



aida

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The information in this report is up-to-date as of 16 October 2015.

The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 16 EU Member States (AT, BE, BG, CY, DE, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 2 non-EU countries (Switzerland, Turkey) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. Furthermore the project 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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TABLE OF CONTENTS

Acknowledgments	2
Glossary & List of Abbreviations	5
Statistics	6
Overview of the legal framework and practice	9
Overview of the main changes since the first report	10
Asylum Procedure	11
A. General	11
1. Flow Chart	11
2. Types of procedures	12
3. List the authorities that intervene in each stage of the procedure	12
4. Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance)	12
5. Short overview of the asylum procedure.....	13
B. Procedures	16
1. Registration of the asylum application	16
2. Regular procedure	18
3. Dublin	26
4. Admissibility procedure	33
5. Border procedure (border and transit zones).....	36
6. Accelerated procedure	38
C. Information for asylum seekers and access to NGOs and UNHCR	41
D. Subsequent applications	42
E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)	44
1. Special procedural guarantees	44
2. Use of medical reports	45
3. Age assessment and legal representation of unaccompanied children	45
F. The safe country concepts	48
G. Treatment of specific nationalities	49

Reception Conditions	51
A. Access and forms of reception conditions	51
1. Criteria and restrictions to access reception conditions.....	51
2. Forms and levels of material reception conditions.....	54
3. Types of accommodation	56
4. Conditions in reception facilities.....	60
5. Reduction or withdrawal of reception conditions.....	63
6. Access to reception centres by third parties	65
7. Addressing special reception needs of vulnerable persons.....	66
8. Provision of information.....	67
9. Freedom of movement	68
B. Employment and education	70
1. Access to the labour market.....	70
2. Access to education	71
C. Health care	73
Detention of Asylum Seekers	75
A. General	75
B. Legal framework of detention	76
1. Grounds for detention	76
2. Alternatives to detention.....	79
3. Detention of vulnerable applicants	79
4. Duration of detention.....	80
C. Detention conditions	81
1. Place of detention	81
2. Conditions in detention facilities.....	81
D. Procedural safeguards	83
1. Judicial review of the detention order	83
2. Legal assistance for review of detention.....	84

Glossary & List of Abbreviations

Testphase	Pilot accelerated procedure introduced in Zurich in January 2014
AFIS	Automated Fingerprint Identification System
AOZ	Asyl-Organisation Zurich, running the “testphase” reception centre in Zurich
AS	Official Journal of Swiss law (Amtliche Sammlung)
EJPD	Federal Department of Justice and Police Eidgenössisches Justiz- und Polizeidepartment
ELISA	Organisation providing legal aid to asylum seekers at Geneva airport
Eurodac	European fingerprint database
FOM	Federal Office for Migration (now SEM)
FNA	Foreign Nationals Act
NCPT	National Commission for the Prevention of Torture
SEM	State Secretariat for Migration Secrétariat d'état aux migrations
TAF	Federal Administrative Court Tribunal administratif fédéral

Statistics

Table 1: Applications and granting of protection status at first and second instance: 2015 (January – September)

	Applicants in 2015	Pending applications on 30 Sep 2015	Asylum	Temporary admission	Rejection ¹	Asylum rate	Temp. Adm. rate	Rejection rate
Total	24,212	23,768	5,035	5,892	8,367	26.1%	30.5%	43.4%

Breakdown by countries of origin of the total numbers

Eritrea	8,927	10,584	2,077	1,849	1,453	38.6%	34.4%	27%
Syria	2,337	2,744	1,046	1,696	197	35.6%	57.7%	6.7%
Afghanistan	1,929	1,746	146	517	467	12.9%	45.8%	41.3%
Sri Lanka	1,219	1,213	775	197	394	56.7%	14.4%	28.8%
Somalia	1,025	992	115	311	204	18.3%	49.4%	32.4%
Nigeria	659	235	0	20	538	0%	3.6%	96.4%
Iraq	809	695	55	114	171	16.2%	33.5%	50.3%
Gambia	600	122	1	1	369	0.3%	0.3%	99.4%
Kosovo	467	224	10	68	429	2%	13.4%	84.6%
China	448	583	107	332	194	16.9%	52.4%	30.6%

Source: SEM, Monthly Asylum Statistics, September 2015 (number of applications and decisions from January-September 2015), <http://bit.ly/1Xe8oIT>.

¹ Rejection should include *both* in-merit and admissibility negative decisions (including Dublin decisions).

Table 2: Gender/age breakdown of the total numbers of applicants: 2015 (January – September)

	Number	Percentage
Total number of applicants	24,212	100%
Male applicants	17,461	72.1%
Female applicants	6,751	27.9%
Accompanied Children	4,877	20.1%
Unaccompanied children	1,529	6.3%

Source: SEM, Internal Statistics, January - September 2015.

Table 3: Comparison between first instance and appeal decision rates: 2015

Breakdown between first and second instance is not available.

Table 4: Applications processed under the accelerated procedure in 2015 (January – September)

Figures are not yet available for the “Testphase” accelerated procedure.

	Number	Percentage
Total number of applications	24,212	100%
Applications treated under the 48-hour procedure	1,449	6%
Applications treated under the Fast-track procedure	2,299	9.5%

Source: SEM, Internal Statistics January – September 2015

Table 5: Subsequent applications lodged in 2015 (January – September)

	Number	Percentage
Total number of subsequent applications	486	100%
Main countries of origin		
Sri Lanka	52	10.7%
Kosovo	36	7.4%
Serbia	35	7.2%
FYROM	36	7.4%
Bosnia	23	4.7%

Source: SEM, Monthly Asylum Statistics, September 2015 (number of applications and decisions from January-September 2015), <http://bit.ly/1Xe8oIT>.

Table 6: Number of applicants detained per ground of detention: 2013-2015:

There is no data available on detention due to the competences of different cantons regarding detention.

Table 7: Number of applicants detained and subject to alternatives to detention: N/A

There is no data available on detention due to the competences of different cantons regarding detention.

Overview of the legal framework and practice

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

Title (EN)	Original Title (FR)	Abbreviation	Web Link
Asylum Act	Loi sur l'asile	AsyIA	< http://bit.ly/1GpuAId > (FR) < http://bit.ly/1FjUQqe > (EN)
Federal Act on Foreign Nationals	Loi fédérale sur les étrangers	FNA	< http://bit.ly/1Bfa0LT > (FR) < http://bit.ly/1Bfa26s > (EN)
Federal Act on Administrative Procedure	Loi fédérale sur la procédure administrative	APA	< http://bit.ly/1lhNNtx > (FR) < http://bit.ly/1BQdG52 > (EN)
Federal Constitution of the Swiss Confederation	Constitution fédérale de la confédération suisse	Constitution	< http://bit.ly/1dHqBgi > (FR) < http://bit.ly/1HNtlPO > (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/1eipzYG > (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 Conduct of Test Phases for Accelerated Asylum Measures	Ordonnance sur la réalisation de phases de test relatives aux mesures d'accélération dans le domaine de l'asile (Ordonnance sur les phases de test)	Test Phases Ordinance	< http://bit.ly/1BjwYB5 > (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/1IGDU6s > (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 DFJP on the management of federal reception centres in the field of asylum	Ordonnance du DFJP relative à l'exploitation des logements de la Confédération dans le domaine de l'asile		< http://bit.ly/1MYJoQv > (FR)
Directive III on the Field of Asylum	Directive III sur le domaine de l'asile		< http://bit.ly/1TpuYgF > (FR)

Overview of the main changes since the first report

The report was first published in **April 2015**.

Procedure

- As of July 2015, the rules for support of unaccompanied minors have improved slightly, as their representative must now be present already in the first interview, and his or her tasks have been a bit more closely defined than before.
- In September 2015, the Swiss parliament adopted a draft for a restructuring of the asylum system along the model of the pilot test procedure in Zurich, which is modelled on the Dutch system. The goal is to accelerate asylum procedures while at the same time guarding the asylum seekers' rights and therefore providing them with free legal representation. It will however not enter into force before 2018 or 2019.
- The Federal Administrative Court has developed its jurisprudence in a variety of areas, for example regarding the *Tarakhel* guarantees for families in a Dublin procedure regarding Italy, and regarding the limitation of the Court's competence regarding the question whether or not a decision was appropriate, which includes the humanitarian reasons for which the sovereignty clause can be applied.

Reception

- The increase in the numbers of arriving unaccompanied minors in 2014 and 2015 have presented the cantons with a challenge. Some cantons have increased their reception capacities for unaccompanied minors.

Detention

- In July 2015, specific rules for administrative detention in the Dublin procedure entered into force. Several of these rules seem problematic and are not in line with the Dublin III Regulation (time limits, definition of flight risk).

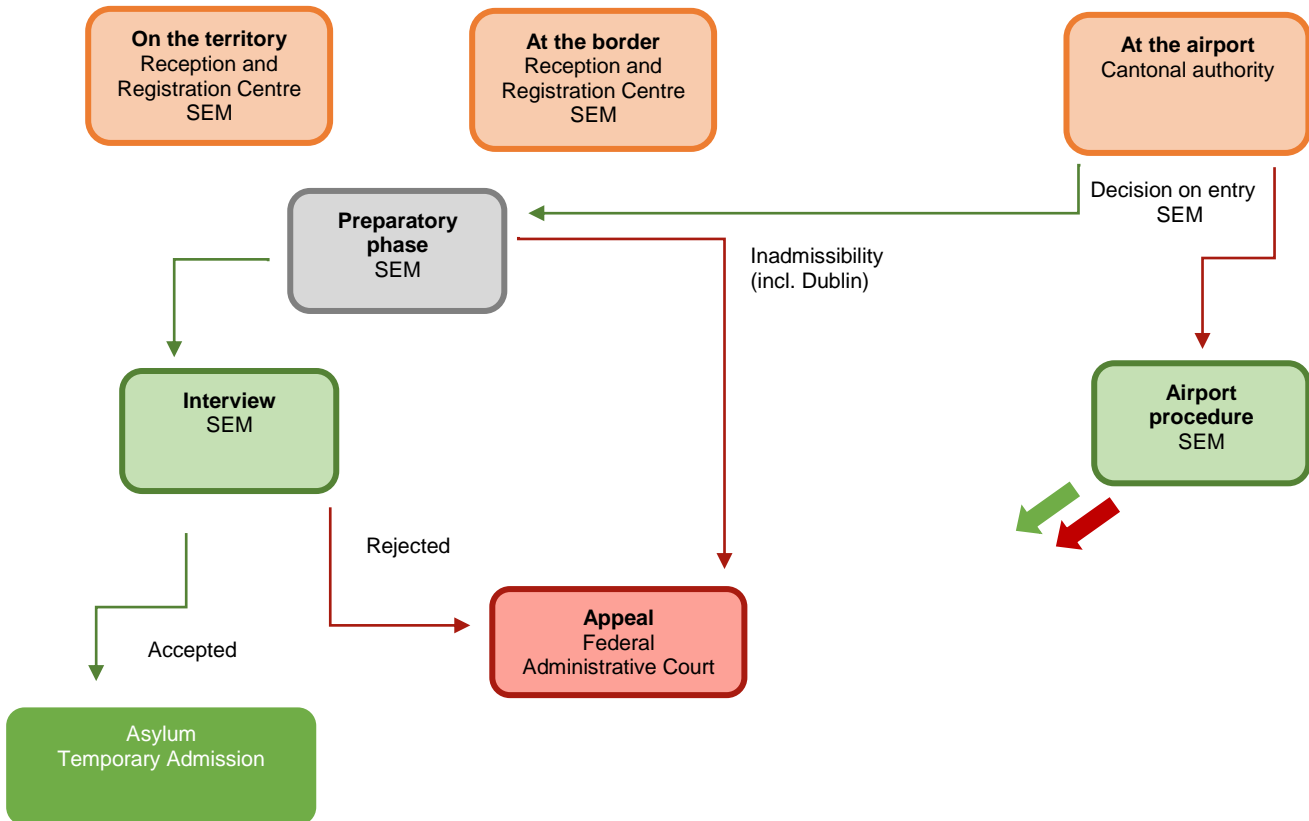
Relocation

- The Swiss government announced in September 2015 that it will take part in the EU relocation scheme for asylum seekers registered in Italy and Greece.

