQGyFg>. Available also in German and Italian.

¹⁷⁸ The evaluation is in German/French available at: <https://bit.ly/3f0thru>; a comment of the Swiss Refugee Council is available in German (and French) at: <https://bit.ly/3tLSiPK>. The report found that complex cases are still too often handled in accelerated proceedings. Insufficient clarification of the facts too often leads to incorrect triage. Further, the evaluation found serious deficiencies in every third asylum decision of the SEM, such as insufficient clarification of the facts and procedural errors. Too many asylum decisions continue to be sent back to the SEM for reassessment. According to the figures of the Federal Administrative Court, the rejection rate has decreased from 18.3% (2019) to 11.9% (2020). However, the cassation rate was still more than twice as high as before the system change, when the rate averaged 4.8% for the years 2007-2018.

The Coalition of Independent Jurists for the right of asylum, gathering several lawyers and NGOs working on asylum cases, published an independent evaluation of the first year of implementation of the asylum reform.¹⁷⁹ The report partly focuses on the work of the mandated legal protection, pointing to a series of problematic issues. On one hand, the Coalition raises the question of the independence of such mandated organisations, noting that they are very cautious when it comes to taking a stance in the public space.¹⁸⁰ The geographical proximity with the SEM in the federal centres is also reflected in the perceptions of asylum seekers, who do not always take the independence of their legal representative for granted.¹⁸¹ The report also points at insufficient coordination among the various mandated organisations that have missed, according to the Coalition, an opportunity to jointly influence the development of case law in the interests of asylum seekers.

Each asylum seeker is assigned a legal representative from the start of the preparatory phase and for the rest of the asylum procedure, unless the asylum seeker expressly declines this. The legal representative assigned should inform the asylum seeker as quickly as possible about the asylum seeker's chances in the asylum procedure. The so-called legal protection in the federal asylum centres, consisting in principle of an advice office and legal representation, mainly carries out the following tasks:¹⁸²

- ❖ Informing and advising asylum seekers;
- ❖ Informing asylum seekers about their chances of success in the asylum procedure;
- ❖ Ensuring the preparation of – and participating in – the interview;
- ❖ Representing the interests of unaccompanied minor asylum seekers as a person of trust in federal centres and at the airport;
- ❖ Drafting an opinion on the negative draft decision in the accelerated procedure;
- ❖ Communicating the end of the representation mandate to the asylum seeker when the representative is not willing to lodge an appeal because it would be doomed to failure (so-called 'merits test'),¹⁸³
- ❖ Ensuring legal representation during the appeal procedure, in particular by preparing and writing an appeal;
- ❖ Informing the asylum seeker of the other possibilities for legal advice and representation for lodging an appeal.

In cases where the application is being channeled into the extended procedure, legal representatives must conduct an "exit interview" with the applicant in order to inform them of the further course of the asylum procedure and of the possibilities for legal advice and representation in the extended procedure (see below).

The legal representation lasts, under the accelerated and the Dublin procedure, until a legally binding decision is taken, or until an incidental decision on the allocation to the extended procedure is issued by the SEM. It also extends to a possible appeal procedure in front of the Federal Administrative Court. It ends when the assigned legal representative informs the asylum seeker that they do not wish to submit an appeal because it would have no prospect of success (so called "merits-test"). This can be seen as problematic since the merits-test would be a task for the Court but also, since the estimation of the prospect of success is depending on jurisprudence, the development of the jurisprudence is slowed down. If the legal representative decides to lay down their mandate, this should take place as quickly as possible after notification of the decision to reject asylum in order for the asylum seeker to find another legal

¹⁷⁹ Ibid, 12, ch. 4.2.6.

¹⁸⁰ Coalition des juristes indépendant-e-s pour le droit d'asile, *Restructuration du domaine de l'asile: Bilan de la première année de mise en œuvre*, September 2020, available in French at: <https://bit.ly/3mJPg7u> and in German at: <https://bit.ly/34vbKCG>, 13, ch. 4.2.8.

¹⁸¹ Ibid, p. 8, ch. 4.1.6.

¹⁸² Article 52 OA1 and seq.

¹⁸³ Depending on the organisation in charge of legal assistance, several steps may have been taken to provide a framework for this sensitive assessment. For example, the principle of double-checking each negative decision received: a manager or more experienced legal officer will systematically evaluate the decision and discuss it with the legal officer in charge of the case. In addition, internal recommendations or guidelines relating to the practice of the authorities make it possible to guide and give clear information to the lawyers in charge of making this merits test.

representative if wished.¹⁸⁴ The mandated legal representative should give the contact of other legal advice offices.

Revocation of mandates are particularly problematic given the geographic isolation of some federal centres and the short deadlines for introducing an appeal, which can make it practically impossible to find a legal representation and hence prevent the asylum seeker from accessing an effective remedy. This problem is more or less accentuated depending on the region the asylum seeker was allocated to, as discussed above, which also creates unequal treatment. Also, for legal advice offices or lawyers who take over and appeal in those cases, there is only very little time for gathering all documents and writing the appeal.

No statistical data are available on the number of asylum seekers having renounced to legal representation during their asylum procedure nor on the number of asylum seekers having appointed an external independent lawyer. According to the SEM, it is rare that asylum seekers renounce their right to legal representation.¹⁸⁵

The extended procedure (allocation to a canton)

Following allocation to a canton, asylum seekers may contact a legal advice agency or the legal representative allocated free of charge at relevant steps of the first instance procedure before the decision, in particular if an additional interview is held on the grounds for asylum.¹⁸⁶ In fact, usually there is a change of legal representation after the triage in the extended procedure. However, the legal representative assigned at the federal asylum centre can continue to represent the asylum seeker in exceptional cases if a relation of trust has developed.¹⁸⁷

Following a public call for tenders, the SEM appointed several organisations active in the cantons to provide legal protection after the asylum seeker's allocation to a canton.¹⁸⁸ An updated list of all organisations providing legal representation for asylum seekers in the different regions of Switzerland (both those appointed by the SEM as well as other organisations) is available on the website of the Swiss Refugee Council.¹⁸⁹

The system of legal representation in the extended procedure implemented by the SEM covers solely the decisive steps of the asylum procedure. It does not include the submission of an appeal to the Federal Administrative Court, a task for which they could be reimbursed afterwards by the Court if the appeal is not considered as doomed to fail. Furthermore, several activities traditionally carried out by the legal advice offices active in the cantons do not fall within the scope of application under the new Asylum Act and the related ordinances, for instance family reunification procedures, contacts and reaching out to health professionals or questions relating to accommodation.¹⁹⁰ When asylum seekers are attributed to a canton where another language is spoken than in the one spoken where the federal centre was located, this can represent an obstacle for the legal representative. Complementary interviews will be conducted in the initial federal asylum centre in the language of that centre, and the decision will also be written in that language. A further obstacle for legal representatives in the extended procedure is that the SEM does not allow access to the minutes of the interview on the asylum grounds, except if there is a complementary interview, in which case they only have access the evening (after 17h) before the day of the interview. This time is insufficient to prepare for the interview, especially if it is written in a language that the legal representative does not completely master. This also does not allow for adequate exchange with the

¹⁸⁴ Article 102h AsyIA.

¹⁸⁵ Information provided by the SEM, 1 May 2023.

¹⁸⁶ Article 102I AsyIA.

¹⁸⁷ Article 52f(3) OA1.

¹⁸⁸ SEM, *Loi sur l'asile révisée : le SEM désigne les bureaux de conseil juridique habilités*, 26 February 2019, available in French (and German and Italian) at: <https://bit.ly/2TdD2qO>.

¹⁸⁹ The list is available at: <https://bit.ly/33cXspz>.

¹⁹⁰ Swiss Refugee Council, *Conseil et représentation juridique*, available in French (and German) at: <https://bit.ly/3nQiG4C>.

asylum seeker, especially when a translator is needed. Nevertheless, it is a little bit better than the old practice, when access was only granted 30 minutes before the interview.

The procedural steps that the legal advisory offices receive remuneration from the SEM for are significantly reduced compared to the accelerated procedure, which means a much lower compensation for legal protection in the extended procedure. To be compensated for the costs of the appeal, the legal representative must apply to the court to be granted free legal representation, which if granted is only paid after the judgment. The only partial remuneration of legal assistance means that in practice, there are steps that are not or insufficiently covered by the compensation received from the state (e.g. the study of files, obtention of means of proof, interpreters, expenses for journeys to see the client etc.). This is especially problematic if asylum seekers are in prison or lodged far away from the legal advisory office (see chapter [Detention: Legal Assistance](#)).

Access to legal representation for asylum applications lodged in detention: See: [Registration of the asylum application](#).

2. Dublin

2.1. General

If the preliminary investigations in the preparatory phase indicate that another Member State might be responsible for processing the asylum application according to the Dublin III Regulation, a request for taking charge or taking back is submitted to the relevant State. Under the Asylum Act, a Dublin procedure formally begins with the submission of the request to take charge or take back and lasts until the transfer to the competent Dublin State or the decision of SEM to examine the application on the merits in a national procedure.¹⁹¹ In case of a Dublin procedure, the SEM has to examine whether grounds exist to make use of the sovereignty clause. If such grounds exist, Switzerland takes over the responsibility for examining the application even if another Member State would be responsible according to the Dublin Regulation. In all the other cases where a decision to dismiss the application without examining the substance of the case has been taken, the SEM examines if the transfer of the applicant to the receiving State is lawful, reasonable and possible.

Dublin statistics: 2022

Detailed data for 2022 was not available from the SEM at time of publication. In 2021,¹⁹² the SEM reported to have sent 8,681 outgoing requests, mainly to Germany, Italy and France, and to have implemented 2,523 outgoing transfers, mainly take back outgoing transfers, to Germany Italy, France and Austria. The SEM reported 6,214 incoming requests, mostly take back requests mainly from France and Germany, and to have implemented 1,088 incoming transfers, many from Greece and Germany.

The data concerning 2022 presented in the table below uses data from Eurostat. However, particularly in the case of Switzerland, these numbers should be used with caution as there have been in previous years major discrepancies between data reported at the national level by SEM and data presented by Eurostat.

¹⁹¹ Article 26b AsylA.

¹⁹² For full data see AIDA, *Country Report: Switzerland, 2021 update*, available at: <https://bit.ly/3qmqbqx>, 36ff.

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	5,594	1,216	Total	3,423	693
Austria	1,220	190	Germany	1,107	129
Germany	1,004	393	France	1,073	80
Croatia	810	14	Belgium	358	38
Italy	548	185	Greece	240	326
France	526	149	Malta	223	3

Source: Eurostat, 'Dublin' statistics, consulted 5 June 2023, available at : <https://bit.ly/42moJSj>.

Outgoing procedure		Incoming procedure	
	Requests		Requests
Total	5,594	Total	3,423
Take charge	20	Take charge	15
Italy	6	Greece	8
Austria	4	Bulgaria	2
Croatia	3	Netherlands	2
Germany	2	Belgium	1
Portugal	2	France	1
...		Cyprus	1
Take back	5,222	Take back	2,818
Austria	1,203	France	956
Germany	961	Germany	948
Croatia	787	Belgium	333
France	488	Malta	220
Italy	451	Netherlands	127

Source: Eurostat, 'Dublin' statistics, consulted 5 June 2023, available at : <https://bit.ly/42moJSj>.

The Dublin III Regulation is applied directly since 1 January 2014.

2.1.1. Application of the Dublin criteria

According to the SEM, in 2022 Switzerland issued a total of 8,008 take charge or take back requests to other Member States, compared to 4,904 in 2021, 4,057 in 2020, 4,848 in 2019, 6,810 in 2018 and 8,370 in 2017. They were based on the following criteria:

Outgoing Dublin requests by criterion: 2018-2022					
Dublin III Regulation criterion	2018	2019	2020	2021	2022
Family provisions: Articles 8-11	43	28	18	13	46
Documentation and entry: Articles 12-15	1,823	1,130	1,037	1,122	2,427
Dependency and humanitarian clause: Articles 16 and 17(2)	55	16	4	16	22
"Take back": Article 18(1)(b)	3,703	2,781	2,166	2,775	4,652

“Take back”: Article 18(1)(c)	30	32	43	34	25
“Take back”: Article 18(1)(d)	1,155	861	779	933	805
“Take back”: Article 20(5)	1	0	10	11	15
Total outgoing requests	6,810	4,848	4,057	4,904	8,008¹⁹³

Source: SEM, Information provided on 1 May 2023.

The Federal Administrative Court clarified in 2015 that the presence of a family member or sibling in a pending asylum procedure in Switzerland qualifies as “legally present” for the purposes of Article 8(1) of the Dublin III Regulation.¹⁹⁴ It also confirmed that Article 9 and 10 of the Dublin III Regulation are directly applicable, and that there is a reduced standard of proof to establish the competence of a Member State in the Dublin procedure.¹⁹⁵

The family criteria in particular are generally applied narrowly. The SEM’s practice regarding the effective relationship and the definition of family members in the Dublin III Regulation is strict.¹⁹⁶

In a principle judgment of January 2021, the Court ruled for the first time regarding the established right of residence as a prerequisite for relying on Article 8 ECHR. It stated that a family can, in principle, request that its rights be considered in light of Article 8 ECHR, regardless of the residence status of the family member living in Switzerland. Additionally, it stated that Article 8 para 1 ECHR is only violated if a balancing of interests leads to the result that the private interests of the persons concerned in the continuation of family life in Switzerland outweigh public interests in the transfer of a family member to the family member to the member state originally found responsible.¹⁹⁷

2.1.2. The dependent persons and discretionary clauses

Article 16 of the Dublin Regulation has to be used if such a constellation is the case, if an actual dependency is given, Article 16 counts as further criteria to determine the member state responsible.¹⁹⁸

According to the jurisprudence of the Federal Administrative Court, the sovereignty clause in Article 17 of the Dublin Regulation is not self-executing, which means that that applicants can only rely on the clause in connection with another provision of national law.¹⁹⁹ The clause must be applied though if the transfer to the responsible Dublin State would violate one of Switzerland’s international obligations, Article 29a(3) AO1 provides the possibility to apply the sovereignty clause on humanitarian grounds. There are no general criteria publicly available in Switzerland on when the humanitarian clause or the sovereignty clause are implemented. According to the Federal Administrative Court, the criteria must be transparent, objective and comprehensible.²⁰⁰ The SEM is very reluctant to show in a transparent manner which criteria are decisive for the application of the sovereignty clause. The Federal Administrative Court’s competence to examine the SEM’s decision regarding humanitarian reasons is very limited, which leads to less jurisprudence and transparency on the issue. However, the Court has sent some cases back to the SEM, notably because it had failed to consider whether or not to apply a discretionary clause (see section on [Dublin: Appeal](#)).²⁰¹

¹⁹³ 16 outgoing requests were not categorised.

¹⁹⁴ Federal Administrative Court, Decision D-5785/2015, 10 March 2016.

¹⁹⁵ Federal Administrative Court, Decision E-6513/2014, 3 December 2015.

¹⁹⁶ See for example: Federal Administrative Court, Decision ATAF 2017/VI/1, 10 February 2017.

¹⁹⁷ Federal Administrative Court, Decision ATAF 2021 VI/1, 25 January 2021. See also: <https://bit.ly/3HzQ3Cv>.

¹⁹⁸ Federal Administrative Court, Decision ATAF 2017 VI/5, 11 May 2017.

¹⁹⁹ Federal Administrative Court, Decision E-5644/2009, 31 August 2010.

²⁰⁰ Federal Administrative Court, Decision E-7896/2015, 23 June 2016.

²⁰¹ See for example: Federal Administrative Court, Decision D-3566/2018, 28 June 2018: Case of a woman whose parents were recognised as refugees in Switzerland and who herself was in a very bad state of health, the Federal Administrative Court recognised a mutual dependency between the daughter and her parents to

According to Swiss case law,²⁰² the interpretation of humanitarian reasons should be similar to the interpretation of the humanitarian clause of the Dublin Regulation.²⁰³ Therefore, a sharp distinction cannot be made between the grounds mostly accepted by Swiss authorities to use the sovereignty clause and grounds mostly accepted to use the humanitarian clause. In most cases in which Switzerland decides to examine an application even if another state is responsible, the cases concern EU Member States with problematic conditions. Another category are particularly vulnerable persons, for example families (especially single mothers with children) or persons with severe medical problems that run a high risk of not receiving the essential care because of the deficiencies of the reception conditions or of the asylum system in the responsible Member State.²⁰⁴ However, the threshold for the application of the humanitarian clause is high. A high risk of detention in case of a transfer back to the responsible state has also been stated as a reason (for further information see section on [Dublin: Appeal](#)).

²⁰⁵In the case of an Eritrean asylum seeker who had a child with an Eritrean national residing in Switzerland who was granted temporary admission ("F refugee permit") the SEM simply asked the Italian authorities for guarantees regarding the availability of care for the mother and her baby. In the Court's view, the SEM was wrong not to consider the father-child relationship at all and not to consider the proportionality between the removal order and the child's best interests sufficiently. The case was referred back to the SEM to rule on the application of the sovereignty clause in relation to Article 8 ECHR.²⁰⁶

In a leading case judgment, the Federal Administrative Court confirmed that asylum seekers in Dublin procedures can invoke Article 8 ECHR if they have family members with a temporary admission in Switzerland. The temporary admission status will then be taken into account as one of the factors when deciding on the balance of interests in the sense of Article 8(2) ECHR.²⁰⁷ This is a new development for Dublin, as Swiss practice in other areas generally considers a "stable residence status" in Switzerland as a prerequisite for invoking Article 8 ECHR and thus for examining Article 8 (2) ECHR, and a temporary admission usually not being considered stable enough (except in special individual circumstances).

In 2022, the SEM applied the sovereignty clause in 484 cases, compared to 672 cases in 2021, 546 cases in 2020 and 859 cases in 2019. In 2022, 332 cases concerned applications for which Greece would have been competent according to the Regulation, 31 Italy, 19 Poland, 16 Hungary and 14 Croatia.²⁰⁸

These figures show that, like the family criteria, the humanitarian clause and the sovereignty clause are only rarely applied by Switzerland.²⁰⁹

2.2. Procedure

such an extent that non-application of Article 16 of the Dublin Regulation could not be justified; the SEM was ordered to proceed with the material assessment of the applicant's asylum claim under the national procedure.
²⁰² Federal Administrative Court, Decision E-7221/2009, 10 May 2011.

²⁰³ Articles 16 and 17(2) Dublin III Regulation.

²⁰⁴ For example: In Decision D-5221/2016, 31 October 2018 and Decision D-5407/2018, 31 October 2018, the Federal Administrative Court the cases were referred back to the SEM in order to do a proper examination of a possible use of the sovereignty clause. The cases concerned families with a Dublin decision to Bulgaria, where they had been ill-treated and detained by the authorities.

²⁰⁵ Jurisprudence and examples as well as historical explanations are provided in smaller size to facilitate the reading.

²⁰⁶ Federal Administrative Court, Decision E-4936/2017, 19 February 2018.

²⁰⁷ Federal Administrative Court, Decision E-7092/2017, 25 January 2021.

²⁰⁸ Data provided by SEM, 1 May 2023.

²⁰⁹ In November 2017, the Swiss Refugee Council and a broad coalition of NGOs submitted to the Federal Council the "Dublin call" (*Appel de Dublin*). This call urges the authorities to handle the asylum applications lodged by vulnerable persons. For further information, see the website of the coalition available (in French) at: <http://bit.ly/2pFSRKW>.

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility?²¹⁰

❖ Answer to negative Dublin decision	23 days
❖ Negative Dublin decision to transfer	270 days

The SEM has to transmit the fingerprints of applicants to the Central Unit of the Eurodac System.²¹¹ The Federal Council has the possibility to provide exceptions for children under the age of 14.²¹² In practice, all applicants over 14 years of age are systematically fingerprinted and checked in Eurodac after the registration of their application in Switzerland. This applies to all asylum procedures carried out in Switzerland, regardless of where an application is filed. The Dublin procedure is systematically applied in all cases where the data check or other indications suggest that another Dublin Member State is responsible for examining an asylum application.²¹³

The Federal Administrative Court ruled that if a person fails to cooperate with fingerprinting, this can be considered as a severe violation of the duty to cooperate according to the Asylum Act. This is also the case if the asylum seeker wilfully destroys the skin of their fingertips. However, the SEM must clarify with an expert whether or not the modification of the fingertips was wilful or due to external influences.²¹⁴ Article 8(3-bis) of the Asylum Act states that persons who fail to cooperate without valid reason lose their right to have the proceedings continued. Their applications are cancelled without a formal decision being taken and no new application may be filed within three years; the foregoing is subject to compliance with the UN-Refugee Convention. So far, no such cases are known to the Swiss Refugee Council and persons who reappear after a few months are integrated back into the asylum procedure for now.

If another Dublin State is presumed responsible for the examination of the asylum application, the applicant is granted the right to be heard.²¹⁵ This hearing can take place either orally or in writing²¹⁶ and provides the opportunity for the applicant to make a statement and to present reasons against a transfer to the responsible state. Therefore, it must take place before the take charge or take back request is sent to the respective country. In practice, the right to be heard is mostly only granted once and is carried out orally. If a Eurodac hit is found or other evidence is available, the right to be heard is already granted during the first interview conducted by the SEM.

In principle, the applicant is entitled to access to the files relevant for the decision-making.²¹⁷ Access can only be refused if this would be contrary to essential public interest, essential private interests or interests of non-completed official investigations.²¹⁸ In general, access to the files is not granted automatically, only upon explicit request. However, in case of an inadmissibility decision (all Dublin transfer decisions are inadmissibility decisions), copies of the files are annexed to the decision if enforcement of the removal has been ordered.²¹⁹ The files should include information about the evidence on which the take back request was made and the reply of the concerned Member State. In case of Dublin transfer decisions, the SEM notifies the decision to the service provider tasked with providing legal representation, who shall inform the legal representative on the same day,²²⁰ who will inform the person concerned.

According to Article 37 AsylA, the notification of a Dublin decision should occur within three working days after the requested state has agreed to take charge or take back the applicant. In 2022 this deadline was not respected, notifications took place on average 23.4 days after the answer of the requested state.²²¹

²¹⁰ Data provided by SEM, 1 May 2023.

²¹¹ Article 102a-bis AsylA.

²¹² Article 99 AsylA.

²¹³ Article 21(2) AsylA.

²¹⁴ Federal Administrative Court, Decision ATAF 2011/27, 30 September 2011.

²¹⁵ Article 36(1) AsylA.

²¹⁶ Article 29(2) Constitution.

²¹⁷ Article 26 APA.

²¹⁸ Article 27 APA.

²¹⁹ Article 17(5) AsylA.

²²⁰ Article 12a(2) AsylA.

²²¹ Information provided by the SEM, 1 May 2023.

2.2.1. Individualised guarantees

Italy

Since the *Tarakhel* judgment²²² of the ECtHR, families can only be transferred to Italy when their authorities guarantee the adequate housing and that the family will not be separated. The Swiss Federal Administrative Court specified that the individual guarantees are a substantive precondition for the legality of the Dublin transfer decision according to international law, and not only a transfer modality, as the SEM had repeatedly claimed. The families, as all persons in a Dublin procedure, are not granted the right to be heard regarding the guarantees before the first instance decision.²²³ Therefore, the guarantees must be provided at the moment of the Dublin transfer decision (first instance decision), so that the applicants can make a statement regarding those guarantees in their appeal to the Federal Administrative Court.

Since 2015, the Federal Administrative Court considers a guarantee as sufficient if the Italian authorities confirm the fact that the applicants in the concrete case constitute a family, mentioning the names and ages of all family members as well as providing a list of the Protection System for Asylum Seekers and Refugees (SPRAR at the time, now SAI) projects in **Italy** in which a number of places had been reserved for families returned under Dublin, as well as by accepting that the applicants in the concrete case constituted a family, mentioning the ages of all family members.²²⁴

Following the amendments in Italian asylum legislation introduced since October 2018 through the so-called Salvini decree, asylum seekers were no longer entitled to live in SPRAR centres.²²⁵ On 8 January 2019, a circular letter was sent from the Italian Dublin Unit to all Member States – replacing the circulars issued since 8 June 2015 – stating that families would no longer be placed in SPRAR centres but in first reception centres and emergency reception centres. The Federal Administrative Court ruled in a reference judgment that such guarantees were not specific enough, as families requiring transfer from Switzerland to Italy no longer had access to the second-line reception centres under the new legislation.²²⁶ Due to the new legislation, in 2019 and 2020 Italian authorities have been required to submit even more specific guarantees concerning reception conditions in each individual case regarding families or seriously ill asylum seekers who will be reliant on seamless medical care from the moment they arrive in Italy.²²⁷ In cases of pregnant women, individual guarantees are needed depending on the stage of pregnancy and health situation.²²⁸ In April 2020, Italian authorities provided a new list of accommodation centres that were specific for families, but the Court stated that this was not sufficient individual guarantee within the meaning of *Tarakhel* case law.²²⁹

As Salvini's successor Luciana Lamorgese largely reversed Salvini's legislative changes by decree in December 2020, a new Circular letter was sent to the other Dublin states on 8 February 2021. It informed that families would have the possibility of being accommodated in SAI accommodation, but that the services of the initial reception centres would also be extended again in such a way that accommodation in such a centre would be compatible with the requirements of the *Tarakhel* ruling. In another reference judgment, the Court expressed itself regarding this change for families. In the relevant case, the complainant had travelled to Italy in 2019 on a visa and from there on to Switzerland, where she gave birth to her son. One month before the non-entry decision from the SEM, the latter obtained an updated *nucleo familiare* form from the Italian authorities with the assurance of adequate, family-friendly accommodation. This, together with the circular of 8 February 2021, was judged to be a sufficient guarantee, arguing that the services of the initial reception centres had been expanded and that families

²²² ECtHR, *Tarakhel v. Switzerland*, Application no. 29217/12, 4 November 2014, available at: <http://bit.ly/3Jtwkjd>. The ECtHR found a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights if the Swiss authorities were to send an Afghan couple and their six children back to Italy under the Dublin Regulation without having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together.

²²³ Information provided by the SEM, 9 September 2015.

²²⁴ Federal Administrative Court, Decision D-4394/2015, 27 July 2015.

²²⁵ Italian Law 132/1, 4 December 2018, converting Decree-Law 113/2018 into law.

²²⁶ Federal Administrative Court, Decision E-962/2019, 17 December 2019.

²²⁷ Federal Administrative Court, *Stricter criteria for Dublin transfers to Italy*, press release, 17 January 2020, available at: <https://bit.ly/419EFYX>.

²²⁸ Federal Administrative Court, Decision F-2939/2020, 13 July 2020, in which the Court required individual guarantees for a pregnant woman with psychological problems; Decision D-1026/2020, 4 March 2020, in which the Court stated that the woman was not under the category of vulnerable applicants for whom individual guarantees are needed since she was in an initial stage of pregnancy and was in good health.

²²⁹ Federal Administrative Court, Decision F-4872/2020, 5 November 2020, para 4.4.

had priority when being assigned to a SAI centre, and the complaint was rejected.²³⁰ The Swiss Refugee Council criticised this decision.²³¹

In December 2019, taking into account the changes in the Italian legislation introduced by the Salvini Decree (Decree 132/2018), the Court extended the need to obtain individual guarantees from **Italian** authorities to the cases of applicants with **serious health problems**: such guarantees include both adequate accommodation and immediate access to medical care.²³² Following that jurisprudence, a number of cases were referred back to the SEM for further instruction with the requirement of obtaining individual guarantees from Italian authorities.²³³ In 2022, this obligation was lifted again regarding take-charge procedures. For take-back procedures, guarantees are still required. The Court reasoned this with the risk of being excluded from accommodation in take-back cases.²³⁴

It is not transparent how the individual guarantees for families – as well as vulnerable and ill applicants – will actually be implemented after a transfer.

In order to document the proceedings in individual cases, in 2016 the Swiss Refugee Council and the Danish Refugee Council started a joint monitoring project (**Dublin Returnees Monitoring Project, DRMP**)²³⁵ to follow up on what happens to individual families and vulnerable persons after their transfer to Italy. The first report focused on families and single parents and showed that the treatment the monitored families received upon arrival in Italy varied greatly.²³⁶ In some cases, the transferred families could only be accommodated after a certain period of time and after the intervention of third parties. There seemed to be arbitrary or at least unpredictable practice as to which kind of assistance the returned families would get from the Italian authorities. Furthermore, the quality of the accommodation provided varied considerably. The relevant regional authorities and/or responsible persons of the reception facility were not always informed in advance of the medical condition and special needs of the applicants. Therefore, it cannot be guaranteed that families returned to Italy will be accommodated in line with the preconditions set out in *Tarakhel*. The DRMP will continue to document the situation of Dublin returnees in Italy without participation of the Danish Refugee Council at least until the end of 2023, focusing on the effects of the legislative changes for persons returned to Italy under the Dublin Regulation.

Bulgaria

On 11 February 2020, the Federal Administrative Court issued a reference judgement on the question of systemic deficiencies in **Bulgaria**.²³⁷ Although the Court itself explained in a very detailed manner the problems in the Bulgarian asylum system, it concluded that there are no systemic flaws in the asylum procedure and reception conditions in Bulgaria which would justify a complete suspension of transfers to that country. A case-by-case examination will be required to determine whether or not the transfer to that country of a particular asylum seeker should be suspended. The Court also mentioned the possibility to request individual guarantees from the Bulgarian authorities. In April 2020, the Court ruled, in a case concerning a family, that the SEM had not sufficiently examined the reception conditions in Bulgaria and would need to require individual guarantees of adequate accommodation for the family.²³⁸

Others

²³⁰ Federal Administrative Court, Decision F-6330/2020, 18 October 2021.

²³¹ See press release of 22 October 2021, *Le Tribunal administratif fédéral ignore la situation précaire des personnes requérantes d'asile en Italie*, available in French (and German) at: <https://bit.ly/3JRIBou>.

²³² Federal Administrative Court, Reference Decision E-962/2019, 17 December 2019, para 7.4.3.

²³³ Federal Administrative Court, Decisions D-4067/2019, 14 January 2020; D-1869/2019, 22 January 2020; D-552/2020, 5 February 2020; E-6810/2016, 11 March 2020; F-2751/2019, 17 March 2020; D-5952/2020, 4 December 2020. Case concerning a pregnant woman who was considered vulnerable: Federal Administrative Court, Decision F-2393/2020, 13 July 2020. However, pregnant women do not automatically fall under vulnerable applicants according to the Court, see Decisions Decisions E-406/2015, 2 April 2015; D-4978/2016, 6 September 2016 and E-1026/2020, 4 March 2020. In one case, the Court also stated that the unborn child cannot rely on the Convention on the Rights of the Child, Decision E-406/2015, 2 April 2015. Case concerning a victim of trafficking: Federal Administrative Court, Decision E-543/2020, 16 March 2020.

²³⁴ Federal Administrative Court, Decision D-4235/2021, 19 April 2022.

²³⁵ Further information to be found on the website of the Swiss Refugee Council: <https://bit.ly/3GULaH5>.

²³⁶ Danish Refugee Council and Swiss Refugee Council, *Is mutual trust enough? The situation of persons with special reception needs upon return to Italy*, 9 February 2017, available in English at: <https://bit.ly/3JkNYyK>; the second report from the Danish Refugee Council and the Swiss Refugee Council, *Mutual trust is still not enough. The situation of persons with special reception needs transferred to Italy under the Dublin III Regulation*, was published on 12 December 2018, available in English at: <https://bit.ly/3Y1pkqJ>.

²³⁷ Federal Administrative Court, Decision F-7195/2018, 11 February 2020.

²³⁸ Federal Administrative Court, Decision D-5126/2018, 15 April 2020.

The Court had also asked for individual guarantees regarding reception conditions and access to medical treatment for mentally ill persons (not families) and regarding **Hungary** and **Slovenia**.²³⁹ The Court further issued a decision in a Dublin case regarding **Greece** (as of 2020 only applying to persons with a Greek visa): in cases of seriously ill applicants, the SEM must obtain individual guarantees from Greek authorities concerning the immediate access to medical care after transfer.²⁴⁰ The Court has also required from SEM obtaining individual guarantees in a case concerning a Dublin transfer to **Spain**.²⁴¹

2.2.2. Transfers

According to the SEM, in 2022 it took on average 23 days to issue a Dublin decision after the receipt of a positive answer from the requested Member State.²⁴² Furthermore, on average 270 days passed between the Dublin transfer decision and the actual transfer. One reason for this long delay could be the prolongation of the transfer deadline in case of a suspension of the execution because of an appeal, suspension which must be requested. The transfer could then be further delayed if the Federal Administrative Court sent the case back to the SEM for additional clarifications and a new decision, which in turn can be appealed again. In 2022, of a total of 8,029 Dublin-out procedures, in 4,707 cases the requested member state answered positively, of those, 1,566 transfers took place.²⁴³

According to the Foreign Nationals and Integration Act, an applicant may already be detained during the preparation of the decision on residence status under certain circumstances. Applicants within a Dublin procedure may be detained if there are specific indications that the person intends to evade removal. The Federal Administrative Court as well as the Federal Supreme Court have defined some important basic rules for detention in Dublin cases (see section on **Grounds for Detention: Dublin Procedure**). The use of detention differs between cantons. In 2022, a total of 1,000 persons were placed in detention for the purpose of the Dublin III Regulation. 704 Dublin transfers took place from detention.²⁴⁴

As the Dublin III Regulation is directly applied in Switzerland, voluntary transfers should in principle be possible,²⁴⁵ however they always take place under control of the authorities. The SEM does not gather information on the nature of the transfer.²⁴⁶ Since the leading decision of the Federal Administrative Court in 2010, the transfer can no longer be enforced immediately after the notification of the decision, even if appeals against Dublin transfer decisions have no suspensive effect. A time limit of five days must be granted, allowing the applicant concerned to leave Switzerland or to make an appeal and to ask for suspensive effect.²⁴⁷ This case law has since been codified in the Asylum Act.²⁴⁸ As a result, there are at least ten working days between the date of the opening of the Dublin decision and the enforcement of the removal.

In a decision to strike out the application from the list of cases, the ECtHR considered the access to an effective remedy in Dublin cases in Switzerland sufficient.²⁴⁹ This decision was problematic because the ECtHR based it on a wrong interpretation of Swiss law: it cited the provision in the Asylum Act that relates to non-Dublin-cases, in which the asylum seeker can stay on Swiss territory until the end of the proceedings. To the contrary, in Dublin cases this is precisely not the case, as there is no automatic suspensive effect.

²³⁹ Federal Administrative Court, Decision D-2677/2015, 25 August 2015 regarding **Slovenia** and a mentally ill person who needs special trauma treatment. *Tarakhel* was not directly mentioned in the decision, but the Court states the need for guarantees. Regarding Hungary and a traumatised man: Federal Administrative Court, Decision D-6089/2014, 10 November 2014.

²⁴⁰ Federal Administrative Court, Decision F-1850/2020, 6 March 2020, para 4.2.

²⁴¹ Federal Administrative Court, Decision E-3259/2019, 8 October 2019, para 6.7.

²⁴² Information provided by the SEM, 1 May 2023.

²⁴³ SEM statistics 2022 (7-50), available at: <https://bit.ly/3Vqxt8b>. The numbers have to be read taking into account, that they are not in direct relation as transfers can take place months after the acceptance of the take charge or take back request.

²⁴⁴ Information provided by the SEM, 1 May 2023.

²⁴⁵ Article 29 Dublin III Regulation.

²⁴⁶ Information provided by the SEM, 7 April 2022.

²⁴⁷ Federal Administrative Court, Decision E-5841/2009, 2 February 2010.

²⁴⁸ Article 107a AsylA.

²⁴⁹ ECtHR, *M.G. and E.T. v. Switzerland*, Application No 26456/14, 17 November 2016, available at: <http://bit.ly/404QH53>.

The cantons are in particular responsible for carrying out the Dublin-transfers ordered by the SEM. Article 89b AsylA provides that if a canton does not fulfil or only partially fulfils its obligations with regard to the execution of removal, without objective reasons, the Confederation may claim the reimbursement of fixed compensation already paid. Similarly, if this breach leads to an extension of the duration of the stay of the person concerned in Switzerland, the Confederation may waive the payment of these subsidies.²⁵⁰

2.3. Personal interview

Indicators: Dublin: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? Yes No
2. Are interviews conducted through video conferencing? Frequently Rarely Never

The SEM carries out the whole first instance procedure and is also responsible for conducting the interviews with the applicants during the asylum procedure, including the Dublin procedure.

During the preparatory phase, all applicants undergo a short preliminary interview (see section on [Personal interview](#)) focusing mainly on their identity and journey to Switzerland. The SEM is allowed to ask summarily the reasons for seeking asylum but it rarely does so during this so-called Dublin interview.²⁵¹ The interview is usually conducted in the presence of the applicant's legal representative and is usually translated over the phone by an interpreter if necessary.²⁵² The interview is recorded in writing in the form of a summary indicating the duration of the interview and is retranslated before being signed by the applicant and their legal representative. In 2022, the SEM conducted 5,484 Dublin interviews.²⁵³

The health emergency due to the COVID pandemic slightly modified the conditions of interview (see section on [Regular Procedure: Personal Interview](#)).

If the SEM intends to take a Dublin transfer decision (inadmissibility decision), the applicant is granted the right to be heard at the end of the personal interview,²⁵⁴ and they do not get a second interview regarding the grounds for asylum. The omission of the second interview in cases of Dublin and other inadmissibility decisions constitutes the fundamental difference between the personal interview within the Dublin procedure and the additional personal interviews within the regular asylum procedure (accelerated and expanded) where the application is examined in substance (see [Regular Procedure: Personal Interview](#)).

2.4. Appeal

Indicators: Dublin: Appeal

Same as regular procedure

²⁵⁰ The Canton of Neuchâtel appealed against this provision, arguing that the cantons should be given room for manoeuvre and not be required to carry out the transfers ordered by the SEM. Neuchâtel claimed before the Federal Administrative Court that the SEM violated the principle of the separation of powers, its right to be heard, and also that it made an inaccurate and incomplete finding of the relevant facts. The appeal was dismissed: Federal Administrative Court, Decision F-1724/2019, 27 June 2022 and F-1752/2019, 29 June 2022. See also the summaries of euaa in English at: <https://bit.ly/3WE2KnO> and <https://bit.ly/3QcqtD>.

²⁵¹ Article 26(3) AsylA.

²⁵² Article 19(2) AO1.

²⁵³ Data provided by the SEM, 1 April 2021.

²⁵⁴ Article 36 AsylA.

1. Does the law provide for an appeal against the decision in the Dublin procedure?

- ❖ If yes, is it
- ❖ If yes, is it suspensive

- | | |
|--|---|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

In case of a Dublin transfer decision (inadmissibility decision), an appeal can be submitted – as in all the other cases – to the Federal Administrative Court. The time limit to lodge an appeal against a Dublin transfer decision is five working days.²⁵⁵

Contrary to other asylum appeals, appeals against Dublin transfer decisions (inadmissibility decisions) do not have automatic suspensive effect. However, as mentioned in [Dublin: Procedure](#), transfers cannot be enforced immediately after the notification of the decision. A delay of five working days must be granted.²⁵⁶ This allows the concerned applicant to make an appeal and to request that the execution of the appealed decision be suspended. The Court has to decide on the suspensive effect within another five working days.²⁵⁷ In practice, this is granted in almost all cases that cannot be decided upon immediately.²⁵⁸

In the appeal procedure (applies also to the Dublin procedure), the Federal Administrative Court has the possibility to order a hearing if the facts are not clear enough.²⁵⁹ In practice, it does not make use of this possibility.²⁶⁰

To a certain extent, the Court takes into account the reception conditions and the procedural guarantees in the responsible Member States. This is reflected in different (leading case) decisions, notably concerning Dublin Member States such as **Greece, Hungary, Italy, Croatia** or **Bulgaria** (see [Dublin: Suspension of Transfers](#)).

However, the Court can only examine errors of law, not whether or not the decision of the determining authority was “appropriate” (see section on [Regular Procedure: Appeal](#)). This limitation is very relevant in the Dublin procedure. Many Dublin cases do not fall under the compulsory criteria of the Dublin III Regulation or under Articles 3 or 8 ECHR. Therefore, especially in cases regarding family ties that fall outside those strict definitions, the interpretation of humanitarian reasons for which Switzerland can apply the sovereignty clause becomes crucial. The Court stated that it is a question of “appropriateness” where the SEM has a margin of appreciation, whether there are humanitarian reasons for applying the sovereignty clause. The SEM has to examine and motivate its reasoning for using or not using the sovereignty clause. As long as SEM decides within this margin, the Court cannot examine whether the decision was appropriate.

For example, in one case an Afghan mother and her minor son travelled to Switzerland via Bulgaria. The older son/brother lives in Switzerland based on a temporary admission. Because the brother with protection status in Switzerland was already an adult, the SEM decided to send the mother and younger brother back to Bulgaria, despite the fact that the applicants claimed that the younger brother needed the support of his older brother. The Court confirmed this decision: it admitted that the criteria according to which the SEM had examined the humanitarian reasons were strict, however, they were objective and clear. Therefore, the Court could not examine the decision by the SEM.²⁶¹ However, the SEM has to examine and motivate the use of the sovereignty clause.

The Federal Administrative Court confirmed in a leading case decision of 21 December 2017 that the asylum seeker can rely on the correct application of the Dublin responsibility criteria, as an individual right, in line with the CJEU jurisprudence in *Ghezelbash* and *Mengesteab*.²⁶²

2.5. Legal assistance

²⁵⁵ Article 108(3) AsyIA.

²⁵⁶ Article 107a(2) AsyIA; Federal Administrative Court, Decision E-5841/2009, 2 February 2010.

²⁵⁷ Article 107a AsyIA.

²⁵⁸ Practice-based information by the Swiss Refugee Council.

²⁵⁹ Article 14 APA.

²⁶⁰ Practice-based observation by the Swiss Refugee Council.

²⁶¹ Federal Administrative Court, Decision D-3794/2014, 17 April 2015.

²⁶² Federal Administrative Court, Decision E-1998/2016, 21 December 2017.

Indicators: Dublin: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?²⁶³
 - Yes With difficulty No
 - ❖ Does free legal assistance cover:
 - Representation in interview
 - Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
 - Yes With difficulty No
 - ❖ Does free legal assistance cover
 - Representation in courts
 - Legal advice

Free legal assistance is ensured at first instance.²⁶⁴ Therefore, in the Dublin procedure just as in the regular procedure, state-funded (but independent) free legal assistance is guaranteed to all applicants (see also [Legal assistance](#)).

Access to legal assistance is also available for persons who ask for asylum in **detention or prison**. For further information, see the general chapter on [Registration of the asylum application](#).

The relatively short time limit of five working days for lodging an appeal against a Dublin transfer decision constitutes a real obstacle to appealing. This is even more problematic in cases where the mandated legal assistance decides not to appeal as it considers that lodging an appeal would be doomed to fail. In those cases, applicants could theoretically approach a non-state-funded entity for legal advice to ask for support. However, this is very difficult due to the remote locations of federal centres, given that most independent legal advisory offices are situated in urban areas. Additionally, if a lawyer of one of those offices decides to appeal, the time to gather all information needed is extremely short.

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?
 - Yes No
 - ❖ If yes, to which country or countries?

In general, if transfers to other Dublin Member States are suspended, it is because of the application of the sovereignty or the humanitarian clause. The asylum application of the person concerned is then materially examined in Switzerland.

Greece: In November 2017, the SEM announced the reinstatement of Dublin procedures for cases in which the person was in possession of a Greek visa. This does not apply to vulnerable persons.²⁶⁵ This means that in most of the cases Switzerland still relinquishes transfers to Greece and applies the sovereignty clause.

On the other hand, if the person already has a protection status in Greece (and therefore does not fall under the Dublin Regulation, but under the safe third country clause), the Swiss authorities are generally of the opinion that the person can be transferred there. For this purpose, a bilateral readmission agreement is used. For families with children, the Court considers the execution of the removal order only to be reasonable if favourable conditions or circumstances exist. The legal presumption of the reasonableness of enforcing removal was no longer upheld by the Court in the case of persons who, due to their particularly high vulnerability, run the risk of being permanently placed in severe distress if they return to Greece, because they are not in a position to claim the rights to which they are entitled on the spot by their own efforts. The Court therefore considers the removal of extremely vulnerable persons

²⁶³ Since the start of the reformed Swiss asylum procedure on 1 March 2019, free and independent legal assistance is provided at first instance for every asylum seeker.

²⁶⁴ Article 102f AsylA.

²⁶⁵ Federal Administrative Court, Decision F-1850/2020, 6 May 2020, para 4.2.

entitled to protection, such as unaccompanied minors or persons whose mental or physical health is impaired in a particularly serious manner, to be unreasonable in principle, unless there are particularly favourable circumstances on the basis of which it can exceptionally be assumed that the removal is reasonable.²⁶⁶

According to SEM statistics, 3 transfers took place to Greece under Dublin and 30 persons were transferred under the readmission agreement in 2022, compared to one person transferred under Dublin and 24 under the readmission agreement in 2021.²⁶⁷ The agreement applies to persons having received international protection in Greece. The SEM applied the sovereignty clause in 484 cases in 2022, compared to 538 in 2021.²⁶⁸

Hungary: In May 2017 the Federal Administrative Court issued a reference judgment in which it summarised the latest developments in the Hungarian asylum system and the effects on Dublin returnees.²⁶⁹ The Court highlighted the responsibility of the SEM to gather all elements necessary for the assessment, not the responsibility of the appeal authority to carry out complex supplementary investigations. Otherwise, the Federal Administrative Court would overstep its jurisdiction with a decision on the merits of the matter and deprive the party concerned of the legal right of appeal. Therefore, the Court annulled the contested decision and referred it back to the SEM for a full determination of the facts and a new decision, which resulted in the initiation of the national procedure in all cases known to the Swiss Refugee Council.

According to SEM statistics, there were no transfers to Hungary under Dublin in 2022, just as in 2021, 2020, 2019 and 2018. On the other hand, in 2022 there were 6 transfers under the bilateral readmission agreement between Switzerland and Hungary which applies to persons having received international protection in Hungary, compared to 4 in 2021.²⁷⁰

Italy:²⁷¹ Swiss practice regarding Italy remains very strict and the Court still states that there are no systemic deficiencies. The sovereignty clause is only applied in cases of very vulnerable persons, or in case of a combination of different special circumstances. Guarantees have to be obtained from the Italian authorities in family cases,²⁷² as well as in take-back procedures for persons with serious health issues.²⁷³ (for further information see also the section on Individual guarantees above under Procedure).

Since December 2022 until at least 2 May 2023, no Dublin transfers to Italy could take place, following a communication from the Italian authorities to all Dublin Units claiming a lack of reception capacity. This concerns so far around 300 persons who could not be transferred from Switzerland.²⁷⁴

In February 2022, the Swiss Refugee Council published a report on the treatment of mental health problems of asylum seekers and beneficiaries of international protection in Italy. The report showed that there are no sufficient identification mechanism in place and there is no specialised and long-term treatment available.²⁷⁵

²⁶⁶ Federal Administrative Court, Decision E-3427/2021, E-3431/2021, 28 March 2022.

²⁶⁷ SEM, asylum statistics (7-50 and 7-55), available at: <https://bit.ly/3Vqxt8b>.

²⁶⁸ Data provided by the SEM, 1 May 2023.

²⁶⁹ Federal Administrative Court, Decision D-7853/2015, 31 May 2017.

²⁷⁰ SEM, asylum statistics, (7-50 and 7-55), available at: <https://bit.ly/418U0Yk..>

²⁷¹ Regarding reception conditions in Italy for Dublin Returnees and persons with international protection status please see: Swiss Refugee Council, *Reception conditions in Italy – Updated report on the situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, in Italy*, January 2020, available at: <https://bit.ly/3WIXmyQ>.

²⁷² Federal Administrative Court, Decision F-6330/2020, 18 October 2021.

²⁷³ Federal Administrative Court, Decision D-4235/2021, 19 April 2022.

²⁷⁴ NZZ, *Flüchtlingsaufnahme gestoppt: Was steckt hinter Italiens Entscheidung?*, 8 April 2023, available at: <https://bit.ly/3nugYey>.

²⁷⁵ Swiss Refugee Council, *Situation of asylum seekers and beneficiaries of protection with mental health problems in Italy*, February 2022, available in English at: <https://bit.ly/3iikIMG>

The Swiss Refugee Council will continue to document transfers to Italy in 2023 within the framework of the Dublin Returnee Monitoring Project (DRMP).²⁷⁶ Individual cases can be reported or referred to it (for further information see also the section on Individual guarantees above under [Procedure](#)).

In 2022, 325 transfers to Italy took place, compared to 294 in 2021. Under the bilateral readmission agreement between Switzerland and Italy, 51 transfers to place in 2022, compared to 53 in 2021.²⁷⁷

Bulgaria:²⁷⁸ Dublin decisions are generally issued in cases concerning Bulgaria, even in the case of families and vulnerable persons.²⁷⁹ In a decision from September 2017,²⁸⁰ the Court implied doubts about the procedure leading up to the rejection of the applicant's claim in Bulgaria.

On 11 February 2020 the Court issued a reference judgement on the question of systemic deficiencies in Bulgaria.²⁸¹ Although the Court itself explained in a very detailed manner the problems in the Bulgarian asylum system, it concluded that there were no systemic flaws in the asylum procedure and reception conditions in Bulgaria which would justify a complete suspension of transfers to that country. A case-by-case examination will be required to determine whether the transfer to that country of a particular asylum seeker should be suspended. The Court also mentioned the possibility to request individual guarantees from the Bulgarian authorities. (for further information see also the section on Individual guarantees above under [Procedure](#)).

In October 2022, the Court dealt²⁸² with a Dublin Bulgaria case, the Afghan complainant was suffering from health problems and drug addiction. He had been detained and mistreated in Bulgaria. The application for readmission to Bulgaria did not contain any information on the man's health condition and remained unanswered. The SEM used text modules to state that there were no indications of systemic deficiencies in Bulgaria and that the country had sufficient infrastructure. On the one hand, the Court considered the legally relevant medical facts to be incomplete. It also states that it cannot be assumed without further ado that the conditions in Bulgaria meet the requirements of international law. Furthermore, in view of the protection quotas for Afghans in Bulgaria, the Court considered it questionable whether the Bulgarian authorities take sufficient account of the non-refoulement requirement. Furthermore, the SEM had failed to deal with the effects of the war in Ukraine. Next, the SEM was asked to comment on the admissibility and reasonableness of a transfer to Bulgaria against the background of the OSAR report on police violence in Bulgaria and Croatia²⁸³.

In 2022, 3 Dublin transfers to Bulgaria took place, compared to 7 in 2021. Under the bilateral readmission agreement between Switzerland and Bulgaria, 2 transfers to place in 2022, compared to 1 in 2021.²⁸⁴

Malta: According to its own manual,²⁸⁵ the SEM does not transfer vulnerable asylum seekers to Malta if they are facing detention. 4 transfers took place to Malta under the Dublin Regulation in 2022, compared to 1 in 2021. No transfer took place under the readmission agreement in 2022, compared to 1 in 2021.²⁸⁶

Croatia: In a reference judgment²⁸⁷ of March 2023, the Federal Administrative Court assumed that persons will have access to the asylum procedure in Croatia, regardless of whether they are transferred to Croatia by means of a take back or take charge procedure. The court denied the existence of systemic

²⁷⁶ Further information to be found on the website of the Swiss Refugee Council, available in English at: <https://bit.ly/3zpOWCx>.

²⁷⁷ SEM, asylum statistics, (7-50 and 7-55), available at: <https://bit.ly/418U0Yk>.

²⁷⁸ For further details and case law, see previous updates of the AIDA Switzerland Country Report, available at: <http://bit.ly/406fqpx>.

²⁷⁹ For example, in the case of a man who claimed to have been detained and mistreated in Bulgaria, with diabetes and psychological problems: Federal Administrative Court, Decision E-521/2016, 13 June 2016.

²⁸⁰ Federal Administrative Court, Decision E-305/2017, 5 September 2017. For further details, see previous updates of the AIDA Switzerland Country Report, available at: <http://bit.ly/406fqpx>

²⁸¹ Federal Administrative Court, Decision F-7195/2018, 11 February 2020.

²⁸² Federal Administrative Court, Decision F-2707/2022, 12 October 2022.

²⁸³ Swiss Refugee Council, *Violences policières en Bulgarie et en Croatie : conséquences pour les transferts Dublin*, 13 September 2022, available in French (and German and Italian) at: <https://bit.ly/3EJZcsu>.

²⁸⁴ SEM, asylum statistics 2022, 2021 (7-50 and 7-55), available at: <https://bit.ly/418U0Yk>.

²⁸⁵ Manuel Asile et retour, C3 Procédure Dublin, available in French at: <https://bit.ly/37ApcEc>.

²⁸⁶ SEM, asylum statistics (7-50 and 7-55), available at: <https://bit.ly/418U0Yk>.

²⁸⁷ Federal Administrative Court, Decision E-1488/2020, 22 March 2023, available in German at: <https://bit.ly/40Z7d5V>; press release of the Federal Administrative Court in English (and German, French, Italian) available at: <https://bit.ly/44qowQf>; press release of the Swiss Refugee Council available in French (and German) at: <https://bit.ly/40UVB3S>.

deficiencies in the Croatian asylum system and clarified that a transfer should only be dispensed with in exceptional cases if it can be shown that the general assumption does not apply in the individual case.

The facts of the case: The complainant from Syria sought asylum in Switzerland on 29 March 2019. He entered the Dublin area via Croatia and, according to his own statements, had previously been deported to Bosnia 18 times under duress and ill-treatment by the Croatian authorities. Due to his registration in Croatia, the SEM requested a transfer based on Article 13(1) of the Dublin III Regulation (take charge), and Croatia agreed. The SEM then issued a non-admission decision, which was successfully challenged twice by the complainant, as the SEM had not fully ascertained the facts of the case. In particular, the SEM was requested to clarify whether the Croatian asylum system had systemic deficiencies and to analyse the push-back practice; moreover, the SEM had not examined the complainant's individual submissions with regard to a possible inadmissibility or unreasonableness of the transfer to Croatia. In March 2020, the SEM issued a NEE decision for the third time, and an appeal against this decision was again filed with the Federal Administrative Court. (FAC). The latter took three years to issue its reference judgement E-1488/2020 of 22 March 2023.)

The considerations: After a brief discussion of the concept of collective expulsion in consideration and the basic explanations on the basic assumption of mutual trust in the Dublin system, the actual core of the judgment is to be found in para. 9. The Court examines various sources on pushbacks and comes to the conclusion that in view of the numerous reports on prohibited pushbacks, it can be assumed with a very high degree of probability that inadmissible returns as well as violent and inhumane attacks on migrants are regularly practiced by the Croatian authorities. The Court further states that, in view of the reports, it must be assumed that Croatia is mainly a transit country for a considerable number of the persons seeking protection and that the majority of these persons have no interest in an asylum procedure in Croatia. Building on this, the court consults the case law of the ECtHR *N.D. and N.T. v. Spain* and refers to the "own culpable conduct test", which under certain circumstances - despite the absence of individual clarifications - can lead to a denial of a violation of the prohibition if the migrating person is found to have acted wrongly. An embassy report from 2019 (not public) is used to show that Dublin returnees will have access to the asylum procedure, and the court further states that there would be no reports or documented cases of Dublin returnees being unlawfully deported in Croatia by the date of the judgment.

Embassy report: Regarding the question of pushbacks, the SEM asked the Swiss embassy in Croatia to conduct an investigation. Decisions regarding Dublin Croatia cases in 2022 were amongst other based on those investigations, which are supposedly proving that the problem of pushbacks is only relevant in the border region and should not affect Dublin returnees. The report of the embassy is not shared or publicly available, which makes it difficult to counter-argument and is in the view of the Swiss Refugee Council in breach of the right to be heard, as this would require the full inspection of the investigations of the embassy. Further, the Croatian NGO Centre for Peace Studies, who was consulted by the embassy for their research, was very surprised on the outcome and their citation. The Centre for Peace Studies told the Swiss newspaper "Wochenzeitung" that they were only meeting with an intern of the embassy, and that they shared the information that pushbacks are not just happening in the border region of Croatia but also within the country.²⁸⁸ Taking into account the various reports²⁸⁹ and evidence of pushbacks and the use of violence against asylum seekers by the Croatian authorities, the association "Droit de rester" started a petition against Dublin transfers to Croatia.²⁹⁰ The Swiss Refugee Council also calls for a stop of Dublin transfers to Croatia.²⁹¹

17 persons were transferred to Croatia under Dublin in 2022, compared to 15 transfers in 2021. In 2022, nobody was transferred to Croatia under the bilateral readmission agreement, compared to 1 person in 2021.²⁹²

2.7. The situation of Dublin returnees

²⁸⁸ WOZ, *Eine Kette der Verachtung*, 22 Dezember 2022, available in German at: <https://bit.ly/3I8L7yR>.

²⁸⁹ See for example Swiss Refugee Council, *Violences policières en Bulgarie et en Croatie : conséquences pour les transferts Dublin*, 13 September 2022, available in French (and German and Italian) at: <https://bit.ly/3EJZcsu>; the report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 14 August 2020, 3 December 2021, available at: <https://bit.ly/3ICJEbS>; the reports of the Border Violence Monitoring Networks (see <http://bit.ly/3ECwSji>) and of the Centre for Peace Studies (see <http://bit.ly/3xWHT4w>). Further, the reports in the media, for example The Guardian, *Croatian police accused of 'sickening' assaults on migrants on Balkans trail*, 21 October 2021, available at: <http://bit.ly/3ZmivAP>; Rundschau, Video-Beweis: *Kroatische Polizisten prügeln Migranten aus der EU*, 6. October 2021, available in German at: <http://bit.ly/3KGRX9f>; The Guardian, *Croatian border police accused of sexually assaulting Afghan migrant*, 7 April 2021, available at: <http://bit.ly/3Y05Hil>; Der Spiegel, *Sie haben wie blind auf mich eingeschlagen*, 18 November 2020, available in German at: <http://bit.ly/3lrxnHi>; Heute, *So brutal soll Kroatiens Polizei Migranten zurichten*, 25 October 2020, available in German at: <http://bit.ly/41speuX>; Deutschlandfunk, *Polizeigewalt auf der Balkanroute «Sie brechen Arme, Beine, Köpfe»*, 31 July 2019, available in German at: <http://bit.ly/3xS1iDL>.

²⁹⁰ Act.Caompax, *Stopp Dublin Kroatien*, available in German at: <https://bit.ly/3YqvGkb>.

²⁹¹ Swiss Refugee Council, *Etats Dublin*, available in French and German at: <https://bit.ly/3ln3D6q>.

²⁹² SEM, asylum statistics (7-50 and 7-55), available at: <https://bit.ly/418U0Yk>.

Dublin transfers to Switzerland are mainly enforced by air to the airports of Zurich, Geneva and Basel, but they can also take place by land from neighbouring countries.

Dublin returnees are received by the police at the airport or the border post. If the person has been transferred according to a 'take back' request, meaning that they have already applied for asylum in Switzerland in the past, they will have to report to the migration authorities of the canton to which they had been attributed (if such attribution had already taken place), regardless of the state of the procedure. The procedure will then be resumed, if there has not yet been a negative decision on the merits. If the person is transferred according to a 'take charge' request, meaning that they have not applied for asylum in Switzerland before, they have to report to the federal asylum centre which the police points them to. The police give the person a public transport ticket to facilitate the journey to the cantonal migration office or the federal asylum centre. If the person has health problems that require the organisation of a transfer, either the canton or the federal asylum centre will organise the transfer from the airport or border post.²⁹³

No obstacles for applicants transferred back to Switzerland under Dublin have been observed.

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

In Switzerland, all asylum seekers have to undergo the admissibility procedure. This procedure should take place in the first 3 weeks after the application for asylum has been filed, and is called the "preparatory phase".²⁹⁴ Within this time, the SEM records the asylum seekers' personal details and normally takes their fingerprints and photographs. It may collect additional biometric data, prepare reports on a person's age, verify evidence and travel and identity documents and make enquiries specific to origin and identity. At this time, the asylum seekers will normally be interviewed by the SEM about their identity and their itinerary, and summarily about the reasons for leaving their country. On the basis of the gathered information, the SEM reaches the decision on admissibility, which aims to determine whether the decision should be examined on the merits or deemed inadmissible. If the application cannot be considered as an asylum claim according to the Asylum Act or if the application is not sufficiently justifiable and the asylum seeker withdraws their application, the application is cancelled without a formal decision.²⁹⁵ Similarly, the application is cancelled without a formal decision if asylum applicants fail to cooperate without valid reason or if they fail to make themselves available to the authorities for more than 20 days or more than 5 days if the asylum seeker is accommodated in a federal centre (see [Registration of the asylum application](#)).

The reasons for rejecting an asylum application as inadmissible are similar, but not identical to the ones mentioned in Article 33 of the recast Asylum Procedures Directive, and can be found in Article 31a(1)-(3) AsyIA.

An application is inadmissible where the asylum seeker:

- (a) Can return to a [Safe Third Country](#) in which they have previously resided;
 - (b) Can be transferred to the responsible country [under the Dublin Association Agreement];
 - (c) Can return to a third country in which they have previously resided;
 - (d) Can travel to a third country for which they have a visa and where they may seek protection;
 - (e) Can travel to a third country where they have family or persons with whom they have close links;
- or
- (f) Has applied solely for economic or medical reasons. In this case, normally a second interview will take place before the SEM takes the decision to dismiss the application.²⁹⁶

²⁹³ Information on the procedure for Dublin returnees has been provided by the SEM on 27 April 2021.

²⁹⁴ Article 26 AsyIA.

²⁹⁵ Article 25a AsyIA.

²⁹⁶ Article 36(2) AsyIA.

The grounds relating to countries not listed as “safe third countries” in the Swiss list (see [Safe Third Country](#)) do not apply if there are indications that there is no effective protection against *refoulement* in the individual case.²⁹⁷

Decisions to dismiss an application based of the Dublin Regulation must normally be made within three working days of the application being filed or after the Dublin state concerned has agreed to the transfer request.²⁹⁸ In practice, these time limits are rarely respected.

The SEM delivered the following inadmissibility decisions from 2018 to 2022:

Inadmissibility decisions: 2018-2022					
Ground for inadmissibility	2018	2019	2020	2021	2022
Safe third country: Article 31a(1)(a) AsyIA	255	303	248	479	903
Responsibility of another Dublin State: Article 31a(1)(b) AsyIA	4,185	2,720	2,103	2,678	3,925
Country where the applicant has previously resided: Article 31a(1)(c) AsyIA	2	3	4	9	6
Country where the applicant has family or persons with close links: Article 31a(1)(e) AsyIA	2	8	7	1	Not available
Application made exclusively for economic or medical reasons: Article 31a(3) AsyIA	258	221	156	156	187
Subsequent application: Article 111c(1) AsyIA	21	27	6	12	Not available
Total	4,723	3,282	2,622	3,409	Not available

Source: SEM, 18 January 2018; 21 January 2019; 12 February 2020; 19 March 2021, 1 April 2022; 1 May 2023.

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

- Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure?
 - Yes No
 - ❖ If so, are questions limited to identity, nationality, travel route? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? Yes No
- Are interviews conducted through video conferencing? Frequently Rarely Never

Every asylum seeker will be granted a first personal interview (which is in fact called Dublin Interview – see [Personal interview](#)) with questions about their identity and the itinerary.²⁹⁹ According to the SEM, they systematically interview accompanied minors aged 14 or over, whereas younger children are only interviewed directly if this is necessary to establish the facts.³⁰⁰ Since spring 2021, a right to be heard is systematically granted to parents of children below the age of 14 concerning the specific situation of these children. This right is granted in both Dublin and national procedures in order to take into account all elements relating to the particular situation of these young children and to determine whether a personal

²⁹⁷ Article 31a(2) AsyIA.

²⁹⁸ Article 37 AsyIA.

²⁹⁹ Information provided by the SEM, 12 January 2018.

³⁰⁰ No personal interview was conducted with accompanied children under 12 years of age until 2021. A decision of the UN Committee on the Rights of the Child (Committee for the Rights of the Child, *V.A. v. Switzerland*, 28 September 2020, available at: <https://bit.ly/3WHbQ2q>) concerning Switzerland stated in 2020 that even children of young age must be heard in asylum procedures (see section on minors in

hearing of the latter is necessary. In this context, the providers of legal protection services have been informed of the new measures taken by the SEM. They were asked to discuss the particular situation of children under 14 years of age during the first interview with the family members and then to promptly inform the SEM of any specificities (obstacles to removal, specific grounds for asylum, conflict of interest with the parents, etc.) so as to enable the planning of a possible hearing of the minor under 14 years of age if this should prove necessary.³⁰¹

In the case of unaccompanied minors, there is no so-called Dublin Interview but a “first interview for unaccompanied minors”.

If the SEM decides to dismiss an application according to Article 31a(1) AsyIA, there will be no second interview, but the asylum seeker is granted the right to be heard. This allows the person concerned to provide a statement in response to the intention of the SEM to dismiss the application.

The first short interview is the same as in the regular procedure (see section on [Regular Procedure: Personal Interview](#)). The right to be heard regarding the inadmissibility decision is usually granted at the end of the first interview or subsequently in writing.

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against an inadmissibility decision?

- | | | |
|----------------------------|--|--|
| ❖ If yes, is it | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| | <input type="checkbox"/> Yes | <input type="checkbox"/> Some grounds <input checked="" type="checkbox"/> No |

An appeal against a decision to dismiss an application must be filed before the Federal Administrative Court within 5 working days.³⁰² The short time limit of five working days for lodging an appeal against an inadmissibility decision constitutes an obstacle where the free legal assistance renounces to appeal as the chances of success are considered very low. In those cases, applicants could theoretically approach a non-state-funded office for legal advice to ask for support. However, significant obstacles arise in practice, especially when asylum seekers are accommodated in federal centres in remote locations which are far away from independent legal advisory offices that are usually situated in urban areas.

In general, an appeal has automatic suspensive effect in Switzerland.³⁰³ Appeals against inadmissibility decisions have automatic suspensive effect, except for Dublin decisions (see section on [Dublin: Appeal](#)).

In principle, the Court should decide upon appeals against inadmissibility decisions within five working days,³⁰⁴ which is not observed in practice as the average duration for Dublin appeals is 20 days.³⁰⁵ Although this would be possible in principle, there are no personal hearings in front of the Court for inadmissibility cases.

The other modalities of the appeal are the same as in the regular procedure.

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance during admissibility procedures in practice? Yes With difficulty No

³⁰¹ Information provided by the SEM, 1 April 2022.

³⁰² Article 108 AsyIA (the Ordinance COVID-19 Asylum did not extend this deadline).

³⁰³ Article 55(1) APA.

³⁰⁴ Article 109 AsyIA.

³⁰⁵ Information provided by the Federal Administrative Court, 31 January 2023.

- ❖ Does free legal assistance cover: Representation in interview
 Legal advice
- 2. Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice? Yes With difficulty No
 - ❖ Does free legal assistance cover Representation in courts
 Legal advice

The same rules as regards legal assistance under the regular procedure apply. See chapter on [Legal assistance](#) above.

4. Border procedure (border and transit zones)

4.1. General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? Yes No
2. Where is the border procedure mostly carried out? Air border Land border Sea border
3. Can an application made at the border be examined in substance during a border procedure? Yes No
4. Is there a maximum time limit for a first instance decision laid down in the law? Yes No
 - ❖ If yes, what is the maximum time limit? 20 days³⁰⁶
5. Is the asylum seeker considered to have entered the national territory during the border procedure? Yes No

Switzerland has no land border with third countries other than Schengen and Dublin Member States. There is therefore no special procedure at land borders; persons who request asylum at the border or following their detention for illegal entry in the vicinity of the border shall normally be assigned by the competent authorities to a federal asylum centre, where they enter the same procedure as any other asylum seeker.³⁰⁷

There is a special procedure for people who ask for asylum at the airport. Persons who lodge their asylum application at the airport often do so after having been arrested by the airport police because they were found in possession of fake travel documents. In Geneva, in some cases they are prosecuted for illegal entry and brought to the police post in the city, where they spend one night before going back to the airport to start the asylum procedure. It should be further noted that, during the airport procedure, applicants are not considered as having entered the national territory.

If a person arrives at the international airport of **Geneva** and claims asylum, the airport police records the personal details, takes their fingerprints and photographs and immediately informs the SEM of the asylum application.³⁰⁸ The asylum seeker receives a flyer with information on the airport procedure. The SEM decides whether to authorise entry into Swiss territory within two working days. If it temporarily denies entry, asylum seekers are allocated a place of stay in the transit zone of the airport where they can be held for a maximum of 60 days, which constitutes de facto detention (see [Detention of Asylum Seekers](#)).³⁰⁹ Since the pandemic, the number of asylum applications submitted at Geneva airport has decreased significantly, in 2022, there were 77 asylum applications. In 2022, the SEM continued to authorise the entry of applicants from countries such as Türkiye, Afghanistan, Syria, Pakistan, when they do not have a "Eurodac hit" (or a "Greece hit") so that their hearings can be conducted in the federal asylum centre in Boudry.

³⁰⁶ Article 23 AsylA.

³⁰⁷ Article 21(1) AsylA.

³⁰⁸ Article 22 AsylA and Article 12 AO1.

³⁰⁹ Article 22(5) AsylA.

The SEM examines if Switzerland is responsible to carry out the procedure according to the Dublin Regulation. They shall authorise entry into the territory if Switzerland is responsible according to the Dublin III Regulation, and if the asylum seeker appears to be at risk under any of the grounds stated in the refugee definition at Article 3(1) AsylA or under threat of inhumane treatment in the country from which they directly arrived; or if the asylum seeker establishes that the country from which they have directly arrived would force them to return to a country in which they appear to be at risk, in violation of the *non-refoulement* principle. If it cannot immediately be verified if the mentioned conditions are fulfilled, entry into the territory is temporarily denied.³¹⁰

The airport procedure can result in a decision granting access to the territory (in which case the applicant is channelled into the regular procedure), a negative in-merit decision or an inadmissibility decision (e.g. Dublin or safe third country).³¹¹ The decision has to be taken within 20 days after the application was made. If the procedure takes more time, the SEM has to authorise entry, in which case the applicant is usually attributed to the extended procedure and allocated to a canton, but they can also be allocated to a federal asylum centre for an accelerated procedure.³¹² If the procedure ends with a removal decision, the applicant can be held in the transit zone for a maximum of 60 days (since the application). If the removal has not been enforced after 60 days, the persons concerned can be transferred to an immigration administrative detention centre, in practice, they are led to the competent cantonal authorities who decide whether to detain them or provide them with emergency aid.³¹³

If a person requests asylum at **another airport in Switzerland**, the person will be transferred to a federal asylum centre and will enter the regular procedure.³¹⁴

According to data provided by the SEM, in the whole year 2022 296 (compared to 170 in 2021) requests for entry were lodged. The main countries of origin were Türkiye (32 cases in Geneva, 27 in Zurich) and Cuba (40 cases in Zurich). The SEM issued 275 authorisations to enter Switzerland.³¹⁵

³¹⁰ Article 22(1-bis), (1-ter) and (2) AsylA.

³¹¹ Article 23(1) AsylA. See also SEM, Manuel Asile et Retour, chapter C2, p. 6-7.

³¹² Article 23(2) AsylA.

³¹³ SEM, Handbook on Asylum and Return, chapter C2, available in French at <https://bit.ly/3r8VZN7>, 9.

³¹⁴ SEM, Manuel Asile et Retour, chapter C2, p. 4, available in French at: <https://bit.ly/36mHNG1>. Due to the emerging pandemic, air traffic collapsed worldwide at the beginning of 2020, including at **Zurich** Airport, therefore no more asylum applications were registered there. Even after air traffic gradually resumed, there were only very isolated asylum applications at the airport. Since the resource-intensive operation of the SEM structures at the airport was considered unreasonable under these conditions, the procedures were adapted so as to carry out the few procedures at the nearby Zurich federal asylum centre also in 2022.

³¹⁵ Information provided by the SEM, 1 May 2023.

4.2. Personal interview

Indicators: Border Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure?
 Yes No
❖ If so, are questions limited to nationality, identity, travel route? Yes No
❖ If so, are interpreters available in practice, for interviews? Yes No
2. Are interviews conducted through video conferencing? Frequently Rarely Never

In the airport procedure in Geneva, a first interview with the SEM takes place in the SEM offices situated in the detention centre in the transit area. At the end of 2022, there are two SEM employees responsible for hearings at the airport. They work mainly in the federal asylum centre in Boudry but are seconded to Geneva to conduct the hearings. If necessary, the SEM can deploy other staff from Boudry. A legal representative is present during the interview. There is always an interpreter present in the interview. After having the first interview, the SEM carries out an analysis of the file, after which they can decide to authorise entry, introduce a Dublin procedure implicating the Dublin unit, or continue the airport procedure with the organisation of an interview on the grounds for asylum.

In **Zurich**, no airport procedure has taken place since the lockdown in March 2020, people are directly referred to the federal centre in Zurich.

4.3. Appeal

Indicators: Border Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?
 Yes No
❖ If yes, is it Judicial Administrative
❖ If yes, is it suspensive Yes Some grounds No

The decision to deny entry in Switzerland and be placed in the transit zone can be appealed in so far that the SEM has not yet notified the negative or dismissal decision.³¹⁶

The applicant or their legal representative can also appeal against a decision taken within the airport procedure, be it a decision on the merit or a decision to dismiss an application. Such appeal must be introduced within 5 working days.³¹⁷ The Federal Administrative Court is the competent appeal authority, similarly to the regular procedure. As in the regular procedure, appeals have automatic suspensive effect,³¹⁸ except for Dublin decisions, in which case the person has to ask for suspensive effect (for further information, see sections on [Regular Procedure: Appeal](#) and [Dublin: Appeal](#)).³¹⁹

If the Federal Administrative Court accepts an asylum seeker's appeal against a decision to deny entry, a negative or dismissal decision, the SEM has to authorise entry and directly allocate the person concerned either to a federal asylum centre or to a canton.³²⁰

³¹⁶ Article 108(3) and (4) AsyIA.

³¹⁷ Article 108(3) AsyIA and Article 23(1) AsyIA.

³¹⁸ Article 55(1) APA.

³¹⁹ Article 107a AsyIA.

³²⁰ Article 23 AsyIA; SEM, Handbook on Asylum and Return, chapter C2, available in French at <https://bit.ly/3r8VZN7>, 8.

4.4. Legal assistance

Indicators: Border Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in interview
 Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in courts
 Legal advice

Similar to ordinary asylum procedures, the airport procedure foresees that applicants are assigned a legal representative since the beginning of the procedure for free, unless the asylum applicant explicitly renounces it.

Upon registration of the asylum application, the SEM informs the legal representation, which will contact the applicant within two days to conduct a first counselling interview.³²¹ In practice, and due to work overload, the legal representation often prepares the applicant on the day of the hearing. However, two Caritas telephone numbers are given to applicants on arrival, one to send in their evidence, and the other to ask questions or contact their legal representation.³²² The legal representative will also attend the interviews carried out in the context of the airport procedure and meet the applicants in advance to prepare them for the interview. There is no main difference regarding legal assistance in the regular procedure and the airport procedure (see section on [Regular Procedure: Legal Assistance](#)). According to a legal representative working in Geneva, the fact that sometimes the two interviews (summary and on the grounds for asylum) are conducted on the same day makes it difficult to prepare their clients. The fast pace of the airport procedure also poses some challenges to the provider of legal representation at the organisational level.

Caritas Switzerland is responsible for the legal representation at **Geneva** airport. Differently from the situation in federal asylum centres, there is no fix or regular presence of these organisations at the airport but they punctually go to the airport for interviews or meetings with the asylum seekers. The organisation providing legal assistance has their own offices situated in the detention centre. Differently from the ordinary procedure, the legal representative will also take on the task of legal counsellors. According to Caritas, asylum applicants in Geneva have access to their legal representation through the phone. The legal representatives are also able to talk to their clients on the phone when needed and the private company running the centre, ORS, facilitates the contact.

³²¹ Article 7(2) AO 1 and Article 102h AsylA.

³²² Information from Caritas, 19 January 2023.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? Yes For certain categories No
❖ If for certain categories, specify which:
2. Does the law provide for an identification mechanism for unaccompanied children? Yes No

The law does not specifically provide for the screening of vulnerabilities and there is no standard procedure in practice to assess and identify them. Furthermore, all but very complex asylum claims should be assessed and decided within 140 days. The fast-paced procedure puts administrative authorities and legal representatives under increased pressure, which, coupled with the lack of standard identification tools, may result in overlooking potential vulnerabilities. A report published by UNHCR in 2020 details the protection gaps existing in the Swiss asylum system in this regard, and advances concrete suggestions to overcome them.³²³ According to UNHCR, there remain wide margins for improvement in the screening and identification of vulnerable applicants. Similar concerns were also raised by the National Commission for the Prevention of Torture (NCPT), which published its latest report on federal reception centres in January 2021.³²⁴

A general document, detailing the State Secretary for Migration's guidelines for the identification and protection of particularly vulnerable asylum seekers should be available to the public in 2023.

Some international instruments signed by Switzerland specifically provide for the screening of some groups of asylum seekers. We will focus on the implementation of these provisions in the Swiss practice.

1.1. Screening of vulnerability: Victims of human trafficking

The obligation to identify victims of human trafficking has been introduced in the Swiss legislation,³²⁵ to respond to European requirements.³²⁶ Most of the efforts of the SEM are focused on trafficking for purposes of sexual exploitation. In its second report on Switzerland, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) strongly encouraged Swiss authorities to step up efforts to detect and prevent trafficking for the purpose of labour exploitation and trafficking in children.³²⁷ GRETA is due to visit Switzerland for its third Evaluation Round in spring 2023. Final report is expected by the end of 2023.

In 2016, of the Federal Administrative Court highlighted the identification of victims of trafficking as the state's obligation and the importance of their identification within the asylum procedure,³²⁸ but did not explicitly state that a failure to fulfil this obligation represents a violation of Article 10 of the Council of Europe Convention.

³²³ UNHCR, written by Angela Stettler, *Neustrukturierung des Asylbereichs – Asylsuchende mit besonderen Bedürfnissen im neuen schweizerischen Asylverfahren. Problemaufriss und erste Empfehlungen*, August 2020, available in German at: <https://bit.ly/35YrIG4>.

³²⁴ NCPT, *Report on federal asylum centres 2019-2020*, January 2021, available in German at: <https://bit.ly/3jEAb72>, p. 13-16.

³²⁵ Articles 35 and 36 of the Ordinance on Admission, Period of Stay and Employment.

³²⁶ Article 10 Council of Europe Convention on action against Trafficking in Human beings, Warsaw, 16 May 2005.

³²⁷ GRETA, Report, 9 October 2019, available in English at: <https://bit.ly/2Q0rxIX>, § 85 and 95-96.

³²⁸ Federal Administrative Court, Decision D-6806/2013, 18 July 2016.

Despite this, it remains very difficult to identify victims of human trafficking in the context of the asylum procedure, as the interview conditions and the limited time are not favourable to building the necessary trust between the applicant and the authorities.

In its 2019 report on Switzerland, GRETA found that the SEM does not conduct formal identification of victims of trafficking and limits itself to detecting possible victims based on their allegations, referring them to the criminal investigation authorities, to specialised counselling centres established in the framework of the Federal Law on Assistance to Victims of Crimes (LAVI) and to other specialised organisations. Furthermore, GRETA highlighted cases in which victims of trafficking were not identified in the asylum process and received a negative decision regarding their asylum application. They remained in Switzerland as irregular migrants and were subsequently identified by outreach work organisations after having experienced further exploitation in Switzerland. GRETA expressed concern as regards the lack of early identification mechanism, because it reduces the possibilities for victims of trafficking to benefit from timely support in the asylum process, with regard to both procedures and reception conditions.³²⁹

The Asylum and Human Trafficking working group³³⁰ was established to implement action 19 of the National Action Plan against trafficking (NAP). Working under the lead of SEM, it is made up of SEM officials and representatives of the main NGOs active in the asylum field, including the Swiss Refugee Council. Its task is to optimise identification processes regarding human trafficking victims, provide victim assistance during the asylum (including Dublin) procedure, outline these processes in an open publication (e.g. handbook, brochure, etc.), and determine what further action is needed. The working group published a report in May 2021,³³¹ setting out a list of recommendations, which aim to better detect potential victims of human trafficking and to ensure that their rights are respected in asylum procedures. In particular, the SEM introduced a specific interview in case of indications of trafficking in human beings, and a 30-day recovery and reflection period for potential victims is now granted upon detection. SEM also vowed to reinforce staff training and develop practical tools dedicated to this issue.³³² While welcoming the report as a first step in the right direction, the NGOs involved in the consultation process pointed out that many protection gaps still remain.³³³

1.2. Age assessment of unaccompanied children

In 2022, 664 age assessments were conducted (out of a total of 2,450 applications made by unaccompanied minors); in 330 cases (50%), the SEM concluded that the asylum seeker was not a minor.³³⁴ Given the current Swiss practice, talking about 'age assessments' equals talking about 'forensic procedures'.

The UN Convention on the Rights of the Child (CRC) is in force in Switzerland since 1997. The Committee on the Rights of the Child has issued multiple statements on age assessment and the way it should be implemented by State parties,³³⁵ but the Swiss practice falls short of the international standards at different levels.³³⁶

³²⁹ GRETA, Report, October 2019, available at: <https://bit.ly/2lnYsWS>, §128-130.

³³⁰ Coordinated by the Coordination Unit against the Trafficking and Smuggling of Migrants - *Koordinationsstelle gegen Menschenhandel und Menschen schmuggel*, KSMM.

³³¹ The report is available in German and French at: <https://bit.ly/3to6e1Q>.

³³² According to information provided by the SEM in April 2021 trafficking in persons is the topic of one basic training (1 hour) and one specialisation training (3 hours) offered to caseworkers. The content of the training or the number of caseworkers having followed such course are not known.

³³³ Swiss Refugee Council, *Mieux protéger les requérants d'asile victimes de la traite des êtres humains*, press release, 25 May 2021, available in French (and German) at: <https://bit.ly/3qdGnYA>.

³³⁴ Data provided by the SEM, 1 May 2023.

³³⁵ CRC, General Comment No.4 (2017), available in English at: <https://bit.ly/2VV7Klg>, §II.4; SCEP, Statement of Good Practice (2009), available in English at: <https://bit.ly/2TB3M6b>, §D5.1; CRC, General Comment No. 12 (2009), available in English at: <https://bit.ly/3aCJ0sm>, §22; CRC, General Comment No. 6 (2005), available in English at: <https://bit.ly/2VWg9Lx>, §21 and section V.b.

³³⁶ The Swiss Refugee Council has developed guidelines with the aim of supporting legal representatives dealing with age assessment, available in French at: <https://bit.ly/3qXyKou>.

For instance, even though, in principle, minority should always be presumed, in practice not all applicants claiming to be under the age of 18 are treated as children and granted the child-specific protections throughout the assessment process, including the right to not be accommodated with adults (see section on [Special reception needs of vulnerable groups](#)). Furthermore, although the person is not explicitly forced to consent the age assessment process, if they refuse to participate, the SEM may claim that the asylum seeker did not comply with the duty to cooperate and could therefore be qualified as an adult, or even lose their right to have the asylum proceeding continued.³³⁷ Also, there is no effective remedy to challenge the decision on age assessment. The asylum seekers can only challenge it when they lodge an appeal against the asylum decision itself.³³⁸ Finally, Swiss authorities mainly rely on forensic examinations to assess the asylum seeker's age.

Unaccompanied asylum-seekers children in Switzerland: 2019-2022				
Year	2019	2020	2021	2022
Number of applications by unaccompanied minors ³³⁹	441	535	989	2,450
Number of age assessments conducted	168	305	528	664 ³⁴⁰
Percentage of age assessments compared to applications	38%	57%	53.3%	27%
Found to be adults	Unknown	Unknown	245	330 ³⁴¹
Percentage found to be adults compared to applications	/	/	24.7%	13%

The Federal Administrative Court had already ruled in the past that age assessments (by way of forensic examinations) could be ordered when the proof of the identity (e.g. date of birth) of the asylum seeker was not sufficient,³⁴² and the previous legislation already foresaw the use of scientific methods to assess the age. The law now provides for a combination of methods to be used,³⁴³ In a judgment passed in August 2018, the Federal Administrative Court clarified how the outcome of the forensic examinations should be assessed, in case of discrepancies among the different results.³⁴⁴ Despite the judgement, inconsistencies can be observed in the way the different medical laboratories evaluate the outcomes of the forensic examinations.

³³⁷ Article 8 AsylA.

³³⁸ In order to allow judicial scrutiny on age assessment, *before* a final decision on the asylum application is reached, legal representatives have started to challenge the legal age established by SEM through the use of the [Federal Act on Data Protection \(FADP\)](#). In short, procedure is as follows: once the SEM has reached a decision on the applicant's age, their (presumed) D.O.B is registered in the Central Migration Information System (SIMIC). Since the administration has the obligation to make sure that all personal data recorded in the SIMIC is correct, legal representatives can appeal the SEM inscription of the presumed D.O.B. on the basis of the FADP, arguing that the D.O.B. declared by their applicant is more likely to be the correct one than the one chosen by SEM. This way, they force the Federal Administrative Court to go through the age assessment and decide which of the two dates, whether the one indicated by SEM or the one indicated by the applicant, is more likely to be the correct one. It is to be reminded, though, that this procedure represents an additional burden for the legal representatives, as it is lengthy and expensive in terms of time and resources. The procedure is thus only used in a limited amount of cases.

³³⁹ SEM statistics are available at: <https://bit.ly/3c87Js7>.

³⁴⁰ Data provided by the SEM, 1 May 2023.

³⁴¹ Data provided by the SEM, 1 May 2023.

³⁴² Federal Administrative Court, Decision E-1552/2013, 2 April 2013, available in German at: <https://bit.ly/2v4MKDN>, para 4.2.

³⁴³ Article 7 AO1 provides for a combination of methods, which include skeletal age (e.g. X-ray of the hand, possibly CT scan of the sternum-clavicular joint) as well as dental age and physiognomy (e.g. sexual maturity and physical constitution).

³⁴⁴ Federal Administrative Court, Decision E-891/2017, 8 August 2018. The Federal Administrative Court does sometimes step in to correct the SEM's practice, when the latter is too strict or detached from international guidelines. See for instance: Federal Administrative Court, Decisions D-4824/2019, 27 September 2019, available in Italian at: <https://bit.ly/39MzwnU>; E-7333/2018, 4 March 2019, available in French at: <https://bit.ly/2lt79FT>; E-4959/2018, 4 February 2019 (Dublin case), available in German at: <https://bit.ly/2xoq963>; D-1589/2019, 15 May 2019, available in German at: <https://bit.ly/39DKouH>; E-2999/2018, 14 February 2018, available in German at: <https://bit.ly/3390Hx9>.

In June 2022, the Swiss Society of Forensic Medicine published a report,³⁴⁵ which attempts to bring some uniformity and clarity to the way forensic examinations are conducted. The report points out in particular that some examinations (especially dental examinations) can be influenced by ethnicity: the lack of reference studies can be highlighted if necessary, depending on the applicant's origins. The Federal Administrative Court admitted for instance the lack of baseline studies on tooth maturation for the Afghan population.³⁴⁶ Rather than leading to a more limited and cautious use of forensic medical examinations as a whole, however, recent observations by the Swiss Refugee Council suggest that the main effect of the report was to give even greater weight to the results of sterno-clavicular tomography. In its concluding observations about Switzerland, published in October 2021, the CRC recommended that Switzerland “establish age determination procedures that respect the privacy and integrity of the child, include multidisciplinary assessments of the child’s maturity and level of development and respect the legal principle of the benefit of the doubt”.³⁴⁷

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people? Yes For certain categories No
- ❖ If for certain categories, specify which: Unaccompanied children; gender-based claimants; victims of trafficking

There is no specific unit to carry out the procedures for vulnerable persons, but there are experts for specific topics within the SEM (“thematic specialists”) who can be asked for advice or support in difficult cases (for example regarding unaccompanied minors, gender-specific violence or victims of trafficking). These collaborators also treat asylum applications themselves and are responsible for the development of practice trends and decision-making on their topic. In 2022, staff members who are called upon to hear and investigate cases involving minors have received specific internal training. This consists of two training modules. A large part of this training is dedicated to hearing techniques adapted to minors. In addition, a one-day training course on interviewing minors between the ages of 6 and 13 was given three times at the end of 2021 by two external experts in child psychology.³⁴⁸

2.1 Adequate support during the interview and credibility assessment

People with serious illnesses or mental disorders, and survivors of torture, rape or other forms of serious violence, including female genital mutilation (FGM)

The UN Human Rights Committee stated in its recommendations on the fourth periodic report of Switzerland in 2017³⁴⁹ that it regretted that expert evaluations drawn up pursuant to the Istanbul Protocol were not fully recognised and taken into account by the Swiss authorities in implementing the principle of *non-refoulement*.³⁵⁰ According to the same recommendations, Switzerland should ensure that all personnel concerned receive systematic and practical training on the Istanbul Protocol and apply it.

³⁴⁵ SSML, *Forensische Altersdiagnostik*, June 2022, available in German at: <https://bit.ly/3C62nKI>.

³⁴⁶ Federal Administrative Court, Decision D-1874/2022, 31 August 2022, available at: <https://bit.ly/3leRWs9>.

³⁴⁷ Committee for the Rights of the Child, Concluding observations – Switzerland, October 2021. The report is available at: <https://bit.ly/3Z0u559>, 14.

³⁴⁸ Information provided by the SEM, 1 May 2023.

³⁴⁹ UN Human Rights Committee, *Concluding observations on the fourth periodic report of Switzerland*, 22 August 2017, available in several languages at: <https://bit.ly/2Q0ZdQb>.

³⁵⁰ The UN General Assembly adopted the Manual on Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, known as the Istanbul Protocol, almost 20 years ago, available in several languages at: <https://bit.ly/39Cyl0P>. The Istanbul Protocol contains internationally recognised standards and procedures on how to recognise and document symptoms of torture, so that the documentation may be used as evidence in Court. Although non-binding as such, it does have a *quasi-binding* legal nature, because every State signatory to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment must adhere to the standards set out there, if it wants to fulfil the obligation to carefully and effectively examine evidence of torture. As a result, the Istanbul Protocol has established itself internationally as the instrument for documenting torture and inhumane treatment.

According to the information available to the Swiss Refugee Council, an overall introduction (6 hours) to the importance and use of the Istanbul protocol was provided to all officers working in the new Federal Reception Centres in 2020. No further information is available on the provision of further courses between 2021 and 2022.

National NGOs report cases in which the SEM failed to carry out further investigations and, in particular, have expert reports drawn up in accordance with the standards of the Istanbul Protocol if asylum seekers assert - in the hearings or via medical reports - that they are victims of torture or inhuman/degrading treatment.³⁵¹ Even when asylum seekers nevertheless succeed in producing such reports in individual cases, the Swiss authorities often fail to take them into account adequately, especially when it comes to the (physical/psychological) consequences of the ill-treatment endured. This in turn can have a very meaningful impact on the asylum claim, as it makes it very hard for the asylum seekers to make their claims credible.³⁵²

In a report of 2017, the National Commission for the prevention of Torture considered that, in all the asylum and migration centres it visited, there was no standard protocol in practice to facilitate access to assistance and support for victims of torture.³⁵³ The same conclusions were repeated in a report published in 2021.³⁵⁴ A round table with representatives of the SEM and of national NGOs dealing with the topic took place in September 2019, but it is unclear which further steps the Government will take to better implement the provisions of the Protocol (see also section on the use of [medical reports](#)).

In September 2018, the UN Committee against Torture ruled that the expulsion of a torture survivor to Italy under the Dublin Regulation would violate the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee reproached the Swiss authorities for not undertaking an individual assessment of the personal and real risk that the complainant would face in Italy as an asylum seeker and victim of torture, and for simply relying on the assumption that he was not particularly vulnerable and would thus be able to obtain adequate medical treatment in Italy.³⁵⁵

LGBTQI*

SEM addresses the credibility issues linked to SOGI claims in the same part of its Handbook³⁵⁶ that is devoted to gender-based persecution (for more information, see section on [Victims of gender based violence](#)).³⁵⁷ It does though specifically mention that LGBTQI+ individuals often come from countries where they did not have the possibility of expressing their sexual orientation/gender identity. Therefore, they might find it particularly difficult to disclose it or talk about it, because of feelings of stigma, and shame. The use of the DSSH model is thus recommended to carry out interviews with them. Despite the information and guidelines provided in the Handbook, the conduct of the hearings continues to pose many problems. For instance, the asylum seeker is not always granted the right to be interviewed by people of a gender of their choice. Also, late disclosure is often weighted against the applicant, despite abundant evidence that trauma or fear can prevent LGBTQI* asylum seekers to disclose their past experiences in a timely manner.³⁵⁸ Moreover, the jurisprudence regarding LGBTQI* does not seem to be uniform

³⁵¹ An NGO 'working group' is dedicated to the implementation of the Istanbul Protocol into the Swiss practice, information available in German (and French) at: <https://bit.ly/2TNahBH>.

³⁵² See for instance: Federal Administrative Court, Decision D-4802/2020, 30 December 2020, para 4.1 – 4.3 available in German at: <https://bit.ly/3aTOvVk>.

³⁵³ National Commission for the prevention of torture, NCPT, Report on federal asylum centres 2017-2018, available at: <https://bit.ly/331LIKQ>, §84.