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: ² | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ³ | <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: ⁴ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Other: Pilot accelerated procedure (Testphase) | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

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

Swiss asylum law provides the possibility to grant temporary protection ("*protection provisoire*") 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.⁵ 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. Until now, this instrument has never been used by the Swiss authorities. At the beginning of 2015, political discussions have started about the possibility of introducing the status for Syrians, but nothing has been decided so far.

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

Stage of the procedure	Competent authority in EN	Competent authority in original language (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	Secrétariat d'Etat aux migrations
Application	State Secretariat for Migration	Secrétariat d'Etat aux migrations
Dublin (responsibility assessment)	State Secretariat for Migration	Secrétariat d'Etat aux migrations
Refugee status determination	State Secretariat for Migration	Secrétariat d'Etat aux migrations
Airport procedure	State Secretariat for Migration	Secrétariat d'Etat aux migrations
Appeal procedure	Federal Administrative Court	Tribunal administratif fédéral
Subsequent application	State Secretariat for Migration	Secrétariat d'Etat aux migrations

4. Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance)

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 first instance

² For applications likely to be well-founded or made by vulnerable applicants.

³ Accelerating the processing of specific caseloads as part of the regular procedure.

⁴ Labelled as "accelerated procedure" in national law.

⁵ Articles 66-79a AsylA.

			authority?
State Secretariat for Migration (Asylum Department)	1,028 (497 in the area of asylum) ⁶	Federal Department of Justice and Police	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

5. Short overview of the asylum procedure

Preliminary remarks: Recent and current changes of Swiss Asylum Law

Swiss Asylum Law has undergone a series of changes in the last few years and further modifications are foreseen in the near future. The Asylum Act and the Federal Act on Foreign Nationals as well as different relevant ordinances have been revised (totally or partially). A certain number of urgent measures that entered into force on 29 September 2012, the day following their adoption by the Parliament, have been extended until September 2015. In addition, a number of so-called non-urgent measures were adopted by the Parliament at the end of 2012 and entered into force in January and February 2014.⁷ Currently, a process of restructuring of the asylum system is under way. The parliament accepted this proposal in September 2015. In this context, an accelerated asylum procedure has been tested since January 2014.⁸ Further, several adaptations in national law implementing the Dublin III Regulation came into force on 1 July 2015, mainly regarding detention in the Dublin procedure⁹

Application for asylum

A person can apply for asylum in a federal reception and processing centre, at a Swiss border or during the border control at an international airport in Switzerland.¹⁰ The Swiss asylum procedure is organised as a single procedure.

In most cases, asylum applications are filed in one of the 5 reception and processing centres that are run by the SEM. If this is not the case, the concerned asylum applicants are directed to one of those centres, where the first part of the asylum procedure will be carried out.¹¹ The proceeding is different if an application is filed at an international airport or if an application is treated within the pilot phase testing an accelerated procedure (see further down). The stay at the reception and processing centres is limited to a maximum of 90 days (but can be extended).¹² After this period of time, the applicants are transferred to a canton. If the procedure is not completed at that point, it will be continued while the applicant stays in the assigned canton.¹³

Preparatory phase

The preparatory phase ("*phase préparatoire*") starts after the submission of the application and usually takes place in a reception and processing centre. This phase takes at most 3 weeks.¹⁴ As a first step, the asylum seeker benefits from a preliminary advisory meeting about the asylum procedure.¹⁵ But generally in practice, instead of holding an advisory meeting, the information is provided in the form of an explanatory leaflet. The SEM registers

⁶ SEM, Information given by e-mail, 5 October 2015 (numbers as of end of September 2015).

⁷ Federal Council, *Botschaft zur Änderung des Asylgesetzes (Verlängerung der dringlichen Änderungen des Asylgesetzes)* (Message regarding the change of the Asylum Act (Prolongation of the urgent changes of the Asylum Act): <http://bit.ly/1TpyhEu>, 2088; SEM, *Asylgesetz mit markierten Änderungen (Erlass 3 und Erlass 1)* (Asylum Act with marked changes (Act 3 and Act 1)): <http://bit.ly/1J0Riy8>.

⁸ Test Phases Ordinance.

⁹ Bundesbeschluss zur Weiterentwicklung des Dublin/Eurodac-Besitzstandes (Federal decree on the development of the Dublin/Eurodac rules), AS 2015 1841, <http://bit.ly/1LtcRFj>.

¹⁰ Article 19 AsylA.

¹¹ Article 21 AsylA.

¹² Article 16 para. 2 OA1.

¹³ Article 27 AsylA.

¹⁴ Article 26 AsylA.

¹⁵ Article 25a AsylA.

the applicant and takes his or her fingerprints. If necessary, other biometric data can be collected, identity documents or pieces of evidence can be checked and further investigations on the identity or the origin of a person can be conducted. The SEM also examines if any other state is responsible for processing the asylum application according to the Dublin Regulation.¹⁶ Further, an official of the SEM conducts a first, relatively short interview with the applicant. The interview encompasses issues on the identity, the origin and the living conditions of the applicant. It also covers the essential information about the journey to Switzerland and summarily the reasons for seeking asylum.¹⁷ If during the preparation phase the SEM has established that another Dublin Member State is responsible for processing the asylum application, the asylum applicant is granted the right to be heard regarding possible reasons against a transfer to that state.¹⁸ This is often granted during the first interview.

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 the asylum seeker withdraws his or her application, the application is cancelled without a formal decision.¹⁹ Furthermore, the application of asylum applicants who fail to cooperate without valid reason or who fail to make themselves available to the authorities for more than 20 days is cancelled without a formal decision and the persons concerned cannot file a new application within 3 years (compliance with the Refugee Convention being reserved).²⁰

In certain cases, the SEM will take an inadmissibility decision, 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 Regulation another state is responsible for conducting the asylum and removal procedures.²¹ 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 removal of the applicant is lawful, reasonable and possible.²²

Substantive decision

If Switzerland is responsible for examining the application in substance (no inadmissibility decision), the applicant undergoes a second interview regarding the grounds for asylum, where he or she has the possibility to describe his or her reasons for flight and, if available, present pieces of evidence.²³

After the second interview, the SEM carries out a substantive examination of the application. In a first step, the SEM examines whether the applicant can prove or credibly demonstrate that he or she fits the legal criteria of a refugee. As provided by the law, a person able to

¹⁶ Article 26 AsylA.

¹⁷ Article 26(2) AsylA.

¹⁸ Article 36(1) AsylA.

¹⁹ Article 25a AsylA.

²⁰ Article 8bis AsylA.

²¹ Article 31a AsylA.

²² Article 44 AsylA; Article 83 FNA.

²³ Article 29 AsylA.

demonstrate he or she meets these criteria is granted asylum in Switzerland.²⁴ 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 his or her exclusion from asylum,²⁵ it will issue a negative asylum decision. In this case, the SEM has to examine in a second step whether the removal of the applicant is lawful, reasonable and possible.²⁶ If the removal is either unlawful, unreasonable or impossible, the applicant will be admitted temporarily (F permit) to 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 that are excluded from asylum or to foreigners (without refugee status). The scope of temporary admission exceeds the scope of subsidiary protection according to the 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). But the status rights of persons with a temporary admission in Switzerland are significantly lower than the status rights of persons with subsidiary protection according to the Qualification Directive.

In practice, the SEM treats asylum applications of citizens from certain European visa-waiver-countries (Serbia, Macedonia, Bosnia and Herzegovina) since August 2012, as well as from Kosovo and Georgia since March 2013 and from Hungary in October 2014, in an accelerated manner. In these cases, the procedures are notably concluded within 48 hours from the first interview. Applications that require further clarification of the facts are exempted from this accelerated treatment.²⁷

Appeal

If an applicant has not been granted asylum, he or she can submit an appeal against the decision of the SEM to the Federal Administrative Court.²⁸ 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). An appeal can be made against negative substantive and inadmissibility decisions. However, the time limit for lodging an appeal depends on the type of the contested decision. The time limit is 30 days in the case of a substantive negative asylum decision (no granting of asylum). It is only 5 working days in the case of an inadmissibility decision, a decision in the airport procedure, or if the applicant originates from a so-called safe country of origin (according to the list of the Federal Council) and is obviously not eligible for refugee status and his or her removal is lawful, reasonable and possible.²⁹

Removal

The cantonal authorities are in charge of the execution of the removal of an applicant, regardless of whether it concerns the transfer to a Dublin Member State or a removal to a country of origin.³⁰

Accelerated procedures

²⁴ Article 49 AsylA.

²⁵ 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).

²⁶ Article 44 AsylA; Article 83 FNA.

²⁷ SEM, *48-hour procedure extended to Kosovo and Georgia*, Press release of 26 March 2013, <http://bit.ly/1GpBzRB>.

²⁸ Article 105 AsylA.

²⁹ Article 108 AsylA.

³⁰ Article 46 AsylA; Article 21(2) Test Phases Ordinance.

Swiss law provides for two types of procedures that can be considered as accelerated procedures: the airport procedure and the procedure which is currently being tested.

If the asylum application is filed during the border control in the transit area of an international airport, special rules apply.³¹ As a first step, the SEM has to decide whether entry into the territory should be allowed or not. 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 SEM then has to issue the asylum decision within a maximum of 20 days after the asylum application. If that time limit is not met, the SEM allocates the applicant to a canton where he will be treated in the regular procedure. The time for lodging an appeal against a negative asylum decision within the airport procedure is 5 working days.³²

Since the beginning of 2014, an accelerated procedure has been tested in the federal reception centre in Zurich for a period of 2 years (called pilot or test phase) in view of a possible restructuring of the asylum system. In general, the whole procedure (preliminary phase, accelerated procedure) is carried out within the test centre in Zurich.³³ The accelerated test procedure ends with an asylum decision of the first instance or with a transfer to the so-called “extended procedure” if the decision of the first instance cannot be notified within the federal centre. In the first case, an appeal to the Federal Administrative Court can be lodged within 10 days of the notification of the decision (5 working days in case of inadmissibility decisions or safe country of origin decisions).³⁴ If no decision can be taken in the federal centre, the applicant is transferred to a canton and integrated in the regular procedure, in general because further clarifications are necessary.³⁵ In order to compensate for the acceleration of the procedure and to maintain a fair procedure, different measures are introduced. The persons whose application is examined within the accelerated procedure are entitled to free advice on the asylum procedure as well as free legal representation from the very beginning of the procedure.³⁶

B. Procedures

1. Registration of the asylum application

Indicators: Registration

1. Are specific time-limits laid down in law for asylum seekers to lodge their application? Yes No
2. If so, what is the time-limit for lodging an application?
3. 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

According to Swiss law, an asylum application can be filed at a reception and processing centre, at an open border crossing or at a border control point at an international airport in Switzerland. An application can be filed only at the Swiss border or on Swiss territory,³⁷ since the Swiss parliament has decided to abolish the possibility to file asylum applications at Swiss representations abroad from 29

³¹ Articles 22 and 23 AsylA

³² Article 108 AsylA.

³³ Articles 16-18 Test Phases Ordinance.

³⁴ Article 38 Test Phases Ordinance.

³⁵ Article 19 Test Phases Ordinance.

³⁶ Articles 23 and 18 Test Phases Ordinance.

³⁷ Article 19 AsylA.