³⁵⁴ Report is only available in German and in French: <https://bit.ly/3GfHPPW>.

³⁵⁵ UN Committee against Torture, CAT/C/64/D/742/2016, 3 September 2018, available in English at: <https://bit.ly/2Gy8FXA>, §8.6.

³⁵⁶ SEM, Handbook on asylum and return, ch. D2.1 – Gender based persecution. Available in French and German only, here: <http://bit.ly/3kHsXUp>.

³⁵⁷ SEM, Handbook on Asylum and Return, chapter D2, available in French at: <https://bit.ly/2wCi2SZ>.

³⁵⁸ Federal Administrative Court, Decisions E-4306/2018, 21 September 2018; E-4422/2017, 2 April 2019; E-3422/2018, 27 June 2018; E-1490/2015, 13 March 2018. On these challenges, please also refer to Anis Keiser, *Requérant.e.x.s d'asile LGBTIQ+ : Les enjeux principaux des demandes d'asile pour motifs d'OSIEGCS*, ASYL 4/2020, available in French at: <http://bit.ly/3R8xag5>, 16.

according to the observation of the Swiss Refugee Council. Together with NGOs active on the field, the Swiss Refugee council has developed guidelines with the aim of supporting legal representatives dealing with LGBTQI cases.³⁵⁹

The Observatory for Asylum and Foreigners Law in French-speaking Switzerland published in November 2022, a report that details the challenges LGBTQI+ applicants meet while navigating the Swiss asylum system.³⁶⁰ As far as the evaluation of credibility goes, the report relates that SEM officials tend to apply appreciate it too strictly, and that some questioning techniques aim mostly at finding contradictions, thus generating a “logic of suspicion”: for example, detailed recounts of sexual intercourses are sometimes still requested, despite the existence of very clear European jurisprudence against it, or some proofs are not thoroughly examined.³⁶¹

Victims of gender-based violence

According to the Asylum Act, motives for seeking asylum specific to women must be considered.³⁶² Furthermore, when spouses, registered partners or a family apply for asylum, each person seeking asylum has the right, as far as they are capable of discernment, to have their own reasons for asylum examined.³⁶³

If there are indications of or if the situation in the country of origin indicates gender-specific violence and persecution, the asylum seeker will be interviewed by a person of same gender according to the law.³⁶⁴ The SEM Handbook on Asylum and Return specifies that men who are victims of gender-specific violence and persecution should be able to choose the gender of the interviewing official, but that in this case the provision will be applied with some “pragmatism”.³⁶⁵ The rule also applies to the interpreter and the person taking notes. Despite this rather clear legal framework, the SEM does not always comply with these obligations.³⁶⁶

When it comes to the assessment of credibility, settled case law accepts that a traumatized woman may try to protect herself from difficult memories by frequently using “stereotypes” or in some cases by changing the subject of phrases.³⁶⁷ Yet, the SEM is often very strict in assessing credibility, especially of late and somewhat inconsistent narratives, even when they come from highly traumatized women.³⁶⁸ The same holds true for late declarations, which are often dismissed as non-credible. This is unfortunate, as the SEM Handbook clearly states that the claimant’s credibility must not be dismissed on the sole ground of the belated allegations.³⁶⁹

³⁵⁹ The Guidelines of the Swiss Refugee Council are available in French (and German) at: <https://bit.ly/3q7imCu>. Also, the Swiss Refugee Council developed a detailed report on the decision-making and jurisprudence related to LGBTQI* asylum seekers.

³⁶⁰ ODAE, Asile LGBTQI+ - La situation des personnes LGBTQI+ dans le domaine de l’asile, 15 November 2022, available in French at: <http://bit.ly/3kLaW7J>.

³⁶¹ Asile LGBTQI+, 9.

³⁶² Article 3, para 2 AsylA.

³⁶³ Article 5 AO1.

³⁶⁴ Article 6 AO1.

³⁶⁵ SEM, Handbook on Asylum and Return, chapter D2, available in French at: <https://bit.ly/2TRQv7Y>, 18.

³⁶⁶ Federal Administrative Court, Decisions D-7431/2018, 22 January 2019; E-1805/2017, 26 September 2019; D-2849/2017, 18 October 2019. In all these decisions, the Federal Administrative Court sent the case back to the SEM for a new assessment.

³⁶⁷ Commission suisse de recours en matière d’asile (CRA), 16/1996, available in German at: <https://bit.ly/2TNPj5K>.

³⁶⁸ Federal Administrative Court, Decisions E- 5954/2016, 12 June 2018; E-3953/2016, 22 August 2019, available in German at: <https://bit.ly/2xqOaJT>; D-6998/2017, 8 July 2019, available in German at: <https://bit.ly/2lxFBiit>; E-6865/2017, 17 April 2019, available in French at: <https://bit.ly/2v62HJY>. In all these cases the SEM decisions were quashed by the Federal Administrative Court. In other cases, though, while the sexual violence was uncontested, the claimant was not able to prove that it was in connection with the flight, and the Federal Administrative Court dismissed the claim. See for example E-5299/2019, 5 March 2020, available in German at: <https://tinyurl.com/y5xupmeo>.

³⁶⁹ SEM, Handbook on Asylum and Return, chapter D2, available in French at: <https://bit.ly/2TRQv7Y>, 21. See, for instance Federal Administrative Court, E-2245/2017, 26 November 2019.

Victims/possible victims of human trafficking

The guarantees that are in place for victims of gender-based violence (see section C above) can also be applied to potential victims of human trafficking (PVOT) or victims of human trafficking (VOT). Nevertheless, no specific provision is in place to ensure that. NGOs working in the field remark that the audition seems often more geared towards receiving information for the federal/cantonal police and not gaining an insight into the personal situation and needs of the potential victim. The practice of only granting access to a specialised victim organisation only after an in-depth audition is questionable.

In a judgement on the credibility assessment of victims of trafficking in the asylum procedure and the positive obligations of the authorities to identify victims of trafficking, the Federal Administrative Court noted that untrue statements in earlier proceedings constitute a typical testimony of victims of human trafficking, and therefore should not automatically lead to the assumption that the subsequent human trafficking allegations were unreliable.³⁷⁰

Minors/unaccompanied minors

Regarding the personal interview of children, especially unaccompanied children, Swiss law provides for the interviewer to take into account the special nature of being a child.³⁷¹ According to case law specific guarantees should be in place.³⁷² Namely, the atmosphere should be welcoming and benevolent, the adults in the room must have an open and empathetic attitude, each of the participants should introduce themselves to the child and the aims and objectives of the interview should be clarified in a child friendly manner. The Court also provided some details on how the interview should take place: the pace should be slower than the one followed in an interview with an adult, breaks should be granted every 30 minutes, 'open' questions should be preferred, at least at the beginning, conversation topic should be changed only after announcing it to the minor, the listeners' attitude should remain neutral.

The practice does not always live up to these standards. In one decision, the Federal Administrative Court took specific issue with the way the SEM conducted the interview as they did not take sufficient account of the child's particular vulnerability during the hearing. The hearing was conducted in the same way as that of an adult asylum seeker: introductory questions to create a trusting atmosphere were completely absent, the pace of questioning and the type of questions posed were not appropriate, the role and function of the officers present not clearly explained. The Court found that the child's right to be heard had been breached, and that the administrative authorities should re-assess the case.³⁷³

In other cases, the administrative authorities fail to consider that the minor's age could have an impact on the internal consistency of their accounts, and apply the same credibility standards as adults. This is also in contrast with international guidelines on child-friendly justice and on the child's right to be heard.³⁷⁴

In September 2020 the Committee for the Rights of the Child found that, by removing two minor children with their mother to Italy according to the Dublin III Regulation without properly hearing them, Switzerland had violated Article 3 and 12 of the CRC.³⁷⁵ Another decision, along the same lines, was published in

³⁷⁰ Federal Administrative Court, Decision D-6806/2013, 18 July 2016, available in German at: <https://bit.ly/38ACZuL>.

³⁷¹ Article 7(5) AO1.

³⁷² Federal Administrative Court, Decision E-1928/2014, 24 July 2014, available in French (main parts also in German and Italian) at: <https://bit.ly/2PXidze>.

³⁷³ Federal Administrative Court, Decision E-7447/2015, 5 November 2018, available in German at: <https://bit.ly/337u2Z0>. See also: Federal Administrative Court, Decision D-6508/2019, 18 December 2019, and D-6229/2017, 7 February 2020.

³⁷⁴ Federal Administrative Court, Decisions D-6508/2019, 18 December 2019, available in German at: <https://bit.ly/38zH8z9>; E-573/2016, 12 December 2016, available in German at: <https://bit.ly/2TE2Yxn>; E-6636/2017, 21 June 2018, available at: <https://bit.ly/2TBnnTK>; D-1520/2017, 5 April 2017, available in French at: <https://bit.ly/38ytuwk>.

³⁷⁵ Committee for the Rights of the Child, *V.A. v. Switzerland*, 28 September 2020, available at: <https://bit.ly/3WHbQ2q>.

March 2022³⁷⁶. Both decisions address a common problem in Swiss practice whereby very young minors, especially if accompanied by their families, are only seldom heard, because it is assumed that their interests coincide that of their parent. Such practice is against the CRC. According to the SEM, they systematically interviewed accompanied minors aged 14 or over, whereas younger children are only interviewed directly if this is necessary to establish the facts. Since spring 2021, a right to be heard is systematically granted to parents of children under the age of 14 concerning the specific situation of these children. This right is granted in both Dublin and substantive procedures in order to take into account all elements relating to the particular situation of these children and determine whether a personal hearing of the latter is necessary. Providers of legal protection services were informed of the new measures taken by the SEM. They were asked to discuss the particular situation of children under 14 years of age during the first interview with the family and then to promptly inform the SEM of any specificities (obstacles to removal, specific grounds for asylum, conflict of interest with the parents, etc.) so as to enable planning of a possible hearing of the minor under 14 years of age if necessary.³⁷⁷

2.2 Decision-making process

People with serious illnesses or mental disorders, and survivors of torture, rape or other forms of serious violence, including female genital mutilation (FGM)

The practice is not always correct when it comes to victims of FGM (or at risk thereof): while the type³⁷⁸ of FGM suffered does not seem to have (rightfully so) any bearing in the decision-making process, sometimes the SEM refuses asylum on the basis that FGM is a one-off act that cannot be repeated on the same girl or woman and that asylum law cannot make up for wrongful acts committed in the past. This is in sharp contrast with the UNHCR guidance on FGM.³⁷⁹ The Federal Administrative Court generally takes a more careful approach. In one judgment,³⁸⁰ for instance, the Federal Administrative Court accepted that FGM is a form of persecution specific to women. In examining the risk of future harm, the judges did not consider the risk of re-infibulation, but rather the general risk that the applicant will be subjected to other forms of persecution as a single, displaced woman with children. Moreover, the trauma caused by FGM was mentioned as a cause of the applicant's fragility and subsequent vulnerability. A relevant case concerned a young Somali national, who suffered from FGM in her country of origin and, once in Switzerland, underwent a de-infibulation procedure. According to the Federal judges, the applicant would certainly be at risk of further FGM in case of return to Somalia, but this was because of her own doing (namely, because she submitted to a de-infibulation procedure). Thus, the applicant only received protected status (F-permit refugee) and not asylum.³⁸¹

LGBTQI*

When it comes to decision-making, the SEM and Federal Administrative Court do not consider criminalisation of “non-compliant” sexual identity/gender orientation in the country of origin as sufficient

³⁷⁶ Committee for the Rights of the Child, *K.S and M.S v. Switzerland*, 16 March 2022, available at: <https://bit.ly/3JjJmZF>

³⁷⁷ Information provided by the SEM, 1 April 2022. The Swiss Refugee Council published a detailed analysis of the application of the right to be heard in Switzerland, as well as guidelines to better implement such right in the asylum procedure, both in March 2021. They are available (in French and in German) at: <https://bit.ly/3kZQBvC>.

³⁷⁸ According to the WHO, there are 4 different types of FGM, all of them being equally painful, dangerous for a girl/woman's health and diminishing of her independence and self-worth. More information available here: <https://bit.ly/3GpOHMY>.

³⁷⁹ UNHCR, *Guidance Note on Refugee Claims relating to Female Genital Mutilation*, May 2009, available in English at: <https://bit.ly/2TOHpcd>.

³⁸⁰ Federal Administrative Court, Decision E-6456/2015, 29 June 2018.

³⁸¹ Federal Administrative Court, Decision E- 3512/2019, 27 July 2020.

ground for an asylum request.³⁸² There must be past persecution, ‘simple’ harassment will not be regarded as enough. Furthermore, both bodies attach a lot of weight to the “discretion requirement”, often claiming that the asylum seeker could avoid persecution by concealing their sexual orientation upon return to the country of origin. This is however in contrast with CJEU jurisprudence.³⁸³

The European Court of Human Rights ruled in November 2020 that Switzerland had violated Article 3 ECHR in the case of a Gambian homosexual person who faced removal to Gambia.³⁸⁴ The European Judges took specific issue with the fact that the Swiss authorities had simply gone with the assumption that the applicant would have been able to live discretely in case of removal to the country of origin, furthermore benefitting from the improved situation since the election of a new, more LGBTI-friendly president in 2016. This had led the Swiss authorities to completely overlook whether the Gambian authorities would be able and willing to protect LGBTQI* people against ill treatment by non-State actors. On the contrary, the Court underlined that the applicant’s sexual orientation could still be discovered in case of return, and that the Swiss courts had failed to sufficiently assess the availability of State protection against acts of persecution stemming from non-state actors, leading to a violation of Article 3 ECHR.

Victims of gender-based violence

Although SEM specifically recognises in its Handbook that domestic violence, forced marriage and sexual violence are forms of gender-based persecution that may be relevant to an asylum application, there are very few concrete cases where applications based on this type of violence have actually been accepted. The biggest problem is always the credibility of the applicants, but both the SEM and the Federal Administrative Court also have great difficulty in recognising that women victims of these types of violence could also qualify as members of a particular social group³⁸⁵. Assessment of the availability of State protection in case of persecution coming from third parties can also be quite problematic.

In recent years, asylum has often been granted to applicants coming from the Middle East (e.g. Afghanistan, Iraq, Syria) when falling under the listed categories above.³⁸⁶ Much more controversial is the assessment of claims of ‘honour’ killings, domestic violence, or forced marriage, lodged by ‘western’ women, especially the ones coming from the Balkan area and Türkiye. In these cases, most of the times, applications are rejected, on the basis that these States have been designated as ‘safe countries of origin’

³⁸² Federal Administrative Court, Decision D-2314/2018, on Congo, para 5.2.2; E-2497/2016 19 April 2018, on Azerbaijan, available in German at: <https://bit.ly/2Q0UBcW>, para 5.3.1; D-4923/2009, 1 May 2012 on Algeria, available in German at: <https://bit.ly/2TEIS7n>, para 4.2.3; D-7041/2013, 14 May 2014 on Morocco, available in German at: <https://bit.ly/3cJ9E4D>, para 5.2; E-7217/2014, 18 December 2014 on Tunisia, available in German at: <https://bit.ly/3qWm8xP>, para 5.2.4; D-891/2013, 17 January 2014 on Iran, available at: <https://bit.ly/3aDNtLq>, para 5.2. and 5.3; E-3952/2017, 21 February 2018 on Afghanistan, available in French at: <https://bit.ly/2lvGWGq>, para 3.3. On the specific situation of bisexual persons in Morocco, D-5585/2017, 12 September 2019, available in German at: <https://bit.ly/2VYOAKS>. On the situation in Ethiopia, see: E-2109/2019, 28 August 2020, available in German at: <https://bit.ly/3tJySe9>. On the one in Syria, see: D-6722/2017, 12 August 2020. On the one in Uganda see: E-4133/2020, 20 November 2020. For a different approach, on Iraq, see D-6539/2018, 2 April 2019, available in German at: <https://bit.ly/2Q0NOzN>, para 7.5.

³⁸³ The CJEU case in point is *X, Y and Z v. Minister voor Immigratie en Asiel* (consid. 70 et 71). The SEM in its Handbook on Asylum and Return states officially that the discretion requirement is no longer applied in LGBTQI cases, but practice is not always correct. When it comes to the jurisprudence of the Federal Administrative Court, recent examples are the following: E-1842/2019, available at: <https://bit.ly/2lxSCZC>; E-3952/2017, available at: <https://bit.ly/3cJjU8>; E-1490/2015, available at: <https://bit.ly/2PZAWdk>; D-7342/2017, available at: <https://bit.ly/3cKSBz6>; D-6635/2017, available at: <https://bit.ly/2lx5Q8P>; D-5961/2017, available at: <https://bit.ly/2lz5KO4>; D-6447/2017, available at: <https://bit.ly/2Q0eaCh>. See also, again and unfortunately, E-2109/2019 and E-4133/2020, already mentioned in the previous footnote.

³⁸⁴ ECHR, *B and C v. Switzerland*, Application nos. 43987/16 and 889/19, 17 November 2020, available at: <http://bit.ly/3XF6FRO>.

³⁸⁵ Federal Administrative Court, E-2883/2019, 28 June 2019, D-3064/2019, 11 July 2019. See also, more positive, D-3501/2019, 21 August 2019, and E-2461-2462/2019, 12 November 2019.

³⁸⁶ Federal Administrative Court, Decision E-4962/2019, 2 December 2019. For Afghanistan, see Federal Administrative Court, Decisions D-3501/2019, 21 August 2019 and E-2245/2017, 26 November 2019.

(or, in the case of Türkiye, on the basis of settled case-law),³⁸⁷ and that State authorities would be willing and able to offer adequate protection to those targeted by these types of gender-based persecution.³⁸⁸

Practice concerning victims of sexual violence is also problematic. Despite noting, in its Handbook, that persecutions inflicted for one of the Convention grounds could take the form of sexual violence, the Administration sometimes fails, in practice, to properly link this form of mistreatment to the appropriate Convention ground. In such cases, allegations of rape have then been dismissed as 'common misadventures' that took place because of the general situation of instability/ war existing in the country of origin, thus neglecting the fact that this very typical form of gender-specific persecution can be used to assess or perpetuate political, racial or religious structures of power.³⁸⁹ The SEM finally changed its approach at the end of 2020, as evidenced by the Handbook which now devotes a new paragraph to "Women in Conflict Situations".³⁹⁰ In this new section, the SEM explicitly admits that 'it cannot be ignored that women, solely because of their sex, are particularly and specifically affected by sexual violence in the context of conflicts', that 'the examination of asylum applications from persons coming from countries facing war or conflict will therefore have to determine whether the person concerned has been personally targeted because of his or her characteristics, including his or her sex'. These are certainly positive changes, which incorporate the case law of the Federal Administrative Court as well as international recommendations on the subject. It will be important to continue to monitor the case law in the coming months to see if it will be effectively implemented in daily practice.

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) entered into force in Switzerland in April 2018. A group of NGOs, the [Network Istanbul Convention](#), has been created to monitor the implementation of the Convention in the Swiss practice. The country report on Switzerland of the Istanbul Convention monitoring body, the GREVIO, was published in November 2022. For what specifically concerns the asylum field³⁹¹ the Committee regrets the absence of a procedure for screening vulnerabilities and early detection of women victims of gender-based violence and is concerned about the persistent lack of sensitivity and understanding of gender-based violence issues among SEM staff.³⁹² GREVIO furthermore notes that the protection offered to women nationals of 'safe' countries is not always sufficient: this is because allegations of violence are rejected on the grounds that the third State in question would have the capacity to protect the victim, inter alia because that State has ratified the Istanbul Convention. GREVIO requests that the Swiss authorities take measures to improve the capacity to detect cases of violence against women and to assess the capacity of countries of origin to provide effective protection. They could, in this context, refer to the existing GREVIO evaluation reports.³⁹³ Finally, GREVIO strongly encourages the Swiss authorities to ensure that asylum-seeking women and girls are given optimal support in the asylum procedure, so that they have the opportunity to disclose all the grounds on which they seek international protection.

According to information provided by the SEM in 2021, gender-based persecution is the topic of one basic training (2 hours) and one specialisation training (3 hours) offered to caseworkers.³⁹⁴ For the year 2022, employees received the same training model as in 2021. 68 people attended the basic training. Due to

³⁸⁷ Federal Administrative Court, Decisions E-1948/2018, 12 June 2018; E-6626/2019, 23 December 2019; E-1175/2020, 16 March 2020; E-5920/2019, 21 November 2019.

³⁸⁸ For Albania, see Federal Administrative Court, Decision D-1960/2019, 7 May 2019; for Macedonia, see Federal Administrative Court, Decision E-2883/2019, 28 June 2019; for Kosovo, see Federal Administrative Court, Decisions E-4677/2018, 27 May 2020 and E-3437/2020, 13 July 2020.

³⁸⁹ See for instance: Federal Administrative Court, Decisions D-2290/2017, 8 February 2019; D-6021/2017, 15 April 2019 and E-2657/2015, 4 April 2017.

³⁹⁰ SEM Handbook on Asylum and Return, chapter D2, available in French at: <https://bit.ly/2TRQv7Y>, 13, para. 2.3.6.

³⁹¹ The Istanbul Convention is very comprehensive, and only 2 Articles, namely Articles 60 and 61, specifically refer to asylum seekers and refugees.

³⁹² GREVIO, Baseline Evaluation Report – Switzerland, November 2022, para 268. The report is available in English here: <https://bit.ly/3HzBkun>.

³⁹³ GREVIO Report – Switzerland, para 270 and 272. The Swiss Refugee Council published a report on the use of GREVIO report within the Swiss practice in 2021, available at: <https://bit.ly/3HzBkun>.

³⁹⁴ Information provided by the SEM, 27 April 2021.

the overload of work, particularly in connection with the war in Ukraine, the specialised training sessions did not take place. For the year 2023, the duration of the basic training has been reduced to 3 hours and a new concept of specialised training has been implemented (online courses followed by two days of face-to-face courses).³⁹⁵

The SEM does not produce disaggregated statistics on the asylum grounds and therefore also not on gender-specific persecution, which would be necessary to better grasp the problem and the protection rate for asylum applications based on gender-specific persecution.

Victims/possible victims of human trafficking

Contrary to practice in other European countries, the SEM and the Federal Administrative Court deny that victims of trafficking can be considered as 'members of a defined social group'.³⁹⁶

While decisions and judgments on the merits are rare, there are more cases concerning victims of trafficking in the Dublin procedure, with, in some cases at least, positive decisions.³⁹⁷ In a case concerning France, the Court reminded the administrative authorities that in possible cases of trafficking they need to initiate investigations *ex officio* without the need for the victim to report it.³⁹⁸ Furthermore, the Court found that the general presumption of safety in human trafficking cases is not justified in the case of France, given that there are concrete indications that the vulnerability of potential victims of human trafficking in France cannot always be adequately taken into account".

In general, it remains difficult for VOT to access asylum procedures in Switzerland, because of the very strict way the country applies the Dublin regulation.

Switzerland is currently in the 6th round of monitoring of the implementation of the Convention on the Elimination of All Forms of Discrimination against Women CEDAW. As part of the monitoring cycle, the Confederation published a national report in November 2020,³⁹⁹ to which NGOs responded in 2021.⁴⁰⁰ Another, detailed report on the specific issues concerning VOT in Switzerland, including VOT in the asylum procedure, was due for publication in 2022, but, at the time of writing, the Swiss Refugee Council does not have any further information on the state of the report.

2.3 Exemption from special procedures

It is possible, on an individual basis, to exempt an applicant from the airport procedure if stay in the transit zone is deemed not appropriate on the basis of medical reports and/or vulnerability. In practice, however, also vulnerable applicants including unaccompanied minors spend the initial phase of the procedure at the airport. In some cases, their entry can be authorised just after the first summary interview.

The number of vulnerable applicants who were authorised to enter Swiss territory in 2022 was 25.⁴⁰¹

3. Use of medical reports

Indicators: Use of Medical Reports

³⁹⁵ Information provided by the SEM, 1 May 2023.

³⁹⁶ It is, unfortunately, constant practice. See: Federal Administrative Court, Decision D-2759/2018, 2 July 2018; D-2341/2019, 22 October 2019; D-2759/2018, 2 July 2018; E-4273/2018, 4 February 2020; D-1547/2017, 4 December 2019, mostly focuses on the availability of State protection for VOT in Benin, and concludes that the State is willing and able to assist them.

³⁹⁷ Federal Administrative Court, Decision D-3471/2019, 23 July 2019.

³⁹⁸ Federal Administrative Court, Decision D-3292/2019, 1 October 2019.

³⁹⁹ Available at: <https://bit.ly/3Kes4v3>.

⁴⁰⁰ NGO-Coordination post Beijing Switzerland, The Implementation of the Women's Rights Convention in Switzerland – CEDAW Shadow Report, May 2021, available at: <https://bit.ly/3KIeTOr>.

⁴⁰¹ Information provided by the SEM, 1 May 2023.

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm? Yes In some cases No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements? Yes No

Every asylum seeker has to sign an agreement at the beginning of the asylum procedure that gives the SEM the right to have access to their medical reports. The asylum seeker is not by law forced to sign, but if they do not, the SEM will claim that the asylum seeker has not complied with the duty to cooperate and therefore loses their right to have the proceeding continued.

According to the law, when filling out the application for asylum, asylum seekers must state any serious health problems of which they are aware and of relevance to the asylum and removal procedures.⁴⁰² In practice, this is very problematic as traumatised people are often not aware of their trauma, it is symptomatic that a trauma can show up only after some time, which speaks for the credibility of the disease.⁴⁰³ Medical problems that are claimed at a later stage or established by another medical specialist may be taken into account in the asylum and removal procedures if they are proven. The provision of *prima facie* evidence suffices by way of exception if there are excusable grounds for the delay or proof cannot be provided in the case in question for medical reasons. That should be the case for all psychological diseases which can hardly be proven.

Medical care and the establishment of medical facts in the examination of asylum applications remain one of the main issues induced by the acceleration of procedures. They crystallize the tension between, on the one hand, the tight procedural deadlines provided for in the Asylum Act and the processes put in place in federal structures and, on the other hand, an examination of asylum applications based on adequate medical care enabling the medical professionals to make clear and detailed medical diagnoses.

In this respect, case law of the Federal Administrative Court highlights several shortcomings concerning medical care and measures of instruction taken by the authority of first instance on the medical aspects before issuing a decision on removal or transfer to another Dublin State. The Federal Administrative Court particularly points out to the following points: decisions issued in the absence of a medical diagnosis, the difficulty for asylum-seekers in accessing a doctor, the transfers from one federal centre to another during the procedure which result in the interruption of medical follow-up or treatment, the lack of adequate translation during interviews with doctors or medical staff of the centres and finally the difficulty for legal representatives to obtain information or medical reports.⁴⁰⁴

The health concept implemented by the SEM in French-speaking Switzerland prohibits direct contacts between legal representation and health professionals, both inside and outside the federal centres. In 2020, only email contacts were allowed between the infirmary of the centres. This situation has gotten even worse in 2021 – and did not improve in 2022 – as the legal representatives were forbidden to contact the infirmary, except for organisational requests such as an appointment date. Otherwise, they can only communicate through the SEM.⁴⁰⁵ In an important judgment of 2019, the Federal Administrative Court

⁴⁰² Article 26-bis AsyIA.

⁴⁰³ On the obligation of the SEM to always assess the applicant's medical situation when there are concrete signs that he or she may suffer from serious diseases such as PTSD that, even though the applicant does not specifically mention any kind of health issues, see e.g. Federal Administrative Court, Decision D-6057/2017, 15 May 2018, para 5.4.

⁴⁰⁴ See for instance : Swiss Refugee Council, *L'accélération ne doit pas prêter l'équité et la qualité*, 4 February 2020, available (in French) at: <http://bit.ly/3j7aD6T>; Vivre Ensemble, *Procédures accélérées et accès aux soins. L'équation impossible ? | Prise en considération de l'état de santé : des procédures bâclées*, June 2019, available (in French) at: <https://bit.ly/32djGq4>.

⁴⁰⁵ Federal Administrative Court, Decision D-2044/2022, 3 August 2022 (available here: <https://bit.ly/3C8vZXQ>) confirms that this worrying practice is still ongoing. In this case, the Federal Administrative Court had already rejected the applicant's first appeal (which concerned the execution of a Dublin transfer to Greece). At the basis of the Tribunal's reasoning was the fact that, according to the information available at the time, there was no medical indication that the applicant was suffering from any acute illness, and that, despite his diagnosed depression, he was overall in good shape. A revision request was later lodged against this first judgment, because the legal representatives was able to show that he had been denied access to the

stated that the unjustified lack of transmission of medical information represents a violation of the right to a lawful hearing.⁴⁰⁶

From the perspective of organisations such as the Swiss Refugee Council, direct and effective communication between medical staff and legal representation is necessary to ensure adequate care and a complete establishment of the relevant facts, especially in the context of an accelerated procedure.

In principle, asylum seekers do not have to pay for the medical examination. Moreover, medical treatment – if necessary – will be paid for by the basic health insurance every asylum seeker is provided with. However, medical examinations for the purpose of a detailed medical report to be used in the asylum procedure are rarely requested by the authorities. In the majority of federal centres the SEM has concluded partnerships with doctors or medical centres to which asylum seekers are redirected in case of need. In the eventuality that an asylum seeker consults a doctor who is not included in the SEM concept, the costs incurred are not covered by the basic health insurance. In light of the current breaches as reflected in the recent FAC's case law as described above, there is in some cases a real difficulty in asserting health problems in time in the first instance procedure.

Another problem is that, in a large number of cases, medical reports are taken into account mainly in order to assess whether the removal order is legal and reasonable, and are not adequately considered for the assessment of the person's credibility.

The medical reports are unfortunately infrequently based on the methodology laid down in the Istanbul Protocol. In the view of NGOs, there is need for improvement in this regard.

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?
 Yes No

In Switzerland, unaccompanied children are entitled to asylum interviews if they are deemed capable of judgment. The assessment of this capability depends on the maturity and the development of the child in question.⁴⁰⁷ Usually, a person is considered as able to make a judgment at the age of 14. The Federal Administrative Court has stressed the importance of the right of the child to properly take part in all the decisions that concern them and clarified in a detailed manner how this should be put into practice during the personal interview.⁴⁰⁸

A representative, a so-called person of trust, is immediately to be appointed for each unaccompanied asylum-seeking child. The latter assists the unaccompanied child during the asylum procedure.⁴⁰⁹ The Asylum Ordinance 1 specifies that the duty of the representative starts with the first interview.⁴¹⁰ This means that in all the procedures, the representative should be present in the first as well as the second interview. Also, when a hearing takes place because the SEM does not believe that the person is a minor and is about to treat the person as an adult, a representative should be attending because the change of the asserted birth date should be considered as a decisive procedural step.

⁴⁰⁶ applicant's medical files at the SEM's request. Therefore, the fact that the applicant was actually under psychiatric treatment and at high medical risk hadn't been properly disclosed to the Court at the time of the first decision. Decision D-2044/2022 accepts the applicant's request to revise the case, and sends the file back to SEM for new assessment of the facts. See also, broadly on the assessment of medical issues during the asylum procedure: E-1413/2021, 8 April 2021; D-1008/2020, 26 July 2021; D-6591/2020, 13 January 2021. For a more detailed description of the medical concept see in particular: Federal Administrative Court, Decision D-1954/2019, 13 May 2019; E-3262/2019, 4 July 2019.

⁴⁰⁷ Asylum Appeals Commission, Decision E-MARK 1996/4, 9 March 1995.

⁴⁰⁸ Federal Administrative Court, Decision E-1928/2014, 24 July 2014.

⁴⁰⁹ Article 17(3) AsylA.

⁴¹⁰ Article 7(2-bis) AO1.

The child may then be transferred to a Canton, if they are moved to the so-called extended procedure and their asylum application is accepted or temporary admission granted. In these cases, the legal duties of the person of trust are passed on to other representatives, mostly social workers that operate within the different cantons as well as a legal representative if the asylum procedure is not yet completed. The discrepancies and different quality level of the care and support provided by the different cantonal offices has been highlighted in a report by the Conference of the Cantonal Directors of Social affairs committees.⁴¹¹ The division of responsibilities between the persons of trust working in the Federal centres and the cantonal representatives is another sensitive issue. Moreover, the person of confidence is foreseen as an interim measure until child protection measures under the Civil Code (such as appointing a guardian) are implemented. The appointment of a guardian usually occurs after attribution to a Canton.

According to the new Asylum Ordinance 1, the mandate of the person of trust working inside the Federal centres or at the airports begins after the submission of the asylum application and lasts as long as the unaccompanied stays in said centre or at the airport or until he turns 18. If a Dublin procedure is pending, then the activity of the person of trust lasts until the unaccompanied minor is transferred to the competent Dublin State, or until s/he becomes an adult.⁴¹² Even if the unaccompanied minor renounces of the appointed legal representative, the person of trust remains responsible for defending his or her interests. Neither the authorities nor the unaccompanied minor can waive the appointment of a person of trust.⁴¹³ This means that there is no need for the unaccompanied minor to agree with such designation.

In 2022, 2,450 applications were lodged by unaccompanied children, compared to 989 in 2021, 535 in 2020, 441 in 2019 and 401 in 2018.⁴¹⁴ Most of unaccompanied children were from Afghanistan (2,001 out of 2,450, 82%).

Profile and tasks

The duties of the person of trust (who also acts as legal representative in federal asylum centres) are not precisely defined by law and are therefore not always clear in practice.⁴¹⁵ The Asylum Ordinance 1 specifies that the representative must have knowledge of asylum law and the Dublin procedure. They accompany and support the minor in the asylum or Dublin procedure. The Ordinance lists a few examples of tasks that the representative must fulfil: advice before and during interviews; support in naming and obtaining elements of proof; support especially in the contact with authorities and medical institutions.⁴¹⁶ The idea is that the person of trust should support the asylum seeker in the asylum procedure, as well as in other legal/administrative tasks related to the asylum claim and to the minor's situation in Switzerland (accommodation in the centre, attendance to school, health issues etc). In practice, as long as the minor stays in the federal asylum centre (maximum 140 days), the representative mostly accompanies them to the asylum interview or hearing. The child and the representative often only meet shortly before the interview and, in some cases, persons of trust cannot have direct access to the federal reception centres where minors are accommodated. Often the translator of the SEM is asked for help with the explanation of the representative's role. Under these circumstances there is hardly any time to build trust.

Three years into the restructured procedure, it is to be noted that unfortunately a lot still needs to be done to ensure that legal representatives acting as persons of trust have the necessary support and resources to carry out their tasks in the best possible way.⁴¹⁷ Recent exchanges fostered by the Swiss Refugee Council confirm that the exchange and dialogue between the persons of trusts and other actors responsible for the children's well-being and care inside the centres (social workers, educators, teachers, etc) is often made difficult or hindered by cumbersome bureaucratic requirements. Furthermore, the need

⁴¹¹ Recommandations de la Conférence des directrices et directeurs cantonaux des affaires sociales (CDAS), 20 May 2016, available at: <https://go.aws/39BQxHD>.

⁴¹² The person of trust also represents the child in the procedures referred to in Articles 76a and 80a FNIA.

⁴¹³ Federal Administrative Court, Decision D-5672/2014, 6 January 2014.

⁴¹⁴ SEM statistics are available at: <https://bit.ly/3c87Js7>.

⁴¹⁵ Asylum Appeals Commission, Decision EMARK 2006/14, 16 March 2006.

⁴¹⁶ Article 7(3) AO1.

⁴¹⁷ CRC, Concluding observations – Switzerland, October 2021, p. 14. Report is available here: <https://bit.ly/3VBR0Rj>.

remains to better clarify the responsibilities and tasks of the persons of trust working inside the centres and the social workers that are active at a cantonal level. Shortcomings in the care and support of UASC are unfortunately the consequence. As an example, while an increasing number of unaccompanied children continue to disappear from asylum centres, there are no standard protocols in place to ascertain how to approach the issue and to better protect UASC from the risk of falling prey of trafficking networks.⁴¹⁸

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? Yes No
2. Is a removal order suspended during the examination of a first subsequent application?
 - ❖ At first instance Yes No
 - ❖ At the appeal stage Yes No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
 - ❖ At first instance Yes No
 - ❖ At the appeal stage Yes No

The Asylum Act provides a specific procedure for subsequent applications. The procedure is described in Articles 111c AsylA and 111d AsylA (regarding the costs) and in Article 7c AO1 (procedural aspects). Every application submitted within 5 years of the asylum decision or removal order becoming legally binding is considered subsequent application. As such it must be submitted in writing by post and include a statement of the grounds. The responsible authority is the SEM, as in cases of first applications in the regular procedure.

The subsequent application should not be confused with a request for re-examination. An application is to be treated as a subsequent asylum application if there are significant reasons which have an impact considering the examination of refugee status. On the other hand, if the new application is not based on grounds regarding refugee status, but only regarding obstacles to return (for example medical reasons), it is treated as a request for re-examination.⁴¹⁹ The distinction is difficult in practice, even for persons specialised in the field of asylum.

There is no obligation for the SEM to provide a personal interview, and in the majority of cases, no interview takes place. Nevertheless, it has the duty to examine all arguments carefully and individually.⁴²⁰

Unlike in the regular procedure, during the examination time of the application, the asylum seeker is not granted a place to stay in federal asylum centres. Subsequent applicants will be most of the time accommodated in cantonal emergency shelters (see section on

Access and forms of [reception](#) conditions). The application does also not have suspensive effect, but the SEM would grant this effect if it starts examining the application in detail. In practice, the deportation will be suspended pending the first opinion of the SEM on the subsequent application.

⁴¹⁸ This issue had already been tackled by GRETA in its second report on Switzerland (available here: <https://bit.ly/3YeHAXe>), see para 95: "GRETA urges the Swiss authorities to strengthen efforts to prevent trafficking of unaccompanied or separated children by addressing the problem of such children going missing, in particular by providing suitable safe accommodation and adequate supervision, as well as systematically carrying out police investigations into disappearances of unaccompanied and separated children and strengthening follow up and alert systems on reports of missing children". See also the CRC, Concluding observations - Switzerland, October 2021, which urges the State to "investigate reports of alleged disappearance of children during the asylum procedure, establish their whereabouts and prosecute those responsible for crimes involved in such disappearances", page 14. Report is available here: <https://bit.ly/3YZx7H5>.

⁴¹⁹ Asylum Appeals Commission, Decision EMARK 1998/1, 4 March 1998.

⁴²⁰ Martina Caroni et al., *Migrationsrecht*, 3rd edition, Berne 2014, 342 et seq.

The procedure remains the same even with more than one subsequent application during the 5-year period after the asylum decision or removal order has become legally binding, except for unmotivated or repeated subsequent applications with the same motivation. The latter will be dismissed without a formal decision. The Federal Administrative Court has clarified that, normally, there is no legal remedy to appeal this dismissal decision.⁴²¹ However, if the SEM has applied this provision incorrectly, there is the right to an effective remedy for denial of justice.⁴²²

The legal advisory offices in the cantons can be asked for help in the procedure of a subsequent application. Their legal assistance will depend on their capacities and their estimation of the prospects of success. A list of such offices is available on the website of the Swiss Refugee Council.⁴²³

The number of persons lodging subsequent applications in 2022 was as follows:

Subsequent applicants in Switzerland: 2022		
Main countries of origin	Number of applicants	Accepted
Sri Lanka	275	8
Afghanistan	113	80
Iraq	103	21
Eritrea	54	23
Iran	48	8
Ethiopia	44	26
Syria	41	2
Türkiye	48	3
Georgia	37	0
Armenia	30	0
Total	1,144	249

Source: SEM, asylum statistics 2022 (7-10), available at: <https://bit.ly/418U0Yk..>

This makes for a recognition rate under subsequent applications of 22%, compared to 14% in 2021 and 13% in 2020.

⁴²¹ Federal Administrative Court, Decision E-3979/2014, 3 November 2015.

⁴²² Federal Administrative Court, Decision E-5007/2014, 6 October 2016.

⁴²³ Available at: <https://bit.ly/33cXspz>.

F. The safe country concepts

Indicators: Safe Country Concepts

- | | | |
|--|---|-----------------------------|
| 1. Does national legislation allow for the use of “safe country of origin” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Civil society organisations expressed concern about the implementation of the safe third country concept in the absence of an adequate assessment on the human rights situation in the countries and in the absence of clarification about the possible risks to which a person returning there would be exposed. Repeatedly, precautionary measures - interim measures - are pronounced against Switzerland, on the basis of which the UN committees temporarily stop threatening expulsions.⁴²⁴

1. Safe country of origin

The Federal Council is responsible for designating states in which, on the basis of its findings, there is protection against persecution,⁴²⁵ as safe countries of origin.⁴²⁶ In such a case, SEM usually issues a decision of inadmissibility without further investigations. The time limit for an appeal in these cases is 5 working days.⁴²⁷ The common list of safe countries of origin and safe third countries is published in the Annex 2 of Asylum Ordinance 1 on procedural aspects (AO1).⁴²⁸ It currently includes:

- ❖ EU and EEA Member States (all together 57 asylum applications in 2022);
- ❖ Albania (47 asylum applications);
- ❖ Benin (8 asylum applications);
- ❖ Bosnia-Herzegovina (25 asylum applications);
- ❖ Burkina Faso (12 asylum applications);
- ❖ Georgia (735 asylum applications);
- ❖ Ghana (13 asylum applications);
- ❖ India (33 asylum applications);
- ❖ Kosovo (61 asylum applications);
- ❖ Moldova, excluding Transnistria (16 asylum applications);
- ❖ Mongolia (10 asylum applications);
- ❖ Montenegro (14 asylum applications);
- ❖ North Macedonia (108 asylum applications);
- ❖ Senegal (34 asylum applications);
- ❖ Serbia (59 asylum applications);
- ❖ UK (3 asylum applications).⁴²⁹

⁴²⁴ See humanrights.ch, *Renvois : la pratique des autorités migratoires suisses menace les droits humains*, 18 March 2021, available in French (and German) at: <https://bit.ly/3VHmq9i>.

⁴²⁵ With regard to the determination of a home country or country of origin as certain of persecution, the factors taken into account are: the political stability; the political stability; the observance of human rights; the assessment of other EU and EFTA Member States and the UNHCR and other country-specific peculiarities (Article 2 AO1).

⁴²⁶ Article 6a(2)(a) AsylA.

⁴²⁷ Article 108(3) AsylA.

⁴²⁸ Annex 2 AO1, available in French (and German and Italian) at: <http://bit.ly/2FMt9sO>.

⁴²⁹ SEM, asylum statistics (7-20), available at: <https://bit.ly/418U0Yk>.

2. Safe third country

The Federal Council is also responsible for the designation of states where there is effective protection against *refoulement*⁴³⁰ as safe third countries.⁴³¹ They should periodically review these decisions.⁴³²

2.1 Safety criteria

The following requirements must be met:⁴³³

- ❖ Ratification of and compliance with the ECHR, the Refugee Convention, the UN Convention against Torture and the UN Covenant on Civil and Political Rights.
- ❖ Political stability which guarantees the compliance with the mentioned legal standards.
- ❖ Compliance with the principle of a state governed by the rule of law.

According to the Asylum Appeals Commission (predecessor of the Federal Administrative Court), what is relevant is the possibility to find actual protection in the third country. This is not the case if there is no access to the asylum procedure or if the third country only applies the Refugee Convention to European refugees.⁴³⁴ According to the materials of the Federal Council in preparation of the mentioned provision, it is also necessary that the third country accepts the readmission of the person in question.⁴³⁵

This list includes so far all EU and EFTA member states.⁴³⁶ For further details on case law related to EU countries as safe third countries, see [Suspension of transfers](#).

2.2 Connection criteria

According to the law, the SEM shall normally dismiss an application for asylum if the asylum seeker can return to a safe third country as described above in which they were previously a resident. In practice, these are normally cases in which the asylum seeker already has international protection (or another type of residence permit) in an EU/EFTA-member state. In these cases, bilateral readmission agreements⁴³⁷ define the process of the person's return. If the person was there as an asylum seeker or merely passed through, the Dublin Regulation applies, rather than the safe third country rule (all countries on the safe third country list are Dublin member states as well).

3. First country of asylum

There is no first country of asylum concept in place in Switzerland.

⁴³⁰ As defined in Article 5(1) AsylA.

⁴³¹ Article 6a(2)(b) AsylA.

⁴³² Article 6a(3) AsylA.

⁴³³ Federal Council, Bundesblatt (Federal Gazette) 2002, available in German at: <http://bit.ly/2j9UF6l>, 6877 et seq.

⁴³⁴ Asylum Appeals Commission, Decisions EMARK 2000/10 and 2001/14.

⁴³⁵ Federal Council, Bundesblatt (Federal Gazette) 2002, 6884.

⁴³⁶ SEM, *Bezeichnung aller EU- und EFTA-Staaten als sichere Drittstaaten*, 14 December 2007, available in German at: <https://bit.ly/3HOC8f5>.

⁴³⁷ Available at: <https://bit.ly/3VD33hN>.

G. Information for asylum seekers and access to NGOs and UNHCR

1. Provision of information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? Yes With difficulty No
- ❖ Is tailored information provided to unaccompanied children? Yes No

In 2019, the SEM published a video on Youtube with some simplified explications regarding the new restructured procedure in several languages.⁴³⁸ The SEM even has a dedicated YouTube channel where it advertises a variety of videos for asylum seekers as well as a website (www.asylum-info.ch) with useful information in different languages. Asylum seekers also receive a leaflet with those links and the most important information regarding the asylum procedure from SEM. A specific leaflet is provided to persons applying for asylum at airports which explains the airport procedure.

Every asylum seeker assigned to the federal centres, following the lodging of the asylum application, obtains initial information from the NGO in charge of legal protection in the form of an individual consultation meeting to present the work of the legal protection service, inform of the rights and obligations of asylum seekers during the procedure and to gather initial information. A leaflet available in the main languages spoken by the applicants is provided by the NGOs and a short film explaining the procedure and questions regarding accommodation, health insurance, allowance and access to the labour market is also broadcasted in the offices of the legal representation. In addition, asylum seekers have the possibility to visit the legal protection offices spontaneously or by appointment during their stay in the federal centre in order to obtain information or submit any evidence. However, access to legal protection offices is highly dependent on the location of federal centres and legal aid offices.

Additionally, UNHCR also provides information videos via Youtube, for example the explanation video for family reunification in several different languages.⁴³⁹

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No

Asylum seekers at the border (airports) have effective access to the NGOs mandated to provide legal representation at first instance (namely Caritas and Berner Rechtsberatungsstelle für Menschen in Not, see [Border procedure: Legal assistance](#)). The right of asylum seekers to access to UNHCR is not specifically regulated in Swiss national law. Access to legal assistance can be difficult for persons in detention, as their means to contact and find a legal representative within the short time limits for appeal (especially in case of inadmissibility decisions) are limited. However, free legal assistance was introduced at first instance to counter the introduction of tight deadlines with the restructured procedure (see [Regular procedure: Legal assistance](#)).

⁴³⁸ See the English version at: <https://bit.ly/2SS2NxO> (also available in German, French, Italian, Arab, Farsi, Somali, Tigrinya, Russian, Tamil, Georgian, Turkish).

⁴³⁹ Available at: <https://bit.ly/32Re3Cv>.

One serious difficulty in Switzerland is the access to NGOs and legal advice for persons who are located in remote federal accommodation centres.⁴⁴⁰ Since the procedure in principle takes place exclusively in the federal asylum centre with processing facilities, the presence of NGOs responsible for ensuring the legal protection of asylum seekers is considerably reduced in remote federal accommodation centres. Concrete opportunities for access to other civil society organisations vary strongly depending on the location of both centres with and without processing facilities.

In cases where mandated legal representation decides not to appeal a negative decision because it would be doomed to fail (so-called “merits-test”), there are very few possibilities to seek assistance from another organisation or private lawyer. First of all, the time limit is very short, especially in the Dublin and accelerated procedure. Secondly, a ticket for transportation to a legal advisory office must be organised and finally, some legal advisory offices are only open one day per week. As a result, persons located in the countryside face clear disadvantages especially regarding the access to legal advice and therefore also access to some information and support.⁴⁴¹ Additionally, it is not guaranteed that another organisation will have the capacities to support the appeal. Private lawyers have to be paid.

H. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? Yes No
❖ If yes, specify which: Syria
2. Are applications from specific nationalities considered manifestly unfounded?⁴⁴² Yes No
❖ If yes, specify which: Albania, Algeria, Benin, Bosnia-Herzegovina, Burkina Faso, North Macedonia, Gambia, Georgia, Ghana, India, Kosovo, Moldova, Mongolia, Montenegro, Morocco, Nigeria, Senegal, Serbia, UK, EU/EFTA Member States

1. Afghanistan

The largest group of asylum seekers in 2022 were Afghans, with a total of 7,054 applicants. Out of them, 19% were granted asylum at first instance, while 79% received temporary admission.⁴⁴³

Due to the events in Afghanistan in the second half of 2021,⁴⁴⁴ the SEM did not enforce deportations as of April 2022.⁴⁴⁵ On 15 February 2022, the SEM released a report on the potential risk profiles for being targeted by the Taliban.⁴⁴⁶ Anyone who is persecuted in a way that is relevant under refugee law is granted asylum. Those who do not meet these requirements are usually granted temporary admission. If there is an application for re-examination or if the case is pending before the Federal Administrative Court, the SEM generally orders temporary admission.

The practice and jurisprudence on Afghani asylum applications remains quite restrictive. For instance, according to the administration and the Courts, there’s no risk of forced recruitment of underage soldiers by the Taliban, throughout the country. While the ‘safety net’ of temporary admission allows the authorities

⁴⁴⁰ See below in the chapter on remote centres.

⁴⁴¹ For further information on this topic, see Thomas Segessenmann, *Rechtsschutz in den Aussenstellen der Empfangs- und Verfahrenszentren des Bundes*, ASYL 1/15, 14.

⁴⁴² Whether under the “safe country of origin” concept or otherwise.

⁴⁴³ SEM, asylum statistics (7-20), available at: <https://bit.ly/418U0Yk>.

⁴⁴⁴ The situation **before the Taliban takeover** was as follows: Returns to Afghanistan were generally considered unreasonable (meaning temporary admission was granted), with three exceptions: returns to the cities of Kabul, Mazar-i-Sharif and Herat were considered reasonable if certain conditions were met in the individual case, mainly a family or social network. Federal Administrative Court, Decisions D-7950/2009, 30 December 2011 (Mazar-i-Sharif); D-2312/2009, 28 October 2011 (Herat); ATAF 2011/7, 16 June 2011 (Afghanistan in general and Kabul); D-5800/2016, 13 October 2017, (Kabul); Reference Decision D-4287/2018, 8 February 2019 (Mazar-i-Sharif); Decision D-4705/2016, 14 June 2021 (Herat).

⁴⁴⁵ For case law and practice prior to the Taliban takeover in August 2021, see previous updates of the AIDA Country Report Switzerland, available at: <https://bit.ly/406fqpx>.

⁴⁴⁶ Available in German at: <https://bit.ly/3iFylGR>.

to provide some protection to most of the Afghanis coming to Switzerland, this status is not as comprehensive and solid as the refugee status.

2. Türkiye

In 2022, with 4,791 applications lodged by Turkish nationals, they were the second largest group of asylum seekers in Switzerland. The recognition rate at first instance (asylum status) reached 82% of all the decisions rendered on the merits while 6% were given a temporary admission status.⁴⁴⁷

In a principle judgment regarding exclusion from asylum released on 25 September 2018,⁴⁴⁸ the Federal Administrative Court excluded a Kurdish refugee from asylum status for supposed proximity to Komalen Ciwan, an organisation considered as affiliated to PKK. The presumption of proximity to that organisation was considered as sufficient by the Federal Administrative Court to suspect that the applicant endangered Switzerland's internal or external security. The decision raises many questions notably concerning freedom of expression as well the standard of proof and the burden of proof in cases of suspected links to terrorist organisations or violent extremism. It calls into question the notion of refugee protection as such insofar as the latter aims precisely to protect persons persecuted for their political opinion.⁴⁴⁹

In 2019, the Court stated in several judgments that the situation in Türkiye had deteriorated with regard to the political and human rights situation, especially in the southeast of the country.⁴⁵⁰ Conversely, in a judgment of November 2019, the Court ruled that Turkish authorities can be considered as willing and able to protect victims of gender specific persecution.⁴⁵¹

3. Eritrea

In 2022, Eritrea was the third largest group of asylum seekers in Switzerland with 1,830 applications lodged. The recognition rate at first instance (asylum status) reached 72% of all the decisions rendered on the merits while 19% were given a temporary admission status.⁴⁵²

Applications lodged by Eritreans : 2019-2022 ⁴⁵³							
	Total new asylum applications	Primary applications	Secondary applications				Relocation
			Total	Births	Family reunification	Multiple applications	
2019	2,899	297	2,601	1,434	1,057	110	1
2020	1,917	211	1,706	1,173	366	167	0
2021	2,029	386	1,642	1,310	216	116	1
2022	1,830	426	1,404	1,201	117	86	0

Primary applications refer to applications lodged directly by Eritrean applicants in Switzerland, while secondary applications refer to applications lodged following family reunification procedure, subsequent applications as well as children born in Switzerland to refugee or asylum seekers' parents. The above figures demonstrate that the number of new applications lodged by Eritreans is very low, representing 11% of asylum applications in 2019, 10% in 2020, 19% in 2021 and 7% in 2022. The high proportion of such secondary applications clearly increases the protection rate in a way that is misleading. In fact, according to the statistics, the protection rate (asylum status) was 71% and the temporary admission rate

⁴⁴⁷ SEM, asylum statistics (7-20), available at: <https://bit.ly/418U0Yk>.

⁴⁴⁸ Federal Administrative Court, Decision E-2412/2014, 25 September 2018.

⁴⁴⁹ For further information, see Swiss Refugee Council, *L'arrêt sur les Kurdes ébranle les fondements du droit d'asile*, 5 October 2018, available (in French) at: <http://bit.ly/3XUkgVm>.

⁴⁵⁰ Example: Federal Administrative Court, Decision E-1625/2017, 24 January 2019.

⁴⁵¹ Federal Administrative Court, Decision E-5920/2019, 21 November 2019.

⁴⁵² SEM, asylum statistics (7-20), available at: <https://bit.ly/418U0Yk>.

⁴⁵³ SEM, asylum statistics (7-21), available at: <https://bit.ly/418U0Yk>.

was 21% in 2021 (see the statistical table at the beginning of this report), but few people have been granted protection upon a primary application (no detailed data available).

In June 2016, the SEM changed its policy regarding Eritrea. It stated that persons who left Eritrea illegally and had previously never been called to the military service, exempted from military service, or released from military service, would no longer be recognised as refugees. In January 2017, the Federal Administrative Court also changed its practice and ruled that the illegal exit of Eritrea could no longer, in itself, justify recognition of refugee status and that additional individual elements were required.⁴⁵⁴ Confirming this more restrictive approach, the Court subsequently found in August 2017 that the return of Eritrean nationals could not be generally considered unreasonable. Stating that the situation in Eritrea had improved significantly since 2005, the Court considered that persons whose asylum request was rejected and who had already done their military service as well as those who had “settled” their situation with the Eritrean State or benefited from the status of so-called “diaspora member” were not under the threat of being convicted or recruited to the national service and that there was no obstacle to the execution of removal under national law (art. 83 al. 3 FNA) and international law (art. 3 CEDH).⁴⁵⁵ In a third leading decision, the Federal Administrative Court stated that there was no issue with *non-refoulement* (under Article 3 and/or 4 ECHR) nor any obstacle to the execution of removals in national law⁴⁵⁶ for persons who have to serve in national service.⁴⁵⁷ However, if the applicant succeeds in making it highly probable that he would personally be subjected to ill-treatment (contrary to Art. 3 ECHR) or poor living conditions (contrary to Art. 4 ECHR), during military service, then his removal would be unlawful.⁴⁵⁸ Also, all this does not preclude the need to examine whether the asylum seeker left Eritrea illegally and if so, whether he has additional factors that could put him at risk of persecution if returned (as mentioned above).⁴⁵⁹ Finally, according to the reference decision⁴⁶⁰ of the Court, the enforcement of removal to Eritrea is generally reasonably required, except in the presence of particularly unfavourable individual circumstances in which an existential threat (or state of necessity) must be admitted. This has to be verified in each individual case and concerns in particular: single men who left Eritrea a long time ago and without a solid family network (decision D-8182/2015 of December 13 2019) and single or unmarried women with an illegitimate child, without school education and work experience and without a solid family network.⁴⁶¹

Between 2018 and 2020, the SEM examined and reviewed the temporary admission of 3,400 Eritrean nationals, concluding that removal was reasonable and revoking temporary admission status in 83 cases (2.4%). In October 2020, the Federal Administrative Court clarified that revocation of temporary admission after such review required an examination of proportionality taking into account the degree of integration of the person concerned.⁴⁶² As of January 2023, 67 revocations have become legally effective. Five appeals were upheld by the Federal Administrative Court. In nine cases, the SEM annulled the revocation of provisional admission during the appeal proceedings before the Court. In two cases, the SEM annulled the revocation of the provisional admission after the referral back by the Court. One appeal is still pending. The termination of a provisional admission is possible at any time according to the criteria pursuant to Art. 84 AIG. However, a specific review in the case of Eritrean nationals does not currently take place.⁴⁶³

In December 2018, the UN Committee against Torture ruled that the expulsion of an Eritrean national would constitute a violation of Article 3 of the Convention.⁴⁶⁴ Following a negative decision taken by the SEM, the Federal Administrative Court had declared the appeal doomed to failure though a single-judge procedure. It had thus required the payment of an advance fee of 600 CHF despite the claimant’s proven indigence. The Committee considered that the examination carried out under this procedure was anticipated and summary, whereas the complainant’s allegations were plausible, particularly in view of the disastrous human rights

⁴⁵⁴ Federal Administrative Court, Decision D-7898, 30 January 2017.

⁴⁵⁵ Federal Administrative Court, Decision D-2311/2016, 29 August 2017.

⁴⁵⁶ Federal Administrative Court, Decision D-2311/2016, 29 August 2017.

⁴⁵⁷ Federal Administrative Court, Decision E-5022/2017, 10 July 2018. This practice change has been criticised by the Swiss Refugee Council and others, as it does not seem justified by the current country of origin information (COI) or the difficulty to obtain reliable COI. For further information, see Swiss Refugee Council, *Décision du Tribunal administratif concernant le renvoi d'une Erythréenne – Le jugement est incompréhensible*, 31 August 2017, available in French at: <http://bit.ly/3wC6SJJ>; 'La Confédération mise sur l'intimidation plutôt que sur des solutions', 3 September 2018, available (in French) at: <http://bit.ly/3Y6ruFP>.

⁴⁵⁸ ATAF 2018 VI/4.

⁴⁵⁹ This is still in force, Federal Administrative Court, Decision D-7898/2015.

⁴⁶⁰ Federal Administrative Court, Reference Decision D-2311/2016, 17 August 2017.

⁴⁶¹ Federal Administrative Court, Decisions E-686/2018, 18 March 2022 and E-2117/2017, 17 December 2019.

⁴⁶² Federal Administrative Court, Decision E-3822/2019 of 28 October 2020.

⁴⁶³ Information provided by the SEM, 1 May 2023.

⁴⁶⁴ UN Committee against Torture, CAT/C/65/D/811/2017, 17 December 2018, available at: <http://bit.ly/409vA1o>.

situation in Eritrea. It found that the requirement of procedural costs had prevented the applicant from having the possibility to see his appeal examined on the merits by the Federal Administrative Court. It therefore concluded that a removal to Eritrea would constitute a violation of Article 3 and ordered the Swiss authorities to maintain the suspension of the removal to Eritrea and to reassess the claimant's asylum application.⁴⁶⁵

4. Algeria

The fourth largest group of asylum seekers in Switzerland in 2022 were persons from Algeria. There were 1,362 asylum applications, but only 7 persons were granted asylum, 6 persons received a temporary admission. The rejection rate stayed very high at 95% (in merit decisions).

5. Syria

Syrians were the fifth largest group of asylum seekers in Switzerland in 2022, with a total of 1,252 applications for international protection lodged. The recognition rate at first instance (asylum status) was 59% and the temporary admission rate was 36% in 2022.

In February 2015, the Federal Administrative Court issued two leading cases regarding Syria. They are still valid today, in light of current jurisprudence and practice. In the first judgment, the Court stated that considering the current circumstances in Syria, army deserters and conscientious objectors can risk persecution, provided they have made themselves known as opponents to the regime. The Court also denied an internal flight alternative for the applicant (of Kurdish origin) in the Kurdish-controlled area, due to the instability of the region.⁴⁶⁶ In a second judgment, the Court stated that even ordinary participants in demonstrations in Syria against the regime risk persecution if they have been identified by Syrian state security forces.⁴⁶⁷ It must be added, though, that jurisprudence is very strict when it comes down to assessing whether the applicant could have really been identified by the security services. Regarding the forced recruiting of persons by the Kurdish group YPG, the Court stated that this did not amount to a justified fear of persecution.⁴⁶⁸ The Federal Administrative Court does not consider removals to Syria always unlawful. In a case published in 2021, for instance, the judges considered that the applicant, who had been sentenced to a long term of imprisonment for serious crimes, could return to Aleppo, given that the situation was 'stable' since 2016.⁴⁶⁹

In July 2022⁴⁷⁰ the Federal Administrative Court reviewed its practice on the consequences of an illegal departure due to increasing documentation of the experiences of Syrian returnees. It considered that a re-entry into Syria requires a status settlement in a formal procedure in order to obtain a "security clearance". This could be refused for various reasons (e.g. because of detained family members, oppositional statements on social media or a stay in an "unpopular" country). The Court explains that the status settlement is particularly necessary for persons who had left the country illegally, had refused military service or had applied for asylum abroad. If the Syrian state agreed to the status settlement, the persons concerned would be removed from the list of wanted persons. However, in individual cases, persons who had settled their status could also be arrested. Overall, however, the Court saw no justification for changing the current case law on illegal departure: Although the return after an illegal departure could prove problematic in individual cases despite status settlement and result in disadvantages, it did not conclude it to be a systematic, nationwide action against returnees from European countries. The requirement of "overwhelming probability" of future persecution was therefore lacking. Illegal departure alone would therefore still not lead to the assumption of refugee status.

⁴⁶⁵ See also CSDM, '*Une décision de renvoi vers l'Érythrée prise par les autorités suisses viole la Convention contre la torture*', 19 December 2018, available (in French) at: <https://bit.ly/2SoBFb6>.

⁴⁶⁶ Federal Administrative Court, Decision D-5553/2013, 18 February 2015.

⁴⁶⁷ Federal Administrative Court, Decision D-5779/2013, 25 February 2015.

⁴⁶⁸ Federal Administrative Court, Decision D-5329/2014, 23 June 2016.

⁴⁶⁹ Federal Administrative Court, Decision E-1876/2019, 8 March 2021. See also: E-6023/2017, 26 June 2019; D-1105/2017, 31 May 2017; and E-3152/2018, 22 June 2018.

⁴⁷⁰ Federal Administrative Court, Decision E-2943/2019, 6 July 2022

Concerning resettlement, the Federal Council decided to resettle 1,600 particularly vulnerable recognised refugees for the years 2020-2021, mainly victims of the Syrian conflict.⁴⁷¹ In 2022, 436 refugees from Syria were resettled to Switzerland (compared to 1,009 in 2019, 512 in 2020 and 434 in 2021).⁴⁷²

6. Other nationalities

Sri Lanka (471 asylum applications in 2022): In July 2016, the Federal Administrative Court updated its case law by considering that the enforcement of removals to the northern (apart from the Vanni) and eastern provinces of the country was, in principle and under certain conditions, reasonable.⁴⁷³ Subsequently, the Court restricted its stance further through a principle judgment released in October 2017.⁴⁷⁴ The Court argued that since the end of the conflict in 2009, the security situation had improved significantly in the Vanni region. As a result, it considered that a person with a sustainable network of relationships and the possibility of securing the minimum existence level with time should be able “to resettle there without undue difficulty”.⁴⁷⁵ Regarding vulnerable profiles such as single women with or without children, persons with serious health issues or elderly, the Court concluded that the execution of the removal remained unreasonable. This case law continues to be applied.⁴⁷⁶ However, there is case law showing that the Court’s view on the return of applicants with health issues differ.⁴⁷⁷ In February 2020 and July 2021, the SEM published an Update on the situation in Sri Lanka, that did not lead to any fundamental change.⁴⁷⁸ Likewise, the political and economic crisis in 2021 and 2022 did not have a significant impact on the practice of the SEM and the Court, namely with regard to their effects on health care.⁴⁷⁹ The court only assumed in few individual cases⁴⁸⁰ that the recent events in Sri Lanka had to be taken into account and the extent to which the health system was still functioning had to be examined.

Iraq (504 asylum applications in 2022): Since the Court’s position of December 2015 according to which there is no situation of generalised violence in the northern Kurdish provinces, persons can be returned there if they have a sustainable social or family network there.⁴⁸¹ Persons from central and southern Iraq usually receive a form of protection. As of 2022, the practice concerning Kurdish provinces remained the same.

Iran (551 asylum applications in 2022): The Federal Administrative Court recognises in its jurisprudence that people who express themselves critically of the regime, especially in social media, are increasingly subject to mass reprisals. Nevertheless, Swiss practice grants asylum only to those whose engagement goes beyond typical mass activities and who are therefore perceived by the regime as serious and dangerous opponents. With regard to conversion to Christianity, Swiss practice considers that only those who are active in their church or who engage in proselytism face an increased risk of persecution. In October 2022, the Court confirmed its jurisprudence that the Bahai in Iran are subject to collective persecution: The faith is not recognised as a religion and its followers are systematically persecuted.⁴⁸² Unbearable psychological pressure in the event of return is only admitted in the case of missionary activity by the applicant. In other cases, it is accepted that Iranian nationals may exercise their Christian faith

⁴⁷¹ Information on resettlement programs available on the website of the SEM, at: <https://bit.ly/3padRU2>.

⁴⁷² SEM, asylum statistics (7-20), available at: <https://bit.ly/418U0Yk>.

⁴⁷³ Federal Administrative Court, Decision E-1866/2015, 15 July 2016.

⁴⁷⁴ Federal Administrative Court, Decision D-2619/2016, 16 October 2017.

⁴⁷⁵ The Swiss Refugee Council expressed strong reservations concerning the evaluation made by the Court regarding the security situation in the northern part of Sri Lanka, especially in the Vanni’s region. Indeed, this appreciation is mostly based on a UNHCR’s survey of 113 families who returned voluntarily from India to the northern part of the country. Therefore, it appears that the evaluation made does not rest on a detailed analysis. For further information see: Swiss Refugee Council, *Curieux sondages et requérants-e-s d’asile du Sri Lanka*, 14 December 2017, available in French (and German) at: <https://bit.ly/3iLLwiw>.

⁴⁷⁶ Federal Administrative Court, Decision D-3257/2022, 16 November 2022.

⁴⁷⁷ Federal Administrative Court, Decision, D-5268/2019, 15 February 2022, compared to Decision, D-319/2020, 22 December 2022.

⁴⁷⁸ Available in German at: <https://bit.ly/3GJcFR4> and <https://bit.ly/3XsbXjp>.

⁴⁸¹ Federal Administrative Court, Decision E-3737/2015, 14 December 2015, confirmed in Decision E-86/2017, 7 November 2018.

⁴⁸² Federal Administrative Court, Decision D-1197/2020, 25 October 2022.

privately.⁴⁸³ Regarding domestic violence, case law has significantly improved since 2021, when the Federal Administrative Court recognised that state authorities are not willing to provide effective protection for women who are victims of violence.⁴⁸⁴ On request regarding the current situation in Iran since September 2022, the SEM stated that they are currently collecting information from various sources in order to examine whether the practice needs to be adjusted.⁴⁸⁵

Ethiopia (230 asylum applications in 2022): The practice towards Ethiopian asylum seekers has become more and more restrictive since the election of President Abiy Ahmed in 2018. Despite several reports of violence and violations of human rights, the Federal Administrative Court considers the situation as having significantly improved and such violations of human rights as “an outgrowth of the democratisation process that has been initiated”.⁴⁸⁶ In January 2019, Switzerland concluded an agreement with Ethiopia on the repatriation of applicants from Ethiopia who have received a negative asylum decision.⁴⁸⁷ The planned agreement between Switzerland and Ethiopia provides close cooperation with the Ethiopian secret services. The latter would be responsible for identifying the asylum seekers concerned.⁴⁸⁸ According to SEM’s statistics,⁴⁸⁹ no removal took place in 2022 (compared to 8 in 2020).⁴⁹⁰ Despite the conflict in Tigray, the Court considers that there is no widespread violence in the whole of Ethiopia that could justify ineligibility for removal. The question, then, of whether the Court recognises a war or widespread violence in the Tigray region in particular is not entirely clear. In its jurisprudence, there are elements in favour of recognition, as well as elements against. On the one hand, in several of its judgments, it mentions, with reference to Tigray, war, humanitarian crisis, serious conflicts between the central Ethiopian government and the TPLF, ethnic tensions and protest movements, or the exceptional situation in Tigray, so that its jurisprudence must be put into perspective for this region. But on the other hand, other judgments state that the enforcement of removal in all regions of Ethiopia is reasonably required. And there are no cases in which it clearly recognises the ineligibility of removal to the Tigray region because of the conflict situation there.

On a practical level, the SEM communicated to the media that it would no longer carry out removals to Ethiopia of asylum seekers from Tigray since November 2020 and that since December 2021, it has suspended all removals to Ethiopia until further notice.

Tibet: Regarding applicants from Tibet, very often the SEM does not believe that they have been brought up in Tibet (China) but considers them as having been socialised in exile communities in India or Nepal. Due to alleged failure to comply with the asylum procedure, their claims are rejected without further investigations. To assess their place of socialisation, SEM uses country experts and linguistics analyses (LINGUA-analysis). In 2020, an asylum seeker who claimed to have been socialised in Tibet had been considered not credible following the LINGUA-analysis. However, independent experts argued that the LINGUA-Analysis by a specific analyst appointed by the SEM had not been conducted in a professional way and therefore was not reliable.⁴⁹¹ In 2021, about 240 Tibetans lived in Switzerland without regular status.

⁴⁸³ See for example Federal Administrative Court, Decision D-2344/2020, 9 February 2022, para 6.3.3.

⁴⁸⁴ Federal Administrative Court, Decision E-2470/2020, 26 January 2021, para 6.7.1.

⁴⁸⁵ Information provided by the SEM, January 2023.

⁴⁸⁶ See for example, Federal Administrative Court, Decision D-1759/2018, 7 August 2020, para 5.1 and D-1842/2020, 21 July 2020, para 6.1.

⁴⁸⁷ SEM, La Suisse et l'Éthiopie règlent leur collaboration dans le domaine du retour, 16 January 2019, available (in French) at: <https://bit.ly/2SoLndI>.

⁴⁸⁸ For further information see Swiss Refugee Council, *Éthiopie: est-il vraiment urgent de renvoyer les demandeurs d'asile déboutés?*, 5 December 2018, available in French at: <http://bit.ly/3kDx5Vo>.

⁴⁸⁹ SEM, asylum statistics (7-30), available at: <https://bit.ly/418U0Yk>.

⁴⁹⁰ On 27 January 2021, the SEM deported 3 Ethiopian rejected asylum seekers on a special flight to Addis Abeba; see for example media report by Le Temps, available at: <https://bit.ly/2OjX2cs>.

⁴⁹¹ See the News of the Swiss Refugee Council, *Vives critiques d'experts sur les analyses de provenance concernant le Tibet*, 2 November 2020, available in French (and German) at: <https://bit.ly/3ImQPpF>.

Reception Conditions

Short overview of the reception system

The reception system is organised in two phases, the first being under federal and the second under cantonal responsibility. During the first phase – which should not exceed 140 days – asylum applicants are accommodated in federal asylum centres under the responsibility of the State Secretariat for Migration SEM, while upon allocation to a canton, their accommodation is managed at cantonal level.

Asylum applications can be submitted in one of the six federal asylum centres with processing facilities, located in **Zurich, Bern, Basel, Pasture, Boudry** and **Altstätten**. Once the application for international protection has been lodged, the applicant can be transferred to one of the other centres within the same category. All applicants (except those under the airport procedure) spend the first weeks after their application and up to 140 days in such centres, where they are accommodated and the first steps of the procedure are carried out.

If their application is dismissed or rejected, asylum seekers are transferred to a federal asylum centre without processing facilities (so-called “departure centres”), from which their Dublin transfer or removal to their country of origin is organised. In cases where the removal has not taken place within 140 days from the lodging of the asylum application – *inter alia* due to difficulties in organising the travel documents, awaiting of a Court decision or any other reason – the persons will be allocated to a canton.

The second phase of reception is managed at the cantonal level. A transfer in cantonal facilities occurs: a) when a person receives a positive decision or a temporary admission within an accelerated procedure; b) when the extended procedure is ordered; c) when a person has been accommodated in a federal asylum centre for more than 140 days, even if his or her application has been dismissed or rejected.

Cantons are in charge of their own reception centres. Usually, asylum seekers and beneficiaries of protection will be first accommodated in collective centres, and in a second stage in shared apartments or private apartments in case of larger families. For those rejected asylum seekers who have lost their right to social assistance, the cantons provide for emergency aid shelters (see [Forms and levels of material reception conditions](#)).

Persons who have been recognised as refugees and temporarily admitted persons have the right to social assistance, including accommodation, without time limit.

A. Access and forms of reception conditions

Both the Confederation and the cantons are responsible for providing material reception conditions to asylum seekers, depending on whether the person is in a federal or a cantonal reception centre. The first phase of the asylum procedure takes place in one of the 6 federal asylum centres with procedural facilities, and can be followed by transfer to a federal asylum centre without procedural facilities.⁴⁹² Asylum seekers stay in federal centres for up to 140 days, and are then allocated to a canton (see section on [Freedom of Movement](#)).⁴⁹³

⁴⁹² The setup of federal reception and processing centres is foreseen by Article 26 AsyIA; the Ordinance of the FDJP on the management of federal reception centres in the field of asylum (the Ordinance of the FDJP) provides operating rules for all federal centres; further internal rules are applied in each centre.

⁴⁹³ Article 24(4) AsyIA.

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make available material reception conditions to asylum seekers in the following stages of the asylum procedure?

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Admissibility procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Border procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Onward appeal	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input checked="" type="checkbox"/> No
❖ Subsequent application	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?

❖ Social assistance and emergency aid	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ Accommodation	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Material reception conditions primarily consist of accommodation, food, health care and limited financial allowance according to the specific entitlement to social assistance. Assistance benefits are granted only when a person is unable to maintain themselves from their own resources, and under the condition that no third party is required to support them on the basis of a statutory or contractual obligation.⁴⁹⁴

On the federal level, asylum seekers must declare their valuables and money when entering the asylum procedure. Usually the border guard, the police or the State Secretary of Migration will search the people for valuables and /or cash which they may have on themselves. If they have assets at their disposal they are liable to pay the special charge (“Sonderabgabe”, Art. 86 AsylA). The charge serves to secure a claim for reimbursement of social assistance, emergency assistance, departure and enforcement costs as well as the costs of the appeal proceedings (Art. 85 AsylA). It is levied by confiscating assets and money which exceed the amount of CHF 100. If their legal origin is proven, only the amount exceeding CHF 1,000 will be definitively confiscated. (Art. 16 Abs. 4 AsylV2).

After transfer to the cantonal structures, the asylum seekers' need for assistance is reassessed. During the asylum procedure the above-mentioned rules continue to be applied. The obligation to declare and dispose of assets ends when the asylum-seeker is granted asylum or is provisionally admitted as a refugee, when they are granted another residence permit or when the amount of CHF 15,000 is reached, but in any case, no later than ten years after entry into Switzerland.

For organisational reasons, accommodation in asylum centres is available for all asylum seekers, regardless of their financial resources, and even obligatory in most cases.⁴⁹⁵

Social assistance, departure and enforcement costs as well as the costs of the appeal procedure must be reimbursed subsequently if the person has the necessary means at a later point in time.⁴⁹⁶

Regular procedure

Asylum seekers in a regular procedure are entitled to full material reception conditions from the lodging of the application until granting of a legal status or rejection of their application. Material or financial assistance continues either under the emergency aid scheme in case the person is to leave the country, or according to the usual legislation on social assistance if the person receives a protection status.

In the federal centres, reception conditions are similar for all asylum seekers regardless of the type of procedure they will go through, with the exception of the daily 3 Swiss francs pocket money, to which

⁴⁹⁴ Article 81 AsylA.

⁴⁹⁵ Article 28(2) AsylA states that the SEM and the cantonal authorities may allocate asylum seekers to accommodation, and in particular accommodate them as a group. This provision is separate from the ones on social assistance and emergency aid in Article 80 et seq. AsylA. On the side of financial organisation, accommodation is however counted in within the social assistance budget.

⁴⁹⁶ Article 85(1) AsylA, Brief information from the SEM regarding the levy of the special charge on assets in English: <https://bit.ly/3C5ygmD>. Information available in several languages: <https://bit.ly/3PYVdxh>.

persons from EU/EFTA countries or countries exempt from the visa requirement are not entitled.⁴⁹⁷ After cantonal attribution, reception conditions may change significantly. General legal entitlement to reception conditions is governed by national law and should therefore be similar in all cantons, but the implementation of those national provisions is largely dependent on cantonal regulation and varies in practice.

Admissibility procedure (including Dublin)

According to national law, asylum seekers whose application may be dismissed without proceeding to an in-merit examination are entitled to the same reception conditions as persons in a regular procedure, until formal dismissal of their application.⁴⁹⁸

Swiss legislation is based on the idea that dismissal of an application will occur within the 140 days of the stay in the federal centre.⁴⁹⁹ Quickly rejected or dismissed asylum seekers should in principle not be allocated to a canton, unless their appeal has not been decided upon within a reasonable time or they are prosecuted or convicted for a felony or misdemeanour committed in Switzerland.⁵⁰⁰ Persons in the Dublin procedure are not allocated to a canton, unless their removal cannot be completed within 140 days. They are transferred to a federal asylum centre without processing facilities.⁵⁰¹ In 2022, the average length of stay in the Federal Centres was between 61 to 75 days, depending on the region.⁵⁰²

Asylum seekers are entitled to social benefits until the decision of rejection or dismissal becomes enforceable. This happens when the deadline for appeal expires without any appeal being made, or at the moment the appeal authority rejects the appeal. The person has to leave the country and the material reception conditions become dramatically reduced as the person is excluded from social assistance and falls into the emergency aid scheme (see section on [Forms and levels of material reception conditions](#)).⁵⁰³

Airport procedure (border procedure)

When an asylum seeker applies for asylum at the airport of **Geneva**, Swiss authorities must decide whether to permit entry into Switzerland within 20 days.⁵⁰⁴ For further information on the procedure, see Asylum Procedure, C. Procedures, 4. Border procedures) The centre in the transit zone of **Geneva** has a capacity of 30 places. Given the closed nature of these centres, the holding of asylum seekers during the airport procedure is considered as detention within the meaning of this report (see Chapter on Detention starting with [General](#)). Asylum seekers may be held at the airport or exceptionally at another location for a maximum of 60 days. After this period, the SEM allocates the person either to a canton or a federal asylum centre.⁵⁰⁵ Upon issuing a legally binding removal order, asylum seekers may be transferred to an immigration detention facility.⁵⁰⁶

Appeal procedure

The appeal procedure is part of the overall procedure and does not affect entitlement to material reception conditions. Restrictions occur at the moment when the decision becomes enforceable, which means either at the moment the appeal authority rejects the appeal, or when the deadline for appeal expires if no appeal

⁴⁹⁷ SEM, *Stratégie de traitement du SEM dans le domaine de l'asile*, available in English (as well as in French, German and Italian) at: <https://bit.ly/339iE2z>. In the Decision F-3150/2018 of 20 July 2020, the Federal Administrative Court has observed that an automatic application of this rule could lead to a violation of the constitutional principle of equality before the law in the case of a person claiming a legitimate need for protection (para 7.6).

⁴⁹⁸ See sections on [Dublin](#) and [Admissibility Procedure](#).

⁴⁹⁹ See sections on [Dublin](#) and [Admissibility Procedure](#).

⁵⁰⁰ Article 27(4) AsylA.

⁵⁰¹ Information on this is available at: <https://bit.ly/3abc6Px>.

⁵⁰² Information provided by the SEM, 1 May 2023.

⁵⁰³ See section on Forms and levels of material reception conditions.

⁵⁰⁴ For details on the airport procedure see section [Border Procedure](#).

⁵⁰⁵ Article 22(6) AsylA.

⁵⁰⁶ Article 22(5) AsylA.

has been lodged. There should therefore be no change of reception conditions during the appeal procedure, neither regarding accommodation, nor social assistance benefits.

Subsequent applications: application for re-examination, revision or subsequent applications

Swiss law provides for the restriction of reception conditions during the procedure for subsequent applications or applications for revision or re-examination. Therefore, persons in such procedures do not receive social assistance (as they are subject to a legally binding removal decision for which a departure deadline has been fixed) and receive only emergency aid for the duration of a procedure.⁵⁰⁷ This restriction on reception conditions also applies when the removal procedure is suspended by the competent authority. Regarding accommodation, subsequent asylum applicants do not return to a federal centre but stay mostly assigned to the same canton and level of accommodation conditions depends on the cantonal practice.⁵⁰⁸ In case five years have passed since the entry into force of the last asylum decision,⁵⁰⁹ the application will be considered a new one and the asylum seeker will normally be accommodated in a federal asylum centre.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers and temporarily admitted persons on average, as of April 2022 (in original currency and in €): CHF 1,124 / 1,113 € for a family of three persons⁵¹⁰

Social assistance for asylum seekers includes basic needs such as food, clothes, transportation and general living costs, in the form of allowance or non-cash benefits, accommodation, health care and other benefits related to specific needs of the person. National law specifically provides for accommodation in a federal or cantonal centre,⁵¹¹ social benefits in the form of non-cash benefits whenever possible, or vouchers or cash.⁵¹² Limited health insurance also ensures access to medical care according to Article 82a AsylA (see section on [Health Care](#)).

Accommodation

The provision of accommodation facilities is governed by Article 28 AsylA, according to which the authorities (SEM or the cantonal authorities) may allocate asylum seekers to a place of stay and provide them with accommodation. The Confederation and the cantons each have their own accommodation facilities, which vary (see [Types of Accommodation](#)).

Food and clothing are not specifically mentioned in the law, even though they may be provided in the reception centres. In the federal centres, meals are served 3 times a day, on a regular schedule. Asylum seekers who do not show up at meal time will have to wait for the next service. Cantonal centres have their own systems, depending on the type of accommodation centres and the nature of social benefits (cash or non-cash benefits). The amount of daily financial allowance (including vouchers) varies according to the internal organisation of each centre and to the possibility to receive daily meals in kind. Clothing distribution is also regulated at a local level, in collaboration with NGOs. This support is part of the non-cash benefits of the social assistance.

⁵⁰⁷ The legal basis for the restriction is Article 82(2) AsylA. For the reception conditions under the emergency aid scheme, see [Forms and Levels of Material Reception Conditions](#).

⁵⁰⁸ For more information on subsequent applications, see section [Subsequent Applications](#).

⁵⁰⁹ Article 111c AsylA.

⁵¹⁰ Sonntagszeitung, 10 April 2022 with referral to the SODK/cantons. For further information regarding social aid and emergency aid see also the website of the SODK: <https://bit.ly/3lbufAM>.

⁵¹¹ Article 28 AsylA.

⁵¹² Articles 81 and 82(3) AsylA. National provisions on social assistance and emergency aid for asylum seekers are in Chapter 5 AsylA. The AO2 on Financial Matters provides important precisions on the financing of welfare benefits.

Asylum seekers are provided with accommodation during the entire procedure. Accommodation is included in the right to social benefits. Asylum seekers do not have a choice regarding the allocated place of stay and will usually be moved from one centre to another during the procedure (first after the cantonal allocation, then within the canton according to their individual situation). In most cantons, rejected or dismissed asylum seekers are regrouped in special centres regulated under the emergency aid scheme.

Social benefits

Persons who are staying in Switzerland on the basis of the Asylum Act and who are unable to support themselves with their own resources shall receive social benefits unless third parties are required to support them on the basis of a statutory or contractual obligation, or may request emergency aid.⁵¹³ The provision of social benefits is under the responsibility of the Confederation as long as the person is staying in a federal asylum centre. After allocation to a canton, the canton should provide social assistance or emergency aid on the basis of Article 80 AsyIA. Fixing of the amount, granting and limiting welfare benefits are regulated by cantonal law when it falls under cantonal responsibility.⁵¹⁴ This results in large differences in treatment among cantons. Living costs in Switzerland are high in general, but there are differences depending on the place. In general, it can be stated that the financial support is scarce, especially for persons with a temporary protection as foreigner, their social benefits are lower than the minimum standard living costs recommended by the SKOS.

Asylum seekers are also entitled to child allowances for children living abroad. These are however withheld during asylum procedures and should be paid only when the asylum seeker is recognised as a refugee or temporarily admitted in accordance with Article 83(3)-(4) FNIA.⁵¹⁵

Emergency aid

Persons subject to a legally binding removal decision for which a departure deadline has been fixed are excluded from social assistance.⁵¹⁶ In fact, this concerns all persons whose asylum application has been rejected (and the appeals deadline expired) as all negative decisions from the SEM include a departure deadline. This exclusion from social assistance also extends to persons in a subsequent procedure (application for re-examination, revision or subsequent application).⁵¹⁷ These persons receive emergency aid on request in case they find themselves in a situation of distress according to Article 12 of the Federal Constitution.⁵¹⁸

Emergency aid consists of minimal cantonal benefits for persons in need and unable to provide for themselves. The Federal Supreme Court has set out basic guidance regarding what emergency aid must entail in order to respect human dignity.⁵¹⁹ But the concrete fixing and granting of the emergency aid is regulated by cantonal law, which results in large differences in treatment between asylum seekers. In some cantons this task is delegated to municipalities or relief organisations.⁵²⁰ The Confederation compensates cantons for the costs of emergency aid.⁵²¹

Like social benefits, emergency aid is provided in the form of non-cash benefits wherever possible. Persons under emergency aid are housed in specific shelters (often underground bunkers or containers,

⁵¹³ Article 81 AsyIA.

⁵¹⁴ Article 3(2) AO2.

⁵¹⁵ Article 84 AsyIA.

⁵¹⁶ Article 82(1) AsyIA.

⁵¹⁷ Article 82(2) AsyIA.

⁵¹⁸ Reports can be found here in French (and German and Italian): <https://bit.ly/3x1vxbV>.

⁵¹⁹ See Muriel Trummer, *Bundesgerichtliche Rechtsprechung zur Auslegung der Nothilfe für abgewiesene Asylsuchende*, in: ASYL 4/12, p. 24.

⁵²⁰ Contact details of cantonal coordination offices for asylum issues are available at: <https://bit.ly/3XSorRS>. See also practice in the Canton of Vaud: *Guide d'assistance 2013 : recueil du Règlement du 3 décembre 2008 sur l'assistance et l'aide d'urgence octroyées en application de la loi sur l'aide aux requérants d'asile et à certaines catégories d'étrangers et des directives du Département de l'intérieur en la matière / EVAM Etablissement vaudois d'accueil aux migrants*, available in French at: <http://bit.ly/1eGZqTZ>.

⁵²¹ The compensation scheme has changed for the applications filed after the 1st March 2019. For details see the 2019 SEM monitoring report on the suppression of social assistance available at: <https://bit.ly/37B3d3a>.

with access sometimes restricted to night time), where living conditions are reduced to a minimum and are known to be quite rough.⁵²² Under emergency aid, people may have to live with around 8 CHF (around 7 Euros) a day, which must cover the expenses for food, transportation, household items and any other needs. This amount is extremely low in comparison to the high living costs in Switzerland. Further restriction is that the entire amount is granted in the form of non-cash benefits or vouchers (which can only be used in one particular supermarket chain), as encouraged by the national legislation.

This restriction of reception conditions raises serious problems for asylum seekers whose (subsequent) procedure is still running. Long-term stay under emergency aid is known to be disastrous for the integration and health of asylum seekers, despite the chance of being granted legal status at the end of the procedure.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions? Yes No
2. Does the legislation provide for the possibility to withdraw material reception conditions? Yes No

National law provides for the possibility to refuse (completely or partially), reduce or withdraw social benefits under explicit and exhaustively listed conditions. General restriction conditions of social benefits are foreseen in Article 83(1) AsylA, which provides for partial or total withdrawal of material reception conditions where the asylum seeker:

- (a) Has obtained them or attempted to obtain them by providing untrue or incomplete information;
- (b) Refuses to give the competent office information about their financial circumstances, or fails to authorise the office to obtain this information;
- (c) Does not report important changes in his or her circumstances;
- (d) Obviously neglects to improve his or her situation, in particular by refusing to accept reasonable work or accommodation allocated to him or her;
- (e) Without consulting the competent office, terminates an employment contract or lease or is responsible for its termination and thereby exacerbates his or her situation;
- (f) Uses social benefits improperly;
- (g) Fails to comply with the instructions of the competent office despite the threat of the withdrawal of social benefits;
- (h) Endangers public security or order;
- (i) Has been prosecuted or convicted of a crime;
- (j) Seriously and culpably fails to cooperate, in particular by refusing to disclose his or her identity; or
- (k) Fails to comply with the instructions from staff responsible for the proceedings or from the accommodation facilities, thereby endangering order and security.

Restriction patterns are related to the obligation of the asylum seeker to collaborate with the authorities for the establishment of the facts (identity, financial situation, etc.), to reduce reliance on social benefits by being ready to participate in the economic life, to reduce living expenditures, and to conform with Swiss law generally.

Emergency aid is however an unconditional right for everyone present on Swiss territory and unable to provide for themselves. The exclusion from social assistance has no impact on the entitlement to emergency aid. This means that every asylum seeker (even dismissed or rejected) should find an accommodation place during their stay in Switzerland and be able to provide for their own (basic) needs. However, reception conditions are very critical under the emergency aid scheme, with several cantons making use of underground civil protection centres (so-called *bunkers*) originally conceived for the

⁵²² For more information on this subject, see Christian Bolliger, Marius Féraud, Büro Vatter AG (Politikforschung & -beratung), *La problématique des requérants d'asile déboutés qui perçoivent l'aide d'urgence sur une longue période*, Bern, 26 May 2010, available in French at: <https://bit.ly/3vmxP3u>.

protection of civil population in case of armed conflict or other types of emergency but are used as emergency aid shelters.

The Asylum Act also provides for the possibility to exclude persons from a federal asylum centre as a disciplinary sanction, when an asylum applicant has endangered others in the centre, disturbed the peace or refused to obey staff orders. The exclusion can however not exceed 24 hours and is subject to a written decision made by SEM. Other sorts of disciplinary sanctions exist in the federal centres, such as denial of exit permits, elimination of pocket money or a ban on entering specific spaces.⁵²³

Before any reduction or withdrawal is ordered, an assessment of proportionality is made and the subsistence minimum has to be considered. The basic need is defined as “enforcement legal subsistence minimum” (*betriebsrechtliches Existenzminimum*) and differs in each canton.

Special centres for uncooperative asylum seekers

Article 24a AsylA is the legal basis for the creation of special centres for uncooperative asylum seekers. It states that asylum seekers who endanger public security and order or who by their behaviour seriously disrupt the normal operation of the federal asylum centres may be accommodated by the SEM in special centres that are set up and run by the SEM or by cantonal authorities. Although applications cannot be lodged in those centres, procedures are carried out according to the same rules than in the usual federal asylum centres. The only centre of this type ever opened is situated in **Les Verrières**, Canton of Neuchâtel and has a capacity of 20 places, on average, 8 persons were accommodated in this centre in 2022.⁵²⁴ According to the information of the SEM, discussions for a possible second centre for uncooperative asylum seekers are ongoing.⁵²⁵

According to the law, the decision to send someone to a special centre is made either by federal or cantonal authorities. In its statement, the SEM indicated that only men would be placed in such centres.⁵²⁶ The decision to place a person in a special centre must respect the principle of proportionality. According to SEM practice, the placement in a special centre is ordered for a period of 14 days and can be prolonged to a maximum of 30 days.⁵²⁷ Although the law did not foresee a separate remedy against such decision, the Federal Administrative Court has ruled that it must be possible to contest such decision within 30 days.⁵²⁸ In the same judgment, the Court stated that placement in a special centre constitutes a significant restriction of liberty but not deprivation of liberty.

Grounds for assignment to a special centre are defined in Article 15 AO1. According to this provision, a person can be assigned to a special centre if they are in a federal asylum centre and endanger public security and order or who by their behaviour seriously disrupt the normal operation of the federal asylum centre. A danger to public security and order is assumed if there are concrete indications that the behaviour of the asylum seeker will with great probability lead to a breach of public security and order.

A serious disruption of the normal operation of the federal asylum centre is assumed in the following two situations:

- ❖ First, if the asylum seeker seriously violates the house rules of the centre, especially if they have weapons or drugs, or if they repeatedly disregard a ban to leave the centre.
- ❖ Second, if the person defies the instructions for behaviour by the head of the centre or their deputy and by this behaviour namely repeatedly disturbs, threatens or endangers the staff or other asylum seekers.

⁵²³ Article 25(1)(e) Ordinance of the FDJP on the management of federal centres and accommodation at airports.

⁵²⁴ Data provided by the SEM, 1 May 2023.