September 2012 onwards.³⁸ Any statement from a person indicating that he or she is seeking protection in Switzerland from persecution elsewhere is considered as an application for asylum.³⁹

In general, foreign nationals without a valid permit of stay in Switzerland file an asylum application in one of the 5 reception and processing centres run by the SEM. 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 him or her to a reception and processing centre. The competent authority establishes his or her personal data, informs the closest reception and processing centre and issues a transit permit. The person has to present him or herself at that reception and processing centre during the following working day.⁴⁰

Persons with a valid cantonal residence permit who want to apply for asylum have to file the application in one of the reception and processing centres.⁴¹

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 file an application in a reception and processing 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 filed 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.⁴²

If a person is in prison, 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 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, he is issued an N permit by the cantonal authority.⁴³

If an application is filed 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 the 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 then pass through the airport procedure (see section on Border Procedure).⁴⁴

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.

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 filed soon after the entry, a reasonable justification for the delay can be demanded.

³⁸ Curia vista, *Objets parlementaires* (Information on parliamentary decisions), 10.052 *Loi sur l'asile. Modification* (Amendment of the Asylum Act), available in French, German and Italian at: <http://bit.ly/1R3t815>.

³⁹ Article 18 AsylA.

⁴⁰ Articles 19 and 21 AsylA; Article 8(1)-(2) AO1.

⁴¹ Following the changes of law of 28 September 2012, Article 19(2) of the ancient AsylA has been cancelled. According to the latter, a person with a permission to stay had to submit an asylum application to the cantonal authority of the canton having granted the permission to stay: Directive III Field of Asylum, *Das Asylverfahren*, 4-5.

⁴² Article 8(4) AO1; Directive III Field of Asylum, *Das Asylverfahren*, para 1.1.1.3.

⁴³ Article 8(3) AO1; Directive III Field of Asylum, *Das Asylverfahren*, para 1.1.1.4.

⁴⁴ Article 22ff AsylA.

Due to the Dublin Association Agreement that came into force on 1 March 2008,⁴⁵ Switzerland applies the Dublin Regulation. Therefore the SEM has to examine whether Switzerland (or another state) is competent for examining an application (see section on Dublin). It is therefore not possible anymore to refuse entry to asylum applicants or return them directly to neighbouring states without registering them and examining their application (at least) formally.⁴⁶

According to the Asylum Act, asylum seekers are obliged to cooperate in the establishment of the facts during the asylum procedure (duty to cooperate).⁴⁷ Since 1 February 2014, 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. The applications of the latter are cancelled without a formal decision being taken and the persons concerned cannot file a new application within 3 years (compliance with the Refugee Convention being reserved).⁴⁸ This provision seems to be problematic with regard to access to the asylum procedure, as well as to the right to an effective remedy.⁴⁹ There is not much experience in practice, as the persons concerned probably often do not get in touch with legal advisory offices, therefore the cases are not made known to the Swiss Refugee Council.

2. Regular procedure

2.1. 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: | 10 days |
| 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 as of 31 August 2015: ⁵⁰ | 21,328 |

The SEM is the competent authority for the decision-making on the asylum application at first instance. The competences of the SEM comprise, besides asylum, also other areas in the field of migration such as immigration or integration. However, the authority dealing with asylum is a specialised section within the SEM.

The Asylum Act sets time limits for making a decision on the asylum application at first instance. In the case of inadmissibility decisions, the decision should be made within 5 working days of the submission of the application, or within at most 5 working days of the moment when the concerned Dublin state has accepted the transfer request. In all the other cases, decisions should be made within 10 working days of the submission of the application.⁵¹ However, the procedural deadlines set in Swiss law are only directory provisions and have no compelling character. Within the airport procedure, decisions must be

⁴⁵ Accord entre la Confédération suisse et la Communauté européenne relatif aux critères et aux mécanismes permettant de déterminer l'Etat responsable de l'examen d'une demande d'asile introduite dans un Etat membre ou en Suisse (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, No. 0.142.392.68.

⁴⁶ Swiss Refugee Council (ed.), *Handbuch zum Asyl- und Wegweisungsverfahren (Manual on the asylum and return procedure)*, 2009, 65ff; Article 21 AsylA.

⁴⁷ Article 8(1)-(3) AsylA.

⁴⁸ Article 8(3bis) AsylA.

⁴⁹ Seraina Nufer, *Die Abschreibung von Asylgesuchen nach dem neuen Art. 8 Abs. 3bis AsylG (The cancellation of asylum applications according to the new Article 8 para. 3bis AsylA)*, ASYL 2/14, 3ff.

⁵⁰ SEM, *Monthly Asylum Statistics*, August 2015. The figure includes first and second instance cases.

⁵¹ Article 37 AsylA.

issued within 20 days of the submission of the application. Otherwise, the SEM allocates the applicant to a canton.⁵²

In practice, the length of the asylum procedure diverges significantly from what is foreseen by law. In 2014, the average length of the asylum procedure from the registration of the application to the final decision of the first instance was 400 days. According to the SEM, the increase of the average length of the first instance procedure compared to 2013 (258 days) is attributable to the efforts to reduce the number of asylum applications that have been pending for a long time. In 2014, about 47% of all the decisions could be taken within 6 months after registration of the application.⁵³

On 31 December 2014, 9,543 cases (out of a total of 16,767 pending cases) had been pending for more than 6 months since the application had been filed.⁵⁴ On 31 August 2015, 19,207 cases were pending at first instance, 2,121 at the appeal stage.⁵⁵

Because of an increase of asylum applications in 2008 and the general overburdening of the SEM due to the lack of staff, the latter had to set priorities in the examining of applications (see section on Fast-Track Processing).

Another problem implicating a prolongation of the first instance procedure consists in the lack of available interpreters. Problematic are especially languages that are quite rare or used very often, as for example Tigrinya, and the partially insufficient efforts by the SEM to remedy the staff shortage lately criticised by the Federal Administrative Court.⁵⁶ The SEM has since recruited additional interpreters, see also below.

2.2. Fast-track processing

In August 2012, a so-called “48-hour procedure” was set in place, which has the purpose to treat asylum requests from safe European countries within 48 hours if no further examination is required. At the time, asylum claims from Bosnia-Herzegovina, the Former Yugoslav Republic of Macedonia (FYROM) and Serbia were included in those procedures.⁵⁷ In March 2013, the 48-hour procedure was extended to asylum claims from Kosovo and Georgia.⁵⁸ In October 2014, the 48-hour procedure was also applied for asylum requests by persons from Hungary.⁵⁹

As these nationalities fall under the “safe country of origin” concept, the procedure may be described as accelerated since appeals must be lodged within 5 working days. This is not formally an accelerated procedure, however.

In addition, on 1 April 2013, the SEM started a fast-track procedure for countries of origin with a very low recognition rate such as Nigeria, Gambia, Morocco and Algeria. These cases cannot be treated in the 48-hour procedure, as the organisation of return to non-visa-waiver-countries is more complicated. In these cases, the SEM plans to take a decision within 20 days. The asylum seekers are not

⁵² Article 23(2) AsylA.

⁵³ SEM, *Migration Report 2014*, available in German at: <http://bit.ly/1NgDopM>.

⁵⁴ E-mail from an official of the SEM of 22 January 2015.

⁵⁵ SEM, *Monthly Asylum Statistics*, August 2015.

⁵⁶ Federal Administrative Court, Decision D-5658/2014 of 13 November 2014.

⁵⁷ SEM, *Special measures for asylum seekers from safe European countries*, Press Release of 21 August 2012, <http://bit.ly/1ldjPeg>.

⁵⁸ SEM, *48-hour procedure extended to Kosovo and Georgia*, Press release of 26 March 2013, <http://bit.ly/1GpBzRB>.

⁵⁹ SEM, *Demande d'asile des ressortissants hongrois: procédures réglées en 48 heures (Asylum applications from Hungarian citizens: procedures dealt with within 48 hours)*, Press release of 29 October 2014, available in French, German and Italian at: <http://bit.ly/1TNbFhA>.

transferred to the cantons, but the procedures are normally concluded while they are still in the federal reception and processing centres.⁶⁰

On 24 September 2015, the SEM announced that it will maintain its prioritised treatment of weakly founded asylum applications from citizens of visa-waiver countries as well as countries with a very low recognition rate (48h procedure and fast-track procedure) and Dublin cases. The first interviews and registration of asylum applicants from Eritrea, Syria and Afghanistan have been speeded up, but their substantial interviews and decisions are put back for the time being. Exceptions from this are the prioritised examination of applications from unaccompanied minors, as set down by law. The SEM has recruited additional interpreters to ensure a quick registration of all asylum seekers in the reception and registration centres.⁶¹

Since the beginning of these types of fast-track processing, 2,299 cases have been treated in the fast-track procedure, and 1, 449 cases in the 48h procedure. Out of these cases, 14 were granted asylum in the fast-track procedure and 14 in the 48h procedure. 23 persons received temporary protection in the fast-track-procedure, 120 in the 48h procedure.⁶²

2.3. 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

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.

During the preparatory phase, the applicant undergoes a short preliminary interview. In general, this interview is carried out systematically, but it can be replaced by the interview on the grounds for asylum.⁶³ The preliminary interview encompasses issues on the identity, the origin and the living conditions of the asylum seeker. It also covers the essential information about the journey to Switzerland and summarily the reasons for seeking asylum.⁶⁴ An interpreter can be present during the preliminary interview if necessary.⁶⁵ The minutes of the interview are generally written down. In case the SEM intends to take an inadmissibility decision (see section on Admissibility Procedure), the applicant is granted the right to be heard. The same applies if the person deceives the authorities regarding his or her identity and this deception is confirmed by the results of the identification procedure or other evidence, if the person bases his or her application primarily on forged or falsified evidence, or if he or she seriously and culpably fails to cooperate in some other way.⁶⁶ In those cases, there is no second interview.

In all the other cases, the applicant has a second interview, the so-called interview on the grounds for asylum. On this occasion, the applicant has the possibility to describe his or her reasons for flight and, if available, to present pieces of evidence. In principle, the SEM has the possibility to entrust the cantonal

⁶⁰ SEM, Interview in the SonntagsZeitung of 22 September 2013, <http://bit.ly/1jPXp9V>; SEM, Interview in the Neue Zürcher Zeitung of 30 May 2015, <http://bit.ly/1Ljxhxt>.

⁶¹ SEM, Press release of 24 September 2015, available in German at: <http://bit.ly/1LagzDT>.

⁶² SEM, Statistics as of 30 September 2015, e-mail of 5 October 2015.

⁶³ Article 19(2) AsylA.

⁶⁴ Article 26(2) AsylA.

⁶⁵ Article 19(2) AO1.

⁶⁶ Article 36 AsylA.

authorities with the conduct of the second interview in view of an acceleration of the procedure. However, this possibility is not of relevance in practice, as it does not occur. If necessary, an interpreter is present during the interview. A representative and an interpreter of the applicant's choice can accompany him or her.⁶⁷ Also, a representative of an authorised charitable organization (coordinated by the Swiss Refugee Council) is present in the interview. This person participates as an independent observer in order to clarify facts, suggest further clarification or raise objections to the minutes, but he or she has no party rights.⁶⁸

Neither audio nor video recording of the personal interview is required under Swiss legislation. 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).⁶⁹ Before signing the minutes, the applicant has the possibility to make further comments or corrections to the minutes. In general, the transcription is considered sufficiently verbatim, but the Swiss Refugee Council and other charitable organisations have positively commented on the possibility to use audio or video recording as it would provide for a means to check the content and course of the interview, as well as of the performance of the interpreter if necessary. Video conferencing has only very rarely been used for the interviews.

According to Swiss asylum law, the presence of an interpreter during the personal interviews is not an absolute requirement, as an interpreter shall be called in "if necessary".⁷⁰ Normally, an interpreter nevertheless participates in the interviews. According to the SEM, only when the knowledge of an official Swiss language by an applicant is sufficient, no interpreter is needed for the interview.⁷¹ However, in certain cases, it has been observed that applicants – especially Nigerian applicants – are interviewed in English. This is problematic if the interviewed person, contrary to the assumption of the SEM, does not sufficiently master that language. The SEM has a code of conduct applicable for its interpreters.⁷²

Even if, in general, an interpreter is present during the interviews, a certain number of 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 (coordinated by the Swiss Refugee Council) regularly name difficulties relating to simultaneous translation as a main problem. In 2014, they have *inter alia* emphasised problems related to the translation of the minutes back into the original language that is carried out by the same interpreter who had already simultaneously translated the whole interview in the other direction.