⁵²⁵ Information provided by the SEM, 17 May 2023.

⁵²⁶ SEM, ‘Asile: ouverture du centre spécifique de la Confédération aux Verrières’, 3 December 2018, available in French (and German and Italian) at: <https://bit.ly/2RwVZlr>.

⁵²⁷ SEM, Manuel Asile et Retour, chapter C1; 2.2.2.3; see also PLEX (Plan d’exploitation Hébergement), Annex 2, cited in a Decision of the Federal Administrative Court (F-1389/2019, 20 April 2020, para 7.10).

⁵²⁸ Federal Administrative Court, Decision F-1389/2019, 20 April 2020.

4. Freedom of movement

Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?
 Yes No
2. Does the law provide for restrictions on freedom of movement? Yes No

4.1. Dispersal across cantons

Asylum seekers who have not received a final decision on their application after 140 days as well as asylum seekers assigned to the extended procedure are allocated to one of the 26 Swiss cantons according to a distribution key. The distribution key is laid down in Article 21(1) AO1 and allocates a certain percentage of asylum seekers to each canton according to its population (for example Zurich: 17.8%, Uri 0.4%).

Article 22 AO1 states that the SEM distributes the asylum seekers as equitably as possible among the cantons, taking into account family members already living in Switzerland, nationalities and cases requiring particular care. In accordance with Article 27(3) AsylA, when allocating an asylum seeker to a canton, the SEM shall take into account the legitimate interests of the cantons and the asylum seekers. However, this provision also states that asylum seekers may only contest the decision on allocation to the Federal Administrative Court if it violates the principle of family unity. In practice, the interests of the asylum seekers are hardly taken into account (except for family unity regarding core family members). This system is problematic, as it fails to seize opportunities that would facilitate integration, such as language or further family ties. For example, the allocation strictly according to the distribution key often leads to French speaking asylum seekers being allocated to a German language canton, which makes integration much more difficult.⁵²⁹ Applications to change one's canton based on other than (core) family unity grounds are hardly ever successful to the knowledge of the Swiss Refugee Council.

Following allocation to the canton, cantonal authorities become responsible for the provision of material reception conditions. They provide for accommodation in a cantonal centre as well as for social or emergency assistance to all persons present on their territory, whether legally or illegally. They may delegate implementation competences to municipalities.

Cantonal reception conditions are regulated by cantonal legislation and differ significantly from one canton to another. Therefore, the allocation to a canton may result in large inequality in terms of material reception conditions. The type of accommodation facilities, as well as the amount of financial allowance, is specific to each canton. Some cantons are known to be restrictive in terms of reception conditions, or even lacking adapted structures for the needs of vulnerable persons.⁵³⁰

4.2. Restrictions on freedom of movement

Federal asylum centres

As long as asylum seekers stay in a federal centre,⁵³¹ they are subject to the semi-closed regime of all federal asylum centres. Exits are only possible with a written authorisation delivered by the SEM once fingerprints and a photograph of the asylum applicant have been taken.⁵³² Exit hours are strictly regulated in the ordinance and the general rule allows asylum seekers to go out from 9am to 5pm during the week (from Monday to Friday) and to spend the weekend away, from Friday 9am until Sunday 5pm. SEM may

⁵²⁹ On this topic see Daniel Auer, *Language Roulette? Refugee Placement and its Effect on Labor Market Integration*, in a nutshell #4, January 2017, nccr – on the move, available in English at: <https://bit.ly/34xhjkh>.

⁵³⁰ These large differences in treatment occur despite a fixed compensation system from the Confederation to the cantons. For details on the costs sharing system, see AO2.

⁵³¹ General rules for the federal centres are set up in the Ordinance of the FDJP on the management of federal reception centres in the field of asylum.

⁵³² Article 17 (1) Ordinance of the FDJP.

define more extended exit hours in agreement with the commune hosting the federal asylum centre,⁵³³ which is for instance the case in the centre of **Boudry** where asylum seekers are allowed to return to the asylum centre until 7pm, in **Pasture** until 6pm, in **Altstätten** until 5.30pm and in **Basel, Zurich and Bern** until 8pm.⁵³⁴

Asylum seekers are supposed to stay in the centre on days on which they have an appointment regarding their asylum application (with the authorities, the lawyer or the counselling) or regarding their departure. This further applies where they have an appointment with a dentist or doctor, if they are required to participate in maintenance work of the premises, if a transfer to another centre is planned or on the day in which the enforcement of the removal is foreseen.⁵³⁵

In case of late arrival or unjustified absence, asylum seekers may be subject to a disciplinary sanction such as being deprived of the possibility to go out on the next day or to access certain areas of the centre. Their pocket money or issuing of public transport tickets can also be cut. Other measures can be the exclusion of the centre for a maximum of 24 hours (during which entry in the centre is not allowed)⁵³⁶ or placement in a special centre (**Les Verrières**).⁵³⁷ The disciplinary measures are communicated orally, only the exclusion from the centre for more than eight hours as well as the allocation to a special centre need to be notified in writing. If the refusal of exiting the centre is ordered for more than 24 hours or more than once, a written decision (which can be appealed) is required. A separate room should be provided to asylum seekers excluded from the centre for more than eight hours or in cases the centre is closed at the time the measure ends.⁵³⁸

Some federal centres have a so called “reflection container” or “reflection room”, installed within the entry area of the centre or within a short distance from it. These spaces are intended for emergencies (pending the arrival of the police) to receive recalcitrant asylum seekers for them to calm down and to protect them and others from injuries. They are mostly equipped with a surveillance camera. During their visits, the delegations of the National Commission for the Prevention of Torture (NCPT) found that the use and purpose of these containers are not defined in any law or directive. It is thus required that those containers are not used for disciplinary reasons.⁵³⁹ Since 15 January 2023, the short-term restraint of asylum seekers in security rooms for the purpose of danger prevention has been regulated in the Ordinance of the FDJP on the management of federal reception centres: the person can be restrained only until the arrival of the police and for a maximum of two hours. The restraint of minors under 15 is forbidden.⁵⁴⁰ The regulation of this specific kind of restraint is also a subject of the current amendment of Asylum Law that was recently under consultation.⁵⁴¹

Restriction vs. deprivation of liberty

A report to the Federal Commission against Racism of 2017 concluded that the current regulation of exit hours was too far-reaching in terms of personnel and time (social exchange and employment opportunities are severely restricted; even more so due to the remote location of the centres) and was therefore disproportionate.⁵⁴² It would on the contrary be possible to use milder means (obligation to notify when leaving and returning or general initial authorisations), in order to monitor the movements of asylum seekers without impinging on their personal freedom. The Federal Supreme Court has not yet commented on the proportionality of these regulations.

⁵³³ Article 17(5) Ordinance of the FDJP.

⁵³⁴ House rules of the individual centres accessed in 2021, not publicly available.

⁵³⁵ Article 23 Ordinance of the FDJP.

⁵³⁶ Usually a place to sleep is provided in containers placed outside the centre.

⁵³⁷ Article 25 Ordinance of the FDJP.

⁵³⁸ Article 26 Ordinance of the FDJP.

⁵³⁹ NCPT, Report 2014, 11, para 39, available in German at: <https://bit.ly/3nGLpsP>; Report 2018, p. 33, para 122, available in German at: <https://bit.ly/2KPFoA8>.

⁵⁴⁰ Art. 29a Ordinance of the FDJP.

⁵⁴¹ The Swiss Refugee Council has submitted its opinion on the project of law. It is available, in French, at: <https://bit.ly/3LA00n5>. See also the press release, available at: <https://bit.ly/3HIJfFr>.

⁵⁴² Regina Kiener and Gabriela Medici, ‘Asylsuchende im öffentlichen Raum’, Rechtsgutachten im Auftrag der Eidgenössischen Kommission gegen Rassismus EKR, February 2017.

The centres are operated by private providers, which means that there are great management differences in practice. The same legal requirements apply, but the operating rules are different. Based on the legal report, the Federal Commission against Racism stated that interventions by the providers are attributable to the State, which is thus responsible for protecting the fundamental rights of asylum seekers.

A report published in August 2017 by the Swiss Centre of Expertise in Human Rights (SCHR) deals in detail with the question of when certain restrictions on the freedom of movement of asylum seekers associated with accommodation should be classified as detention.⁵⁴³ The demarcation between restriction of liberty and deprivation of liberty is gradual and depends on the individual case and various factors. The intensity of the intervention can be regarded as a criterion for differentiation. Like the ECtHR, the Federal Supreme Court relies on a combination of temporal and spatial factors. In addition, qualitative criteria are also decisive.

Such criteria could be the existence of reporting obligations, the extent of supervision and surveillance, the organisation of the disciplinary regime or, in particular, the possibility of maintaining social contacts. The latter includes not only the exit hours, but also visiting hours and other communication options. Visiting hours in the federal asylum centres are daily from 2 pm to 8 pm, but visitors are only allowed to enter the centres if they have a relationship to an asylum seeker and with the approval of the personnel.⁵⁴⁴ Despite this rule, in practice most federal asylum centres are not provided with a visitors' room.⁵⁴⁵ In the information leaflet of the SEM, the possibility of visits as provided by law is not even mentioned: "Access for asylum seekers only: Federal asylum centres are not open to the public. This is primarily to ensure the privacy of the asylum seekers in our care. Therefore, in addition to the asylum seekers, only employees of our partner organizations have access to the centres: counselors, security personnel, teachers and medical professionals, pastoral counsellors and the employees of the legal representation of asylum seekers."⁵⁴⁶

The study concluded that accommodation in the reception and processing centres does not reach the intensity level of a deprivation of liberty if the daily possibility to leave the centre is guaranteed and if there are no further restrictions. Thus, although there is no clear definition, we would suggest not to qualify the stay in the ordinary federal asylum centres as de facto detention.

In 2020, the Federal Administrative Court ruled that the placement in a special centre does not constitute deprivation of liberty, despite entailing significant restrictions of personal freedom and freedom of movement.⁵⁴⁷

Remote locations

The location of some centres is very remote. The **Boudry** and **Giffers/Chevilles** federal centres as well as the centre of **Les Verrières** are, for example, characterised by their isolation. The Boudry centre is located in a complex that includes the asylum processing centre and a psychiatric hospital. It is several kilometres away from the surrounding village and about 15km from the town of Neuchâtel. The waiting and departure centre of Chevilles is even more isolated. In order to get there by public transport, it is necessary to take a 20-minute bus ride from the city of Fribourg, which costs CHF 7.80. Once arrived in the village of Chevilles, it still takes a 20-minute walk to reach the centre. There are two buses per hour driving to both centres, and asylum seekers receive every week a single ticket to go to Neuchâtel or Fribourg and 3 CHF of pocket money per day, with the exception of persons from EU/EFTA countries or countries exempt from the visa requirement who do not receive any pocket money.

⁵⁴³ Swiss Centre of Expertise in Human Rights (SCHR), '*Freiheitsentzug und Freiheitsbeschränkung bei ausländischen Staatsangehörigen - Dargestellt am Beispiel der Unterbringung von Asylsuchenden in der Schweiz*', written by Jörg Künzli, Nula Frei and David Krummen, 21 August 2017.

⁵⁴⁴ Article 16 Ordinance of the FDJP.

⁵⁴⁵ NCPT, Report on federal asylum centres 2019-2020, available in German at: <https://bit.ly/3cQJj7k>, 37.

⁵⁴⁶ Information leaflet available in French (also available in German and Italian) at: <https://bit.ly/3j7qxKU>.

⁵⁴⁷ Federal Administrative Court, Decision F-1389/2019, 20 April 2020. See also News of the Swiss Refugee Council, *L'assignation à un centre spécifique ne comporte pas une privation de liberté selon le TAF*, 1 Mai 2020, available in French (and German) at: <https://bit.ly/36bO5bf>.

It is more difficult to distinguish between deprivation of liberty and restriction of liberty in the case of isolated centres, given the lack of possibilities of social contacts with people outside the centre. The location of the centre is decisive for the question of whether restrictions amount to *de facto* deprivation of liberty. Accommodation on a mountain pass, for example, from where the nearest lively town can only be reached by means of transport that asylum seekers cannot afford, is generally to be considered a deprivation of liberty in accordance with the case-law of the ECtHR.⁵⁴⁸ In individual cases, the characteristics of a specific accommodation can lead to difficulties even in the case of less remote centres. Such is the case if, for example, a person's physical condition makes it more difficult to establish social contacts: this could happen to vulnerable persons such as children, the elderly or physically handicapped persons. Not only social contacts, but also access to legal assistance can be rendered difficult by the location of the centre, leading to significant obstacles in terms of access to an effective legal remedy.

The problem arises in particular with the remote locations of some federal asylum centres, which are usually located in former military facilities outside of larger towns and villages (this is the case of Glaubenberg, for example). According to the Coalition of independent lawyers for the right of asylum, such isolation leads to restrictions on freedom of movement and thus the impossibility of a dignified daily life for those seeking asylum, who are practically denied contact with the outside world, leading to social exclusion. This problem is exacerbated by the precarious financial situation of the people concerned.⁵⁴⁹

In conclusion, even though there is no clear definition, for the purpose of this report the accommodation in some centres with remote locations could be qualified as *de facto* detention (see [Detention of Asylum Seekers](#)).

Restriction and exclusion orders

In addition to the mentioned restrictions on freedom of movement for asylum seekers in general, Article 74 FNIA allows for restriction or exclusion orders. According to this provision, the competent cantonal authority may require a person not to leave the area they were allocated to or not to enter a specific area:

- ❖ In case of threat to public security and order. This measure is intended to serve in particular to combat illegal drug trafficking;
- ❖ If he or she has a final negative decision and specific indications lead to the belief that the person concerned will not leave before the departure deadline or has failed to observe the departure deadline. This provision could also apply to asylum seekers in the Dublin procedure, as from a perspective of national law they are dismissed asylum seekers;
- ❖ If the removal has been postponed due to specific circumstances such as medical reasons. This could also apply to asylum seekers with a Dublin transfer decision.

Restriction orders can have different radius, forbidding to leave the area of a canton, a district/region, or a commune. The measure must be proportional to their aim, especially with regard to the length and rayon (restriction to a commune is usually only admitted for criminal offenders).

According to Article 74 para 1bis FNIA, the competent cantonal authority shall require a person who is accommodated in a special centre under Article 24a AsylA not to leave the area they were allocated to or not to enter a specific area.

Appeals may be lodged with a cantonal judicial authority against the ordering of these measures. The appeal has no suspensive effect.⁵⁵⁰

B. Housing

⁵⁴⁸ ECtHR, *Stanev v. Bulgaria*, Application No 36760/06, 17 January 2012, available at: <http://bit.ly/3WK5rDs>.

⁵⁴⁹ Coalition des juristes indépendant-e-s pour le droit d'asile, *Restructuration du domaine de l'asile: Bilan de la première année de mise en œuvre*. Available in French at: <https://bit.ly/3mJPg7u> and in German at: <https://bit.ly/34vbKCG>, p. 8, ch. 4.1.5.

⁵⁵⁰ Article 74(3) FNIA.

1. Types of accommodation

Indicators: Types of Accommodation

- | | |
|--|---------------|
| 1. Number of federal reception centres: | 41 |
| 2. Total number of places in the federal reception centres: ⁵⁵¹ | 6,080 |
| 3. Total number of places in private accommodation: | Not available |
| 4. Type of accommodation most frequently used in a regular procedure: | |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other | |
| 5. Type of accommodation most frequently used in an accelerated procedure: | |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other | |

The reception system is organised in two phases: during the first phase – which should not exceed 140 days – asylum applicants are accommodated in federal asylum centres; while upon allocation to a canton, their accommodation is managed at the cantonal level.

Federal asylum centres are of two sorts: each one of the six asylum regions has one centre with processing facilities where the first stages of the procedure are carried out, and one or more centres without processing facilities (so-called “departure centres”) that are mainly used for those persons whose application has been dismissed or rejected and for whom the authorities are organizing a Dublin transfer or removal.

A transfer to cantonal facilities occurs: a) when a person gets a positive decision or a temporary admission within an accelerated procedure; b) when the extended procedure is ordered; c) when a person is accommodated in a federal asylum centre for more than 140 days, even if their application has been dismissed or rejected.

Cantons are in charge of their own reception centres. Usually, asylum seekers and beneficiaries of protection will be first accommodated in collective centres, and at a second stage in shared apartments or private apartments for families. The management of reception centres at cantonal level is very often entrusted to NGOs or private companies.⁵⁵² For those rejected asylum seekers who have lost their right to social assistance, the cantons provide for emergency aid shelters (see [Forms and levels of material reception conditions](#)).

Below is an overview of the different types of centres, principally at the federal level, as cantons all have their own specificities.

⁵⁵¹ This figure includes the places in all state run facilities, including temporary ones like Hotels.

⁵⁵² See Camilla Alberti, *Privatisation: Les enjeux autour de la délégation de l’asile. Qui profite de qui?*, *Vivre Ensemble* no 167, available in French at: <https://bit.ly/2LEMjs8>.

1.1. Federal asylum centres⁵⁵³

Overview of the federal asylum centres in 2022				
Centre	Function	Region	Capacity	Occupancy at end 2022
Airport Geneva	Airport processing centre	Romandie	30	3
Airport Zurich	Airport processing centre	Zurich	60	6
Alstätten	Federal centre with processing facilities	East	340	275
Basel	Federal centre with processing facilities	Northwest	536	156
Bern	Federal centre with processing facilities	Bern	606	393
Boudry	Federal centre with processing facilities	Romandie	684	732
Chiasso/Pasture	Federal centre with processing facilities	Ticino & Central	238	155
Zurich	Federal centre with processing facilities	Zurich	536	450
Embrach	Federal centre without processing facilities	Zurich	360	308
Brugg	Federal centre without processing facilities (temporary)	Zurich	440	186
Flumenthal	Federal centre without processing facilities	Northwest	300	192
Giffers	Federal centre without processing facilities	Romandie	300	289
Vallorbe	Federal centre without processing facilities	Romandie	280	263
Kappelen	Federal centre without processing facilities	Bern	328	187
Kreuzlingen	Federal centre without processing facilities	East	320	279
Sulgen	Federal centre without processing facilities (temporary)	East	70	47
Glaubenberg	Federal centre without processing facilities (temporary)	Ticino & Central	640	279
Les Verrières	Special centre	Romandie	20	7

Source: SEM, <https://bit.ly/3vUBCFn>; data provided by the SEM, 1 May 2023.

Federal asylum centres are divided into two categories: those with processing facilities and those without. Each of the six asylum regions has one federal centre with processing facilities and at least one without.

⁵⁵³ Legal provisions related to the management of the federal asylum centres are in the Asylum Act, the Ordinance of the FDJP on the management of federal reception centres in the field of asylum and internal house rules of the registration centres. Further information is available on the website of the SEM, at: <https://bit.ly/3lxlbMj>.

Persons in need of protection should lodge their asylum application in one of the 6 federal centres with processing facilities. Following the application, the SEM can decide to allocate them to one of the other five centres. In principle, asylum seekers remain in these centres during a few weeks or months, until they are either assigned to a canton or transferred to a federal asylum centre without processing facilities (also called “departure centres”).⁵⁵⁴ The maximum length of stay in federal asylum centres – be it with or without processing facilities – is 140 days, whereby this length can be exceeded by a few days. In 2022, the average length of stay in federal asylum centres was 71 days.⁵⁵⁵

In some special cases, the SEM can allow asylum seekers to join their family members in a private accommodation. No statistics are available on the number of requests for private accommodation made by asylum seekers and no data was provided regarding private housings used in 2022.

On 25 October 2022, the SEM stated that the federal asylum centres were approaching saturation due to the increasing arrivals of asylum seekers as well as the ongoing arrival of Ukrainian nationals in search of protection.⁵⁵⁶ According to media reports, the centre of Boudry was at that time accommodating 900 people whereas it has a capacity of 700, and people were forced to sleep in common spaces or in the corridor of the centres.⁵⁵⁷ In order to increase the reception capacity, the SEM reallocated some spaces in the ordinary centres into dormitories and opened about 20 temporary federal asylum centres, increasing the capacity at federal level to over 10,000 places.⁵⁵⁸ At the same time, the SEM has taken some measures to reduce the number of residents in federal centres: it implemented some measures to accelerate asylum procedures and it exceptionally attributed some asylum seekers to the cantons suspending their asylum procedure.⁵⁵⁹

Most temporary asylum centres opened by the SEM belong to the army and consist in either military barracks or military multi-purpose or sports halls. In the latter case, some curtains have been installed to provide for smaller dorms, but the personal and family sphere cannot be adequately respected in such big spaces that were not planned as accommodation. Furthermore, in at least two of the six asylum regions, the SEM has resorted to underground civil protection shelters as temporary federal asylum centres. On 16 December 2022, the SEM communicated again that more military buildings were to be temporarily used as reception centres and that the army was going to provide for further support in the areas of logistics and transportation, but not assistance nor security. Given the acute lack of personnel, civil servants are also providing support in assistance tasks.⁵⁶⁰ At its meeting of 1 February 2023, the Federal Council adopted the corresponding report for the parliament's attention. Parliament will decide on this deployment of the army in the spring session 2023.⁵⁶¹

The running of the centres and security matters are entrusted to private companies.⁵⁶² The federal asylum centres can be described as semi-closed, as the hours when asylum seekers may leave and return are limited.⁵⁶³ For more information, see section on [Freedom of Movement](#).

Federal asylum centres with processing facilities

⁵⁵⁴ Article 24 (4) AsyIA.

⁵⁵⁵ Data provided by the SEM, 1 May 2023.

⁵⁵⁶ Although the latter do not go through a normal asylum procedure, they are also accommodated during a few days in the Federal asylum centres for their registration before being attributed to a canton.

⁵⁵⁷ RTS, Forum, 27 October 2022, available at: <https://bit.ly/3GAdLRt>.

⁵⁵⁸ SEM, *Asile : la situation reste tendue*, press release, 22 December 2022, available in French (and German and Italian) at: <https://bit.ly/40qS66k>.

⁵⁵⁹ SEM, *Les centres fédéraux pour requérants d'asile frôlent la saturation – des départs anticipés pour les cantons s'imposent*, 25 October 2022, <https://bit.ly/3vy75gt>. The early attribution during the asylum procedure stopped on 15 December 2022.

⁵⁶⁰ SEM, *L'armée met des places d'hébergement supplémentaires à la disposition du SEM*, 16 December 2022, available in French (and German and Italian) at: <https://bit.ly/3HhNGWo>.

⁵⁶¹ Federal Council, *Soutien au SEM: le Conseil fédéral adopte le message relatif au service d'appui de l'armée dans le domaine de l'asile*, press release, 1 February 2023, available in French (and German and Italian) at: <https://bit.ly/3lwQcB3>.

⁵⁶² The SEM delegates the task of managing the operation of reception and processing centres to third parties under Article 24b (1) AsyIA. Thus, the ORS Service AG (asylum regions Western Switzerland, French speaking Switzerland and Berne) and AOZ Asyl Organisation Zürich (asylum regions Eastern Switzerland, Ticino and Central Switzerland, Zurich) are responsible for running the centres. Security services at the lodges are provided by the companies Securitas AG (asylum regions French speaking Switzerland, Eastern Switzerland, Zurich, Ticino and Central Switzerland) and Protectas SA (asylum regions Western Switzerland and Zurich). Finally, the mandates of patrols operating in the vicinity of the centres have been awarded to three companies: Securitas AG (asylum regions French speaking Switzerland, Zurich) Protectas SA (asylum regions Western Switzerland and Berne) and Verkehrsüberwachung Schweiz (asylum regions Eastern Switzerland and Ticino and Central Switzerland).

⁵⁶³ Here are some information provided from the SEM for asylum seekers in the federal asylum centres in several languages: <https://bit.ly/3vqWns9>.

The centres with processing facilities are the following, one for each of six asylum regions:

- ❖ **Altstätten** (Canton of St. Gallen, Region Eastern Switzerland);
- ❖ **Basel** (Canton of Basel, Region North-Western Switzerland);
- ❖ **Boudry** (Canton of Neuchâtel, French-speaking Region);
- ❖ **Zurich** (Canton of Zurich, Zurich Region);
- ❖ **Chiasso/Pasture**⁵⁶⁴ (Canton of Ticino, Region Ticino & Central Switzerland); and
- ❖ **Berne** (Canton of Berne, Bern Region).

Federal asylum centres without processing facilities (“departure centres”)

In addition to the federal asylum centres with processing facilities, where the asylum procedures are conducted, there are other federal asylum centres without processing facilities, also called “departure centres”, where asylum applicants are usually transferred when they are subject to a Dublin or a negative decision. This can occur either before the final decision (when the main investigative measures requiring the presence of the applicant have been conducted), or after the expiry of the time limit to appeal. These centres mainly house people who have to leave Switzerland within a short period of time and therefore are not transferred to the cantonal asylum centres, unless they cannot be removed from Switzerland within the set period of 140 days.

Each asylum region has at least one departure centre. Currently the centres without processing facilities operating are located in **Kreuzlingen, Sulgen, Embrach, Glaubenberg, Giffers, Vallorbe, Kappelen, Flumenthal, Allschwil, Reinach, Embrach** and **Brugg**.⁵⁶⁵

Most of these centres are situated in remote and isolated locations, which is highly problematic both because those residing there are practically denied contact with the outside world, leading to social exclusion, and because they are prevented from finding a legal representative to appeal a negative decision, in cases where the mandated legal representation is not willing to file an appeal.⁵⁶⁶ The restriction of movement due to isolation is further exacerbated by the precarious financial situation of most asylum seekers who cannot afford public transportation.

Furthermore, part of these centres are located in former military shelters. This is the case of the centre of **Glaubenberg**, for example. Federal military buildings and installations may be used without cantonal or communal authorisation to accommodate asylum seekers for a maximum of three years provided the change in use does not require substantial structural measures and there is no significant change in the occupancy of the installation or building.⁵⁶⁷ The NCPT considers that these military installations are only suitable for short stays of up to three weeks.⁵⁶⁸ Like in the federal asylum centres with processing facilities, the regime is semi-closed.

Special centres for uncooperative asylum seekers

Special centres for uncooperative asylum seekers are foreseen by the Asylum Act under Article 24a and Article 15 OA1. The only is located in Les Verrières, Canton of **Neuchâtel**.⁵⁶⁹ According to the information

⁵⁶⁴ Those are actually two centres, both temporary, and located separately from the SEM and legal protection offices.

⁵⁶⁵ SEM website, <https://bit.ly/37GdsTJ>, updated on 22 December 2022.

⁵⁶⁶ Coalition des juristes indépendant-e-s pour le droit d’asile, *ibid.*, 11, ch. 4.2.5.

⁵⁶⁷ Article 24c AsylA.

⁵⁶⁸ NCPT, *Report 2014*, 8, para 26.

⁵⁶⁹ It opened in December 2018, but was temporarily closed on 1 September 2019 after nine months with in average two inhabitants: Conseil Federal, Asile: Fermeture temporaire du centre spécifique de la Confédération des Verrières, available in French (and German and Italian) at: <https://bit.ly/2uu87OK>. During 2020, the centre was not in function, in February 2021 the SEM has decided to reopen it due to the presence of applicants allegedly disturbing the functioning of the centres or endangering their security. SEM, Communication of 2 February 2021, available at: <https://bit.ly/3rzOwV8>. According to the NCPT report on federal asylum centres published on January 2021, between April and September 2019, only ten asylum applicants have been assigned to this centre, 19.

of the SEM of May 2023, discussion for a second special centre are ongoing (for more information and a definition of special centres, see section on [Reduction or Withdrawal of Reception Conditions](#)).

1.2. Reception centres at the cantonal level

After the maximum of 140 days spent in federal asylum centres, asylum applicants and beneficiaries of protection are allocated to one of the 26 cantons and are transferred to a cantonal reception facility. Each canton has its own accommodation system that usually includes several types of housing (collective centre, family apartment, private accommodation with host families, centre for unaccompanied children, etc.).

Many cantons organise the accommodation structure in 2 phases: the first one in collective shelters, the second in private accommodation. There are different forms of collective shelters, the most common one being former hospitals and hotels or former public institutions like schoolhouses or juvenile homes. As a result of the increase in refugees from the Ukraine, many cantons needed to create additional space in 2022. At least nine cantons are planning container settlements for this purpose or have already built some. Others started to use multipurpose halls with tents inside or are repurposing former office rooms. A few cantons called for help from the civil protection and opened up some subterranean collective shelters in civil defence facilities. These shelters are particularly problematic, since the asylum seekers need to live underground for an uncertain amount of time. Even though the cantons try to limit the duration to a few days or weeks, the actual stay can be longer according to the general housing capacity for refugees in the respective canton. Most cantons are prepared to reopen the underground facilities as an urgency measure, if their regular housing capacity is exceeded.

The moment asylum seekers are transferred to an individual accommodation depends on the canton of allocation and its accommodation capacity. In most cases, asylum seekers may change from one accommodation system to another according to the stage of their procedure (i.e. the reception of a provisory admission or refugee status, the length of their stay in Switzerland or the degree of their integration). Additionally, their personal situation may be taken into account (family, unaccompanied children, vulnerable persons, single men, etc.). Women and children are usually not placed in underground facilities.

In the beginning of the crisis in Ukraine, the private accommodation with host families became quite common. Most cantons opened up this possibility for persons with protection status S, without them having to live in collective shelters before, so they could gain some time in creating more places for refugees. Some cantons still continue with this practice and are willing to grant private accommodation with host families to people with different status, while most of the cantons returned to the regular system with two phases.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? Yes No
2. What is the average length of stay of asylum seekers in the reception centres?⁵⁷⁰ 71 days in the federal centres
3. Are unaccompanied children ever accommodated with adults in practice? Yes No

2.1. Conditions in federal reception centres

In the federal asylum centres, asylum seekers are usually housed in single-sex dorms, while families are accommodated together. Places to rest or isolate are mostly inexistent. Rooms contain at a minimum two or three beds (such rooms are usually reserved for couples and families) and up to several dozens of beds each, equipped with bunk beds. Asylum seekers are responsible for cleaning their rooms. In its 2021

⁵⁷⁰ Information provided by the SEM, 1 May 2023.

report, the National Commission for the Prevention of Torture (NCPT) considered the level of cleaning satisfactory. Asylum seekers share common showers and toilet facilities, which are poorly equipped in terms of privacy.⁵⁷¹ In some cases, men and women share the same showers that they access during different times. The same happens with male and female unaccompanied minors, for whom the NCPT recommends providing specific time slots for the use of showers. UNHCR and the Swiss Refugee Council supported a summary on the recommendations for the protection of asylum-seeking woman and girls in the aftermath of a political postulate, published in October 2021.⁵⁷²

The law stipulates that the special needs of children, families and other vulnerable persons are taken into account as far as possible in the allocation of beds,⁵⁷³ but this provision is very general. In 2021, the schooling was organized inside all federal asylum centres, while few leisure activities exist for children, especially under and above school age. The general tension that exists within the centres, due to the high psychological pressure asylum seekers are living under, the coexistence of persons with very different backgrounds, or even alcohol or drug issues that may occur in the centres, can make the situation very difficult for children, single women or other vulnerable persons.⁵⁷⁴

Asylum seekers are subject to body-search by security personnel every time they come back after going out of the centres. This applies even to children coming back from school, who are systematically searched in some centres, according to the last NCPT report.⁵⁷⁵ According to the NCPT, children and adults should be body-searched only in case of suspicion.⁵⁷⁶ Security personnel is also authorised to seize certain goods when asylum seekers enter or go out of the centre.⁵⁷⁷ The NCPT strongly criticises the practice of confiscating food items and non-alcoholic drinks, highlighting that it is unjustified and does not rely on any legal basis.⁵⁷⁸

In its latest report published in April 2023,⁵⁷⁹ the NCPT drew its conclusions on the visits carried out between 2021 and 2022 in 17 federal asylum centres.⁵⁸⁰ The Commission recognises the challenges posed by the current situation (Ukraine crisis, increasing numbers of asylum seekers, high numbers of unaccompanied minors) and calls for the need, at the political level, to ensure enough resources. Analysing the situation in the centres, it notes that there is considerable potential for improvement in many areas, such as the prevention of violence (particularly sexual violence), the application of security measures (body-searches, use of force, confiscations), the protection of persons suffering from addiction, or persons at risk of suicide or self-harm. The report focuses especially on the situation on unaccompanied minors, highlighting severe shortcomings in their support and declaring itself highly worried about the situation.⁵⁸¹ The observations concerning minors and other vulnerable groups are discussed below.

⁵⁷¹ NCPT, Report on federal asylum centres 2019-2020, available in German at: <https://bit.ly/3cQJj7k>, 27.

⁵⁷² Anne-Laurence Graf, *Eine Zusammenfassung der Empfehlungen zum Schutz von asylsuchenden Frauen und Mädchen im Anschluss an das Postulat Feri*, October 2021, available in German (and French) at: <https://bit.ly/3GMF8pd>.

⁵⁷³ Article 4(1) Ordinance of the FDJP on the management of federal reception centres in the field of asylum.

⁵⁷⁴ Alcohol and drugs are strictly prohibited within the centres under Article 4(2) Ordinance of the FDJP on the management of federal reception centres in the field of asylum. However, this does not prevent some breaches of the regulation from happening in practice.

⁵⁷⁵ NCPT, *Report on federal asylum centres 2021-2022*, available in German at <https://bit.ly/42pPPZh>, 61 (ch. 168). This constitutes a worsening of practice since 2020. In fact, according to the NCPT report on federal asylum centres 2019-2020, body-searching of children had been limited to cases of suspicion (the report is available in German at: <https://bit.ly/3cQJj7k>, 20).

⁵⁷⁶ NCPT, *Report on federal asylum centres 2021-2022*, available in German at: <https://bit.ly/42pPPZh>, 62.

⁵⁷⁷ According to Article 4 of the Ordinance of the FDJP, security personal is allowed to seize travel and identity documents, dangerous objects, assets, electronic devices that may disturb the peace, alcohol, drugs and food. Prohibited weapons and drugs are given to the police immediately.

⁵⁷⁸ NCPT, *Report on federal asylum centres 2021-2022*, available in German at <https://bit.ly/42pPPZh>, 63.

⁵⁷⁹ NCPT, *Report on federal asylum centres 2021-2022*, available in German at <https://bit.ly/42pPPZh>.

⁵⁸⁰ Among these were also 6 centres opened by SEM as “temporary centres”: Allschwil, Balerna, Brugg, Glaubenberg, Reinach, Sulgen. The other centres visited were Giffers, Vallorbe, Basel, Altstätten, Boudry, Embrach, Les Verrières, Bern, Zürich and Flumenthal.

⁵⁸¹ NCPT, press release, 24 April 2023, *Requérants d'asile mineurs non accompagnés : la CNPT est préoccupée par l'encadrement insuffisant dans les centres fédéraux*, available at : <https://bit.ly/3Lz4pGV>.

Asylum seekers are required to participate in domestic work on request of the staff. Household tasks are shared between all asylum seekers according to a work breakdown schedule. The permission to leave the centre is denied until the given tasks have been accomplished. Generally, maintenance is provided by third parties, namely for cleaning tasks (especially for toilets and showers), the cooking as well as security tasks.⁵⁸² Asylum seekers may voluntarily help to serve meals or help in the kitchen. They are not allowed to cook their own food in the federal centres (with a few exceptions regarding centres without processing facilities), but specific diets shall be respected according to internal regulation.⁵⁸³

There is a chaplaincy service in every federal centre. Protestant and catholic chaplains spiritually accompany asylum seekers. They often play an important social role, as they provide an open ear to asylum seekers' worries, and they sometimes call attention to problems in the centres. Between July 2016 and December 2018, a pilot project with Muslim chaplains was set up in the test centre in **Zurich**,⁵⁸⁴ which was evaluated as very positive.⁵⁸⁵ In January 2021, another pilot project started with Muslim chaplains in the federal asylum centres, after its prolongation⁵⁸⁶ in January 2022. Due to the positive effects shown in the evaluation study,⁵⁸⁷ the SEM is definitively introducing Muslim chaplaincy in the Federal Asylum Centres. In order to ensure the long-term financing of this service, an amendment to the Asylum Act is required.⁵⁸⁸

Occupational programmes are proposed to asylum seekers from 16 years of age on, in order to give a structure to the day and thus facilitate cohabitation.⁵⁸⁹ The occupational programmes must respond to a local or regional general interest of the town or municipality. They must not compete with the private sector. They include work in protection of nature and the environment or for social and charitable institutions. Examples are cutting trees or hedges, fixing rural pathways, cleaning public spaces. There is no right to participate in occupational programmes. In case of shortage of places in the occupational programmes, places are distributed according to the principle of rotation of the participants. An incentive allowance may be paid to the asylum seeker. This amount is very low and can therefore not be compared to a salary for a regular job. Thus, remuneration is limited to CHF 5 per hour, a maximum of CHF 30 per working day and a maximum of CHF 400 per month. Persons staying in a special centre for uncooperative asylum seekers receive the incentive allowance in the form of non-cash benefits. In 2020, some asylum seekers reported to the Swiss Refugee Council that remuneration was provided to them only at the time of transfer to another centre, meaning that they could not access the money earned in practice.

Use of physical force and violence episodes in the federal asylum centres

⁵⁸² The SEM delegates the task of managing the operation of reception and processing centres to third parties under Article 24b (1) AsylA. Thus, the ORS Service AG (asylum regions Western Switzerland, French speaking Switzerland and Berne) and AOZ Asyl Organisation Zürich (asylum regions Eastern Switzerland, Ticino and Central Switzerland, Zurich) are responsible for running the centres. Security services at the lodges are provided by the companies Securitas AG (asylum regions French speaking Switzerland, Eastern Switzerland, Zurich, Ticino and Central Switzerland) and Protectas SA (asylum regions Western Switzerland and Zurich). Finally, the mandates of patrols operating in the vicinity of the centres have been awarded to three companies: Securitas AG (asylum regions French speaking Switzerland, Zurich) Protectas SA (asylum regions Western Switzerland and Berne) and Verkehrsüberwachung Schweiz (asylum regions Eastern Switzerland and Ticino and Central Switzerland).

⁵⁸³ PLEX, Version 3.0, ch. 7.5, p. 22, available in French at: <https://bit.ly/3X10Vkv>. In 2020, the Swiss Refugee Council has received some complaints from asylum seekers with medical conditions (pregnant woman, man with diabetes) saying that their food needs were not respected.

⁵⁸⁴ SEM, *Lancement d'un projet pilote d'aumônerie musulmane dans les centres fédéraux pour requérants d'asile*, 4 July 2016, available in French (and German and Italian) at: <https://bit.ly/34s8gDW>.

⁵⁸⁵ SEM, *Aumônerie musulmane au centre pilote de Zurich: le projet pilote donne de bons résultats*, 16 February 2018, available in French (and German and Italian) at: <https://bit.ly/2GkVwSm>. The evaluation highlighted the relevance of spiritual support to asylum seekers of Muslim faith.

⁵⁸⁶ SEM, *Le SEM poursuit son service d'aumônerie musulmane dans les centres fédéraux d'asile*, press release, 31 January 2022, available in French (and German and Italian) at: <https://bit.ly/3QMnXW>.

⁵⁸⁷ The evaluation was carried out by the Swiss Centre for Islam and Society of the University of Fribourg <https://bit.ly/3XftzyR>, the study *Muslimische Seelsorge in Bundesasylzentren Evaluation des Pilotprojekts zuhänden des Staatssekretariats für Migration* is available in German at: <https://bit.ly/3XyYgPA>.

⁵⁸⁸ SEM, *L'aumônerie musulmane est introduite durablement dans les centres fédéraux d'asile*, 31 January 2023, press release available in French (and German and Italian) at: <https://bit.ly/3E9AwKH>.

⁵⁸⁹ Article 6a Ordinance of the FDJP.

During 2020, there was a number of cases in which violence escalated in the federal asylum centres. The media reported excessive use of physical force by security personnel.⁵⁹⁰ According to the information received by the NCPT, the security personnel intervened several times with physical coercion (fixation on the ground), pepper gel and the use of the "reflection room" (see above). Repeatedly, bruises and hematomas resulted from the interventions. Several criminal proceedings were initiated against security staff, with allegations of disproportionate or arbitrary violence and abuse of authority.⁵⁹¹ As noted above, the security staff is contracted from private companies.

In the Commission's assessment, there was considerable potential for improvement in the handling of conflicts, the prevention of violence and allegations of violence, namely through the introduction of a low-threshold and systematic complaint management system. The NCPT also recommended that security companies recruit experienced and competent personnel and improve their training, reinforce the role of assistance staff and introduce consultation hours for persons with addictions (on the basis of a best practice tested in Kreuzlingen). One positive measure that was already taken is that security agents wear an identification number on their uniform.

On 5 May 2021, the SEM communicated that it had mandated the former federal judge Niklaus Oberholzer with an independent investigation on such episodes of violence.⁵⁹² Parallel to this, the SEM has suspended 14 security agents working in the federal asylum centres according to the media.⁵⁹³ The report was published in November 2021. It concluded that undue coercion was used in individual cases in which criminal investigations had also been initiated. The accusation of systemic disregard for the rights of asylum seekers and of torture, however, was considered false and misleading. The report included recommendations: it urged SEM to review the education and training of security staff and the filling of key security positions by SEM personnel and not to delegate the crucial security tasks fully to a private security firm. It also recommended that SEM defines more precise rules on the application of disciplinary measures and the use of 'reflection rooms'.

In order to address these recommendations and implement them where possible, SEM has started a new project called "Prévention et Sécurité" (PreSec). Although the project has been delayed due to the management of arrivals from Ukraine, several new provisions are currently discussed and partly already implemented. In 2021, the SEM finalised a violence prevention concept for all federal asylum centres. On this basis, according to information provided by SEM, each centre has developed specific measures that are meant to prevent violence outbreaks. However, according to the NCPT, an overall awareness of violence prevention was not yet evident among the staff of most of the centres visited, including SEM managers and the staff of security companies.⁵⁹⁴ Furthermore, standard procedures on how to handle reports of alleged illicit or disproportionate violence by staff members as well as reports or suspected cases of sexual violence are still missing.⁵⁹⁵

On 1st November 2022, the SEM has launched a pilot project creating two reporting offices (*Meldestelle*) in the federal asylum centres of Basel and Zurich (project phase: 18 months). The non-profit organisation SAH (*Schweizerisches Arbeiterhilfswerk*) has been mandated to manage those reporting offices. Asylum seekers residing in these two centres as well as security and assistance employees (but not employees

⁵⁹⁰ See the Communication of 15 May 2020 of the Swiss Refuge Council on this matter, *Violence au centre fédéral pour requérants d'asile de Bâle*, available in French (and German) at: <https://bit.ly/2Z0xsvl>.

⁵⁹¹ NCPT, *Report on federal asylum centres 2019-2020*, 22-24. See also newspaper article *Violence à Chevrolles*, *Le Courrier*, 18 June 2020, available at: <https://bit.ly/3pbGQXm>.

⁵⁹² SEM, *Le SEM commande une enquête sur des allégations de violence*, press release, 5 May 2021, available in French (and German and Italian) at: <https://bit.ly/3tBUm92>.

⁵⁹³ Swissinfo, *Switzerland launches probe into suspected asylum centre violence*, 5 May 2021, available in English at: <https://bit.ly/3xWpjbz>.

⁵⁹⁴ NCPT, *Report on federal asylum centres 2021-2022*, available in German at <https://bit.ly/42pPPZh>, 38 (ch. 173); 48 (ch. 214).

⁵⁹⁵ NCPT, *Report on federal asylum centres 2021-2022*, available in German at <https://bit.ly/42pPPZh>, 48 (ch. 214); 50 (ch. 228).

of SEM nor legal representatives or volunteers) can address those offices with their complaints.⁵⁹⁶ The office will provide counselling to the reporting person and transmit the complaints – only if wished, and in anonymised form – to the SEM with their recommendations, that the SEM can decide to follow or not. Although the office is placed outside the centre, the office is subordinate to the SEM and has no power to order any measures or proceed to investigations in alleged cases of violence. As such, it is not an independent complaint mechanism such as recommended by the NCPT, the Swiss Refugee Council and Amnesty International, among others. However, it is a first step in that direction and it will allow to register the complaints and better identify future needs thanks to the final evaluation.

At its meeting on 25 January 2023, the Federal Council communicated its will to create transparent and comprehensive regulations for operating and guaranteeing the safety of asylum seekers and staff in federal asylum centres. Therefore, it opened the consultation process on an amendment to the Asylum Act.⁵⁹⁷ In doing so, it relied in particular on the recommendations of former federal judge Niklaus Oberholzer, who had investigated violence episodes in the centres and highlighted several gaps in the legal bases, in particular concerning the delegation of coercive measures to private agencies, the use of physical force, of security rooms and of disciplinary measures.⁵⁹⁸ The amended law should enter in force approximately by 2025.

The following adjustments are still being developed or examined:⁵⁹⁹

- ❖ Appointment of officers responsible for violence prevention and personal security: The SEM would like to appoint officers responsible for violence prevention and personal security in all asylum regions in the future. These SEM-employees would be responsible for the regular quality controls and continuous on-the-job training of staff hired by the security companies. If the SEM's funding application is approved, the job advertisement and recruitment will probably take place in the first half of 2023.
- ❖ Presence of the SEM also in the federal centres without a procedural function with a manager on site: The SEM is examining whether the presence of the SEM in the federal asylum centres without a procedural function should be strengthened.
- ❖ Examination of a pilot project on "more open centres with fewer security staff and more supervision": As soon as the situation permits, the SEM will examine the implementation of a pilot project on "more open centres".

Accommodation crisis in 2022⁶⁰⁰

As anticipated above, during the second half of 2022 the Swiss reception system has been significantly overwhelmed, with numbers of incoming asylum-seekers exceeding the yearly and monthly projections of the SEM. The war in Ukraine may also have played a part, even though it should be stressed that Ukrainians go through a completely different procedure than the other asylum-seekers. This situation shows that, as soon as the fluctuations go outside the norm, the system is no longer able to cope with the numbers.

The Federal Administration has tried to solve the situation with temporary measures, mainly relying on the availability of alternative accommodations within the different cantons (in some cases also underground), and reaching out to the Army for additional accommodation structures (military barracks and gyms). Between October and December, it also resorted to anticipated cantonal attributions for

⁵⁹⁶ Le Temps, *Le SEM crée un bureau des signalements pour deux centres d'asile*, Le Temps, 12 December 2022, available in French at : <https://bit.ly/3QpvXkl>.

⁵⁹⁷ SEM, *Sécurité et exploitation des centres fédéraux pour requérants d'asile : le Conseil fédéral met en consultation des modifications de la législation*, press release, 25 January 2023, available in French (and German and Italian) at: <https://bit.ly/40s5KGa>. The Swiss Refugee Council has submitted its opinion on the project of law. It is available, in French, at: <https://bit.ly/3LA00n5>. See also the press release, available at: <https://bit.ly/3HIJfFr>.

⁵⁹⁸ Following accusations by non-governmental organisations and the media, former federal judge Niklaus Oberholzer was commissioned by SEM to investigate whether violence is being systematically used in federal asylum centres. For more information see <https://bit.ly/3PWN1h3>.

⁵⁹⁹ Information provided by the SEM, 1 May 2023.

⁶⁰⁰ See also paragraph 1.1. in this chapter

approximately 3,300 asylum seekers: for these persons, the clock of the procedure would stop, and that their application would resume only once there would be enough capacity to examine their applications back in the federal centres.

While commendable on the one hand, these efforts are far from representing an optimal solution on the other, especially for those, among the asylum seekers, who are the most vulnerable. For what specifically concerns minors, for instance, the Swiss Refugee Council was informed that unaccompanied minors may be provisionally transferred to external structures as well, until places become available again in the main centres. This would notably concern SUMA, i.e. 'self-reliant' unaccompanied minors (as opposed to more vulnerable ones). The emphasis on the greater or lesser autonomy of the child should not overshadow the fact that it is still a child, and therefore a vulnerable individual, who should not be set apart from their peers, and especially from their legal representative/person of trust. The same goes for lone women, or LGBTQI+ persons, or possible VHT: if federal asylum centres are already quite problematic for them, all the more so are far-off and remote places where no overview of their needs and issues can be assured. The last NCPT report also highlighted severe shortcomings in the assistance provided to unaccompanied minors at least since February 2022,⁶⁰¹ as explained more in detail in [Special reception needs of vulnerable groups](#).

At their meeting on 26 April 2023, the Federal Council laid the foundations for coping with a rising number of asylum applications. It decided in principle to create additional accommodation places as needed. This is intended to ease the pressure on the overstretched collective structures of the Confederation and the cantons. The Federal Council has instructed the Federal Department of Justice and Police (FDJP) to draw up an overall strategy and a concept for the creation of temporary accommodation and to submit it for a decision.⁶⁰²

2.2. Conditions in cantonal-level facilities

As explained under the section on [Types of Accommodation](#), reception conditions differ largely from one canton to another. The Swiss Refugee Council does not follow the practice in each of the 26 cantons and can therefore only provide general information.

Most asylum seekers stay in collective centres, at least at first arrival in the canton. Generally speaking, asylum seekers benefit from less restrictive measures in the cantonal centres compared to the federal centres, as they mostly can go out at their convenience, or cook for themselves for instance. Also they might have access to limited possibilities of daily structure like occupation programmes or language courses. Asylum seekers are however frequently confronted with the remoteness of reception centres, which impedes them to meet with family members, acquaintances or even consult a legal representative if they do not have financial resources. The capacity of the centres themselves is widely varying and so are the living conditions. Some general problems which can be observed in many places are the cleanliness of the centres, the missing privacy in dormitories and the noise which may prevent people from concentrating on education programmes.

Individual housing and private accommodation with host families provide more comfortable housing conditions. Cantonal authorities strive to house families in individual accommodations, even though this is not always possible. Additionally, the people are usually not allowed to choose their place of living and apartment. The authorities provide them apartments which are rented on the general housing market. This can be a reason for the apartments not to be in best shape, since the financing is usually limited by cantonal or communal regulations of social money for asylum seekers, which is supposed to be lower than the social money for Swiss people (exception: people with refugee status). Single men and women often have to share flats with other asylum seekers. They usually cannot choose who they want to live with as long as they are not financially independent and can find their own apartment.

⁶⁰¹ NCPT, *Report on federal asylum centres 2021-2022*, available in German at <https://bit.ly/42pPPZh>, 8 (ch. 10).

⁶⁰² Federal Council, press release 26 April 2023, available in French (and German and Italian) at: <https://bit.ly/3AONxqD>.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers? Yes No
❖ If yes, when do asylum seekers have access the labour market?
2. Does the law allow access to employment only following a labour market test? Yes No
3. Does the law only allow asylum seekers to work in specific sectors? Yes No
❖ If yes, specify which sectors:
4. Does the law limit asylum seekers' employment to a maximum working time? Yes No
❖ If yes, specify the number of days per year
5. Are there restrictions to accessing employment in practice? Yes No

Asylum seekers staying in a federal asylum centre are not allowed to engage in gainful employment.⁶⁰³ Asylum seekers who are entitled to pursue gainful employment in accordance with the immigration provisions (who are mainly persons already living in Switzerland with a residence permit and who submit a subsequent asylum application) or who participate in charitable occupational programmes, however, are not subject to the ban on employment.⁶⁰⁴ After allocation to a canton, asylum applicants can request permission to work but they are subject to the precedence of domestic employees as regulated by the FNIA.⁶⁰⁵ According to statistics published by the SEM, 3% of asylum seekers between 18 and 65 years old are active on the labour market.⁶⁰⁶

2. Access to education

Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children? Yes No
2. Are children able to access education in practice?⁶⁰⁷ Yes No

2.1. Compulsory education

All children under 16 must attend school according to the Federal Constitution.

For the first stage of reception, schooling is provided within the federal asylum centres as provided by Article 80(4) AsylA. As education is a matter of cantonal competence, the federal asylum centres in each region should determine with the competent cantonal authority the modalities for schooling. Thus, there are significant differences in the location, maximum age of admission, number of hours of classes per week and their content between the different centres. Schooling mostly takes place inside the federal centres in school rooms provided by the Confederation. In the centres visited by the NCPT in 2019 and 2020, classes were taking place at least three days and up to five days per week and were provided by teachers by training. In a few centres, there was ambiguity regarding whether children between 15 and 16 could attend classes and the lack of occupation programs for this age was reported.⁶⁰⁸ These issues seem to be unresolved as of 2022.⁶⁰⁹ However, there have also been a positive development: The SEM has offered the cantonal authorities financial support to integrate children between of ages 16 and 17 into

⁶⁰³ Article 43(1) AsylA, as amended on 25 September 2018, BBI 2015 7181 and AS 2018 2855.

⁶⁰⁴ Article 43(4) AsylA, as amended on 25 September 2018, BBI 2015 7181 and AS 2018 2855.

⁶⁰⁵ At Article 21(1), providing that foreign nationals may be permitted to work only if it is proven that no suitable domestic employees or citizens of states with which an agreement on the free movement of workers has been concluded can be found for the job.

⁶⁰⁶ SEM, asylum statistics (6-21), available at: <https://bit.ly/44rdaeN>.

⁶⁰⁷ Access is very limited in the federal reception and processing centres.

⁶⁰⁸ NCPT, Report on federal asylum centres 2019-2020, available in German at: <https://bit.ly/3cQJj7k>, 36.

⁶⁰⁹ NCPT, Report on federal asylum centres 2021-2022, available in German at: <https://bit.ly/3MuwnoV>, 25 ff.

the schools at the federal centres.⁶¹⁰ Unfortunately as of publication not all of the cantons home to federal centres have accepted this additional funding.

In 2020, Save the Children developed recreational material for children residing in federal or cantonal asylum centres with different kinds of activities and tasks that can easily be done also during quarantine or restricted possibilities for social contact.⁶¹¹

After allocation to a canton, the organisation of schooling varies from one canton to another, as the school systems can differ in significant ways between cantons. In fact, the schooling of children is under cantonal competence. In some cantons, children attend special classes for asylum seekers at their arrival (for example **Solothurn**), while others directly join the usual education system, mostly without knowing the language well (**Basel-City**). Some cantons organise special language classes for newly arrived asylum seekers (French, German or Italian according to the canton), until the children are able to join public school (**Berne, Zug**). In the canton of **Grisons** (GR), temporarily admitted children are – due to the alleged provisional nature of this status – educated in special classes together with asylum seekers.

The schooling of young asylum seekers may raise some difficulties for local schools and teachers, since some of the children stay for a short and undefined period of time. Educational background and language knowledge may also be very variable from one child to another. Such issues are usually sorted out at the municipal level and may therefore be influenced by political or even personal sensitivities on the general issue of migration. Specific problems may also arise for children whose parents' asylum application has been rejected or dismissed but who refuse to leave the country. Children have the right to continue to attend class as long as they are present in Switzerland. However, in some cantons children in emergency assistance only have the right to a special class with other children in emergency assistance. Other cantons leave the children in emergency assistance and their families in the regular structures, so that no change of school is necessary and the best interests of the child can be taken into account.

Furthermore, access to primary education can be hindered by the issue of age determination. Children who are considered to be over 16 have in principle no access to compulsory education.

2.2. Apprenticeship and studies

Lack of access to further education, in the form of an apprenticeship or studies, is an important problem in the integration process of asylum applicants over 16. Although the legislation allows asylum seekers to enter education programmes, many practical and administrative impediments deter potential employers to hire asylum seekers whose procedure has not been concluded yet. As asylum procedures may last for years (although the average length has significantly decreased with the asylum reform), it may happen that young persons stay excluded from the higher education system during one of the most important periods of their life. In addition to the great difficulties that young asylum seekers face in finding an apprenticeship or to be accepted in a higher school,⁶¹² they can also be confronted with the problem of financing their studies as they are excluded from the public scholarship programmes. Financing of post-compulsory education for asylum seekers is therefore highly dependent on the goodwill of cantonal and municipal authorities.

Some cantons adopted specific measures to bridge the educational gap that asylum seekers between 16 and 18 face. Such non-compulsory measures are highly dependent on the communal and cantonal

⁶¹⁰ Information provided by the Project "Access to education for young migrants regardless of their legal status" at the Swiss Observatory for on asylum and foreigner law (SBAA) on the basis of an e-mail received by the SEM on the 14 February 2023.

⁶¹¹ Available to download in English (as well as German, French and Italian) at: <https://bit.ly/3JMBGN9>. Save the Children has also created a website for asylum seeking parents with much useful information and material, in many languages available at: <https://bit.ly/3xOsx0F>.

⁶¹² The apprenticeship is the most common form of post-compulsory education in Switzerland. The apprentice learns a profession over 3 to 4 years within a company, while attending theoretical classes 2 days a week. First condition to access the apprenticeship is to get an apprenticeship contract with a company, which proves to be a difficult task even for young Swiss nationals.

authorities, as well as from NGOs like Caritas, which has set up some specialised programmes for young migrants in some cantons.

Pursuing of apprenticeships for rejected asylum seekers is currently problematic, since young asylum seekers are often obliged to interrupt their training after a negative decision. In December 2020, the National Council accepted a political motion to solve this problem and allow these people to finish their apprenticeship before the removal decision is enforced.⁶¹³

D. Health care

Indicators: Health Care			
1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
2. Do asylum seekers have adequate access to health care in practice?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No

According to national law, access to health care must be guaranteed for asylum seekers during the entire procedure and even after dismissal or rejection of the application under the regime of emergency aid. Like most public allowances, health care falls within federal competence during the period spent in the reception and processing centre, while it becomes a cantonal one after the cantonal assignation. During the stay in a federal centre, asylum seekers should have access to all necessary medical basic care and dental emergency care.⁶¹⁴ Medical care within federal centres is delegated to the company or organisation in charge of general logistics and management of the centres (see section on [Types of Accommodation](#)).

The national law provides for a generalised affiliation of all asylum seekers to a health insurance, according to the Federal Act of 18 March 1994 on Health Insurance.⁶¹⁵ This means that every asylum seeker has health insurance. The Asylum Act provides specific dispositions that allow cantons to limit the choice of insurers and service providers for asylum seekers. Psychological or psychiatric treatment is covered by health insurance. Health care costs are included in the social assistance and are therefore under cantonal competence from the moment of allocation to the canton. Since 1 August 2011, rejected and dismissed asylum seekers with a right to emergency aid are also affiliated to a health insurance.⁶¹⁶

According to the health concept implemented by SEM,⁶¹⁷ all federal asylum centres benefit from a health personnel service, composed mainly of nurses and administrative staff, run by private management companies mandated by the Confederation. The medical service is the first point of contact for asylum-seekers regarding the various health problems they may encounter. Upon arrival in the centre, asylum seekers must submit to a compulsory medical briefing within 3 days of arrival at the centre. Carried out by means of a computer programme available in the main languages spoken by asylum seekers,⁶¹⁸ the main objective of this information session is the detection, prevention and treatment of transmissible and infectious diseases. The health concept in federal structures focuses mainly on acute and urgent health problems. At the request of an asylum seeker or if the medical staff deems it necessary, an initial medical consultation within the centre may be scheduled in order to determine whether the asylum seeker should be redirected to a doctor or a specialist but also to make an initial assessment of their state of health. This

⁶¹³ On this topic, see the news on website of the Swiss Refugee Council, *Les apprentis déboutés en voie de poursuivre leur formation*, 17 December 2020, available in French (and German) at: <https://bit.ly/36ZQ2YC>.

⁶¹⁴ Article 8 Ordinance of the FDJP on the management of federal reception centres in the field of asylum.

⁶¹⁵ Federal Act on Health Insurance, Loi fédérale du 18 mars 1994 sur l'assurance-maladie (LAMal), RS 832.10.

⁶¹⁶ Article 92d Ordinance on Health Insurance of 28 June 1995, RS 832.102, in connection with Article 82a AsylA and Article 105a Federal Act on Health Insurance.

⁶¹⁷ OFSP/SEM, *Soins médicaux pour les requérants d'asile dans les centres de la Confédération et les centres d'hébergements collectifs cantonaux*, 30 October 2017, available in French (and German and Italian) at: <https://bit.ly/2HBGqX4>.

⁶¹⁸ Available at: <https://bit.ly/3xOyxqc>.

"triage" or gatekeeping process is carried out not only for this first optional consultation but also during the entire stay of the asylum seekers in the federal structures.

Medical care and the establishment of medical facts in the examination of asylum applications appear to be one of the main issues induced by the acceleration of procedures (see:

Use of medical reports). The identification of vulnerabilities, including psychological problems and psychiatric diseases, remains a significant challenge. A psychological screening at arrival in the centre could be a useful measure and also a tool to prevent suicides. According to the NCPT, within the accelerated procedure, access to psychiatric care is limited to the most acute situations, however an early identification of psychiatric and trauma-related problems and orientation towards the competent services already during the stay in federal asylum centres is recommended.⁶¹⁹ The NCPT also reports that a translation service per phone is available to the medical staff, who however make too little use of it.⁶²⁰

The organisation of health support in the cantonal reception centres is under cantonal competence. Similar obstacles as in the federal centres may occur regarding the triage by the staff of the centre, even though some cantons do provide for medical staff within the reception centres.

COVID-19: Asylum seekers are entitled to vaccination and testing in the same way as Swiss citizens. To facilitate return and Dublin procedures, the parliament agreed⁶²¹ to allow forced COVID-19 testing in September 2021, which was criticised by the Swiss Refugee Council.⁶²² The Federal Council suggested to prolong this provision until June 2024.⁶²³

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?
 Yes No

1. Reception in federal asylum centres

As discussed in the chapter on

⁶¹⁹ NCPT, Report on federal asylum centres 2019-2020, available in German at: <https://bit.ly/3cQJj7k>, p. 32.

⁶²⁰ NCPT, Report on federal asylum centres 2019-2020, available in German at: <https://bit.ly/3cQJj7k>, ch. 139, 33.

⁶²¹ See <https://bit.ly/3GpOLOy> (in German).

⁶²² Swiss Refugee Council, *Le Parlement restreint encore les droits fondamentaux des personnes en quête de protection*, 15 September 2021, available in French (and German) at: <https://bit.ly/37oRrLG>.

⁶²³ Federal Council, *Le Conseil fédéral souhaite prolonger la réglementation relative aux tests COVID-19 lors des renvois*, press release, 3 June 2022, available in French (and German and Italian): <https://bit.ly/3TP5DQI>.

Guarantees for vulnerable groups, national law does not define the categories of persons that are considered vulnerable.

In general, all but very complex asylum cases will be assessed and decided (including the appeal) within 140 days in the so-called accelerated procedure. During this time, all asylum seekers (including vulnerable ones) are accommodated in a federal asylum centre with processing facilities or sometimes in a federal asylum centre without processing facilities.⁶²⁴ Separate housing facilities exclusively reserved for vulnerable asylum seekers are not provided in the accelerated procedure. However, separate buildings, wings, floors or rooms for families, women, minors or other vulnerable persons do exist – albeit to different extents - within the federal asylum centres. Special solutions (usually foster care) are found for unaccompanied minors under the age of 12.

The Ordinance of the FDJP on the management of federal reception centres in the field of asylum and accommodation at airports provides that asylum seekers are to be accommodated in single-sex dormitories, and that families are accommodated in the same dormitory. Furthermore, families should also be accommodated in premises “which allow a common life and which take into account, as much as possible, the need to have a private sphere”. As far as vulnerable groups are concerned, the Ordinance simply states that the specific needs of vulnerable persons, including unaccompanied minors, will be taken into account during their accommodation and supervision, and that unaccompanied minors will be accommodated away from adults.

Four years after the entry into force of the restructured procedure, there still seem to be wide margins for improvement. For instance, no special accommodation is granted to highly traumatised people, and their access to healthcare and health assistance is limited in practice through different factors (see the chapter on

⁶²⁴ See the SEM website for further details, available in English (as well as German, French and Italian) at: <https://bit.ly/2VXusQ4>.

Use of medical reports). When it comes to LGBTQI* and female asylum seekers, the solutions envisaged do not always fully account for the great importance of ensuring protected spaces (not only dormitories), separate from male applicants. This specific situation of women and girls was addressed in a political intervention at the Swiss Parliament, further to which a broad investigation was launched to verify whether the accommodation conditions for women inside the federal centres were compliant with the international standards, and especially with the Istanbul Convention. In October 2019 the Government published a report,⁶²⁵ according to which there is room for improvement in different areas, such as training and awareness raising for staff, information and support for asylum seekers and the identification of victims of sexual violence. Guidelines were published in November 2021 detailing how the administration intends to implement the results of these reports.⁶²⁶

In its report published in November 2022, GREVIO regretted the lack of a gender-sensitive accommodation policy for all Swiss reception facilities “to identify and protect women victims of gender-based violence”.⁶²⁷

However, as discussed above, accommodation for unaccompanied minors has been quite critical in 2022 given the overall strain placed on the reception and accommodation system especially in the second half of 2022. Not only are minors sometimes moved to remote locations away from the federal asylum centres but, due to lack of resources, centres are in dire need of social workers and educators to work with them during the time they are in the centres. Also, contact with the person of trust (legal representation) is more challenging in practice when the minors are placed in different locations. These circumstances pose the risk of further alienation, discomfort, and isolation for the minors, which may in turn enhance the risk of them leaving the centres unannounced and unnoticed. The Swiss Refugee Council and other NGO follow up closely on the developments, in exchange with the authorities and legal protection actors.

These problems were confirmed by NCPT in a very recent report published in April 2023. Drawing conclusions on the visits conducted in 17 federal asylum centres between 2021 and 2022, the Commission expressed high concern for the situation of unaccompanied minors, who are not able to get any personalised support at least since February 2022. Indeed, the socio-educational workers have found themselves managing 70 to 100 minors at a time, together with some unspecialised staff members. The NCPT clearly states that the treatment of minors is in violation of the Convention on the Rights of the Child (CRC) because the best interests of the children are not enough considered and their rights to protection, rest, leisure, play and recreational activities are not guaranteed. The situation of girls is of particular concern: given their small number, they are often accommodated with adults and left to themselves, receiving no support from socio-educational staff. According to the NCPT, the current system of support for unaccompanied minor asylum seekers must be reviewed and adapted so that professional and continuous assistance of all children is guaranteed even in the event of a large influx.⁶²⁸ The report also points at the transfer of minors in adults' accommodation after an age assessment concluding for the adult age, defining this practice as illicit before a decision on the age of the applicant is entered in force.⁶²⁹

Concerning other vulnerable groups, the NCPT has regretted the provisory suppression, in several centres, of rooms accessible only for women in order to make space for more dorms; as well as the

⁶²⁵ Swiss Confederation, *Rapport sur la situation des femmes et des filles relevant du domaine de l'asile*, October 2019, available in French (and German and Italian) at: <https://bit.ly/2w01y6Z>. See also: Anne-Laurence Graf, *Eine Zusammenfassung der Empfehlungen zum Schutz von asylsuchenden Frauen und Mädchen im Anschluss an das Postulat Feri*, October 2021, available in German (and French) at: <https://bit.ly/3GMF8pd>.

⁶²⁶ SEM, *Situation von Frauen und Mädchen in den Bundesasylzentren: Bericht zur Umsetzung der Massnahmen in Erfüllung des Postulates 16.3407 Feri vom 9. Juni 2016*, 17 November 2021, available in German (and French) at: <https://bit.ly/3GQDI2l>.

⁶²⁷ GREVIO, *Baseline Evaluation Report – Switzerland*, November 2022, para 275. The report is available in English here: <https://bit.ly/3HzBkun>.

⁶²⁸ NCPT, *Report on federal asylum centres 2021-2022*, available in German at <https://bit.ly/42pPPZh>, 19 and ff.

⁶²⁹ NCPT, *Report on federal asylum centres 2021-2022*, available in German at <https://bit.ly/42pPPZh>, 31 (ch. 131).

accommodation of several families in the same room. The Commission is very critical about the treatment of persons with disabilities as well, as in several centres the mobility was strongly reduced for people on a wheel chair.⁶³⁰

2. Reception in cantonal centres

Asylum seekers, including vulnerable ones and unaccompanied minors, are transferred to a canton if their asylum application has been granted, if they have been given a temporary permit or if their asylum procedure is still pending, but the case is complex and needs more time (extended procedure). Minors below 12 are also assigned to cantonal accommodation. In all these cases, asylum seekers are thus assigned to reception facilities, for whose maintenance and regulation the assigned canton will be responsible. Reception conditions in the cantons vary.

While the SEM used to assign **unaccompanied children** to cantons in which specific structures were set up, it now includes all cantons in the reception of unaccompanied minors.⁶³¹ Due to the increase in the number of unaccompanied minors, several cantons increased their reception capacities.⁶³²

Several organisations provide assistance to **traumatised asylum seekers**. The Outpatient Clinic for victims of torture and war (*Service ambulatoire pour victimes de la torture et de la guerre*) in **Bern** offers a wide range of therapies that combine social work and different treatments for persons traumatised by extreme violence.⁶³³ Similar services are available in **Geneva, Zurich, St. Gallen** and the Canton of **Vaud**.⁶³⁴ However, their capacities are insufficient compared to the needs. According to national law,⁶³⁵ the SEM may financially support the setup of facilities for the treatment of traumatised asylum seekers, in particular teaching and research in the field of specialised supervision of those asylum seekers.

In a report published in 2016 and subsequently updated in 2018 by Asile LGBT Genève, it was highlighted that the reception and accommodation conditions were particularly worrisome for LGBTQI+ asylum seekers.⁶³⁶ This has been confirmed by another report, again concerning LGBTQI+ asylum seekers, published in November 2022 by the Observatory for Asylum and Foreigners Law in the french-speaking Switzerland.⁶³⁷

In its report published in November 2022, GREVIO regretted that “it is difficult to gain an up-to-date picture of the situation in all cantons” as well as the “wide disparities in accommodation conditions and in strategies to protect women from violence”. According to the report, the main sour points remain the “major shortcomings in training on gender-based violence for staff working in collective accommodation centres, and a lack of practical tools to help detect cases of violence.”⁶³⁸

Shelters offering special protection to victims of trafficking as well as victims of domestic violence are missing in most areas or there are significant obstacles for asylum seekers in accessing, partly due to financing issues between federal and cantonal authorities.

⁶³⁰ NCPT, *Report on federal asylum centres 2021-2022*, available in German at <https://bit.ly/42pPPZh>, 34-36.

⁶³¹ Konferenz der kantonalen Sozialdirektorinnen und Sozialdirektoren (SODK), *Empfehlungen der SODK zu unbegleiteten minderjährigen Kindern und Jugendlichen aus dem Asylbereich*, 20 May 2016, available in German at: <https://bit.ly/339WGwE>.

⁶³² For a global and regularly updated view of the reception facilities for unaccompanied children in the cantons, see: Alliance for the Rights of Migrant Children, *Cartographie cantonale des structures de prise en charge pour MNA*, available in French (and German) at: <http://bit.ly/2Fh73hA>.

⁶³³ Swiss Red Cross, *Service ambulatoire pour victimes de la torture et de la guerre*, available in French (and German) at: <https://bit.ly/3pZphgX>.

⁶³⁴ For contacts and more information, see the website Support for Torture Victims, available at: <https://bit.ly/3n3Sxl0>.

⁶³⁵ Article 44 AO2.

⁶³⁶ Asile LGBT Genève, *Recherche-action sur l'accueil des réfugié.e.s LGBTI à Genève*, January 2019, available (in French) at: <https://bit.ly/32g6ArR>.

⁶³⁷ ODAE, *Asile LGBTQI+ - La situation des personnes LGBTQI+ dans le domaine de l'asile*, 15 November 2022, available in French here: <https://bit.ly/3vpCFwJ>.

⁶³⁸ GREVIO, *Baseline Evaluation Report – Switzerland*, November 2022, para 276. The report is available in English at: <https://bit.ly/3HzBkun>.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

All asylum seekers are provided with information on the asylum procedure but also on reception, accommodation, health insurance, allowances etc. They also watch a short film that presents the main steps of the procedure and the intervening actors. As they also have the opportunity to ask questions to the counselling persons, it can be stated that they are better informed and have a better understanding of the asylum process than under the old procedure.

The asylum procedure, as well as the rights and obligations of foreigners according to their status is outlined on the Swiss Refugee Council website, in German and in French, partially also in English.⁶³⁹ The procedure is also explained on the website of the SEM, with videos.⁶⁴⁰

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
- Yes With limitations No

Reception centres are only accessible for asylum seekers. They are in principle not open to the public.⁶⁴¹

Family members and other visitors

In the federal centres, asylum seekers may receive visitors with the agreement of the staff, as long as the visitor can prove the existence of links with the asylum applicant. Visits are normally allowed every day from 2:00pm to 8:00pm, only in rooms provided for this purpose. The SEM can change the visit schedule for organisational reasons. Visitors have to check in with the reception desk on arrival and departure and identify themselves. They are subjected to the same security rules as asylum seekers. The staff in charge of security is therefore empowered to search them and seize dangerous objects and alcoholic beverages for the duration of their visit.⁶⁴² According to the most recent report of the NCPT, not all federal asylum centres have actually arranged a visitors' room.⁶⁴³

Federal reception centres are equipped with public telephones, as well as internet.⁶⁴⁴ Asylum seekers are allowed to keep their mobile phones but there are some special rules regarding the use of mobile phones, for example not to use it in the dorms. Swiss legislation does not allow asylum seekers to sign a cell phone contract in their own name, unless they have a residence permit in Switzerland. Telephone cards for the public telephones must be bought by asylum seekers from their own limited budget.

Legal representation

In theory, legal representatives could enter the federal asylum centre during visiting hours. This access is granted as the legal representation is foreseen by the law. However, in practice, applicants get appointments at the offices of the legal representation, which implies that access to legal representation varies depending on the geographical location of the infrastructure and transport modalities. To the best

⁶³⁹ Swiss Refugee Council, available (in English) at: <https://bit.ly/34KEc3t>.

⁶⁴⁰ SEM, available (in English) at: <https://bit.ly/2L3Skhe>.

⁶⁴¹ Article 3 Ordinance of the FDJP.

⁶⁴² Article 16 Ordinance of the FDJP.

⁶⁴³ NCPT, *Report on federal asylum centres 2019-2020*, January 2021, available in German at: <https://bit.ly/3cQJj7k>, p. 37, ch. 161.

⁶⁴⁴ Article 13 Ordinance of the FDJP.

of our knowledge and with some exceptions (e.g. the federal centre in Zurich), the legal protection has no direct access to the accommodation buildings (see chapter on [Regular procedure](#)).

NGOs and civil society organisations

Pastoral workers can access the federal asylum centres during the opening hours. An agreement between the SEM and the national churches regulates cooperation in the area of church pastoral care. The pastoral care offered in the centres is aimed at all asylum seekers, irrespective of religion and culture.⁶⁴⁵ Upon request, the SEM may grant other persons, in particular representatives of NGOs, access to the federal centres.⁶⁴⁶

The Ordinance of the FDJP states that the SEM must take organisational measures to encourage exchanges between asylum seekers and civil society actors.⁶⁴⁷ The platform ZiAB provides support to groups of volunteers intervening and proposing activities in or near federal asylum centres, those groups provide for example clothing markets, sport events as well as room for games and exchange with the local community.⁶⁴⁸

G. Differential treatment of specific nationalities in reception

There is no difference in treatment in reception based on nationality. The reception standards are the same as for asylum seekers of other nationalities with the notable exception of the distribution of pocket money. Thus, nationals of **countries exempt from the visa requirement** do not receive the 3 CHF granted by the SEM as pocket money to asylum seekers housed in the federal centres.⁶⁴⁹ In 2020, the Federal Administrative Court observed that an automatic application of this rule could lead to a violation of the constitutional principle of equality before the law in the case of a person claiming a legitimate need for protection.⁶⁵⁰

⁶⁴⁵ Handbook SEM, C1, 2.10.

⁶⁴⁶ Article 3 (3) Ordinance of the FDJP.

⁶⁴⁷ Article 7 Ordinance of the FDJP.

⁶⁴⁸ Plattform *Zivilgesellschaft in Asyl-Bundeszentren*, information available in French (and German) at: <https://bit.ly/3HD86rC>. List of volunteering groups available in French (and German) at: <https://bit.ly/3376E1R>.

⁶⁴⁹ SEM, *Strategy for processing asylum requests: Fast-tracking of unjustified applications*, March 2019, available in English (as well as German, French and Italian) at: <https://bit.ly/3qNTfDU>.

⁶⁵⁰ Federal Administrative Court, Decision F-3150/2018, 20 July 2020, para 7.6. In this case, the Court has ruled that the difference of treatment was justified.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention⁶⁵¹

1. Total number of asylum seekers detained in 2022:	2,759
2. Number of asylum seekers in detention at the end of 2022:	181
3. Number of detention centres:	Not available
4. Total capacity of detention centres:	277 places

Immigration detention in Switzerland is applied for the purpose of removal, as no general detention of asylum seekers is foreseen. The administrative detention of asylum seekers *during* the asylum procedure is rarely practiced (this is only possible in the form of Detention in preparation for departure and Temporary detention in some exceptional cases), while the other detention types are possible only *after* a removal decision has been issued. Therefore, most asylum seekers are detained after their procedure has ended with a decision of removal or transfer according to the Dublin III Regulation.

In Switzerland, the cantons are competent to enforce removals as well as to use coercive measures aiming at facilitating such enforcement. Cantonal authorities are thus responsible for ordering detention, which leads to a significant diversity of detention practices across the country.⁶⁵² Against a cantonal detention order, an appeal can be filed to the cantonal appeal instances. The Federal Supreme Court is responsible for examining appeals against decisions issued by the highest cantonal appeal instance.

The cantons are also in charge of the organisation of detention in terms of capacity and conditions, which results in a high number of facilities used for the purpose of administrative detention and a certain diversity of detention conditions. There are 277 places in detention facilities, which are used for administrative detention.⁶⁵³ Many of the cantons are actually using normal prisons or other penal detention facilities for the detention of asylum seekers (see section on [Detention conditions](#)).

1. Statistics on detention

According to data provided by SEM, in 2022 detention was ordered against asylum seekers in 2,759 cases. Temporary detention under Article 73 (which cannot exceed 3 days) concerned 406 asylum seekers (121 of whom were Dublin cases)⁶⁵⁴ The data should be read with caution for the following three reasons:

- ❖ Immigration detention in Switzerland is applied for the purpose of removal. As a consequence, the available data on pre-removal detention often concerns both asylum seekers and irregular migrants having not applied for asylum. For this report, it has been possible to obtain data on asylum seekers specifically. When the available data concerns immigration detention in general, this will be specified.
- ❖ SEM cannot order detention, only the cantons are competent for ordering detention,⁶⁵⁵ except for the detention of asylum seekers in airport transit zones. Although the cantons have a legal obligation to report all cases of administrative detention to the SEM,⁶⁵⁶ the registration of the relevant information and quality of registered information present

⁶⁵¹ Data provided by the SEM, 1 May 2023.

⁶⁵² This has been highlighted by the Parliamentary Control of Administration in the cited report. See also Christin Achermann, Anne-Laure Bertrand, Jonathan Miaz, Laura Rezzonico, *Administrative Detention of Foreign Nationals in Figures*, in a nutshell #12, January 2019, available in English at: <http://bit.ly/2wDdHik>.

⁶⁵³ Data provided by the SEM, 1 May 2023.

⁶⁵⁴ Information provided by the SEM, 1 May 2023.

⁶⁵⁵ Article 80(1) and 80 (1bis) Foreign Nationals and Integration Act (FNIA).

⁶⁵⁶ Article 15a Decree on execution of removals and expulsion of foreigners, RS 142.281.

several deficiencies as reported by a study commissioned by the Parliamentary Control of the Administration.⁶⁵⁷

- ❖ The definition of detention of asylum seekers in Swiss law is not totally clear. In particular, temporary detention (up to three days) is not always considered detention. The holding of foreign nationals in airport transit zones is also officially not considered detention. For the scope of this report, we consider both types of confinement as detention.

2. The question of *de facto* detention in Switzerland

The term *de facto* detention has not yet been used in case law. There are good legal reasons for considering the accommodation in the transit zone during the airport procedure *de facto* detention (see section on

Border procedure (border and transit zones)). The same could be said for asylum centres in isolated or remote locations, which provide for limited possibilities of access and movement outside the centres

Federal asylum centres without processing facilities (also called “departure centres”) are used for the accommodation of asylum seekers whose applications resulted in or are highly likely to result in a Dublin decision, as well as for those receiving a negative decision within the accelerated procedure. Those centres are often located in particularly isolated areas, as in the case of Glaubenberg, Giffers/Chevilles or Flumenthal. Those areas are poorly served by public transportation, which makes it difficult to receive visitors or leave the area of the centre. Another type of asylum centres are the “special centres” for “asylum seekers who pose a significant danger to public safety and order or who significantly disrupt the operation and security of federal centres”⁶⁵⁸. In April 2020, the Federal Administrative Court concluded that accommodation in a special centre did not represent deprivation of liberty. However, it clarified that the decision to assign a person to such centre must be subject to possible contestation within 30 days, despite the fact that the law did not foresee a separate remedy against such decision.⁶⁵⁹

In a legal opinion addressed to Federal Commission against Racism, it was stated that a restrictive exit regime and the remote location of centres are particularly sensitive.⁶⁶⁰ The possibilities of moving from one place to another, establishing social contacts and shaping everyday life are very limited. The Federal Supreme Court pointed out that reduced exit possibilities represent a significant encroachment on personal freedom, especially if the restrictions last longer than a few days.⁶⁶¹ This also applies to indirect interventions such as time consuming and thus deterrent control procedures at the exit.

In addition, accommodation in a federal asylum centre can involve deprivation of liberty in the form of sanctions. According to Article 25 of the Decree on the operation of federal centres and accommodation at airports, disciplinary measures include the prohibition of exit the centre for one or several days. Each federal asylum centre has a so-called “reflection room”. This is where asylum seekers whose behaviour poses a threat to other asylum seekers and the BAZ staff are temporarily placed while waiting that the police arrives. Following harsh critique on the concept and use of reflection rooms by the NCPT as well as the Oberholzer investigation report,⁶⁶² the SEM has introduced an internal directive on the use of such rooms. Since 15 January 2023, the use of reflection rooms is also regulated in the Ordinance of the FDJP on the on the management of federal reception centres in the field of asylum and accommodation at

⁶⁵⁷ Jürg Guggisberg, Aurélien Abrassart and Severin Bischof. *Administrativhaft im Asylbereich: Mandat «Quantitative Datenanalysen»*. Final report for the attention of the Parliamentary Control of the Administration, 16 October 2017.

⁶⁵⁸ Article 24a Asylum Act.

⁶⁵⁹ Federal Administrative Court, Decision F-1389/2019, 20 April 2020.

⁶⁶⁰ Kiener Regina und Medici Gabriela, *Asylsuchende im öffentlichen Raum*, Rechtsgutachten im Auftrag der Eidgenössischen Kommission gegen Rassismus EKR, February 2017.

⁶⁶¹ Federal Supreme Court, Decision BGE 128 II 156, 9 April 2002, para 2c.

⁶⁶² Following accusations by non-governmental organisations and the media, former federal judge Niklaus Oberholzer was commissioned by SEM to investigate whether violence is being systematically used in federal asylum centres. For more information see <https://bit.ly/3PWN1h3>.

airports. According to the newly introduced Article 29a, such temporary holding must be ordered by the management of the asylum centre only after having informed the police and can last a maximum of two hours, until the police reaches the centre. The holding of children under 15 years old is forbidden. It is planned to introduce a similar legal basis in the asylum law as well.

This topic is further discussed in the section on [Freedom of movement](#).

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
 - ❖ on the territory: Yes No
 - ❖ at the border: Yes No
2. Are asylum seekers detained in practice during the Dublin procedure?
 - Frequently Rarely Never
3. Are asylum seekers detained during a regular procedure in practice?
 - Frequently Rarely Never

1.1. Detention at the airport

When an asylum seeker applies for asylum at the airport of **Geneva**, the Swiss authorities must decide whether to allow their entry into Switzerland within 20 days.⁶⁶³ In Zurich, the airport procedure was modified at the beginning of the COVID-19 pandemic and people are directed to a federal asylum centre. This is still the case in January 2023. If entry into Swiss territory is allowed, the asylum seeker is assigned to a canton and is entitled to regular reception conditions. If entry is refused, the SEM should provide persons with a place of stay and appropriate accommodation until they leave the country.⁶⁶⁴ While the airport procedure is ongoing, asylum seekers are confined in the transit zone. Asylum seekers may be held at the airport or exceptionally at another location for a maximum of 60 days in total,⁶⁶⁵ if entry cannot be granted immediately.

The aim of detention at arrival is to prevent unauthorised entry. According to the Federal Supreme Court and to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), it is an uncontested deprivation of liberty, in line with the *Amuur v. France* ruling of the ECtHR.⁶⁶⁶ This type of confinement is based on the assumption that the persons have not yet entered Switzerland.⁶⁶⁷ From the moment in which entry into the country has been established, holding in transit zones is no longer permitted under this legal title. The Federal Administrative Court, however, goes further and considers it possible to carry out an arrest to prevent illegal entry even within a certain time and space *after* the border has effectively been crossed.⁶⁶⁸ Yet this brings with it a new difficult question of demarcation.

1.2. Temporary detention

So-called “temporary detention” for identification purposes (as far as the person’s personal cooperation is required) or for the purpose of issuing a decision in connection with their residence status may be

⁶⁶³ For details on the airport procedure, see section [Border Procedure](#).

⁶⁶⁴ Article 22(3) AsyIA.

⁶⁶⁵ Article 22(5) AsyIA. Other locations are not used in practice.

⁶⁶⁶ Federal Supreme Court, Decision BGE 129 I 139, 27 May 1997, para 4.4; CPT, *Rapport au conseil fédéral suisse relative à la visite effectuée en Suisse par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants du 24 septembre au 5 octobre 2007*, para 93.

⁶⁶⁷ Federal Council, Message concernant la modification de la loi sur l’asile, de la loi fédérale sur l’assurance-maladie et de la loi fédérale sur l’assurance-vieillesse et survivants du 4 septembre 2002.

⁶⁶⁸ Federal Administrative Court, Decision D-6502/2010, 16 September 2010.

ordered according to Article 73 FNIA for a maximum of 3 days. In 2022, 406 persons were temporarily detained under Article 73 FNIA . Out of this total number of persons, 249 were asylum seekers, of which 121 were Dublin cases. The average length of temporary detention under Article 73 FNIA was 1.3 day.⁶⁶⁹

1.3. Detention in preparation for departure

Detention in preparation for departure may be ordered during the asylum procedure according to **Article 75 FNIA** to facilitate the conduct of removal proceedings or criminal proceedings. It can be ordered on the following grounds, where persons:⁶⁷⁰

- ❖ refuse to disclose their identity, submit several applications for asylum using various identities or repeatedly fail to comply with a summons without sufficient reason or ignore other instructions issued by the authorities in the asylum procedure;
- ❖ leave an area allocated to them in accordance with a restriction order or enter an area they are prohibited from entering;⁶⁷¹
- ❖ enter Swiss territory despite a ban on entry and cannot be immediately removed;
- ❖ were removed and submitted an application for asylum following a legally binding revocation of their residence or permanent residence permit or a non-renewal of the permit due to violation of or representing a threat to the public security and order or due to representing a threat to internal or external security;
- ❖ submit an application for asylum after an expulsion ordered by the Federal Office for Police to protect internal or external national security;
- ❖ stay unlawfully in Switzerland and submit an application for asylum with the obvious intention of avoiding the imminent enforcement of a removal or expulsion order. Such an intention shall be suspected if it were possible and reasonable to file the asylum application earlier and if the application is submitted in close chronological relation to detention, criminal proceedings, the implementation of a penalty or the issue of a removal order;
- ❖ seriously threaten other persons or considerably endanger the life and limb of other persons and are therefore being prosecuted or have been convicted; or
- ❖ have been convicted of a felony; or
- ❖ is a risk to Switzerland's internal or external security according to findings made by fedpol or the Federal Intelligence Service.

In practice, only persons lodging an asylum application in prison or detention facilities or prior to entering Switzerland at **Geneva** or **Zurich** airports are likely to be detained during the whole procedure (yet in the latter case under another legal provision, see above). Asylum seekers are rarely detained during the asylum procedure. It mostly occurs in cases where they have committed criminal offences. According to the SEM, in 2022 detention in preparation for departure was ordered 59 times. In 45 cases it concerned asylum seekers (32 of which were Dublin cases).⁶⁷²

1.4. Detention pending deportation

Detention pending deportation according to **Article 76 FNIA** is applicable to persons who have received a negative decision as well as a dismissal without entering in the substance of the case (NEM/NEE), for example in case removal to a **Safe third country** has been ordered.

Once the SEM has issued a decision (expulsion or removal order), cantonal authorities can order a so-called detention pending deportation ("*Ausschaffungshaft*") to ensure the enforcement of the decision. This can occur also before the entry into force of the decision.⁶⁷³ A person can also be kept in detention

⁶⁶⁹ Information provided by the SEM, 1 May 2023.

⁶⁷⁰ Article 75(1) FNIA.

⁶⁷¹ Article 74 FNIA.

⁶⁷² Information provided by the SEM, 1 May 2023.

⁶⁷³ Federal Supreme Court, Decision ATF 140 II 409, para 2.3.4; 121 II 59, para 2a, 122 II 148, para 1.

if they are already in detention in preparation for departure according to Article 75 FNIA.⁶⁷⁴ In addition, according to Article 76 FNIA, detention pending deportation can be ordered if persons:

- ❖ refuse to disclose their identity, submit several applications for asylum using various identities or repeatedly fail to comply with a summons without sufficient reason or ignore other instructions issued by the authorities in the asylum procedure;
- ❖ leave an area allocated to them in accordance with a restriction order or enter an area they are prohibited from entering;⁶⁷⁵
- ❖ enter Swiss territory despite a ban on entry and cannot be immediately removed;
- ❖ stay unlawfully in Switzerland and submit an application for asylum with the obvious intention of avoiding the imminent enforcement of a removal or expulsion order. Such an intention shall be suspected if it were possible and reasonable to file the asylum application earlier and if the application is submitted in close chronological relation to detention, criminal proceedings, the implementation of a penalty or the issue of a removal order;
- ❖ seriously threaten other persons or considerably endanger the life and limb of other persons and are therefore being prosecuted or have been convicted;
- ❖ have been convicted of a felony;
- ❖ is a risk to Switzerland's internal or external security according to findings made by fedpol or the Federal Intelligence Service;
- ❖ are suspected of seeking to evade deportation, according to serious indications, in particular because they fail to comply with the obligation to cooperate with the authorities;
- ❖ based on their previous conduct, it can be concluded that they will refuse to comply with official instructions;
- ❖ are issued with a removal decision in a federal centre and enforcement of the removal is imminent.

According to case law of the Federal Supreme Court, a risk of absconding can be found to exist where the person has already disappeared once, they attempt to hinder the enforcement of removal by giving manifestly inaccurate or contradictory information, or if they make it clear, by their statements or behaviour, that they are unwilling to return to his country of origin.⁶⁷⁶ As expressly provided for in Article 76(1)(b)(3) FNIA, there must be concrete elements to this effect. The mere fact of not leaving the country within the time limit set for this purpose is not sufficient, taken individually, to admit a ground for detention.⁶⁷⁷

In practice, the assessment of the risk of absconding leaves cantonal authorities a large discretion to order this type of detention. Case law has assessed a risk of absconding in cases where a foreign national has already disappeared, hampers the removal proceedings by providing false or contradictory information, or even if he or she states unwillingness to return.⁶⁷⁸ Like for all the other types of detention, detention must be proportional and deportation must be foreseeable in order to be lawful.⁶⁷⁹

According to SEM, in 2022, there were 1,256 persons detained pending deportation (according to Article 76 FNIA, compared to 1,098 in 2021), of which 502 had gone through an asylum procedure. Detention pending deportation ended with deportation in 85% of cases (asylum and non-asylum cases mixed, whereby deportation in asylum cases is often more difficult for the authorities to enforce).⁶⁸⁰

A special provision concerning detention pending deportation exists in the FNIA for cases in which the enforcement delay is due to lack of cooperation in obtaining travel documents.⁶⁸¹ This specific type of detention, regulated under Article 77 FNIA, can be used both with regard to asylum seekers and other foreigners, after the deadline for leaving has expired, and cannot exceed 60 days. It is hardly ever used:

⁶⁷⁴ Article 76(1)(a) FNIA.

⁶⁷⁵ Article 74 FNIA.

⁶⁷⁶ Federal Supreme Court, Decisions 2C_256/2013, para 4.2; ATF 130 II 56 para 3.1; 2C_1139/2012, para 3.2.

⁶⁷⁷ Federal Supreme Court, Decision 2C_142/2013, para 4.2.

⁶⁷⁸ Federal Supreme Court, Decision ATF 140 II 1, 9 December 2013, para 5.3.

⁶⁷⁹ Article 96 FNIA, Article 15(1) of the Return Directive.

⁶⁸⁰ Information provided by the SEM, 1 May 2023.

⁶⁸¹ Article 77 FNIA.