The representatives of charitable organisations also point out that several interpreters are not impartial, sometimes even have close ties to the regime in the country of origin, or that they are not professional (imprecise, no literal translation but a summary, lacking linguistic competence). 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. Furthermore, they have pointed out the use of interpreters in other languages than the applicants' mother tongue (languages less mastered by the applicants concerned) as a consequence of the lack of interpreters. This has especially been observed in languages (such as Tigrinya, Syrian Kurdish) that are often required because they are spoken by important communities of applicants.⁷³

⁶⁷ Article 29 AsylA.

⁶⁸ Article 30 AsylA.

⁶⁹ Article 29(3) AsylA.

⁷⁰ Article 29(1bis) AsylA.

⁷¹ SEM, *Handbuch Asyl und Rückkehr. Anhörung zu den Asylgründen* (Manual on asylum and return, Interview regarding the reasons for asylum), available in German at: <http://bit.ly/1Fk7AXb>, 8; Asylum Appeals Commission, Decision EMARK 1999/2 of 27 October 1998, para 5.

⁷² SEM, *Kompetenzprofil Dolmetschende BFM* (Federal Office for Migration, competence profile for interpreters), 2011.

⁷³ *Ibid.*

In November 2014, the Federal Administrative Court (TAF) criticised in a decision the efforts made by the SEM to remedy the shortage of interpreters in Tigrinya.⁷⁴ It has also been observed that several interviews of Nigerian applicants have been scheduled on the same day and worked through in 15-minute intervals. Such interviews have – especially due to the superficiality as well as the speed and sequence of the questions – brought to light challenges regarding accuracy of the content and have been conducted in an impersonal atmosphere (in extreme cases confusion with other applicants). Nigerians form the fourth largest group of applicants, but have statistically a low chance of being granted asylum or temporary admission in Switzerland.

2.4. Appeal

Indicators: Regular Procedure: Appeal

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

❖ 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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

2. Average processing time for the appeal body to make a decision: Not available

Swiss law provides for an appeal mechanism in the regular asylum procedure. The first and last competent authority for examining an appeal against inadmissibility and substantive decisions of the SEM is the Federal Administrative Court (TAF).⁷⁵ A further appeal to the Federal Supreme Court is not possible (except if it concerns an extradition request).⁷⁶ The TAF can either deliberate on the merits of a case and issue a new, final decision or dismiss the decision and send the case back to the SEM for reassessment.

An appeal to the TAF 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.⁷⁷ It is important to note in this respect that the TAF cannot fully verify asylum decisions of the SEM anymore, since the examination for appropriateness has been abolished in the new Asylum Act as of 1 February 2014.⁷⁸ Appropriateness of a decision means situations in which the first instance 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. Previously, the Court could examine whether or not a decision made by the SEM was appropriate. But since February 2014, the Court can examine the SEM’s decisions on asylum only regarding the violation of federal law, including the abuse and exceeding (but not the inappropriate use) of discretionary powers or incorrect and incomplete determination of the legally relevant circumstances.⁷⁹ 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 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 highly ranking 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.⁸⁰ In practice, the

⁷⁴ Federal Administrative Court, Decision D-5658/2014 of 13 November 2014.

⁷⁵ Article 105 AsyIA. Most judgments of the Federal Administrative Court can be found here: <http://bit.ly/1NgE8vb>.

⁷⁶ Article 83(c)-(d) Federal Supreme Court Act (*Loi sur le Tribunal fédéral*).

⁷⁷ Article 106 AsyIA.

⁷⁸ Article 106(1) AsyIA.

⁷⁹ For a more detailed analysis of the discretionary power of the first instance authority and the competence of the Federal Administrative Court, see Federal Administrative Court, Decision E-641/2014 of 13 March 2015.

⁸⁰ 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)* (Cancellation of the examination of appropriateness in the area of asylum), ASYL 2/13, 11ff.

limitation of the Court's competence has proven to be extremely problematic especially in Dublin cases when it comes to the question whether or not Switzerland should apply the sovereignty clause for humanitarian reasons (see section on Dublin: Appeal).

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). The proceedings in front of the court shall be conducted in one of the 4 official languages,⁸¹ 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.⁸²

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 shall grant an appellant a suitable additional period to complete the appeal.⁸³

The time limit for lodging an appeal against negative decisions on the merits is 30 days. The Court normally has to take decisions on appeals against decisions of the SEM within 20 days.⁸⁴ In reality, the average processing time for the Court to take a decision was 524 days between 2008 and 2010;⁸⁵ more recent data is not available. While the procedure is long for appeals against negative substantive decisions with temporary admission (on average 537 days) and for negative substantive decisions with removal (average 860 days), it is much shorter for Dublin inadmissibility decisions (average 54 days) as well as for all the other inadmissibility decisions (89 days).⁸⁶ In 50% of the cases in which an appeal is made, the procedure from the registration of the application to a final decision (after the appeal to the Federal Administrative Court) takes more than one year.⁸⁷

In general, an appeal has automatic suspensive effect in Switzerland.⁸⁸ Appeals in Dublin cases are an exception: suspensive effect is not automatic but can be granted upon request.

Different obstacles to appealing a decision can be identified. One important obstacle is the fact that the Court may demand an advance payment (presumed costs of the appeal proceedings), 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.⁸⁹ In fact, 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).⁹⁰ Another obstacle is set by the limitation of the competence of the TAF since 1 February 2014.

Within the appeal procedure, the Court has the possibility to order a hearing if the facts are not elucidated in a sufficient manner.⁹¹ In practice, it has hardly ever made use of this possibility.

2.5. Legal assistance

⁸¹ Article 33a APA.

⁸² Swiss Refugee Council *Fiches d'information sur la procédure d'asile* (Information leaflets on the asylum procedure), available in several languages at: <http://bit.ly/1QPhrAg>.

⁸³ Article 33a and 52 APA.

⁸⁴ Article 109 AsylA.

⁸⁵ EJDP, *Bericht über Beschleunigungsmassnahmen im Asylbereich*, 2011, 16.

⁸⁶ *Ibid*, 16-17.

⁸⁷ *Ibid*, Annex 2.

⁸⁸ Article 55(1) APA.

⁸⁹ Article 63(4) APA.

⁹⁰ For example ECtHR, *MA v Switzerland*, Application No 52589/13, Judgment of 18 November 2014.

⁹¹ Article 14 APA.

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

Access to legal assistance differs between the regular as well as the airport procedure on the one hand and the accelerated procedure in the trial at the test centre in Zurich on the other hand, as well as the planned restructuring of the asylum procedure in the future (see section on Accelerated Procedure).

The right to free administration of justice is enshrined in the Federal Constitution. In both the first instance procedure and in the appeal procedure,⁹² the right to free administration of justice can encompass proceedings free of charge and free legal representation. The first can be granted if the person does not have sufficient resources and the appeal does not appear *prima facie* without merit. In addition, if these criteria are met and the representation by a lawyer seems necessary in order to safeguard the rights of the person, a lawyer can be assigned to a party to the proceedings.⁹³

The right to free administration of justice is specifically regulated in asylum law since February 2014. Contrary to the general provision in the Federal Act on Administrative Procedure, the legal representation is generally presumed to be necessary in the asylum procedure. It is therefore no longer a precondition to establish the necessity of legal representation, except for appeals within a Dublin procedure, a revision procedure or a re-examination procedure. A legal representative has to hold a university degree in law.⁹⁴ Even if the necessity test has become obsolete, the merit of an appeal is still tested. The described legal basis regulates the access to free legal assistance within the regular and the airport procedure.

In the past, restrictive practices regarding free legal assistance have been observed in Switzerland, during the first instance procedure as well as during the appeal procedure.⁹⁵ During the first instance procedure, generally no state-funded free legal assistance is granted. While the argument within the first instance procedure had often been the lacking necessity of legal representation,⁹⁶ in the appeal procedure the dismissal has in general been justified with the lack of merit of an appeal. The merit test is carried out on the basis of the file only (no hearing).⁹⁷ These observations were made before the abolition of the necessity test in the Asylum Act in February 2014. There is no recent report on how practices have changed since, but the observation concerning the appeal procedure might still be applicable.

In the regular and the airport procedure, independent legal advisory offices cover most of the legal assistance work in practice. On the one hand, there are national legal advisory offices that are situated near the reception and processing centres and on the other hand, there are cantonal legal advisory offices that take over the legal assistance after the transfer of applicants to a canton. These offices are mostly projects of NGOs and they are for the most part funded by donations.⁹⁸ Most of the legal advisors have a university degree in law, but are not attorneys. Even if *de facto* they provide generally

⁹² Articles 8(1) and 29(1) and (3) Constitution.

⁹³ Article 65(1)-(2) APA.

⁹⁴ Article 110a AsyLA.

⁹⁵ ECRE, *Survey on legal aid for asylum seekers in Europe*, 2010, available at: <http://bit.ly/1IGRz2l>, 33.

⁹⁶ Asylum Appeals Commission, Decision EMARK 2001/11 of 10 July 2001.

⁹⁷ ECRE, *Survey on legal aid for asylum seekers in Europe*, 2010.

⁹⁸ See for example Caritas, *Rechtsberatung*, available in German at: <http://bit.ly/1TpPa1T>; Swiss Church Aid (HEKS), *Rechtsberatung in der Schweiz*, available in German at: <http://bit.ly/1R3L0J7>.

free legal assistance inasmuch as no advance payment is required, there is no legal right to state-funded legal assistance from these independent legal advisory offices and the latter cannot, in practice, offer professional legal assistance covering all the needs because their resources are limited. This contrasts with the assumption made by the Federal Administrative Court that the independent legal advisory offices could replace the granting of free administration of justice.⁹⁹ There exist a certain number of private lawyers' offices specialised in asylum and foreigners' law, but the costs are quite high (often an advance payment is required) and against the background of the restrictive practice of the SEM and the Court regarding free administration of justice, this constitutes an important obstacle for applicants.

Furthermore, 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.

It seems not to be the amount of financial compensation itself that constitutes an obstacle for independent legal advisory offices or private lawyers to engage in the provision of legal assistance to asylum seekers. But it is rather the difficulty to get financial compensation at all that constitutes an obstacle – in combination with the limited resources for the independent legal advisory offices respectively in combination with the advance payment that private lawyers usually require (that many applicants cannot afford).

A legislative amendment is foreseen, which was adopted by the parliament on 25 September 2015, called "*Erlass 2– Neustrukturierung des Asylbereichs*".¹⁰⁰ It is a restructuring of the asylum system modelled according to the pilot project for an accelerated procedure in the test centre. Once the new system will enter into force, there will be state-funded legal assistance for every asylum seeker provided by the law in the future. This would apply both to the regular and admissibility procedure. The amendment is not expected to enter into force before 2018 or 2019 – this depends on how long the process of adapting the ordinances and other implementing decrees will take and whether or not there will be a referendum.

⁹⁹ Asylum Appeals Commission, decision EMARK 2001/11 of 10 July 2001. See also Stern, *Kostenloser Rechtsbeistand für Asylsuchende in der Schweiz – Rechtspraxis, Rechtsgrundlagen, Potentiale und Perspektiven* (Free legal representation for asylum seekers in Switzerland – legal practice, legal basis, potentials and perspectives), 2013, Asyl 13/2, 4ff.

¹⁰⁰ Draft of the new Asylum Act, text adopted by the parliament, 24 September 2015, available at: <http://bit.ly/1LbCYKw>.