22 cases have been reported in 2022 (of which 19 asylum seekers). This type of detention resulted in deportation in 77% of cases.⁶⁸²

1.5. Detention in the Dublin procedure

According to **Article 76a FNIA**, a person in the Dublin procedure can be detained if:⁶⁸³

- ❖ There are specific indications that the person intends to evade removal;
- ❖ Detention is proportional; and
- ❖ Less coercive alternative measures cannot be applied effectively.⁶⁸⁴

Article 76a FNIA provides a list of the specific indications that can lead to the assumption that the person intends to evade removal. These are the following:

- ❖ The person concerned disregards official orders in the asylum or removal proceedings, in particular by refusing to disclose their identity, thus failing to comply with their duty to cooperate or by repeatedly failing to comply with a summons without sufficient excuse.
- ❖ Their conduct in Switzerland or abroad leads to the conclusion that they wish to defy official orders.
- ❖ They submit two or more asylum applications under different identities.
- ❖ They leave the area that they are allocated to or enter an area from which they are excluded.
- ❖ They enter Swiss territory despite a ban on entry and cannot be removed immediately.
- ❖ They stay unlawfully in Switzerland and submits an application for asylum with the obvious intention of avoiding the imminent enforcement of removal.
- ❖ They seriously threaten other persons or considerably endangers the life and limb of other persons and is therefore being prosecuted or have been convicted.
- ❖ They have been convicted of a felony.
- ❖ They deny to the competent authority that they hold or have held a residence document and/or a visa in a Dublin State or have submitted an asylum application there.
- ❖ They are a risk to Switzerland's internal or external security according to findings made by fedpol or the Federal Intelligence Service
- ❖ If the person resists boarding a means of transport for the conduct of a Dublin transfer, or prevents the transfer in another way by his or her personal conduct.

Different aspects of these provisions are problematic, especially the manner in which the risk of absconding is defined, as well as the maximum duration of detention (see section on [Duration of detention](#)), which are not in line with Article 28 of the Dublin III Regulation. The latter was clarified by the Federal Supreme Court in a judgment of 11 March 2022 concerning an Algerian national, who was detained for more than six weeks after the order to return him to Belgium had already become legally binding in the Dublin procedure. The Court stated clearly that the detention provision in Swiss law in this regard is to be interpreted in accordance with the requirements of the Dublin III Regulation in line with the practice of the CJEU.⁶⁸⁵

As a non-EU member state, Switzerland has no possibility to access the CJEU to clarify these issues. This is problematic especially from the perspective of the individual asylum seeker, as there is no effective remedy to contest the violation of EU law by Swiss law.

The Federal Supreme Court set down important principles in a leading case decision of May 2016:⁶⁸⁶

- ❖ A person may not be detained for the sole reason that they previously applied for asylum in another Dublin State. There must be an individual examination of specific indications for a high risk of absconding;

⁶⁸² Information provided by the SEM, 1 May 2023.

⁶⁸³ Article 76a FNIA.

⁶⁸⁴ The principles of necessity (absence of a less coercive measure) and proportionality are valid for the other types of detention as well, although they are clearly stated only for detention under the Dublin procedure.

⁶⁸⁵ Federal Supreme Court, Decision 2C_610/2021, 11 March 2022, press release in German available at: <https://bit.ly/3r6sWtJ>.

⁶⁸⁶ Federal Supreme Court, Decision 2C_207/2016, 2 May 2016.

- ❖ If requested, the legality of the Dublin detention must in principle be reviewed by a judge within 96 hours from the moment of the written request of the detainee; and
- ❖ There must not be high formal requirements for the request to have the legality of the detention reviewed.

The Federal Administrative Court has also lifted detention decisions made by the SEM in Dublin cases on numerous occasions. It stated that the SEM had violated the person's right to be heard by not examining in an individual manner whether there was a high risk of absconding.⁶⁸⁷ It also stated that when examining proportionality, a restriction order on the territory of the reception centre could be an alternative to detention.⁶⁸⁸ Appeals to the Federal Administrative Court are not possible anymore since federal authorities (SEM) are not competent anymore in the ordering of detention after 1 March 2019. Appeals must be done at the cantonal level first, and only then to the Federal Supreme Court.

According to the SEM, in 2022, there were 1,000 detention orders concerning detention under the Dublin procedure (compared to 1,037 in 2021). Detention under the Dublin procedure has ended with the enforcement of transfer in 76% of cases.⁶⁸⁹

1.6. Coercive detention

Coercive detention under Article 78 FNIA can be ordered when a legally enforceable removal or expulsion order cannot be enforced due to the personal conduct of the foreigner. It is aimed at persuading the person to change their behaviour in cases where the enforcement of removal is impossible without their cooperation.⁶⁹⁰ This is highly problematic when considering Article 15(4) of the Return Directive, stating that when a reasonable prospect of removal no longer exists, detention ceases to be justified and the person concerned shall be released immediately. In a recent case in relation with the COVID-19 pandemic, the Federal Supreme Court has clarified that coercive detention is only lawful when removal is objectively possible in foreseeable future, the level of cooperation of the foreigner being irrelevant in this evaluation.⁶⁹¹

In 2022, there were 16 cases coercive detention (compared to 18 in 2021), in 0 cases coercive detention has ended with deportation.⁶⁹²

2. Alternatives to detention

Indicators: Alternatives to Detention

- Which alternatives to detention have been laid down in the law?
 - Reporting duties
 - Surrendering documents
 - Financial guarantee
 - Residence restrictions
 - Other
- Are alternatives to detention used in practice? Yes No

Except from Dublin-related detention, Swiss legislation does not explicitly establish that detention can be ordered only when less coercive measures are not sufficient. However, the examination of alternatives to detention is implied by the principle of proportionality.⁶⁹³ The FNIA provides for some measures that can be used as alternatives to detention. In particular, Article 64e provides that cantonal authorities can require the foreign national: (a) to report to an authority regularly; (b) to provide appropriate financial security; (c) to hand in travel documents. Those measures can be used with the aim of ensuring the enforcement of

⁶⁸⁷ Federal Administrative Court, Decisions D-2925/2016, 17 May 2016; E-2850/2016, 13 May 2016; D-2484/2016, 27 April 2016.

⁶⁸⁸ Federal Administrative Court, Decisions D-2484/2016, 27 April 2016 and D-1626/2016, 22 March 2016.

⁶⁸⁹ Information provided by the SEM, 1 May 2022.

⁶⁹⁰ Federal Supreme Court, Decision ATF 133 II 97, 2 April 2007, para 2.2.

⁶⁹¹ Federal Supreme Court, Decision C_408/2020, 21 July 2020.

⁶⁹² Information provided by the SEM, 1 May 2023.

⁶⁹³ See for example the Decision of the Federal Supreme Court 2C_1063/2019 of 17 January 2020, para 5.3.

removal orders and can function as alternatives to detention. Furthermore, the restriction and exclusion orders (Article 74 FNIA), prohibiting respectively to leave an allocated area or to enter a specific area, were explicitly introduced in the law as alternatives to detention.⁶⁹⁴ The implementation of alternatives to detention is not registered as such and there are no statistics available on their use. According to the SEM, there are also no statistics concerning the number of restriction and exclusion orders issued by the cantons.⁶⁹⁵

In 2015, the UN Committee against Torture stated in its recommendations that Switzerland must apply alternative measures to detention.⁶⁹⁶ Although some alternative measures exist, they are still too rarely implemented in practice. There are also wide divergences between the practices of different cantons. The National Council Control Committee has stated in a 2018 report that the significant differences among cantons in the rate of detention orders signify that the cantons apply differently the principle of proportionality, raising fundamental questions of equality of treatment.⁶⁹⁷

Regarding Dublin detention cases, the Federal Administrative Court has stated that a restriction order on the territory of the reception centre could be an alternative to detention, subject to an individual examination.⁶⁹⁸ The Federal Supreme Court has also highlighted that detention is only admissible as an *ultima ratio* measure and after a thorough examination of other less coercive measures.⁶⁹⁹

In 2022, the Federal Council has examined and rejected the possibility of introducing electronic surveillance as an alternative to detention. However, it decided to propose the introduction of another alternative consisting in the obligation to stay in a specific accommodation during a few hours every day or night.⁷⁰⁰

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?

<input type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Rarely	<input type="checkbox"/> Never
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 - ❖ If frequently or rarely, are they only detained in border/transit zones? Yes No
2. Are asylum seeking children in families detained in practice?

<input type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Rarely	<input type="checkbox"/> Never
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The law prohibits the detention of children under 15. Detention for minors between 15 and 18 is currently possible and can last a maximum of 12 months (whereas detention of adults can last up to 18 months).⁷⁰¹

⁶⁹⁴ Martin Busiger, *Ausländerrechtliche Haft: Die Haft nach Art. 75 ff. AuG*, 2015. On the topic of alternatives to detention, see also *Die ausländerrechtliche Administrativhaft – Kritik und Alternativen*, 7 October 2020 from Asylex on humanrights.ch; available in German (and French, dated 22 July 2021) at: <https://bit.ly/3d1c80K>.

⁶⁹⁵ Information provided by the SEM, 27 April 2021.

⁶⁹⁶ UN Committee Against Torture, *Observations finales concernant le septième rapport périodique de la Suisse*, Advanced unedited version, 13 August 2015, available at: <https://bit.ly/3EZn2tB>, no. 17.

⁶⁹⁷ *Détention administrative de requérants d'asile : Rapport de la Commission de gestion du Conseil national du 26 juin 2018*, p.7502. See also Christin Achermann, Anne-Laure Bertrand, Jonathan Miaz, Laura Rezzonico, *Administrative Detention of Foreign Nationals in Figures*, in a nutshell #12, January 2019, available in English at: <http://bit.ly/2wDdHik>.

⁶⁹⁸ Federal Administrative Court, Decisions D-2484/2016, 27 April 2016; D-1626/2016, 22 March 2016.

⁶⁹⁹ Federal Supreme Court, Decisions 2C_1052/2016 and 2C_1053/2016, 26 April 2017.

⁷⁰⁰ Communication of the Federal Council, 16 December 2022, <https://bit.ly/3Vswtif>.

⁷⁰¹ The Parliament had to decide on an initiative that asked to forbid detention of minors altogether, the National Council approved, but the Council of States rejected the initiative twice: See website of the Swiss Parliament, available in German at: <https://bit.ly/3ud3GE6>.

The following numbers regarding child detention were provided by the SEM from 2018 to 2022:

Detention of children: 2018-2022					
	2018	2019	2020	2021	2022
Children subject to administrative detention	8	7	4	8	5
Of which, unaccompanied children	2	2	0	1	0
Children subject to temporary detention	11	19	11	4	6
Of which, unaccompanied children	6	9	5	3	2

Source: SEM, 19 March 2021, 1 April 2022, 1 May 2023, adjusted on 27 June 2023.

According to a report published by the National Commission for the Prevention of Torture (NCPT) in 2019, two cantons (**Geneva** and **Neuchâtel**) formally prohibit the detention of minors (including those of 15 and above) in their cantonal law, while five (Basel-Land, Jura, Obwald, Nidwald, Vaud) do not order administrative detention as a matter of principle. In several other cantons, no detention of minors was registered in 2017 and 2018. On the other side, ten cantons have communicated having placed minors in administrative detention in the same period (**Aargau, Basel-Stadt, Bern, Glarus, St-Gallen, Solothurn, Uri, Valais, Zug, Zurich**). The length of detention was particularly long in **Bern, Valais, Zug** and **Zurich**. The NCPT also highlights that most minors are detained in prisons for the execution of penalties or remand prisons, which are inadequate.⁷⁰²

NGO Terre des Hommes reported in 2018 that most cantons avoid detaining whole families, however in case of non-collaboration, some cantons detain the father, while the mother and children stay in the reception centre.⁷⁰³ In some (rare) cases it can also happen that a single parent or both parents are detained, while the children are placed in foster care or a home. If a mother of a baby is detained, it can happen that the baby is placed in detention with her. Since the child is not formally detained in those cases, there are no data on this measure.⁷⁰⁴ This occurred especially in the cantons of Bern and Zurich, but Zurich stated that it had ended this practice on 1 July 2018.⁷⁰⁵ This practice is unlawful since the FNIA prohibits the detention of children under the age of 15. Furthermore, it is very problematic from the point of view of the right to family life and the best interests of the child. The Swiss Refugee Council's view is that children and families should never be detained. The position of the Federal Council goes in the same direction.⁷⁰⁶ On 28 September 2018, the Federal Council responded to recommendation No 4 of the Parliamentary Control of Administration by stating that the SEM will ask the cantons to avoid detention of children below 15 and study alternatives for the enforcement of families' removals.⁷⁰⁷ However this cannot be guaranteed since detention is within the competence of cantonal authorities.

The Federal Supreme Court ruled in favour of an Afghan family in a judgment from April 2017 regarding the detention of the parents of four children and the separation of the family. The authorities faked a transport of the five-person family from the asylum centre to an apartment, but instead brought them with packed suitcases to the airport in order to return them to Norway where they had been issued a negative asylum decision. The family refused to board the plane because they feared to be deported from Norway to Afghanistan. After they refused to enter the plane, the family was separated. The authorities of the Canton of Zug arrested the parents for three weeks and placed the children somewhere else in order to force them to leave the country. The Court recognised the human misery in which the complainants found themselves, in particular due to the lack of the possibility to make contact with each other and with their

⁷⁰² NCPT, *Rapport au DFJP et à la CCDJP relatif au contrôle des renvois en application du droit des étrangers, d'avril 2018 à mars 2019*, 24 May 2019, available at : <https://bit.ly/3KYmkIH>, 16-18.

⁷⁰³ Terre des Hommes, *État des lieux sur la détention administrative des mineur.e.s migrant.e.s en Suisse*, November 2018, 77.

⁷⁰⁴ NCPT, *Rapport au DFJP et à la CCDJP relatif au contrôle des renvois en application du droit des étrangers, d'avril 2018 à mars 2019*", 24 May 2019, available at : <https://bit.ly/3KYmkIH>, 19.

⁷⁰⁵ NCPT, *Rapport au DFJP et à la CCDJP relatif au contrôle des renvois en application du droit des étrangers, d'avril 2018 à mars 2019*, 24 May 2019, available at : <https://bit.ly/3KYmkIH>, 19.

⁷⁰⁶ Federal Council, *Détention administrative de requérants d'asile*, 26 June 2018, available in French at: <https://bit.ly/2MV0IkZ>.

⁷⁰⁷ Available in French (and German and Italian) at: <http://bit.ly/2wAQPQu>.

children during their detention and stated that the experienced treatment almost reached a threshold of Article 3 ECHR. Furthermore, the Court considered the detention of the complainant with her four-month-old baby in the Zurich airport prison, separated from her three other, older children, was not an *ultima ratio* and was thus disproportionate. Therefore, the Court found a violation of Article 8 ECHR.⁷⁰⁸ This is not an isolated case. In many cases, detention and the ordering of coercive measures are disproportionate, yet the lack of access to legal representation prevents many asylum seekers from appealing against it.

As regards the conditions of detention, Article 81(3) FNIA contains special rules, which require taking into account the specific needs of vulnerable persons, unaccompanied children and families in detention arrangements. However, it is not clear how exactly this provision is translated into practice, particularly since ordinary prisons are often used for carrying out immigration detention despite this being forbidden by law (with exceptions). In particular, minors are not always separated from adults in practice.⁷⁰⁹ The Committee on the Rights of the Child recommended that all cantons should take measures to prevent the placement of children with adults during different kinds of confinement, including administrative detention.⁷¹⁰ Terre des Hommes reports that the conditions in which the detention of minors occurs are unacceptable and put them at risk of abuse, particularly if the separation from adults is not respected.⁷¹¹

There are few facilities with places reserved for the administrative detention of women. Since the facilities only house a small number of women and the places are often empty, women can find themselves in a condition of loneliness and de facto isolation.⁷¹²

Regarding the detention of asylum seekers in airport transit zones during the airport procedure, vulnerable applicants – including unaccompanied minors – can also be held at the airport. This usually occurs during the first days after their application. When the vulnerability is manifest, for example in cases of unaccompanied minors or pregnant women, entry into the territory is usually allowed faster, for example after the summary interview.

4. Duration of detention

Indicators: Duration of Detention

- | | |
|--|------------------------------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 18 months |
| 2. In practice, how long in average are asylum seekers detained? | Not available ⁷¹³ |

4.1. Maximum duration set by law

Altogether, detention can be ordered for a maximum of 6 months and can be extended for a further period of up to 12 months where the person does not cooperate with the authorities.⁷¹⁴ Therefore the maximum period for detention under Articles 75, 76 and 78 FNIA is 18 months as foreseen in the Return Directive. When a person is released and detained again the duration is summed up, unless they have left the national territory.

For children between 15 and 18, the maximum period of detention is 6 months which may be extended by up to 6 months, thereby totalling 12 months.⁷¹⁵

⁷⁰⁸ Federal Supreme Court, Decisions 2C_1052/2016 and 2C_1053/2016, 26 April 2017.

⁷⁰⁹ Recommendation No 5. Détenition administrative de requérants d'asile : Rapport de la Commission de gestion du Conseil national du 26 juin 2018, available at : <http://bit.ly/3XZczww>.

⁷¹⁰ UN Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Switzerland*, 22 October 2021, available at: <https://bit.ly/3RaCjUQ>, 15.

⁷¹¹ Terre des Hommes, *État des lieux sur la détention administrative des mineur.e.s migrant.e.s en Suisse*, November 2018, available at: <https://bit.ly/3Hcqlpg>, 81.

⁷¹² Karin Meier, *Eine Stimme für Menschen in Ausschaffungshaft*, Reformiert, 4 March 2019, available in German at: <https://bit.ly/39TzUXs>.

⁷¹³ The average length of detention of all categories of persons in administrative detention was 30 days in 2022.

⁷¹⁴ Article 79 FNIA.

⁷¹⁵ Article 79 FNIA.

Detention under Article 76(1)(b)(5) can last a maximum of 30 days,⁷¹⁶ while detention under Article 77 cannot exceed 60 days.⁷¹⁷

For detention in the Dublin procedure, there are specific rules on duration.⁷¹⁸ The person may remain or be placed in detention from the date of the detention order for a maximum duration of:

- ❖ Seven weeks while preparing the decision on responsibility for the asylum application; this includes submitting the request to take charge to the other Dublin State, waiting for the response or tacit acceptance, and drafting and giving notice of the decision;
- ❖ Five weeks during a remonstrance procedure;
- ❖ Six weeks to ensure enforcement, from notice being given of the removal or expulsion decision or the date on which the suspensive effect of any appeal against a first instance decision on removal or expulsion ceases to apply, up to the transfer of the person concerned to the competent Dublin State.

In addition, the law foresees the possibility to detain the person if they refuse to board the means of transport being used to effect the transfer to the competent Dublin State, or if they prevent the transfer in any other way through their personal conduct. In that case, they can be detained for another 6 weeks. The period of detention may be extended with the consent of a judicial authority if the person concerned remains unprepared to modify their conduct. The maximum duration of this period of detention is three months.

Some of these provisions actually violate the Dublin III Regulation. Indeed, the maximum duration of detention under the Dublin procedure exceeds that foreseen in Article 28 of the Dublin III Regulation.

The detention served under the Dublin regime will be deduced from the total maximum detention period of 18 months.

4.2. Duration of detention in practice

In practice, the average duration varies according to the type of detention:

Average duration of detention (days) per type of detention: 2022	Overall	Only asylum cases
Temporary detention (Article 73 FNIA)	1	1
Preparatory detention (Article 75)	20	25
Detention pending deportation (Article 76)	22	34
Detention in the Dublin procedure (Article 76a)	23	22
Detention pending deportation in order to organise travel papers (Article 77)	25	22
Coercive detention (Article 78)	97	77
Detention at the airport transit zone	Not available	Not available

Source: SEM, 1 May 2023.

In addition, the use and duration of detention varies considerably among the cantons.

In 2015, the UN Committee against Torture stated in its recommendations that Switzerland must apply detention only as a measure of last resort, especially regarding unaccompanied children, and for a period

⁷¹⁶ Article 76(2) FNIA.

⁷¹⁷ Article 77(2) FNIA.

⁷¹⁸ Article 76a(3)-(5) FNIA.

as short as possible.⁷¹⁹ The report of the Parliamentary Control of Administration refers to significant differences in the ways cantonal authorities interpret the principles of celerity and proportionality, and the findings of 2015 are still relevant today.⁷²⁰

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? Yes No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? Yes No

According to Article 81(2) FNIA, “detention shall take place in detention facilities intended for the enforcement of preparatory detention, detention pending deportation and coercive detention. If this not possible in exceptional cases, in particular because of insufficient capacity, detained foreign nationals must be accommodated separately from persons in pre-trial detention or who are serving a sentence”.⁷²¹ In a judgment issued in March 2020, the Federal Supreme Court stated that detention for immigration related purposes must take place in facilities specially dedicated and conceived for this scope and that detention in a non-specialised facility – even in a separated section – is only admissible for a short time, in exceptional and well-founded cases.⁷²²

However, the administrative detention of asylum seekers and other foreigners in prisons that are also holding prisoners under the penal code – usually in separated areas – is still a very frequent solution adopted by cantons. Following this judgment, this practice should be considered unlawful.⁷²³

1.1 Specialised facilities, prisons and pre-trial facilities

In practice, asylum seekers are regularly detained in prisons or pre-trial detention facilities as there are very few detention centres used exclusively for immigration detention. To this latter category currently belong only three facilities: **Frambois** (20 places) and **Favra** (20 places) in the canton of Geneva, and the regional prison of **Moutier** in the canton of Bern (30 places). While Favra and Moutier have been strongly criticised in the past,⁷²⁴ the detention centre of Frambois has by far the most liberal detention conditions in Switzerland. Resulting from an inter-cantonal cooperation (“*Concordat*”) of three cantons

⁷¹⁹ UN Committee Against Torture CAT, *Observations finales concernant le septième rapport périodique de la Suisse*, 13 August 2015, available at: <https://bit.ly/3ZZCFIc>, para 17.

⁷²⁰ Parliamentary Control of Administration, 7547-7549.

⁷²¹ This formulation was introduced on 1 June 2019 in order to align with Article 16(1) of the Return Directive and interpretation of the CJEU and sets a clearer framework for immigration detention, which requires specialised facilities.

⁷²² Federal Supreme Court, Decision 2C_447/2019, 21 March 2020. In the case under exam, the Court ruled that Articles 81(2) FNIA had not been violated because detention was short (4 days) and motivated (facilitating transportation to the airport).

⁷²³ Jörg Künzli, Kelly Bishop, *Ausländerrechtliche Administrativhaft in der Schweiz: Menschenrechtliche Standards und ihre Umsetzung in der Schweiz*, Swiss Centre of Expertise in Human Rights, Bern, 28 May 2020, 4, available at: <https://bit.ly/3HCCjcY>.

⁷²⁴ NCPT, *Bericht an den Regierungsrat des Kantons St.Gallen betreffend den Besuch der Nationalen Kommission zur Verhütung von Folter in den Gefängnissen der Kantonspolizei St.Gallen vom 5. und 6. Oktober 2015*, 17 March 2016, 9; NCPT, *Bericht an den Regierungsrat des Kantons Bern betreffend den Besuch der Nationalen Kommission zur Verhütung von Folter im Regionalgefängnis Moutier vom 28. Juni 2019*, 1 April 2020, available at: <https://bit.ly/3DjPltn>. See also Decision 2C_765/2022, 13 October 2022 on the Regional prison of Moutier.

(Geneva, Vaud and Neuchâtel)⁷²⁵, it is the only detention centre that is not a (former) prison.⁷²⁶ A few other facilities detain exclusively foreigners in administrative detention but are situated right next to and managed together with a prison for penal use. It is the case of Bässlergut (Basel City, 40 places), Crêtelongue (Valais) and the Centre for the administrative detention of foreigners in Zurich (at Zurich-Kloten airport), the latter having a capacity of 130 places.⁷²⁷ In addition to these facilities, many ordinary prisons confine immigration detainees under the same roof as convicted or remand prisoners, mostly in separated sections, but sometimes also in cells that are not specifically foreseen for this form of detention.⁷²⁸

Since the detention of asylum seekers in Switzerland takes the form of pre-removal detention, there is no specialised facility for asylum seekers only, but asylum seekers are detained together with irregular migrants and foreign nationals without or having lost their residence permit.

Given the decentralised nature of immigration detention in Switzerland, it is difficult to provide for a list of the facilities used for this purpose. According to a 2018 report of monitoring in the area of liberty deprivation, there were 22 facilities carrying out immigration detention, including separate sections within prisons, totalling a capacity of 352 places.⁷²⁹ More recent data on the number of facilities is not available. The number of places dedicated to immigration detention is 277.

The number of 22 facilities is probably an underestimation since it only includes facilities that permanently reserve some places for immigration detention, but it can also happen that other facilities hold immigration detainees for a few days. Indeed, in the 2019 Catalogue of penitentiary establishments published by the Federal Statistical Office, 13 additional facilities are said to be used for the execution of detention under the FNIA.⁷³⁰

Following the above cited case law and critique by national and international institutions, there is currently a certain tendency to centralise immigration administrative detention in fewer facilities allowing to better comply with national and international norms. For example, in the canton of St. Gallen the old detention centres of Widnau and Bazenheid, that had been strongly criticized by the NCPT, have been closed in 2022 and a new specialised detention centre is planned in Altstätten.

1.2 Airport transit zones

The SEM should provide persons who lodged an asylum application at the airport with a “place of stay and appropriate accommodation” in case entry is temporarily denied.⁷³¹ Maximum stay in the transit zone is 60 days in total.⁷³² The centre in the transit zone of Geneva airport has a capacity of 30 places.⁷³³ For the purpose of this report, we qualify these as detention centres, although people are not formally detained and can leave the centre and remain in the airport transit zone in principle.

1.3 Reception centres in isolated areas

⁷²⁵ See the website on the inter-cantonal cooperation of the Heads of the police and justice Departments of the “Latin cantons” that also contains a description of the detention centre: La Conférence latine des Chefs des Départements de justice et police (CLDJP), available at: <https://bit.ly/2JbO8YG>. The legal basis for the detention centre and a description of the centre may be available at: <https://bit.ly/2QzOSLl>.

⁷²⁶ Jörg Künzli, Kelly Bishop, *Ausländerrechtliche Administrativhaft in der Schweiz: Menschenrechtliche Standards und ihre Umsetzung in der Schweiz*, Swiss Centre of Expertise in Human Rights, Bern, 28 May 2020, p. 4, available at: <https://bit.ly/3HCCjY>.

⁷²⁷ Canton of Zurich, ‘Centre for Administrative Detention under Immigration Law’, available at: <http://bit.ly/3RcVmxV>.

⁷²⁸ Parliamentary Control of Administration, 7552.

⁷²⁹ Swiss Competence Centre for the Execution of Criminal Penalties, *Monitorage des capacités de privation de liberté*, February 2019, available at: <https://bit.ly/3HsyqpN>.

⁷³⁰ Federal Office of Statistics, *Catalogue des établissements pénitentiaires*. Last update on January 2020, available at: <https://bit.ly/3tmayLA>. The new digital version of the Catalogue does not provide for this information.

⁷³¹ Article 22(3) AsylA. See [Border Procedure](#).

⁷³² Article 22(5) AsylA.

⁷³³ SEM, Handbook on Asylum and Return, chapter C2, 4.

As detailed in [Freedom of Movement](#) and [The question of *de facto* detention in Switzerland](#) accommodation in federal asylum centres that are located in isolated areas may be considered as constituting *de facto* detention in some cases. See also [Types of Accommodation](#).

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it limited to emergency health care? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

2.1 Conditions in specialised facilities, prisons and pre-trial facilities

Article 81(3) FNIA states that detention conditions must take into account the needs of vulnerable persons, unaccompanied children and families with children, and that detention conditions must be in line with Articles 16(3) and 17 of the Return Directive and with Article 37 of the Convention on the Rights of the Child. Federal law does not provide any more detailed preconditions for detention conditions, as detention is ordered at the cantonal level and lies within the competence of the respective cantons. However, the Federal Supreme Court has laid down some requirements for pre-removal detention: contacts with outside as well as with other detainees must be allowed; detainees should have right to unlimited visits without surveillance; detainees' rights and liberties can be restricted only to ensure the aim of detention and the proper functioning of the facility; and the detention regime must be freer than the regimes in penal forms of incarceration.⁷³⁴ In October 2022, the Federal Supreme Court has ruled that access to the Internet must be provided to detainees in order for them to be able to keep social contacts outside detention.⁷³⁵

Differences between cantons and between facilities are huge with regard to the conditions of detention, the type of facilities used, as well as the legal bases and practices of ordering and reviewing detention. Unfortunately, it is not possible to provide an overview of the practice in all the cantons here.

As a study⁷³⁶ of the Swiss Centre of Expertise in Human Rights (SKMR) has highlighted, administrative detention is carried out (with the only exception of **Frambois**) in buildings of (former) penal institutions. Due to their original or current design, they are therefore characterized by a strong prison-like character. In some cases, as mentioned above, this is done in facilities specifically for this form of detention, but often – at least to date – in separate departments of a detention facility in which criminal or pre-trial detention is also carried out. In some cases, the separation takes place only at the cell level, and in some cases such separation is even dispensed with completely, at least for short periods. The accommodation is particularly problematic in small institutions, which have only a few places for administrative detention under the FNIA. In some cases, the small number of detained persons leads to a situation similar to isolation, especially for women, which results in a disproportionate restriction of the personal freedom of the person concerned, especially when the principle of separation is observed (reason for admission or type of detention as well as gender).

This study has identified a great need for action in the area of detention conditions. Besides the need for specialised facilities, it highlighted that the detention regime is still too restrictive in many cases, with long periods of confinement, limited access to common areas and to the walking yard, insufficient leisure activities or employment opportunities, too restrictive visiting regulations, and schematic application of security measures that are proper to penal incarceration. Regarding medical care, the SKMR has noted

⁷³⁴ Federal Supreme Court, ATF 122 II 49, 2 May 1996, para 5; ATF 122 I 222 of 12 July 1996, para 2; ATF 122 II 299 of 16 August 1996.

⁷³⁵ Federal Supreme Court, Decision 2C_765/2022 of 13.10.2022, para 5.2.3.

⁷³⁶ Jörg Künzli, Kelly Bishop, *Ausländerrechtliche Administrativhaft in der Schweiz: Menschenrechtliche Standards und ihre Umsetzung in der Schweiz*, Swiss Centre of Expertise in Human Rights, Bern, 28 May 2020, 4, available at: <https://bit.ly/3HCCjcY>.

that the special needs of persons in administrative detention are hardly addressed and especially psychological care is often insufficient.⁷³⁷

In 2022, the Federal Supreme Court has judged the conditions of detention inadmissible in a number of cases concerning the Regional prison of **Bern**, the Regional prison of **Moutier**, the penitentiary of **Realta** and the prison of **St. Gallen**.⁷³⁸ A cantonal court has also considered the detention conditions in the prison of **Gmünden** (canton Appenzell Ausserrhoden) inadmissible.

The NCPT regularly visits carceral facilities used for purposes of criminal justice and/or immigration detention. Its reports are the main source of information on those confinement spaces. The NCPT also makes recommendations to the cantonal authorities and follow-up visits to check if they have been followed, however there is no legal obligation for the cantons to implement them.

Since several years the NCPT warns that the conditions for the administrative detention of foreign nationals are generally too restrictive and resemble too much those of penal incarceration. Recognising some exceptions, the NCPT notes that the vast majority of the establishments visited do not differentiate the detention regime according to the type of detention due to a lack of adequate premises and/or sufficient staff. Furthermore, foreigners in administrative detention do not benefit from enough freedom of movement within the facilities.⁷³⁹ In its various reports, the NCPT recommends the cantons provide for more freedom of movement: detention cells should be open without time limitation and stay closed only during the night. With this respect, the time spent out of the cell differs greatly from one facility to another. As a way of example, detainees in **Frambois** can freely move within the whole facility (including a fenced courtyard) from 8am to 9pm, while in **Granges**, they spend 19 to 20 hours in their cell. The NCPT also often recommends to study the possibility of free internet access and/or of using mobile phones. As mentioned above, a recent judgment of the Federal Supreme Court has established that detainees have to be granted access to the Internet.

According to NCPT, occupational programmes should be offered to detainees: this possibility is only provided in some of the facilities, for example in **Frambois**, **Bässlergut**, and the **Zurich** airport prison. In **Bässlergut**, detained persons can work in a workshop for 2,5 hours daily, and are paid 6 CHF per day. Many other facilities do not provide for occupational programs.

Concerning the detention facilities of **Frambois**, **Favra** and **Realta**, NCPT suggests disciplinary measures should be better regulated and controlled. Concerning **Favra** and **Realta**, information about rights and obligations should be more accessible to the detainees through flyers in the most used languages. Here are summarised some of the findings of NCPT in the years 2018 to 2022:⁷⁴⁰

Frambois and **Favra**: In 2017 and 2019, NCPT found that the regime in these facilities does not have the same character as criminal detention. In **Frambois**, detainees can freely move within the facility and outside in the courtyard between 8.15 am and 9 pm and can prepare their own meals in a common kitchen. In **Favra**, the Commission has judged the time of the daily walk outside (1 hour) too short. This was still not improved in 2020 during a follow-up visit. During the pandemic, **Favra** was closed and renovated. In December 2020, the NCPT has noted certain improvements like the possibility to receive calls from the exterior, but considers the conditions too restrictive and not adapted to administrative detention, and recommends closing the facility.

⁷³⁷ Jörg Künzli, Kelly Bishop, *Ausländerrechtliche Administrativhaft in der Schweiz: Menschenrechtliche Standards und ihre Umsetzung in der Schweiz*, Swiss Centre of Expertise in Human Rights, Bern, 28 May 2020, 5, available at: <https://bit.ly/3HCCjcY>, 5.

⁷³⁸ Federal Supreme Court, Decision 2C-27/2022, 9 May 2022 on the Regional prison of Bern and Moutier; Decision 2C_765/2022, 13 October 2022 on the Regional prison of Moutier; Decision 2C-662/2022 on the penitentiary of Realta; Decision 2C_781/2022 on the prison of St. Gallen.

⁷³⁹ Report of the National Commission for the Prevention of Torture on the forth Universal Periodic Review of Switzerland, 13 July 2022, available at: <https://bit.ly/3jdgq13>.

⁷⁴⁰ The reports can be found and downloaded here (search per canton or year): <https://bit.ly/3Q4s5oE>.

Bässlergut: During a follow-up visit in 2017, the NCPT saw improvements, but still suggests to take measures in order to protect the health of the detainees, e.g. protection against passive smoke or prevention of suicidal risk through psychiatric care and accommodation in adequate facilities. Although some improvement could be noted, the facility has still a strong criminal detention facility character.

Realta: NCPT expressed in 2017 its concerns in relation to cell opening hours (approx. 7 hours), the shortage of natural light in the cells, the inadequacy of the courtyard for long stays in the facility, the impossibility to have visits during weekend, the impossibility to keep one's own personal clothes and substitution with prison clothes, the shortage of occupation, the absence of a systematic medical screening upon admission.

Granges: In 2018 the NCPT expressed severe concerns because the national and international standards of detention conditions are not met in this facility. Accommodation of women, especially pregnant women, is not acceptable as there is no department for women and most of the guards are men. In a follow-up visit, the NCPT noted that although women and minors had not been detained in the previous months, most of the recommendations had not been followed and strongly criticized the material conditions and the detention regime, recommending to provide for more freedom of movement within the facility.⁷⁴¹

Regionalgefängnis Bern: In 2019, NCPT visited the prison and recommended to stop the administrative detention of migrants in that prison, as the material conditions do not allow to provide for a less restrictive detention regime. In its response, authorities of Canton Bern stated that since 2018, a new separated sector in the Regional Prison of **Moutier** had been arranged for the administrative detention of foreigners, allowing for more freedom of movement (from 9am to 6pm with the exception of lunchtime; access to the courtyard during 3 hours in the afternoon). It also stated that since September 2019, the Regional Prison of **Bern** would only be used as entry and transit facility, where stays would be limited to a maximum of four days.⁷⁴²

Regionalgefängnis Moutier: The NCPT visited the facility in June 2019. In administrative detention, the cells are open from 12 to 18 and the courtyard and common spaces are accessible from 14 to 17. Some work occupations are available but these are not sufficient for all people detained. The NCPT judged this regime as too restrictive and recommended limiting the locking of cells to night time and studying the possibility to allow the use of Internet and mobile phones. It also recommended to ensure access to psychiatric care, develop a concept to deal with suicide attempts, resort to professional interpreters during medical visits and improve detainees' access to information and house rules.⁷⁴³

Prison of Sarnen (OW): The prison is sometimes used for administrative detention, but there is no separation from (only different cells) nor different detention conditions than other detentions. After its 2019 visit, the NCPT recommended not to use this prison for immigration-related administrative detention.

Prison of Aarau: The prison was visited in 2019. The infrastructure is too similar to that of criminal detention and the NCPT has recommended to lift the obligation to wear prison uniforms.

Penitentiary of Zug: After visiting the facility in 2021, the NCPT recommends to stop using it for the administrative detention of foreign nationals.

Prison of Delémont (JU): After visiting the facility in 2021, the NCPT recommends to stop using it for the administrative detention of foreign nationals. Especially troublesome is the practice described consisting in the placement of people in individual cells without contacts with other detainees. This is meant to respect the separation of the detention regimes, given the few persons in administrative detention, but de facto it amounts to isolation.

⁷⁴¹ Canton du Valais : Conditions de détention jugées inacceptables au centre LMC de Granges, press release available in French (and German and Italian) at: <https://bit.ly/3xjLAIG>.

⁷⁴² Letter of 16 October 2019 available in German at: <http://bit.ly/2STqNAD>.

⁷⁴³ Report available in German at: <https://bit.ly/37c6w3m>.

The NCPT also highlighted that the conditions of detention of minors in general are not adequate as most of them are detained in penitentiaries or remand prisons, which do not guarantee the minimum standards with regard to children's rights. Even in facilities specific to immigration detention, the character is too carceral and the regime too strict.⁷⁴⁴

Within the framework of the evaluation of the Schengen acquis' application by Switzerland with respect to the return policy, the Council of Europe anti-torture Committee has visited in 2021 the **Centre for administrative detention at Zurich airport**, judging the material conditions good, but the detention conditions too strict, with a carceral regime and prevailing security considerations.⁷⁴⁵ According to the report, detainees could leave their cell from 8 am to 5 pm four days a week, but only during four hours on weekends and not at all on Wednesdays. Regarding disciplinary measures, the CPT met a detainee in isolation since 20 days, It recommended to limit the maximum duration of isolation to 14 days and to provide for the right to take some fresh air daily while in isolation.⁷⁴⁶

Detained asylum seekers have access to **health care** in practice. As asylum seekers are usually detained in detention centres for pre-trial detention and/or criminal detention, the health care provided is generally at an acceptable level although it is limited to primary health care.⁷⁴⁷ In some facilities there is medical personnel present, for example in the prison **Bässlergut** in Basel. In a report on the provision of medical care in custodial institutions (not focused on immigration detention), the NCPT highlighted important language barriers, which are often overcome with the help of other detainees or detention staff. This is highly problematic, and the NCPT recommended the resort to interpreters.⁷⁴⁸ In another more recent report on health care in custodial institutions, the NCPT judged access to mental health care very problematic. In addition, efforts need to be done regarding suicide prevention. And gender specific health care for women when they are detained in gender mixed institutions.⁷⁴⁹

Since June 2022, the FNIA provides for a new possibility of restraining the opportunities for detainees to have contact with specific persons or groups in cases where the person concerned is assumed to pose a specific risk to internal or external security, and even ordering solitary confinement if the restrictions have proven inadequate to counter such security risk.⁷⁵⁰

2.2 Conditions in airport transit zones

When asylum applicants are assigned a place of stay in the transit zone, this means that they are placed in a detention centre during the airport procedure. Conditions in such centres are known to be minimal. Asylum seekers may move freely within the centre and can access an area with bars and restaurants within the transit zone, at least in principle. In Geneva, they have unlimited access to a courtyard, with no green area and airplanes flying in proximity. For this reason, accommodation at the airport is considered de facto detention for the scope of this report.

The detention centre in the transit zone of **Geneva** has a capacity of 30 places and is located rather far from the terminals. It is accessible by shuttle bus only and consists of men's and a women's dormitories,

⁷⁴⁴ NCPT, *Rapport au DFJP et à la CCDJP relatif au contrôle des renvois en application du droit des étrangers, d'avril 2018 à mars 2019*, 24 May 2019, available in French at : <https://bit.ly/3juDe2q>, 18.

⁷⁴⁵ Council of the European Union, *Rapport au Conseil fédéral suisse relatif à la visite effectuée en Suisse par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 22 mars au 1er avril 2021*. Available in French at: <https://bit.ly/3HjYUtQ>, paragraphs 249-251.

⁷⁴⁶ Ibid, par. 267-268.

⁷⁴⁷ See the reports issued by the Swiss national CAT Committee, the National Commission for the Prevention of Torture (NCPT), issued during the visits to several detention centres since 2010. The reports always also contain a section on access to health care, and are available at: <https://bit.ly/3XeyTID>.

⁷⁴⁸ NCPT/NKVF, *Gesamtbericht über die schweizweite Überprüfung der Gesundheitsversorgung im Freiheitsentzug durch die Nationale Kommission zur Verhütung von Folter (2018 – 2019)*, January 2022, available (in German) at: <https://bit.ly/3Hlo4Jq>, 28.

⁷⁴⁹ NCPT, *Gesamtbericht über die schweizweite Überprüfung der Gesundheitsversorgung im Freiheitsentzug durch die Nationale Kommission zur Verhütung von Folter (2019 – 2021)*, January 2022, available (in German) at: <https://bit.ly/3Hlo4Jq>.

⁷⁵⁰ Article 81(5) and (6) FNIA.

a communal area and a playroom, and an outside walking yard with a fence.⁷⁵¹ There are also a praying room and a cafeteria. In principle, asylum seekers have access to the non-Schengen transit zone at the airport, with shops, restaurants and bars, but they need to take a shuttle bus to reach it, which means that in practice, they stay in the facility.⁷⁵² The centre is managed by the private company ORS, while security is ensured by airport staff. The SEM, IOM and the legal representation offered by Caritas have their own offices in the facility as well. There is no school for children, or any occupation program available for asylum seekers.⁷⁵³ Health staff is not permanently present. A doctor systematically conducts a first short medical screening within a few days from the arrival and can make further visits in case of necessity.

The detention centre in the transit zone of **Zurich** airport is currently (February 2023) not in use. It has a capacity of 60 places,⁷⁵⁴ and is composed of three dormitories: for men, women and families.⁷⁵⁵ Asylum seekers have access to a terrace, a praying room, and an area with shops and restaurants.⁷⁵⁶ The terrace is the only place where they can breathe fresh air and is located far from the centre; it is used by airport and air companies' personnel. The centre is not appropriate for families with children since there is no school, but families are also held there. Furthermore, no occupation programs are offered. A nurse is regularly there and people in airport procedures have access to a doctor in the airport as well.

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

❖ Lawyers:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
❖ NGOs:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
❖ UNHCR:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
❖ Family members:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No

Lawyers have access to detention centres. Family members have access during visiting hours. Access is dependent on the rules that apply in the detention centre (*Hausordnung*) and may vary significantly.⁷⁵⁷ Regarding the access of NGOs, according to the experience of Amnesty International, a personal authorisation must be obtained in advance in order to visit the facilities. Usually visitors from NGOs need to know and communicate the name of the person they want to visit. Journalists are only exceptionally granted access to detention centres. UNHCR would in theory have access to detention centres, but they do not conduct regular visits.⁷⁵⁸

The visiting hours represent a hurdle for the effective access of family members to detention centres. Many detention facilities allow visits on weekdays only. This is for example the case in the Regional Prison of Bern and the Regional Prison of Moutier according to their websites.⁷⁵⁹ This was also reported by the NCPT for the **Zurich Airport prison**, with the recommendation to cantonal authorities to examine the possibility of visiting hours also on weekends.⁷⁶⁰ The Zurich cantonal government has responded in a public statement that this was impossible due to limited resources. According to the prison website, visits are still limited to weekdays.⁷⁶¹

⁷⁵¹ Terre des Hommes, *État des lieux sur la détention administrative des mineur.e.s migrant.e.s en Suisse*, November 2018, available at: <https://bit.ly/3Hcqlpg>, 56.

⁷⁵² NCPT, *Report on federal asylum centres 2019-2020*, 17.

⁷⁵³ NCPT, *Report on federal asylum centres 2019-2020*, 35.

⁷⁵⁴ AOZ, *Asylunterkunft Transitzone Zürich-Flughafen*, available in German at: <http://bit.ly/38Q3IEF>.

⁷⁵⁵ Le Temps, *Des requérants d'asile bloqués, à Zurich, en zone de transit*, available in French at: <http://bit.ly/2vVS1h7>.

⁷⁵⁶ Le Temps, *Des requérants d'asile bloqués, à Zurich, en zone de transit*, available in French at: <http://bit.ly/2vVS1h7>.

⁷⁵⁷ The visiting rights and the concrete *modus* is also taken up by the NCPT in its reports.

⁷⁵⁸ Information provided by UNHCR, Office for Switzerland and Liechtenstein, 13 February 2023.

⁷⁵⁹ Sicherheitsdirektion, *Besucherinformationen*, available in German at: <https://bit.ly/2T1ORjP>; Direction de la sécurité, *Informations aux visiteurs*, available in French at: <https://bit.ly/3XqiXxr>.

⁷⁶⁰ NCPT, *Report to the Government of the Canton of Zurich regarding a follow-up visit of 14 April 2016 to the administrative detention section of the airport prison Zurich*, 8 November 2016, no 25, these findings are still relevant in February 2023.

⁷⁶¹ Canton of Zurich, *'Centre for Administrative Detention under Immigration Law'*, available in German at: <http://bit.ly/3RcVmxV>.

Administrative detainees have the possibility to make calls using the phones that are placed in detention. If they have no financial means, the facility shall provide for phone cards. According to a recent judgement of the Federal Supreme Court, all detention facilities must provide for the possibility to access the Internet.⁷⁶²

As regards airport **transit zones**, third parties are usually not allowed to visit. Church representatives can access the centre on presentation of their accreditation as long as they announce their arrival and departure with the staff running the holding centre in the transit zone. IOM has access to the transit zones at airports.

Persons who apply for asylum at the airport and are confined in the transit area systematically get free legal representation like all other asylum seekers (see also Section on

Border procedure (border and transit zones)). The organisation mandated for the region West Switzerland (Caritas Suisse) has access to the transit zones and have a regular presence there for the relevant steps of the procedure.

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

- | | | |
|---|---|--|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Dublin detention | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed? | 96 hours | |

Review of administrative detention (except Dublin detention, as seen below) is regulated under Article 80 FNIA. In fact, Article 80(2) FNIA provides that the legality and appropriateness of detention must be reviewed at the latest within 96 hours by a judicial authority on the basis of an oral hearing. The same occurs with decisions to extend the detention order.

According to Article 80(3) FNIA, the judicial authority may dispense with an oral hearing if deportation is anticipated within 8 days of the detention order and the person concerned has expressed their consent in writing. If ultimately deportation cannot be carried out by this deadline, an oral hearing must be scheduled at the latest 12 days after the detention order.