3. Dublin

3.1. General

Indicators: Dublin: General¹⁰¹

1. Number of outgoing requests in 2015 (January–August):		10,828
❖ Top 3 receiving countries	IT	7,874
	HU	711
	DE	500
2. Number of incoming requests in 2015 (January-August):		2,119
❖ Top 3 sending countries	DE	976
	FR	266
	SE	225
3. Number of outgoing transfers in 2015 (January-August):		1,644
❖ Top 3 receiving countries	IT	770
	FR	191
	ES	172
4. Number of incoming transfers in 2015 (January-August):		384
❖ Top 3 sending countries	DE	134
	SE	46
	GR	28

Application of the Dublin criteria

According to the SEM, since Switzerland's accession to the Dublin Association Agreement on 12 December 2008 until 30 September 2015, Switzerland has made a total of 69,777 requests for take charge or take back to other Member States. They were based on the following criteria:

- 300 requests based on Articles 8, 9, 10 and 11 Dublin III Regulation;¹⁰²
- 32,538 requests based on Articles 12, 13, 14, 15 Dublin III Regulation;
- 196 requests based on Articles 16 or 17 Dublin III Regulation;
- 36,743 requests based on Articles 18 or 20(5) Dublin III Regulation.

These numbers show that the family criteria, the humanitarian clause and the sovereignty clause are only applied rarely by Switzerland. The family criteria in particular are generally applied strictly. The SEM's practice regarding the effective relationship and regarding the definition of family members in the Dublin III Regulation is strict. A few recent examples can illustrate this:

- In one case an Afghan couple argued that they had not been able to spend much time together in their home country because the woman's family did not approve of the relationship. The Federal Administrative Court recognised that these were objective reasons not attributable to the couple. So the SEM was wrong in not recognising the relationship of the couple. Switzerland was responsible under Article 10 Dublin III Regulation, as the woman was in a national asylum procedure in Switzerland.¹⁰³
- In the case of a couple from Kosovo who intended to start a marriage preparation procedure in Switzerland, the Federal Administrative Court denied that they were family members in the sense of the Dublin III Regulation. Arguing that they could start the marriage preparation procedure from outside Switzerland, the Court confirmed the SEM's decision to transfer the couple to Hungary.¹⁰⁴

¹⁰¹ SEM, *Monthly Asylum Statistics*, August 2015.

¹⁰² Or the equivalent under the Dublin II Regulation, this goes for all numbers in this list.

¹⁰³ Federal Administrative Court, Decision E-2893/2015 of 21 July 2015.

¹⁰⁴ Federal Administrative Court, Decision D-3087/2015 of 21 May 2015.

- In the case of a young Afghan man, the SEM decided he must return to Hungary, despite the fact that his two minor sisters lived in Switzerland as unaccompanied minors with a temporary admission. Contrary to the SEM's decision, the Federal Administrative Court argued that it must be examined whether the brother was a family member in the sense of Article 2(g) Dublin III Regulation, as he was the only adult reference person of the two girls in Switzerland.¹⁰⁵

The discretionary clauses

In addition to the cases in which Switzerland must apply the sovereignty clause because the transfer to the responsible Dublin State would violate one of its international obligations, Article 29a(3) AO1 provides the possibility to apply the sovereignty clause on humanitarian grounds. Case-law has held that the sovereignty clause is not self-executing, which means that applicants can rely on the clause only in connection with another provision of national law.¹⁰⁶ There are no general criteria publicly available in Switzerland on when the humanitarian clause or the sovereignty clause are implemented. The SEM is very reluctant to show in a transparent manner which criteria are decisive for using 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 (see section on Dublin: Appeal).

The sovereignty clause is used only in exceptional cases and is usually based on Article 29a(3) OA1. According to Swiss case-law,¹⁰⁷ the interpretation of humanitarian reasons in the sense of Article 3(2) of the Dublin III Regulation should be similar to the interpretation of the humanitarian clause of the Dublin Regulation.¹⁰⁸ 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 applicants concerned are particularly vulnerable persons, for example families (especially single mothers with children) or persons with psychological problems that cannot be taken charge of because of the deficiencies of the reception conditions or of the asylum system in the responsible Member State. A high risk of detention in case of a transfer back to the responsible state is also a reason that is put forward relatively often (for further information see section on Dublin: Appeal). There is no information available on the number of cases in which the humanitarian clause or the sovereignty clause have been applied by the Swiss authorities.

3.2. Procedure

Indicators: Dublin: Procedure

- | | |
|---|------------|
| 1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? ¹⁰⁹ | 202 days |
| ❖ Answer to negative Dublin decision | 8-9 days |
| ❖ Negative Dublin decision to transfer | 193.8 days |

The Dublin III Regulation is applied directly since 1 January 2014 according to a decision of the Federal Council of 18 December 2013, In order to implement the provisions concerning legal protection and detention, the Swiss law had to be adapted. The changes came into force on 1 July 2015.¹¹⁰

According to Swiss law, the SEM has to transmit the fingerprints of applicants to the Central Unit of the Eurodac System within the framework of the Application of the Dublin Association Agreements.¹¹¹ The Federal Council has the possibility to provide exceptions to taking the fingerprints for children under the

¹⁰⁵ Federal Administrative Court, Decision D-4385/2015 of 2 September 2015.

¹⁰⁶ Federal Administrative Court, Decision BVGE 2010/45 (E-5644/2009) of 31 August 2010.

¹⁰⁷ Federal Administrative Court, Decision BVGE 2011/9 (E-7221/2009) of 10 May 2011.

¹⁰⁸ Articles 16 and 17(2) Dublin III Regulation.

¹⁰⁹ SEM, Information given by e-mail, numbers regarding January – September 2015, 12 October 2015.

¹¹⁰ SEM, Press release of 12 June 2015, available in German at: <http://bit.ly/1JOCrgN>.

¹¹¹ Article 102a^{bis} AsylA.

age of 14.¹¹² In practice, all applicants over 14 years of age are systematically fingerprinted and checked in Eurodac after the registration of the application in Switzerland. This is part of all types of 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.¹¹³

The Federal Administrative Court stated that if a person fails to cooperate to be fingerprinted, this is 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 his or her fingertips. However, the SEM must clarify with an expert whether or not the manipulation of the fingertips was wilful or due to external influences.¹¹⁴

If another Dublin State is presumed responsible for processing the asylum application, the applicant concerned is granted the right to be heard.¹¹⁵ This can be carried out either orally or in written form,¹¹⁶ and provides the opportunity for the applicant to make a statement and to present reasons against a transfer to the responsible state. 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. It seems problematic that the applicant is confronted with this question only at this stage of the procedure, when the responsibility has not yet been fully established. At this point in time, the presumed responsible state has not yet received the request by the Swiss authorities to take charge or take back the applicant. This means that the right to be heard is granted at a moment when consultations between Member States in the Dublin procedure have not even started yet. This deprives the applicant of procedural rights as, according to the Court of Justice of the European Union (CJEU) in *MM*, the authorities are “to inform the applicant that they propose to reject his application and notify him of the arguments on which they intend to base their rejection, so as to enable him to make known his views in that regard.”¹¹⁷ The right to be heard cannot effectively be exercised as long as the intended outcome of the Dublin procedure is not clear. According to the *MM* standard, the applicant should be able to provide his/her views in the light of an intended concrete decision:

“The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely.”¹¹⁸

In principle, the applicant is entitled to inspection of the files relevant for the decision-making.¹¹⁹ The inspection can only be refused if this would contradict essential public interest, essential private interests or interests of non-completed official investigations.¹²⁰ In general, inspection of the files is not granted automatically, but only upon explicit request. However, in case of an inadmissibility decision, copies of the files are being communicated together with the decision if enforcement of the removal has been ordered.¹²¹ The files should include information about the evidence on which the request for taking back was made and the reply of the requested Member State. In case of Dublin transfer decisions (which are inadmissibility decisions), the SEM can notify the decision directly to asylum applicants even if they are represented by a legal representative. The latter must be informed immediately about the notification.¹²²

Individualised guarantees

¹¹² Article 99 AsyIA.

¹¹³ Articles 20, 22 and 26 AsyIA; Article 16 Test Phases Ordinance.

¹¹⁴ Federal Administrative Court, Decision BVGE 2011/27 of 30 September 2011.

¹¹⁵ Article 36(1) AsyIA.

¹¹⁶ Article 29(2) Constitution.

¹¹⁷ CJEU, Case C-277/11 *MM*, Judgment of 22 November 2012, para 95.

¹¹⁸ *Ibid*, para 87.

¹¹⁹ Article 26 APA.

¹²⁰ Article 27 APA.

¹²¹ Article 17(5) AsyIA.

¹²² Article 13 AsyIA.

In a first national leading case judgment regarding the *Tarakhel* judgment, 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. Therefore, the guarantees must be provided at the moment of the Dublin transfer decision by the first instance decision, so that the applicants can make a statement regarding those guarantees in their appeal to the Federal Administrative Court. If the guarantees are only given before the actual transfer (as had been the practice up to then), this is too late as at that stage there is no longer a legal remedy.¹²³ After this judgment, there have been several cases which the Court sent the matter back to the first instance authority because of insufficient guarantees.¹²⁴ However, in one case the Court stated that the Italian authorities had provided a sufficient guarantee by providing a list of SPRAR projects in which a number of places have 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.¹²⁵ Furthermore, in the case of a pregnant woman the Court stated that no *Tarakhel* guarantees must be obtained. It also pointed out that the unborn child cannot rely on the Convention on the Rights of the Child.¹²⁶ According to the State Secretariat for Migration, *Tarakhel* is only applied in the case of families in the Dublin procedure, not for other categories of persons. From the moment of the *Tarakhel* judgment until the beginning of September 2015, 5 families have been transferred from Switzerland to Italy under the Dublin procedure. The families are not granted the right to be heard regarding the guarantees before the first instance decision.¹²⁷ So the only moment they can make a statement regarding the guarantees is in the appeal.

Transfers

According to the SEM, from January to September 2015 it took on average 193.8 days between the Dublin inadmissibility decision and the transfer. From the positive answer of the responsible Member State to the Dublin inadmissibility decision, it takes another estimated 8 to 9 days.¹²⁸ One reason for this long duration could be the prolongation of the transfer deadline in case of an appeal which is granted suspensive effect. The transfer will then be further delayed if the Federal Administrative Court sends the case back to the SEM for additional clarifications and a new decision, which in turn can be appealed again.

It is striking that the number of Dublin requests for outgoing transfers made by Switzerland from January to August 2015 (10,828) is far higher than the number of outgoing transfers actually carried out (1,644).

According to the Foreign Nationals Act, an applicant can already be detained during the preparation of the decision on residence status. Applicants within a Dublin procedure can be detained for specific grounds (see section on Detention: Grounds for Detention). The use of detention differs between cantons.

As the Dublin III Regulation is directly applied in Switzerland, voluntary transfers should in principle be possible.¹²⁹ Nevertheless, in practice, voluntary transfers are tested only within the accelerated procedure in the test centre in Zurich. Since the leading decision of the Federal Administrative Court of 2 February 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 5

¹²³ Federal Administrative Court, Decision BVGE 2015/4, E-6629/2014 of 12 March 2015.

¹²⁴ For example, Federal Administrative Court, Decision E-936/2015 of 21 April 2015 regarding a Nigerian woman who claimed to have been forced into prostitution in Italy, and who had asked for asylum in Switzerland with her two children; Decision E-3564/2014 of 16 March 2015 regarding a single mother with her child.

¹²⁵ Federal Administrative Court, Decision D-4394/2015 of 27 July 2015.

¹²⁶ Federal Administrative Court, Decision E-406/2015 of 2 April 2015.

¹²⁷ State Secretariat for Migration, Dublin Office, E-mail of 9 September 2015.

¹²⁸ SEM, Information given by e-mail, numbers regarding January – September 2015, 12 October 2015.

¹²⁹ Article 29 Dublin III Regulation.

days must be granted, allowing the applicant concerned to leave Switzerland or to make an appeal and to ask for suspensive effect.¹³⁰ This case-law has since been codified in the Asylum Act.¹³¹

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

3.3. 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, the applicant has a short preliminary interview mainly on the identity, the journey to Switzerland and summarily the reasons for seeking asylum. 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,¹³² but he or she does not undergo 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 personal interviews within the regular asylum procedure where the application is examined in substance (see section on [Regular Procedure: Personal Interview](#)).

3.4. Appeal

Indicators: Dublin: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?
 - Yes No
 - ❖ If yes, is it Judicial Administrative
 - ❖ If yes, is it suspensive Yes 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 (TAF). The time limit to lodge an appeal against a Dublin transfer decision is 5 working days in the regular and the airport procedure.¹³³

Contrary to other asylum appeals, appeals against Dublin transfer decisions (inadmissibility decisions) do not have automatic suspensive effect. However, as mentioned under the section on [Dublin: Procedure](#), transfers 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 5 working days must be granted.¹³⁴ This allows the concerned applicant to make an appeal and to ask for suspensive effect. The Court has to decide about the suspensive effect within 5 working days.¹³⁵

¹³⁰ Federal Administrative Court, Decision BVGE 2010/1 (E-5841/2009) of 2 February 2010.

¹³¹ Article 107a AsyIA.

¹³² Article 36 AsyIA.

¹³³ Article 108(2) AsyIA.

¹³⁴ Article 107a(2) AsyIA; Federal Administrative Court, Decision BVGE 2010/1 (E-5841/2009) of 2 February 2010.

¹³⁵ Article 107a AsyIA.

In the appeal procedure (applies also to the Dublin procedure), the TAF has the possibility to order a hearing if the facts are not elucidated in a sufficient manner.¹³⁶ In practice, it has hardly ever made use of this possibility.

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 as well as other decisions of the Court, notably concerning Dublin Member States such as Greece, Malta, Hungary, Italy or Bulgaria (for further information see section on [Dublin: Suspension of Transfers](#)).

However, the competence of the Court was severely limited in January 2014. Since then, the Court can only examine errors of law, not whether or not the decision of the first instance 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 which fall outside those strict definitions, the notion of humanitarian reasons for which Switzerland can apply the sovereignty clause becomes crucial. The Court stated that whether or not there are humanitarian reasons for applying the sovereignty clause is a question of “appropriateness”, where the SEM has a margin of appreciation. As long as it decides within this margin, the Court cannot examine whether or not 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 with subsidiary protection. Because he is 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 boy 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.¹³⁷

3.5. Legal assistance

Indicators: Dublin: 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 Dublin decision in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in courts
 Legal advice

The right to free administration of justice is enshrined in the Federal Constitution and the Asylum Act.¹³⁸ Nevertheless, restrictive practices regarding free legal advice have been observed in Switzerland in the past, during the first instance procedure as well as during the appeal procedure.¹³⁹ Therefore, in the Dublin procedure just as in the regular procedure, legal assistance is in most cases provided by independent legal advisory offices that are part of NGOs. The test phase constitutes an exception to this, as state-funded free legal assistance is guaranteed to all applicants whose procedures are carried out in the test centre in the trial taking place in Zurich (see section on [Accelerated Procedure: Legal Assistance](#)).

The relatively short time limit of 5 working days for lodging an appeal against a Dublin transfer decision constitutes another obstacle to the access to legal assistance. This seems especially problematic with

¹³⁶ Article 14 APA.

¹³⁷ Federal Administrative Court, Decision D-3794/2014 of 17 April 2015.

¹³⁸ Articles 8(1) and 29(1) Constitution; Article 110a AsylA.

¹³⁹ ECRE, *Survey on legal aid for asylum seekers in Europe*, 2010, 33.

regard to the remote federal accommodation centres (“*Aussenstellen*”).¹⁴⁰ These accommodation facilities are usually located in remote zones – and therefore far away from independent legal advisory offices that are usually situated in urban areas – and they are used in most cases to accommodate applicants in a Dublin procedure.¹⁴¹

Furthermore, 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.

3.6. 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?

Switzerland has suspended transfers to a certain number of Dublin states on a case-by-case basis or following a Court ruling. Up to now, no transfers to any Dublin state have been suspended systematically. According to the SEM,¹⁴² its practice regarding transfers to **Greece** has been influenced by the judgments of the ECtHR in *MSS v Belgium and Greece* and the CJEU in *NS v Secretary of State for the Home Department*, as well as two ensuing leading case decisions of the Federal Administrative Court of 16 August 2011¹⁴³ and of 17 October 2011.¹⁴⁴ According to this jurisprudence, the general presumption that Greece respects its duties under international law can no longer be maintained. However, as an exception, a transfer can be considered reasonable if it is to be assumed that the applicant does not run a concrete and high risk of treatment prohibited under international law (no risk of detention or *refoulement*, usually because the applicant has a residence permit in Greece).¹⁴⁵ In most of the cases Switzerland relinquishes transfers to Greece and applies the sovereignty clause,¹⁴⁶ while transfers can even be suspended for whole categories of applicants.¹⁴⁷

According to Swiss case law, the general presumption that **Malta** respects the basic rights that the concerned persons are entitled to within the Common European Asylum System in an appropriate manner cannot be maintained. This is due to inherent deficiencies of the asylum procedure or of reception conditions. Therefore, it is necessary to examine in individual cases whether an applicant risks a violation of his or her basic rights in case of a transfer to Malta because he or she belongs to a category with particular vulnerabilities.¹⁴⁸ Therefore, the transfer is generally suspended if this is suspected to be the case.

In the case of **Hungary, Italy or Bulgaria**, transfers can be suspended on a case-by-case basis. Concerning **Hungary**, the sovereignty clause has in particular been applied in cases of vulnerable persons and/or if applicants risk detention after return to Hungary.¹⁴⁹ Transfers have also been suspended with respect to **Italy or Bulgaria** because of deficiencies of the asylum procedure or the reception conditions, especially for vulnerable persons.

¹⁴⁰ Article 26(3) AsylA, Ordinance of the DFJP on the management of federal reception centres in the field of asylum.

¹⁴¹ OSAR, ‘Etat des lieux du centre fédéral de Bremgarten «Obere Allmend»’, 2014, 8.

¹⁴² SEM, *Manuel Asile et retour, Procédure Dublin (Manual asylum and return, Dublin procedure)*, 14.

¹⁴³ Federal Administrative Court, Decision BVGE 2011/35 (D-2076/2010) of 16 August 2011.

¹⁴⁴ Federal Administrative Court, Decision E-5604/2011 of 17 October 2011.

¹⁴⁵ Federal Administrative Court, Decision BVGE 2011/35 (D-2076/2010) of 16 August 2011 and Decision E-5604/2011 of 17 October 2011.

¹⁴⁶ SEM, *Manuel asile et retour, Procédure Dublin*, 14.

¹⁴⁷ FOM, Dublin Office 1, Information given in writing, 29 March 2012.

¹⁴⁸ Federal Administrative Court, Decision BVGE 2012/27 (D-7126/2013) of 5 February 2014.

¹⁴⁹ SEM, *Manuel asile et retour, Procédure Dublin*, 14; see for example Federal Administrative Court, Decision E-2093/2012 of 9 October 2013.

In general, if transfers to other Dublin Member States are suspended, the sovereignty or the humanitarian clause is applied. The asylum application of the person concerned is then examined in Switzerland. However, in a few cases, the Dublin transfer can be suspended temporarily, e.g. if a woman is pregnant.

In the recent past, Switzerland has still carried out transfers of vulnerable persons, especially families, to Dublin Member States with insufficient reception conditions, e.g. to Italy. Only in November 2014, the ECtHR stated in the case of *Tarakhel v Switzerland*,¹⁵⁰ that a transfer to Italy of an Afghan family (8 family members at the moment of the decision) without any concrete and individual guarantees regarding accommodation, respect of the interests of the children and non-separation of the family would constitute inhuman and degrading treatment in violation of Article 3 ECHR due to the insufficient capacity of accommodation of the Italian asylum system. In a first national leading case judgment regarding the *Tarakhel* judgment, the 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. Therefore, the guarantees must be provided at the moment of the Dublin transfer decision by the first instance decision, so that the applicants can make a statement regarding those guarantees in their appeal to the Federal Administrative Court. If the guarantees are only given before the actual transfer (as had been the practice up to then), this is too late as at that stage there is no longer a legal remedy.¹⁵¹

Overall in many cases the Swiss practice regarding **Italy** is still strict and the judges still state that there are no systemic deficiencies. However, in two exceptional cases the Court asked for individual guarantees regarding reception conditions and access to medical treatment regarding mentally ill persons (not families) and regarding **Hungary** and **Slovenia** (not Italy).¹⁵²

4. Admissibility procedure

4.1. 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”.¹⁵³ 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 answers the question if the asylum request will be examined substantively or dismissed by an inadmissibility decision.

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

An application is inadmissible where the asylum seeker:

- (a) Can return to a “safe third country” in which he or she has previously resided;
- (b) Can be transferred to the responsible country [under the Dublin Association Agreement];

¹⁵⁰ ECtHR, *Tarakhel v Switzerland*, Application No. 29217/12, Judgment of 4 November 2014.

¹⁵¹ Federal Administrative Court, Decision E-6629/2014 of 12 March 2015.

¹⁵² Federal Administrative Court, Decision D-2677/2015 of 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 of 10 November 2014.

¹⁵³ Article 26 AsylA.

- (c) Can return to a third country in which he or she has previously resided;
- (d) Can travel to a third country for which he or she has a visa and where he or she may seek protection;
- (e) Can travel to a third country where he or she has family or persons with whom he or she has 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.¹⁵⁴

The grounds relating to countries not listed as “safe third countries” in the Swiss list (see Safe Country Concepts below) do not apply if there are indications that there is no effective protection against *refoulement* in the individual case.¹⁵⁵

Decisions to dismiss an application must normally be made within 5 working days of the application being filed or after the Dublin state concerned has agreed to the transfer request.¹⁵⁶ In practice, these time limits are rarely respected. There are several decisions from the Federal Administrative Court about delay of justice in relation to the similar rule before the revision of the law in February 2014. In a decision of 14 April 2014,¹⁵⁷ the Court said that in view of the numerous pending files, not every asylum procedure could be decided within the provided time limit. Based on these special circumstances, the Court considered it unavoidable that the procedures take more time than what the law designated, which expresses itself in the term “normally” used in Article 37 AsyIA.

4.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

1. 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
2. Are interviews conducted through video conferencing? Frequently Rarely Never

Every asylum seeker will be granted a first personal interview with questions about his or her identity, the itinerary, and summarily about the reasons for leaving his or her country.

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. There the person concerned can give a statement in response to the intention of the SEM to dismiss the application. This regards notably all the reasons for an inadmissibility decision described in the general part of this section, except if the application for asylum is made exclusively for economic or medical reasons. In this case, a second interview will take place according to Article 29 AsyIA.

The first summary 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. So the people who are present are the same as in the regular first interview (employee of the SEM who leads the interview, interpreter, sometimes a transcript writer).¹⁵⁸ If the person requesting asylum is an unaccompanied minor, his or her person of confidence is also allowed

¹⁵⁴ Article 36(2) AsyIA.

¹⁵⁵ Article 31a(2) AsyIA.

¹⁵⁶ Article 37 AsyIA.

¹⁵⁷ Federal Administrative Court, Decision D-1643/2014 of 14 April 2014.

¹⁵⁸ Article 17(3) AsyIA.

to take part in the hearing and will be invited by the SEM,¹⁵⁹ because the hearing is a decisive procedural step.

4.3. 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 |
| - Dublin transfer decisions | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| - Other grounds | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

An appeal against a decision to dismiss an application must be filed before the TAF within 5 working days instead of 30 days in the regular procedure.