According to Article 80(4) FNIA, when reviewing the decision to issue, extend or revoke a detention order, the judicial authority shall also take account of the detainee's family circumstances and the conditions under which detention is enforced. In no event may a detention order in preparation for departure or detention pending deportation be issued in respect of children or young people who have not yet attained the age of 15. The Court also needs to examine if detention is proportional and if removal could not be achieved through other means.⁷⁶³

The detainee may submit a request for release from detention one month after the detention review. The judicial authority must issue a decision on the basis of an oral hearing within 8 working days. A further request for release in the case of detention in preparation for departure (Article 75 FNIA) may be submitted after one month or in the case of detention pending deportation (Article 76 FNIA) after 2 months.⁷⁶⁴

The detention order shall be revoked if: the reason for detention ceases to apply or the removal or expulsion order proves to be unenforceable for legal or practical reasons; a request for release from

⁷⁶² Federal Supreme Court, Decision 2C_765/2022, 13 October 2022.

⁷⁶³ Federal Supreme Court, Decision 2C_1063/2019 of 17 January 2020, para 5.3, with references to 2C_263/2019 of 27 June 2019, para 4.3.2 and 2C_466/2018 of 21 June 2018, para 5.2.

⁷⁶⁴ Article 80(5) FNIA.

detention is granted; or the detainee becomes subject to a custodial sentence or measure.⁷⁶⁵

Review of Dublin detention is regulated by Article 80a FNIA. It represents an exception since no automatic review is foreseen. In case of detention under a Dublin procedure, the legality and appropriateness of detention shall be revised by a judicial authority only upon request of the detainee and in a written procedure (both the request and the examination are done in writing). This review may be requested at any time. According to a ruling of the Federal Supreme Court, the review should in principle be conducted within 96 hours after the request.⁷⁶⁶ Later, a request for release can be submitted as mentioned above.

Detention under the Dublin procedure cannot be ordered by SEM, review procedures are therefore carried out at the cantonal level. Again, cantonal practice is very diverse with regard to judicial review. National legislation provides for important safeguards, but compliance with these safeguards is not guaranteed in all cantons. Each canton organises its system of judicial review, and the practice of cantonal Courts is very diverse. It is not possible to provide an overview of all cantonal practices here. The judicial review can be appealed at cantonal level and in the last instance at the Federal Supreme Court, however given the long and expensive procedure, few appeals reach the Federal Supreme Court.

The Swiss Refugee Council has observed that in cases of Dublin detention, the requirements set by Swiss law as well as Article 28 of the Dublin III Regulation were not always met, at least until the Federal Supreme Court and Federal Administrative Courts set down some ground rules (see [Grounds for Detention: Dublin Procedure](#)). The Swiss Refugee Council also suspects that detainees in the Dublin procedure are insufficiently informed that they must themselves ask in written form for a review of the detention. To help remedy this, the NGO has drafted a basic form in four languages with which to ask for a review of the Dublin detention order.⁷⁶⁷ Another challenge, however, remains the distribution of this leaflet to the relevant persons.

The SEM does not have statistics on the number of release requests filed or the number of judicial reviews requested by asylum seekers in detention under the Dublin procedure.⁷⁶⁸

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
 Yes No
2. Do asylum seekers have effective access to free legal assistance in practice?
 Yes No

Detained persons have the right to communicate with their legal representative (Article 81(1) FNIA). However, in cases where the legal representative has resigned the mandate of representation – which occurs when they do not appeal against the Dublin or the asylum decision – they would consequently not be formally informed if one of their former clients has been detained. It would be up to the detained person to contact them, but no representation is ensured given that the mandate has been resigned from and detention falls outside the mandate of the appointed legal representation.

Judicial review of detention takes place automatically except for detention under the Dublin procedure. Usually detainees are not legally represented during this procedure, but this depends on the cantonal legal bases and practice. Indeed, the right to free legal assistance is regulated by cantonal procedural law. As a minimal constitutional guarantee, the Swiss Federal Supreme Court has ruled that free legal representation must be granted upon request in the procedure of prolonging detention after 3 months.⁷⁶⁹ Regarding the first review by a judge, free legal representation must only be granted if it is deemed

⁷⁶⁵ Article 80(6) FNIA.

⁷⁶⁶ Federal Supreme Court, Decision 2C_207/2016, 2 May 2016.

⁷⁶⁷ The form can be found in English, French and German, available at: <https://bit.ly/419uMsX>.

⁷⁶⁸ Information provided by the SEM, 27 April 2021.

⁷⁶⁹ Federal Supreme Court, ATF122 I 49, 27 February 1996, para 2c/cc; ATF 134 I 92, 21 January 2008, para 3.2.3.

necessary because the case presents particular legal or factual difficulties.⁷⁷⁰ The SEM does not have statistics on the number of detained asylum seekers having a legal representation.⁷⁷¹

Some detention facilities provide access to legal support services. For example, in the prison of **Bässlergut** a legal advisor from the NGO HEKS/EPER is present every week and accessible for detainees who request a meeting.⁷⁷² However in many other detention facilities access to legal support is very difficult, and the local NGOs providing legal support in asylum cases often do not have the resources to provide free legal assistance to detained persons. Since 2020, Asylex provides legal support and representation for persons detained at **Zurich** airport prison and in some cases also to people detained elsewhere.⁷⁷³

Access to legal advice and representation for persons who apply for asylum at the airport and are consequently confined in the transit zone is guaranteed by Article 22(3bis) of the Asylum Act.

On the other hand, access to legal advice and representation for those persons applying for asylum in detention facilities (be they detained under immigration or criminal law) is not explicitly mentioned in the law, which has led to several cases where such legal representation for the asylum procedure was not provided. In November 2019, the Federal Administrative Court clarified that the fact that the person concerned had lodged her asylum application while in detention does not dispense the competent authority of its duty to duly investigate the application in accordance with the law in force, in particular to ensure the right to free legal advice and representation.⁷⁷⁴ In September 2022, the SEM has informed that all persons applying for asylum from detention or prison would be assigned a legal representation, provided by the legal advice offices in the cantons that are mandated for the extended procedure.

E. Differential treatment of specific nationalities in detention

There is no information on specific nationalities being more susceptible to detention or systematically detained, or otherwise treated differently than others. Nevertheless, the detention of Eritrean nationals for the purpose of removal to their country of origin deserves a comment. In this case, removal is technically possible only in the form of 'voluntary return', namely with the consent and compliance of the person involved. The Swiss Refugee Council is aware of the practice in some cantons of detaining Eritrean nations in the attempt to force them to collaborate with their own deportation. Although coercive detention (Article 78 FNIA) allows detaining people when deportation cannot be enforced due to their own behaviour, this practice is very problematic since administrative detention can be proportional and lawful only when the removal is possible and foreseeable.

According to the data provided by SEM, the nationalities more represented in administrative detention (asylum and non-asylum cases taken together) are Algeria (422 cases), Albania (202), Afghanistan (181), Morocco (178) and Tunisia (157).⁷⁷⁵

⁷⁷⁰ Federal Supreme Court, Decision ATF 122 I 275, 13 November 1996, para 3.b. Free legal representation was granted in Decision 2C_906/2008, 28 April 2009.

⁷⁷¹ Information provided by the SEM, 1 May 2023.

⁷⁷² The "Kontaktstelle für Zwangsmassnahmenbetroffene" is active since 2008. More information is available at: <https://bit.ly/2Va0CY7>.

⁷⁷³ The NGO can be contacted through the e-mail address detention@asylex.ch.

⁷⁷⁴ Federal Administrative Court, Decision D-5705/2019, 25 November 2019.

⁷⁷⁵ Information provided by the SEM, 1 May 2023.

General remark: The status of subsidiary protection does not exist in Switzerland as the Qualification Directive is not applicable. Regarding the application of Article 9 of the Dublin III Regulation, the term “international protection” includes the temporary admission status in cases in which the status is granted on the ground that the removal is either contrary to international law or not reasonable because of a situation of war or generalised violence (but not a temporary admission based on medical grounds).⁷⁷⁶

A. Status and residence

A table summarising the rights regarding family reunification, travelling, change of residence, work etc. for each legal status is available on the website of the Swiss Refugee Council.⁷⁷⁷

1. Residence permit

Indicators: Residence Permit

1.	What is the duration of residence permits granted to beneficiaries of protection?	
	❖ Refugee status	1 year
	❖ Temporary admission	1 year

Refugees with asylum (status B)

Recognised refugees with asylum receive a residence permit called B-permit.⁷⁷⁸ This permit is issued for a year and then prolonged every year (as long as there is no reason for terminating the refugee status) by the responsible canton. Recognised refugees with asylum have a right to have this permit issued and prolonged. If there are reasons to withdraw the refugee status, the right to have the permit issued and prolonged is withdrawn. In 2022, asylum status and B-permits were granted to 4,816 persons,⁷⁷⁹ including those afforded in cases of family asylum.⁷⁸⁰ On 31 December 2022, there were a total of 56,941 recognised refugees with a B-permit in Switzerland.⁷⁸¹

Temporary admission (status F)

Persons granted temporary admission receive an F-permit.⁷⁸² Technically this is not considered a real permit of stay, but rather the confirmation that a deportation order cannot be carried out and that the person is allowed to stay in Switzerland as long as this is the case. The concept of temporary admission is legally designed as a replacement measure for a deportation order that cannot be carried out because of international law obligations, humanitarian reasons or practical obstacles. This means that there is a negative decision, but the execution of this decision is stayed for the duration of the legal or humanitarian obstacles. Consequently, the F-permit has a number of relevant limitations: for example, persons with an F-permit are only allowed to travel outside Switzerland in exceptional cases, under restrictive and limited circumstances. Also, family reunification is only possible after a waiting period of 3 years, and under the condition that the person is financially independent and has a large enough apartment. The F-permit is issued for one year and then prolonged every year by the responsible canton, unless there are reasons to end the temporary admission. The Swiss Refugee Council is advocating for the replacement of the temporary admission with a “positive” status.⁷⁸³

⁷⁷⁶ Federal Administrative Court, ATAF 2015/18.

⁷⁷⁷ Available in French at: <https://bit.ly/37X8wdt> and in German at: <https://bit.ly/3pxqyJ3>.

⁷⁷⁸ Article 60(1) AsyIA.

⁷⁷⁹ SEM, asylum statistics (7-40), available at: <https://bit.ly/418U0Yk>.

⁷⁸⁰ This refers to persons who have been granted asylum on a derivative ground, particularly members of the nuclear family who are not entitled to their own grounds for asylum.

⁷⁸¹ SEM, asylum statistics (6-23), available at: <https://bit.ly/44rdaeN>.

⁷⁸² Article 41(2) and Article 85(1) FNIA.

⁷⁸³ See Swiss Refugee Council, *Nouveau statut de protection au lieu de l'admission provisoire*, 22 May 2022, available in French (and German) at: <https://bit.ly/3HI2PYo>.

In 2022, 4,689 persons were granted a temporary admission as a foreigner.⁷⁸⁴ On 31 December 2022, there were a total of 35,829 persons with a temporary admission as a foreigner living in Switzerland. Out of these, 18,699 persons have had this status for more than seven years.⁷⁸⁵

There are also persons who have a refugee status but receive only temporary admission instead of asylum (in case of exclusion grounds from asylum, as Switzerland makes the distinction between refugee status and asylum). They receive the same F-permit as other foreigners with temporary admission (with the mention “refugee”), but in addition they have the right to a refugee travel document, and all the other rights granted by the Refugee Convention. In 2022, 547 persons were granted a temporary admission as a refugee.⁷⁸⁶ On 31 December 2022, there were a total of 8,950 persons with a temporary admission as a refugee living in Switzerland. Out of these, 6,093 persons have had this status for more than seven years.⁷⁸⁷

The Swiss Refugee Council is not aware of systematic difficulties in the issuance or renewal of those residence permits.

Temporary protection (status S)

Swiss asylum law provides the possibility to grant temporary protection (“*protection provisoire*”, “S permit”) to persons in need of protection during a period of serious general danger, in particular during a war or civil war as well as in situations of general violence (Articles 66-79a AsylA). This instrument – introduced in the aftermath of the conflicts in the former Yugoslavia – should enable the Swiss authorities to react in an appropriate, quick and pragmatic manner to situations of mass exodus. It was activated for the first time in the context of the war in Ukraine by the Federal Council on 11 March 2022. For further information, see [annex on Status S](#).

2. Civil registration

Every birth in Switzerland must be recorded as soon as possible by the civil register office at the place of birth. Parents must present the required identity documents.⁷⁸⁸ If the procurement of documents is impossible or unreasonable and the personal data are not disputed, a substitute declaration (*Ersatzerklärung*) can be made. Residence in Switzerland is not required for the registration of births or paternity recognition, and is therefore also possible for persons without a residence permit. In practice, registration due to missing documents is sometimes problematic, depending on the readiness of the relevant authorities to allow for a substitute declaration.

In principle, persons seeking asylum or rejected asylum seekers may also marry in Switzerland. Nevertheless, lawful residence in Switzerland is necessary. Persons who do not have a residence permit can apply for a short stay permit for the purpose of marriage. In addition to proof of legal residence, identity documents must also be submitted. This may pose a problem for asylum seekers as they endanger their asylum procedures if they contact their home country during the procedure. Furthermore, it is often not possible to obtain documents due to the situation in the home country. In such cases, a substitute declaration can also be requested. In practice, problems with marriage due to missing documents have been reported to the Swiss Refugee Council, depending on the readiness of the relevant authorities to allow for a substitute declaration. Differences exist in practice between cantons.

3. Long-term residence

The Long-Term Residence Directive is not applicable in Switzerland.

⁷⁸⁴ SEM, asylum statistics (7-40), available at: <https://bit.ly/418U0Yk>.

⁷⁸⁵ SEM, asylum statistics (6-10), available at: <https://bit.ly/44rdaeN>.

⁷⁸⁶ SEM, asylum statistics (7-40), available at: <https://bit.ly/418U0Yk>.

⁷⁸⁷ SEM, asylum statistics (6-10), available at: <https://bit.ly/44rdaeN>.

⁷⁸⁸ Ch.ch, ‘Registering a birth’, available in English at: <http://bit.ly/3HCdfOw>.

A recognised **refugee with asylum** status receives a residence permit (B permit). After 10 years, or if they are especially well integrated, after 5 years, the canton can issue a permanent residence permit (C permit).⁷⁸⁹ However, there is no absolute right to receive this permit; it is at the discretion of the canton. These are the same rules that also apply for other foreigners.

A **temporarily admitted** person receives an F permit. After 5 years, the person can apply to the canton for a residence permit (B permit), if they are well integrated.⁷⁹⁰ However, the practice among the cantons varies and is in general strict. In 2022, 5,660 persons obtained a B permit in this way.⁷⁹¹ Once the person has a B permit, they can again apply for a permanent residence permit (C permit) after 5-10 years similar to the process described above.

Under the naturalisation law, it is necessary to have a C permit in order to apply for naturalisation. This is very difficult for protection beneficiaries, especially temporarily admitted persons, as they will first have to go through all the different steps of permits, which takes a very long time. This is also the case for those born in Switzerland.

4. Naturalisation

Indicators: Naturalisation	
1. What is the waiting period for obtaining citizenship?	10 years
2. Number of citizenship grants to beneficiaries in 2022. ⁷⁹²	1,245 ⁷⁹³

According to the Federal Act on Swiss Citizenship⁷⁹⁴ it is necessary to have a permanent residence permit and reside in Switzerland for 10 years in order to be able to apply for citizenship. The years as an asylum seeker do not count.⁷⁹⁵ This means that **temporarily admitted** persons must wait at least 5 years more than **refugee status** holders (see [Long-Term Residence](#)).

Years spent in Switzerland between the ages of 8 and 18 count double.

The initial application is examined by the SEM, but both the canton and commune of residence have their own requirements. The SEM examines whether applicants are integrated in the Swiss way of life, are familiar with Swiss customs and traditions, comply with the Swiss rule of law, and do not endanger Switzerland's internal or external security. In particular, this examination is based on cantonal and communal reports. If the requirements provided by federal law are satisfied, applicants are entitled to obtain a federal naturalisation permit from the SEM. Naturalisation proceeds in three stages. The cantons and communities have their own, additional residence requirements which applicants have to satisfy. Swiss citizenship is only acquired by those applicants who, after obtaining the federal naturalisation permit, have also been naturalised by their municipalities (in some places this decision is taken by a panel, in others by a popular vote of all citizens of the commune) and cantons. There is no legally protected right to being naturalised by a municipality and a canton. The fee payable also varies according to the place of residence.⁷⁹⁶

In 2022, 1,137 recognised refugees and 108 temporarily admitted persons were granted citizenship.⁷⁹⁷

5. Cessation and review of protection status

⁷⁸⁹ Article 34 FNIA.

⁷⁹⁰ Article 84(5) FNIA. The specific criteria are listed at Article 31 OASA.

⁷⁹¹ SEM, asylum statistics (7-60), available at: <https://bit.ly/418U0Yk>.

⁷⁹² Information provided by the SEM, 1 May 2023.

⁷⁹³ 740 recognised refugees and 2 temporary admitted persons.

⁷⁹⁴ The Act is available at: <https://bit.ly/2PcBpZi>.

⁷⁹⁵ Federal Act on Swiss Citizenship, Article 33.

⁷⁹⁶ Overview on the fees for regular naturalisation is available in English at: <https://bit.ly/3qYZkgH>.

⁷⁹⁷ Information provided by the SEM, 1 May 2023.

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? Yes No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

Refugees with asylum⁷⁹⁸

Automatic cessation of the asylum status is possible if a person has lived abroad for more than one year. If a person is granted asylum in another country or they renounce their refugee status, the protection status ceases as well. Renouncement leads to immediate cessation of the status. Refugee status and asylum expire as well if the foreign national acquires Swiss nationality. Finally, asylum expires if an expulsion order under criminal law has become legally enforceable.

In 2022, asylum expired in 1,480 cases resulting in cessation of status for one of the reasons mentioned above.⁷⁹⁹

Temporary admission⁸⁰⁰

According to the law, the SEM should periodically examine whether the requirements for temporary admission are still met. In practice this does not happen in every case due to practical and capacity reasons. The SEM should revoke temporary admission and order enforcement of removal or expulsion if the requirements are no longer met. It also expires in the event of definitive departure, an unauthorised stay abroad of more than two months, or the granting of a residence permit.

The review is based on an individual assessment. When a conflict ends, it is possible that revocation is examined for all members of the group who were specifically concerned by this conflict. This happened, for example, at the end of the conflicts in ex-Yugoslavia in the 1990s. This has hardly ever been the case in the past years, however, as most of the relevant conflicts are long-standing (Somalia, Afghanistan, Iraq, Syria), the only exception was Eritrea, the SEM reviewed the temporary admission of 3,400 Eritrean nationals between 2018 and 2020, resulting in the revoke of about 2%. Even if cessation is considered for a group of persons, it is examined in each case individually.

In 2018, the Swiss Parliament tasked the SEM with the review of the temporary admission of 3,400 Eritrean nationals. This took place in the context of significant hardening of practice by both the SEM and the Federal Administrative Court with regard to asylum applications submitted by Eritreans. In fact, since a leading decision issued by the Federal Administrative Court in 2017, the enforcement of removal is no longer considered generally unreasonable (see [Eritrea](#)). This approach has been criticised by NGOs,⁸⁰¹ including the Swiss Refugee Council.⁸⁰²

In October 2020, the Federal Administrative Court clarified that revocation of temporary admission due to the consideration that the obstacles to the enforcement of removal no longer exist always requires an examination of proportionality taking into account the degree of integration of the person concerned.⁸⁰³

⁷⁹⁸ Article 64 AsylA.

⁷⁹⁹ SEM, asylum statistics (7-10), available at: <https://bit.ly/418U0Yk>.

⁸⁰⁰ Article 84 FNIA.

⁸⁰¹ See in particular ODAE, *Rapport thématique – Durcissements à l'encontre des Érythréen-ne-s : une communauté sous pression*, 29 November 2018, available in French at: <https://bit.ly/2SCdBAW>.

⁸⁰² Swiss Refugee Council, *La Confédération mise sur l'intimidation plutôt que sur des solutions*, 3 September 2018, available in French (and German) at: <https://bit.ly/3O8Dtyr>.

⁸⁰³ Federal Administrative Court, Decision E-3822/2919, 28 October 2020.

Apart from the review of the necessity of protection due to the situation in the country or the situation of the person, temporary admission ceases automatically if a person leaves Switzerland permanently, if they are abroad for more than two months without a permission to travel, or if they receive a residence permit.⁸⁰⁴ A person's departure from Switzerland is already considered permanent if the person asks for asylum in another country.⁸⁰⁵ This can lead to unclear situations if persons are transferred back to Switzerland from other European states, and then find that their temporary admission has ceased in the meantime.

As in general any ruling can be subject to an appeal,⁸⁰⁶ the cessation of the protection status can also be appealed. The appeal must be filed within 30 days of notification of the ruling.⁸⁰⁷ No legal assistance is foreseen in the law for this specific case but the general legal aid scheme is applicable: If it is necessary to safeguard the right of the person concerned, the Court can appoint a lawyer to represent the applicant.⁸⁰⁸

In 2022, 7,053 temporary admissions were ceased, meaning for example that the person has obtained another residence status or has left Switzerland.⁸⁰⁹ In 6,357 cases, another status was granted.⁸¹⁰

6. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? Yes No
2. Does the law provide for an appeal against the withdrawal decision? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

The SEM shall revoke asylum or deprive a person of **refugee status** if the foreign national concerned fraudulently obtained asylum or refugee status by providing false information or by concealing essential facts. Furthermore, the SEM shall deprive a person of refugee status if they travel to their country of origin. The asylum will also be withdrawn if a refugee represents a threat to Switzerland's internal or external security, or has committed a particularly serious criminal offence.⁸¹¹ The revocation of asylum or the deprivation of refugee status applies in relation to all federal and cantonal authorities. As a consequence of the withdrawal of asylum and refugee status, the residence permit will also be withdrawn as the purpose for the permit has ceased.

If only asylum was withdrawn and not refugee status, the person concerned could be entitled to temporary admission as a refugee (see the distinction in [Residence Permit](#)).

The grounds for a withdrawal are always examined individually. The revocation of asylum or the deprivation of refugee status does not extend to the spouse or the children of the person concerned. Before asylum or temporary admission status is withdrawn, the SEM grants the right to be heard in written form but no individual interview is usually conducted.⁸¹²

⁸⁰⁴ Article 84(4) FNIA.

⁸⁰⁵ Article 26a(a) Ordinance on the Enforcement of the Refusal of Admission to and Deportation of Foreign Nationals (OERE).

⁸⁰⁶ Article 44 Federal Act on Administrative Procedure.

⁸⁰⁷ Article 50 Federal Act on Administrative Procedure.

⁸⁰⁸ Article 65(2) Federal Act on Administrative Procedure.

⁸⁰⁹ Information provided by the SEM, 1 May 2023.

⁸¹⁰ Information provided by the SEM, 1 May 2023.

⁸¹¹ Article 63 AsylA.

⁸¹² Information provided by the SEM, 18 January 2017.

As in general any ruling can be subject to an appeal,⁸¹³ the withdrawal of the protection status can also be appealed. The appeal must be filed within 30 days of notification of the ruling.⁸¹⁴ No legal assistance is foreseen in the law for this specific case, but the general rule regarding legal aid is applicable: If it is necessary in order to safeguard the right of the person concerned, the Court can appoint a lawyer to represent the applicant.⁸¹⁵

In 2022, asylum was withdrawn in 88 cases: in all but 8 cases, the people concerned were also deprived of their refugee status (in those 8 cases, the persons must have received a temporary admission). In 45 additional cases, refugee status was withdrawn to temporarily admitted persons who already did not benefit from asylum (F refugees).⁸¹⁶

As seen in the chapter on [Cessation](#), temporary admission can be withdrawn under Article 84(2) FNIA after review of the conditions that led the authorities to consider the removal as not enforceable and unreasonable. Such review procedure should be conducted for all members of the group concerned by the change of circumstances in the country of origin and is very rarely initiated. Between 2018 and 2020, however, temporary admission of 3,400 Eritreans was reviewed, leading to withdrawals in 83 cases.

Withdrawal of **temporary admission** can also be ordered under Article 84(3) FNIA if someone has been sentenced to a long-term custodial sentence in Switzerland or abroad; has seriously or repeatedly violated or represented a threat to public security and order in Switzerland or abroad or represented a threat to internal or the external security; or has made their removal or expulsion impossible due to their own conduct. Those are also grounds for excluding applicants from temporary admission status in the first place. However, such exclusion or revocation is only possible when temporary admission was granted because enforcement of removal was considered unreasonable or impossible, but not if it was considered inadmissible (because it would violate international law).⁸¹⁷ Revocation of temporary admission requires a detailed examination of the principle of proportionality, where the public interest to remove the applicant and their private interest of pursuing their life in Switzerland (integration, family ties, etc.) must be carefully balanced.

According to the Federal Act on Foreign Nationals and the Criminal Code, foreigners who commit criminal acts (not only severe criminal acts but also for example social welfare fraud) can be expelled.⁸¹⁸ In case of an expulsion order, which is pronounced under criminal law, the asylum status will be withdrawn. Temporary admission shall not be granted or shall expire if an order for expulsion from Switzerland becomes legally enforceable.⁸¹⁹ There is not sufficient information on how this is applied so far.

⁸¹³ Article 44 Federal Act on Administrative Procedure.

⁸¹⁴ Article 50 Federal Act on Administrative Procedure.

⁸¹⁵ Article 65(2) Federal Act on Administrative Procedure.

⁸¹⁶ Information provided by the SEM, 1 May 2023.

⁸¹⁷ Article 83(7) FNIA.

⁸¹⁸ Federal Council, Referendum on Asylum Act, 5 June 2016.

⁸¹⁹ Article 83(9) FNIA.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?
 - ❖ Recognised refugees Yes No
 - ❖ Temporarily admitted persons Yes No
 - Waiting period for temporarily admitted persons 3 years

2. Does the law set a maximum time limit for submitting a family reunification application?
 - Yes No
 - ❖ If yes, what is the time limit? 5 years
1 year for children over 12

3. Does the law set a minimum income requirement?
 - ❖ Recognised refugees Yes No
 - ❖ Temporarily admitted persons Yes No

The differences between the statuses are relevant regarding the question of family reunification. The Swiss Refugee Council provides a table summarising the relevant rules and legal bases according to the status on its website.⁸²⁰ Unaccompanied minors in Switzerland, regardless of their protection status, are not eligible to family reunification with their parents. Same sex couples have the same rights regarding family reunification than heterosexual couples, however in practice family reunification will potentially be more complicated as in most countries of origin, the registration/marriage of same sex couples is not possible or the lacking possibility of living the relationship may even be a reason for leaving the country of origin.

Refugees with asylum

Spouses or registered partners of refugees and their minor children are entitled to family reunification. They will also be recognised as refugees and granted asylum provided there are no special circumstances that preclude this (for example if the family member has a nationality allowing for the family to reside in another country or has been granted refugee status in a safe third country).⁸²¹

If one of those persons is still abroad, their entry must be authorised on request, if the person in Switzerland and the person abroad were separated during the flight.⁸²² If the family had not been separated during the flight, for example because the family / marriage did not exist at that time, they are not entitled to family reunification under the Asylum Act and can only request family reunification under Article 44 FNIA, with more restrictive conditions and no *right* to it. However, if the spouse and children are already in Switzerland, this rule does not apply and they can be included in the asylum of the family member.⁸²³

In case of family asylum, there are no requirements regarding income or health insurance.

Practical problems frequently arise in case of lack of necessary documentation. Also, in some cases the SEM requires the conduct of DNA-tests to prove parenthood. The high costs of such tests as well as the travel costs can be covered by SEM on demand, which however has discretion in the decision whether

⁸²⁰ Available in French at: <https://bit.ly/37X8wdt> and in German at: <https://bit.ly/3pxqyJ3>.

⁸²¹ Federal Administrative Court, ATAF 2019 VI/3 para 5.5–5.7. The same is not true for subsidiary protection, see Decision D-2976/2018, 31 January 2020, para 5.3.2.

⁸²² Article 51 AsyIA.

⁸²³ Federal Administrative Court, ATAF 2017 VI/4, para 4.2–4.4, especially 4.4.1.

or not to approve such demand. The refusal can be appealed.⁸²⁴ This represents a clear obstacle to family reunification. IOM can provide logistical support for the organisation of the flight.⁸²⁵

In 2022, 1,656 recognised refugees applied for family reunification for family members residing abroad (compared to 1,797 in 2021). During the same year, the SEM authorised entry as a consequence of refugee family reunification cases for 1,121 persons (compared to 1,060 in 2021).⁸²⁶

Temporary admission

According to the law, three years after having received temporary admission, the person can apply to be reunited with their spouse and unmarried children under the age of 18. There is no requirement that the family ties already existed in the country of origin. The requirements are that they all live in the same household as soon as the person arrives in Switzerland, the family has suitable housing (a big enough apartment, already at the time of the application), and the family does not depend on social assistance (income requirement). The spouse has to speak the national language at the place of residence or be registered for language support services.⁸²⁷ The application must be filed with the competent cantonal migration authority, which passes it on to the SEM. Certain deadlines apply to the application.⁸²⁸ The 5 (or 1 for children 12 and over) year time limit to apply for family reunification starts at the end of the three-year waiting period. If the family / marriage was established after the waiting period of three years, the time limits start at the time the family / marriage was founded.

In November 2022, the Federal Administrative Court decided in a leading judgment,⁸²⁹ that for persons with a temporary admission, the statutory waiting period of three years is no longer strictly and automatically applicable. Applications for family reunification must already be examined after one and a half years if further waiting is disproportionate in individual cases. The judgment has immediate effect. The Federal Administrative Court adapted its case law to a ruling of the ECtHR.⁸³⁰ According to the ECtHR ruling, if the waiting period exceeds two years, the national authorities must assess each individual case to determine whether a further delay in family reunification violates the right to respect for family life. In doing so, they must take into account in particular the intensity of the family relationship, the degree of integration already achieved in the host country, the existence of insurmountable obstacles to the family's life in the country of origin and the best interests of the child.

In 2022, 380 temporarily admitted persons applied for family reunification (compared to 355 in 2021). The approved cases by the SEM during the same year concerned 120 persons (compared to 142 in 2021).⁸³¹

Procedural aspects

The procedural aspects however are the same for all beneficiaries of protection:

- ❖ The application for family reunification must be submitted within five years, in case of children over 12 years the time limit is twelve months (in case of important family-related reasons, especially the best interest of the child, a later family reunification is possible).
- ❖ The application is free of charge.
- ❖ There is no specific time limit imposed upon the administration to decide on the application. However, applicants remain protected by general procedural guarantees: if the procedure

⁸²⁴ The Human Rights Law Clinic of the University of Bern provides a template for appealing those decisions, available at: <https://bit.ly/3wLvOyp>.

⁸²⁵ See website in French: <https://bit.ly/3tdAIUa>.

⁸²⁶ Information provided by the SEM, 1 May 2023.

⁸²⁷ Article 85(7) FNIA, it is extremely challenging to fulfil the additional requirements and, as the process until the family arrives in Switzerland may take very long, it seems not necessary that the person in Switzerland already lives in the family apartment, as money is mostly short and living costs are very high.

⁸²⁸ Article 74(2)-(3) Ordinance on Admission, Period of Stay and Employment.

⁸²⁹ Federal Administrative Court, Decision F-2739/2022, 22 November 2022 (in French): <https://bit.ly/3PYPvf1>; press release available in English (German, French and Italian) <https://bit.ly/3WMIkZr>.

⁸³⁰ ECtHR, Application no. 6697/18, *M.A. v Denmark*, 9 July 2021, available at: <http://bit.ly/3HAjLKs>.

⁸³¹ Information provided by the SEM, 1 May 2023.

becomes excessively lengthy without any procedural steps taken by the authorities, they may appeal for denial of justice.⁸³²

- ❖ In case of a negative decision, they may file an appeal before the Federal Administrative Court within 30 days of notification.⁸³³ They are entitled to legal aid for this appeal.⁸³⁴

2. Status and rights of family members

In the case of family **asylum**, the beneficiaries themselves are granted the same rights as the sponsor. However, as the refugee status originated in the grounds of the sponsor, the refugee status is of a derivative character, therefore it is not possible for persons with this kind of status to be the sponsor of further family members. The same applies to cases of temporary admission status as a refugee.

However, before the family members are included in the sponsor's status, the SEM usually examines whether they fulfil the refugee definition on their own and can therefore be granted their own refugee status. During the procedure, or at least at the beginning, they are accommodated in a federal asylum centre and not together with the spouse, which could lead some persons to renounce to the examination of their own asylum grounds. This can be problematic in case of separation since the status of the reunited spouse will be dependent on the refugee who has applied for family reunification.

In case there are asylum exclusion grounds⁸³⁵ relating to the family member, this person will only be granted a temporary admission as refugee even though the sponsor was granted asylum.⁸³⁶

Family members of a person who has been granted a **temporary admission status** will receive the same status, if the application for family reunification is granted. If the family members arrive independently of the sponsor, they have to make their own asylum application and will receive temporary admission if those conditions are met.

C. Movement and mobility

1. Freedom of movement

In general, after some time (maximum 140 days) in a federal asylum centre, the SEM allocates the applicants / beneficiaries to a canton according to a distribution key. This allocation can only be contested if it violates the principle of family unity.⁸³⁷

After a status has been granted, **recognised refugees** have the right to choose their place of living within the canton. Additionally, they have the right to change the canton, if they are not dependent on social assistance and there are no grounds for revocation of a residence permit.⁸³⁸

Persons with **temporary admission as foreigners** also have a right to choose their place to live within the allocated canton, unless they depend on social assistance. In this case, the canton can determine a residence or accommodation. In order to change cantons, an application must be filed at the SEM, which will decide after a consultation of the two cantons concerned. A negative decision can only be challenged if it violates the principle of family unity. The allocation to a canton does not limit the freedom of movement within Switzerland.

⁸³² Article 29 of the Federal Constitution; Federal Administrative Court, Decision E-1716/2021, 1 July 2021; , E-2646/2021, 3 November 2020; D-1532/2020, 11 May 2020.

⁸³³ Article 50 of the Federal Act on Administrative Procedures.

⁸³⁴ Article 65 of the Federal Act on Administrative Procedures.

⁸³⁵ Articles 53 and 54 AsylA.

⁸³⁶ Federal Administrative Court, Decision ATAF 2015/40.

⁸³⁷ Article 27(3) AsylA.

⁸³⁸ Article 63 FNIA.

Since the cantons are responsible for granting social assistance, the concrete arrangements depend on the canton. If a person depends on social assistance, it is possible that the canton provides for a room in a certain accommodation and therefore 'determines' the place of residence for the person concerned.

Normally, beneficiaries have to move from the first reception centre to the cantonal collective centre and as a next step within the canton to a private accommodation. We are not aware of problems of beneficiaries related to being obliged to change their accommodation too often.

We are also not aware of any specific residence for beneficiaries for reasons of public interest or public order.

No legal assistance is foreseen in the law for these specific cases, but the general rule regarding legal aid is applicable: If it is necessary in order to safeguard the right of the person concerned, the Court can appoint a lawyer to represent the applicant.⁸³⁹

2. Travel documents

Recognised refugees have a right to receive a travel document in accordance with the Refugee Convention. The travel document for recognised refugees is valid for five years.⁸⁴⁰

Recognised refugees cannot travel to their home country or they might lose their refugee status. Since 1 April 2020, the Foreign Nationals and Integration Act (FNIA) also includes a provision prohibiting them to travel to neighbouring countries of their country of origin, when there is a justified suspicion that the ban on travel to the home country will be disregarded.⁸⁴¹ It allows the SEM to pronounce collective travel bans to certain neighbouring countries for all refugees coming from one specific country. This provision has entered in force but was still not implemented in May 2023, according to the SEM because there are no indication of a systematic abuse of a third country in order to travel to the country of origin.⁸⁴²

For **persons with temporary admission** there are important legal and practical obstacles in obtaining travel documents and re-entry permits. They do not have an automatic right to a travel document, and their travel rights are very limited. If they want to travel outside Switzerland, they must first apply to the SEM (via the cantonal authority) for a return visa (permission to re-enter Switzerland). A return visa is only granted in specific circumstances (severe illness or death of family members and close relatives; to deal with important and urgent personal affairs; for cross-border school trips; to participate in sports or cultural events abroad; or for humanitarian reasons). A return visa can be issued for other reasons if the person has already been temporarily admitted for three years.⁸⁴³

In addition to the return visa, the person needs a valid travel document. Persons with temporary admission can apply to the SEM (via the cantonal authority) for a travel document if they can show that it is impossible for them to obtain travel documents from their home country, or that it cannot be expected of them to apply for travel documents from the authorities of their home country.⁸⁴⁴ The practice regarding this is very strict, it is only seldom recognised that the person cannot obtain travel documents from their home country. They must document very clearly what they have done to obtain travel documents (visits to the embassy etc.). In many cases, the persons do not succeed in proving their lack of documents, as the embassies of their home countries are reluctant to confirm in writing that they will not issue a travel document. This means persons with temporary admission are often unable to travel – for lack of documents, but mainly due to the strict regulation regarding return visas, see above.

⁸³⁹ Article 65(2) Federal Act on Administrative Procedure.

⁸⁴⁰ Article 13(1)(a) Ordinance on the Issuance of Travel Documents for Foreign Persons of 14 November 2012, SR 143.5 (Verordnung über die Ausstellung von Reisedokumenten für ausländische Personen vom 14. November 2012, RDV, SR 143.5).

⁸⁴¹ Article 59c FNIA. Further information is available in French at: <https://bit.ly/2VaWTcX>.

⁸⁴² Information provided by the SEM, 1 May 2023.

⁸⁴³ Article 9 RDV.

⁸⁴⁴ Articles 4(4) and 10 RDV.

If a person with temporary admission is issued a travel document by the SEM, this is called a “passport for a foreign person”.⁸⁴⁵ It is valid for 10 months and loses its validity at the end of the conducted journey; the document is only issued for one specific journey.⁸⁴⁶

There are important practical obstacles in obtaining travel documents and re-entry permits for foreigners with temporary admission.

A reform of temporary admission discussed in parliament led to another restriction to travelling for temporary admitted persons. A general travel ban for them was added in the National Act on Foreigners.⁸⁴⁷ The exceptions in which travel can still be allowed will need to be specified at ordinance level.

Procedure

The application for a travel document must be made in person at the cantonal migration office.⁸⁴⁸ This office will register the application and forward it to the SEM. The SEM issues the travel document. Applications for a re-entry visa must also be made to the cantonal migration authority, and will be forwarded to the SEM for decision.⁸⁴⁹

Both recognised refugees and beneficiaries of temporary admission are not allowed to travel to their home country, otherwise they risk losing their protection status.

In 2022, the SEM issued 24,696 travel documents for recognised refugees; 1,746 “foreign passports” for persons granted temporary admission and who do not have a passport; and 1,088 return visas (of which 6 were valid for repeated entries) for foreigners granted temporary admission.⁸⁵⁰

D. Housing

Indicators: Housing

- | | |
|---|-----------------------|
| 1. For how long are beneficiaries entitled to stay in reception centres? | No limitation |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2022: | 62,820 ⁸⁵¹ |

There is no maximum time limit to accommodation connected with the status. As long as a person depends on social assistance, housing will be provided by the canton. It is possible that this means a collective centre or a specific allocated housing, but there is no temporal limitation on it. Concrete arrangements depend on the canton.

⁸⁴⁵ Article 4(4) RDV.

⁸⁴⁶ Article 13(1)(c) RDV.

⁸⁴⁷ A comment from the Swiss Refugee Council, *Une interdiction de voyager très stricte au lieu d'une intégration facilitée pour les titulaires d'une admission provisoire*, 6 December 2021, available in French (and German) at: <https://bit.ly/34v4euk>.

⁸⁴⁸ Article 14 RDV.

⁸⁴⁹ Article 15 RDV.

⁸⁵⁰ Information provided by the SEM, 1 May 2023.

⁸⁵¹ Data provided by the SEM, 1 May 2023.

E. Employment and education

1. Access to the labour market

Foreign nationals, refugees and stateless persons who have been temporarily admitted to Switzerland, refugees who have been granted asylum in Switzerland and stateless persons who are recognised in Switzerland may take up gainful employment as soon as they received such status.

Recognised refugees (with asylum or with a temporary admission status) are entitled to engage in gainful employment and to change jobs or professions without any restrictions.⁸⁵² The requirements are that the employer must report the start and end of employment and comply with the usual local wage and working conditions for the given profession and industry.⁸⁵³ On 31 December 2022, 41% of refugees with asylum who were able to work were employed (compared to 40% in 2021).⁸⁵⁴

Temporarily admitted persons may work anywhere in Switzerland if the salary and employment conditions customary for the location, profession and sector are satisfied. The employer must report the start or end of employment to the cantonal authority responsible for the place of work in advance. The report must include a declaration, stating that the employer is aware of the salary and employment conditions customary for the location, profession and sector, and that they are committed to observing them.⁸⁵⁵ However, due to the temporary nature and especially the name of this status, temporarily admitted persons still encounter significant hurdles to employment. On 31 December 2022, 47% of temporarily admitted persons able to work were employed in 2021).⁸⁵⁶

Personal qualifications like diplomas from other countries are not recognised for the most part, which is a big problem in respect of access to the labour market.

The pilot programme "Integration Pre-Apprenticeship" has been running since 2018. It was expanded and extended by two years from August 2021 and is supported by 17 cantons. As an additional measure to increase the promotion of the domestic labour force potential, the pilot programme "Financial Grants" was implemented in 14 cantons from January 2021.⁸⁵⁷

At its meeting on 22 February 2023, the Federal Council opened the consultation process on an amendment to the implementing ordinances for the Foreign Nationals and Integration Act and the Asylum Act. Temporarily admitted persons should be able to transfer their residence to another canton more easily if they work there. Access to the labour market should also be made easier for other foreigners.⁸⁵⁸

2. Access to education

Basic education is mandatory until the age of 16 and has to be available to all children in Switzerland. The cantons are responsible for the system of school education and state schools are free of charge.⁸⁵⁹ As long as the children are accommodated in a federal reception centre (first phase of the procedure), schooling is mainly organised within the centres. To meet the requirements of the Convention of the Rights of the Child, particularly as regards access to education until the age of 18, law and practice would need be adjusted. In particular, for teenagers who arrive just at or above the age of 16 years, it can be difficult

⁸⁵² Article 61 AsyIA.

⁸⁵³ Article 65 Ordinance on Admission, Period of Stay and Employment.

⁸⁵⁴ SEM, asylum statistics (6-23), available at: <https://bit.ly/44rdaeN>.

⁸⁵⁵ Article 85a FNIA.

⁸⁵⁶ SEM, asylum statistics (6-22), available at: <https://bit.ly/44rdaeN>.

⁸⁵⁷ SEM, *Le préapprentissage d'intégration est reconduit*, press release, 3 May 2021, available in French (and German and Italian) at: <https://bit.ly/3iFTEbj>.

⁸⁵⁸ FDPJ, *Le Conseil fédéral souhaite faciliter l'accès des personnes admises à titre provisoire au marché du travail*, press release of 22 February 2023, available in French (and German and Italian) at: <https://bit.ly/3mweE5T>.

⁸⁵⁹ Article 62 Federal Constitution.

to find a place of education.⁸⁶⁰ No major obstacles are known to us regarding the access to education until the age of 16.

Recognised refugees have the same rights concerning access to education as Swiss nationals, including special education for people with disabilities. According to the Federal Constitution, cantons shall ensure that adequate special needs education is provided to all children and young people with disabilities up to the age of 20. As the system of school education depends on the canton, the implementation differs. Refugees can also apply for scholarships for higher education. It must be noted that normally, when being granted a scholarship, social assistance will be cut.⁸⁶¹

F. Social welfare

Refugees with asylum and temporarily admitted refugees who are unable to maintain themselves from their own resources are entitled to social benefits. They must be granted the same benefits as local recipients of social assistance.⁸⁶² The guidelines of the Swiss Conference for Social Assistance (SCSA) apply.⁸⁶³

For their part, **temporarily admitted** foreigners should receive the necessary social benefits unless third parties are required to support them.⁸⁶⁴ The social benefits should be rendered in kind as non-cash benefits if possible. The benefits are lower than the social benefits given to the local population.⁸⁶⁵ They can be as much as 40% below the guidelines of the SCSA, which as a consequence, is very little to live on. The amount, however, strongly varies from one canton to another and is supposed to cover basic social assistance, accommodation, health care costs as well as specific needs when necessary.

The provision of social benefits is under the responsibility of the Confederation as long as the person is staying in a federal asylum centre. After allocation to a canton, the canton should provide social assistance or emergency aid on the basis of Article 80a AsylA. Cantonal laws fix the amount and grounds for granting and limiting welfare benefits. This results in large differences of treatment among cantons.

Temporarily admitted foreigners are usually free to choose their place of residence within the canton unless they receive social assistance benefits. The cantonal authorities assign a place of residence and accommodation to temporarily admitted persons dependent on social assistance.⁸⁶⁶

Since the aggravation in the Foreigners Act of 2019 which stated that the dependency on social welfare may lead to a downgrade in terms of status, it has been observed that persons abstain from social welfare because they fear negative consequences.

G. Health care

Every person living in Switzerland, including rejected asylum seekers, must be insured against illness,⁸⁶⁷ and therefore has access to the basic health system.

Cantons may limit the choice of insurers and of physicians and hospitals for asylum seekers and temporarily admitted persons.

⁸⁶⁰ For further information: Report on “Access to education regardless of legal status” by the Swiss Observatory for on asylum and foreigner law (SBAA), 2021, available in German (and French) at: <https://bit.ly/41GQjJy>.

⁸⁶¹ See for further information (in English): <https://bit.ly/3lkdpzh>.

⁸⁶² Article 3(1) AO2.

⁸⁶³ SCSA, *Les normes CSIAS*, available in French (and German and Italian) at: <https://bit.ly/39GyAr6>.

⁸⁶⁴ Article 81 AsylA.

⁸⁶⁵ Article 82(3) AsylA.

⁸⁶⁶ Article 85(5) FNIA.

⁸⁶⁷ Article 3 Health Insurance Act (HIA).

Apart from this restriction, the basic insurance and the covered treatments do not depend on the status but on the needs. Mental health problems are also covered if a psychiatrist (not psychologist) is involved; however, there are limited capacities for adequate treatment in some fields.

Specialised treatment for victims of torture or traumatised beneficiaries or people with mental health problems is available, but the capacity is way too small. There is not only a lack of specialised psychiatrists but the number of interpreters and funding for interpretation for this purpose are insufficient. Especially intercultural interpretation would be needed for specialised treatment of mental health problems.

Language barriers are relevant for any kind of health care, including problems to fill out the paperwork. Beneficiaries are entitled to Covid-19 vaccination and testing in the same way as Swiss citizens.