The time limit of 5 working days is relatively short. If the decision is made while the asylum seeker is still located in one of the 5 federal reception and processing centres, a legal advisory office close to the centre will be open at least one day a week. The legal advisors in the office can explain the decision to the person concerned and may support an appeal. But if the legal advisory office does not see any chance of success and refuses to write an appeal, the time limit can be very short for another lawyer or the person him or herself to write an appeal. Also, for asylum seekers located in remote accommodation facilities, there may not be a legal advisory office nearby, so the short period of 5 working days can be an obstacle to an appeal in these cases.

In general, an appeal has automatic suspensive effect in Switzerland.¹⁶⁰ Appeals against inadmissibility decisions also have automatic suspensive effect, except for Dublin decisions (see section on [Dublin: Appeal](#)).

Normally, the court should decide appeals against inadmissibility decisions within 5 working days,¹⁶¹ which is not the case in practice. Like in regular procedure appeals, no personal hearing in front of the court takes place in practice.

Contrary to appeals in the regular procedure, the scope for the Court is limited to the question of whether the SEM acted within the law when it decided to dismiss the application.¹⁶²

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

¹⁵⁹ If there is no transcript writer present, the employee from the State Secretariat for Migration will write the transcript, there has to be a transcript in any case of all interviews and also of the right to be heard.

¹⁶⁰ Article 55(1) APA.

¹⁶¹ Article 109 AsyIA.

¹⁶² Federal Administrative Court, Decision BVGE 2012/4 (E-6490/2011) of 9 February 2012, para. 2.2.

4.4. Legal assistance

Indicators: Admissibility 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 an inadmissibility decision in practice?
 Yes With difficulty No
❖ Does free legal assistance cover Representation in courts
 Legal advice

In addition to the problems mentioned in the regular procedure (see section on Regular Procedure: Legal Assistance), the relatively short time limit of 5 working days for lodging an appeal in several cases also forms an obstacle to access to legal assistance.

5. Border procedure (border and transit zones)

5.1. 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. Can an application made at the border be examined in substance during a border procedure? Yes No

3. Is there a maximum time-limit for border procedures laid down in the law? Yes No
❖ If yes, what is the maximum time-limit? 20 days

Switzerland has no land border with third countries. All neighbouring states are 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 reception and processing centre, where they enter the same procedure as any other asylum seeker.¹⁶³

There is a special procedure for people who ask for asylum at the airport. If a person arrives at the airport of Zurich or Geneva, the airport police inform the SEM immediately. As a next step, the airport police (in Zurich) or the SEM (in Geneva) shall record the person's personal details and take his or her fingerprints and photographs. The competent authority may record additional biometric data and summarily ask asylum seekers about their itinerary and the reasons for leaving their country.¹⁶⁴ If a person requests asylum at another airport in Switzerland, the person will be transferred to a reception and processing centre and will enter the regular procedure.

In Zurich and Geneva, accommodation will be provided during the time of the airport procedure. Asylum seekers may be held at the airport or exceptionally at another location for a maximum of 60 days.¹⁶⁵

The SEM examines if Switzerland is responsible to carry out the procedure according to the Dublin Regulation. The SEM authorises 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

¹⁶³ Article 21(1) AsylA.

¹⁶⁴ Article 22 AsylA and Article 12 AO1.

¹⁶⁵ Article 22(5) AsylA.

the refugee definition at Article 3(1) AsylA or under threat of inhumane treatment in the country from which he or she has directly arrived; or if the asylum seeker establishes that the country from which he or she has directly arrived would force him or her to return to a country in which he or she appears to be at risk, in violation of the prohibition of *refoulement*. If it cannot immediately be verified if the mentioned conditions are fulfilled, the entry into the territory is temporarily denied.¹⁶⁶ The asylum seeker is then accommodated in a special accommodation facility within the transit zone of the airport.¹⁶⁷

The airport procedure can result in a decision to enter the country, a negative decision or an inadmissibility decision. The decision has to be taken within 20 days after the application was made. If the procedure takes more time, the SEM has to allocate the asylum seeker to a canton.¹⁶⁸ In a great majority of cases, the time limit is respected in practice; people are sent to the responsible canton automatically after 20 days.

5.2. 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?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are questions limited to nationality, identity, travel route?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

2. Are interviews conducted through video conferencing?

<input type="checkbox"/> Frequently	<input type="checkbox"/> Rarely	<input checked="" type="checkbox"/> Never
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In the airport procedure, a first interview will take place in every case. In Zurich, the airport police conduct the interview, while in Geneva it is the SEM. In case of unaccompanied minors, their person of confidence participates in the first interview (see section on Age Assessment and Legal Representation of Unaccompanied Children). Other than this, there is no difference between the first interviews in the regular procedure and the ones in the airport procedure (see sections on Regular Procedure: Personal Interview and Admissibility Procedure: Personal Interview).

If the SEM decides to examine the asylum application substantively, or if the application does not fulfil the criteria for an asylum application, namely if it is based solely on economic or medical grounds, there is a second, detailed interview on the grounds for asylum. If the asylum seeker has not been allowed to enter Swiss territory, this second interview takes place in the transit zone of the airport. It is conducted by the SEM. The same modalities apply as in the regular procedure (see section on Regular Procedure: Personal Interview).

5.3. Appeal

Indicators: Border Procedure: Appeal

Same as regular procedure

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

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
❖ If yes, is it suspensive	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
○ Dublin cases	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

¹⁶⁶ Article 22(1bis), (1ter) and (2) AsylA.

¹⁶⁷ In the facility, movement is very restricted. Nevertheless, the competent Swiss Federal Administrative Court has issued several decisions stating that the stay is not amounting to detention. The Federal Court and academia do not share this legal reasoning.

¹⁶⁸ Article 23(2) AsylA.

Against a decision taken during the airport procedure an appeal can be made within 5 working days.¹⁶⁹ The Federal Administrative Court is the competent appeal authority, like in the regular procedure. As in the regular procedure, appeals have automatic suspensive effect, 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](#)).

There is an independent legal advisory office in place in the airport transit zones in Zurich and in Geneva. Usually, the Court is not very strict with appeals that are submitted in in another language because the airport procedure does not provide the same options to translate documents as the regular procedure.

5.4. 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

The law does not provide access to state-funded free legal assistance during the airport procedure. However, in practice, there is a legal advisory office in the transit zone of the airport ts in Zurich and in Geneva. There is no difference considering legal assistance between the regular procedure and the airport procedure (see section on [Regular Procedure: Legal Assistance](#)).

6. [Accelerated procedure](#)

6.1. General (scope, grounds for accelerated procedures, time limits)

In general, there is no so-called accelerated procedure foreseen in Swiss law, but in January 2014, a pilot project started, which is called “Testphase”. It is a pilot project for accelerated procedures, where every step of the asylum process will take place in the same area. For this project, a special ordinance¹⁷⁰ entered into force. The asylum seekers who enter this special procedure are chosen at random when they make their application at a federal reception and processing centre. Those who are chosen are then transferred to the test centre in Zurich.

In this procedure, every asylum seeker will be supported free of charge by a legal representative who takes part in the whole procedure. This support ends at the earliest after the SEM takes the first decision, if the legal representative decides that he or she does not see a chance of winning an appeal.

Once the asylum application is made, the preparatory phase starts, 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. This phase shall last no longer than 3 weeks. After this, the accelerated procedure itself will take place, it shall last between 8 and 10 working days, while in certain cases, the period can be extended for a few days. If a decision cannot be made in this time

¹⁶⁹ Article 108(2) AsylA and Article 23(1) AsylA.

¹⁷⁰ Test Phases Ordinance.

frame, the person will be transferred to a canton and the application will be processed in the regular procedure. These time limits are respected in practice.

The SEM is also responsible for decisions at first instance in the accelerated procedure. Inside the test phase, very clear (positive and negative) cases will be decided in the accelerated procedure, as well as inadmissibility decisions.

Until now there is only one centre that applies the test procedure, namely the test centre in Zurich. This procedure may be extended to further test centres within Switzerland in the coming years. In addition, the whole Swiss asylum system will be restructured similarly as in the test centre in Zurich. The Swiss parliament approved the new asylum law on 25 September 2015.¹⁷¹ The amendment is not expected to enter into force before 2018 or 2019 – this depends on how long the process of adapting the ordinances and other implementing decrees will take and whether or not there will be a referendum.

Since the test phase only started in 2014, only numbers from that year are available. Until the end of October 2014, 34.3 % of the cases assigned to the test centre were processed in the accelerated procedure.¹⁷² Figures for 2015 are not yet available, as the evaluation report for 2015 will be published in early 2016.

There exist also other procedures which are handled in an expedited manner. The airport procedure is described in the Border Procedure.

Dublin procedures have a time limit of 5 working days for an appeal; the Dublin procedure is described in the section on Dublin. The same time frame for appeals is applied for all inadmissibility decisions.¹⁷³ Those decisions also have to be made within 5 working days of the application being filed or after the Dublin Member State concerned has agreed to the transfer request,¹⁷⁴ although in practice, these time limits are rarely respected. See also the section on the Admissibility Procedure.

If a person comes from a safe country of origin, the request will not be dismissed, but the application shall be rejected without further investigations.¹⁷⁵ In those cases, the time limit for an appeal is also 5 working days.¹⁷⁶

6.2. Personal Interview

Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the accelerated 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

There is always at least one interview, in the accelerated procedure as well as in the regular procedure. In the accelerated procedure it is also the SEM conducting the interviews. Whether or not there is a second interview with a representation of the authorised charitable organisations present depends on

¹⁷¹ Draft of the new Asylum Act, text adopted by the parliament, 24 September 2015, available in German at: <http://bit.ly/1LbCYKw>.

¹⁷² SEM, *Evaluation Testbetrieb, Zusammenfassung der Zwischenergebnisse* (Evaluation of the test procedure, summary of the intermediate results), February 2015, available in German, French and Italian at: <http://bit.ly/1BLLD8M>, 9.

¹⁷³ Article 108 AsylA.

¹⁷⁴ Article 37 AsylA.

¹⁷⁵ Article 40 AsylA.

¹⁷⁶ Article 108 AsylA.

whether or not inadmissibility grounds or other grounds apply (see sections on Regular Procedure: Personal Interview, Dublin: Personal Interview and Admissibility Procedure: Personal Interview).

In the accelerated procedure within the test phase, a legal representative is always present in the interviews. On the other hand, no representation of the authorised charitable organisations (independent observer) is present. Apart from this, there are no differences in the accelerated procedure considering the personal interviews.

6.3. Appeal

Indicators: Accelerated Procedure: Appeal

Same as regular procedure

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

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

There are no differences for appeals against decisions in the accelerated procedure compared to the regular procedure except for the time limits (see sections on Regular Procedure: Appeal, Dublin: Appeal and Admissibility Procedure: Appeal).

In appeals against inadmissibility decisions (including Dublin), against decisions made at the airport or if the person comes from a safe country of origin, the time limit for an appeal is 5 working days, which can be an obstacle, especially when the person concerned is located in a place where there is no legal advisory office (NGO) nearby, or in detention.

In the accelerated procedure in the test phase, the time limit for appeals against substantive decisions is 10 days, but as described before, a free legal representative will support the asylum seeker with the appeal if they think there is a prospect of success. The legal representative has to inform the asylum seeker within a short period of time if he or she will make an appeal or not. If not, the asylum seeker has to try to find other support within the time period if he or she wishes to make an appeal anyway.

6.4. Legal assistance

Indicators: Accelerated Procedure (test procedure in Zurich): Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
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 - ❖ Does free legal assistance cover:

<input checked="" type="checkbox"/> Representation in interview
<input checked="" type="checkbox"/> Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
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 - ❖ Does free legal assistance cover

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> Legal advice

In the test phase, all applicants are entitled to free legal assistance (advice and representation) during the preliminary phase and the accelerated procedure. An applicant can explicitly renounce free legal assistance. Only persons with a university degree in law can work as legal representatives. The legal representative is already assigned to the applicant before the first interview takes place. The latter attends the personal interviews and is given the possibility to write a statement in case the SEM plans to take a negative decision. If the client is an unaccompanied minor, the legal representative also takes over the function of the person of confidence. The legal representation ends with the coming into force of a decision of the SEM or with the decision to continue the asylum procedure outside of the test phase. It also ends if the legal representative informs the applicant that he or she will not make an

appeal against a negative decision because he considers that the application is *prima facie* without merit.¹⁷⁷ This can constitute a problem as the legal representative instead of the court of appeal carries out the assessment of the merit of an application.

An external evaluation of the test procedure (intermediate results) concluded that the provision of free legal assistance leads to better information for asylum seekers and therefore higher acceptance of the asylum procedure. It also has a positive effect on the standardisation and quality of the asylum practice of the SEM. Furthermore, free legal representation leads to a more targeted use of appeals.¹⁷⁸

A legislative amendment is foreseen, which was adopted by the parliament on 25 September 2015, called “*Erlass 2– Neustrukturierung des Asylbereichs*”.¹⁷⁹ It is a restructuring of the asylum system modelled according to the pilot project for an accelerated procedure in the test centre. Once the new system will enter into force, there will be state-funded legal assistance for every asylum seeker provided by the law in the future. This will apply both to the regular and admissibility procedure. The amendment is not expected to enter into force before 2018 or 2019 – this depends on how long the process of adapting the ordinances and other implementing decrees will take and whether or not there will be a referendum.

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

Indicators: Information and Access to NGOs and UNHCR

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
2. 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

According to the Asylum Act, before opening the asylum proceedings, an “advisory preliminary meeting” should take place between the asylum seeker and a person from the SEM. In this meeting, the asylum seeker should be informed about the asylum procedure and it must be clarified with the asylum seeker whether an application for asylum has been filed under the Asylum Act and if this application is sufficiently justifiable.¹⁸⁰

In practice, the information about the rights and obligations of the asylum seeker is provided in an information leaflet at the beginning of the asylum procedure. Also an information leaflet about the application of the Dublin Regulation is given to the asylum seekers normally after their asylum request has been registered. These leaflets are available in many languages. At the beginning of the interviews, the asylum seeker is asked if he or she received this leaflet and if he or she has understood his or her

¹⁷⁷ Article 23-28 Test Phases Ordinance.

¹⁷⁸ SEM, *Evaluation Testbetrieb, Zusammenfassung der Zwischenergebnisse* (Evaluation of the test procedure, summary of the intermediate results), February 2015, 13f.

¹⁷⁹ Draft of the new Asylum Act, text adopted by the parliament, 24 September 2015, available in German at: <http://bit.ly/1LbCYKw>.

¹⁸⁰ Article 25a AsylA.

rights and obligations. In the majority of cases, the most important rights and obligations will be repeated at the beginning of the interview. There are also information leaflets available from the Swiss Refugee Council on the regular and the airport procedure, in 20 different languages.¹⁸¹ Additionally, close to each of the 5 reception and processing centres, there is legal advisory office run by an NGO, where information is provided as well.

The SEM must also inform asylum seekers about the possibility to get free legal advice.

In the test centre, the information is provided by many instruments. Asylum seekers in the test centre have the option to watch a film about the procedure in different languages, and there is also a brochure with the content of the film. In addition, they have several legal advisors and an assigned legal representative who will explain the procedure.

Asylum seekers at the border have effective access to NGOs, especially to the legal advisory offices run by NGOs. 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.

One serious difficulty in Switzerland is the access to NGOs and legal advice for persons who are located in remote federal accommodations. In cases where there is no person on the ground to explain the decision and a possible appeal has to be filed within 5 working days, it can be very difficult for the asylum seeker to get support to understand the decision and also to write an appeal. First of all, the time limit is very short. 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. So the people located in the countryside face clear disadvantages especially regarding the access to legal advice and therefore also access to some information and support.¹⁸²

D. 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 Article 111c AsylA and in Article 111d AsylA and regarding the costs in Article 7c AO1 on procedural aspects. Every application within 5 years since the asylum decision or removal order became legally binding must be submitted in writing with a statement of the grounds. As these provisions were only introduced in February 2014, it is not clear yet to what extent the new grounds must be substantiated in the written application.

¹⁸¹ Swiss Refugee Council, *Fiches d'information sur la procédure d'asile* (Information leaflets on the asylum procedure), available at: <http://bit.ly/1QPhrAg>.

¹⁸² For further information on this topic, see Thomas Segessenmann, *Rechtsschutz in den Aussenstellen der Empfangs- und Verfahrenszentren des Bundes* (Legal protection in the remote locations of the federal reception and processing centres), ASYL 1/15, 14ff.

The responsible authority is the SEM, as in cases of first applications in the regular procedure. The procedure stays the same even with more than one subsequent application during the 5 years after the asylum decision or removal order has become legally binding, except for unmotivated or repeated subsequent applications with the same motivation, discussed below.

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. 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. Nevertheless, it has the duty to examine all arguments carefully and individually.¹⁸³

Unlike in the regular procedure, during the examination time of the application, the asylum seeker is not allowed to stay in the reception and processing centres. 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.

Unmotivated or repeated subsequent applications with the same motivation will be dismissed without a formal decision. As this procedure only came into force in February 2014, it is not clear yet if this informal decision can be considered as an authoritative and formal decision in the sense of Article 5 APA and if it would be possible to launch an appeal to the Federal Administrative Court (directly on this basis).¹⁸⁴ The procedure until now was to ask the SEM for a declaratory ruling according to Article 25 APA. This declaratory ruling can be subject to an appeal.¹⁸⁵ The appeal has to be addressed to the TAF within 30 days of notification of the decision.¹⁸⁶ In this procedure, suspensive effect can be requested. An oral hearing does not take place in front of the Court. The scope of the Court's review is limited to the question of whether the informal decision of the SEM was legally correct because the application actually stated the same grounds.¹⁸⁷ In one case, the Court stated that it was wrong of the SEM to dismiss the case without a formal decision, as it had not taken into account the fact that the health situation of the applicant's girlfriend had changed since the first application.¹⁸⁸

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.

¹⁸³ Martina Caroni et al., *Migrationsrecht* (Migration law), 3rd (vastly revised) edition, Berne 2014, 342 f.

¹⁸⁴ Federal Administrative Court, Decision D-3019/2014 and D-3033/2014 of 27 August 2014, 7.

¹⁸⁵ Article 44 APA.

¹⁸⁶ Article 50 APA.

¹⁸⁷ Federal Administrative Court, Decision D-3019/2014 and D-3033/2014 of 27 August 2014, 8.

¹⁸⁸ Federal Administrative Court, Decision D-6531/2014 of 16 February 2015.

E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

1. Special procedural guarantees

Indicators: Special Procedural Guarantees

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

There is no requirement in law or another mechanism in place to systematically identify vulnerable persons in the asylum procedure. Only the obligation to identify victims of human trafficking has recently been introduced in the Swiss legislation,¹⁸⁹ to respond to European requirements.¹⁹⁰

There is no screening for potential vulnerabilities. According to the law,¹⁹¹ asylum seekers must state any serious health problems of relevance to the asylum and removal procedures of which they were aware when filing the application for asylum (see section on Use of Medical Reports).

It is very hard to identify victims of human trafficking in the context of the asylum procedure, as the conditions of the asylum interviews and the limited time are not favourable to build the necessary trust between the applicant and the authorities. If the interviewer of the SEM suspects a possible victim, they should inform the head of the section, so a special gender-specific hearing can take place. At the beginning of 2014, the SEM assured of its ambition to improve the protection of victims of human trafficking.

There is no specific unit to carry out the procedures for vulnerable persons, but there are experts for specific topics within the SEM who can be asked for advice or asked to get involved in difficult cases (for example regarding unaccompanied minors, gender-specific violence or victims of trafficking).

The accelerated procedure in the test phase can also be used for vulnerable persons if their case is very clear and does not need more time to decide. Also, unaccompanied children can enter the accelerated procedure in the test phase.

If there are indications or if the situation in the country of origin is indicating gender-specific violence and prosecution, the asylum seeker will be interviewed (in the second, detailed interview, not in the first, summary one) by a person of same gender according to the law.¹⁹² The Asylum and Return Compendium of the SEM specifies that men who are victims of gender-specific violence and persecution should be able to choose the gender of the interviewing official in the second interview.¹⁹³ That rule is also applicable to the interpreter and the recorder of the minutes. According to the SEM, such measures are taken if an applicant mentions an act of persecution of sexual nature as well as if an applicant mentions an act of persecution motivated by gender that he or she fears because of his or her membership of a particular social group or if he or she is a victim of human trafficking.¹⁹⁴ In practice, this

¹⁸⁹ Article 35 and 36 of the Ordinance on Admission, Period of Stay and Employment.

¹⁹⁰ Article 10 Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16 May 2005.

¹⁹¹ Article 26bis AsyIA.

¹⁹² Article 6 AO1.

¹⁹³ SEM, *Manual on asylum and return, Article C6, Befragung zur Person* (Interview on personal data), available in German at: <http://bit.ly/1RvsMQW>.

¹⁹⁴ SEM, *Manuel Asile et retour, Les persécutions liées au genre* (Manual on asylum and return, Gender-specific persecution), available in French at: <http://bit.ly/1JUVABE>, 14-15.

way of proceeding is normally respected and an applicant can demand such measures. Certain more general provisions specifically address the needs of women in the asylum procedure.¹⁹⁵ Furthermore, the right of every asylum applicant who is of sound mind and therefore deemed capable of making reasonable judgements to have his or her own reasons for asylum examined is enshrined in Asylum Law in case an application is made by spouses, registered partners and families.¹⁹⁶

2. Use of medical reports

Indicators: Use of medical reports

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 his or her medical reports. The asylum seeker is not forced to sign, but if he or she does not, the SEM will claim that the asylum seeker has not complied with the duty to cooperate and therefore loses his or her right to have the proceeding continued.

According to the law,¹⁹⁷ asylum seekers must state any serious health problems of relevance to the asylum and removal procedures of which they were aware when filing the application for asylum. This is in practice very problematic because traumatised people do often not even know themselves about their trauma, it is symptomatic that a trauma can show up only after some time, which speaks for the credibility of the disease. Medical problems that are claimed later 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. As this rule regarding standard of proof in medical cases was only introduced in February 2014, there is not enough experience with the practice yet.

In principle, the asylum seekers do not have to pay for the medical examination. Moreover, medical treatment – if necessary – will be paid by the basic health insurance every asylum seeker is provided with. However, medical examinations for the purpose of a medical report to be used in the asylum procedure are rarely requested by the authorities. Usually, asylum seekers have to request a medical report on their own. The problem in this case is that the time it takes for the doctors to write the report is not covered by medical insurance, nor does the SEM cover the costs. As asylum seekers are often destitute, the doctors must write the reports in their free time or during other work. The question of financing of medical reports is a significant problem in practice.

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 not very often based on the methodology laid down in the Istanbul Protocol. In the view of NGOs, there is need for improvement in this regard.

3. Age assessment and legal representation of unaccompanied children

¹⁹⁵ Article 17(2) AsylA.

¹⁹⁶ Article 5 AO1.

¹⁹⁷ Article 26bis AsylA.

Indicators: Unaccompanied Children

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

In Switzerland, unaccompanied children are entitled to an asylum procedure – and hence to pass a personal interview within the asylum procedure – if they are deemed capable of making such a judgment. The assessment of this capability depends on the maturity and the development of the child in question.¹⁹⁸ Usually, a person is considered as able to make a judgment at the age of 14. Regarding the personal interview of children, especially unaccompanied children, Swiss law provides for special measures. The interviewer shall take into account the special nature of being a child.¹⁹⁹ A recent decision of the Federal Administrative Court further stresses the importance of that duty and clarifies in a detailed manner how this should be put into practice during the personal interview.²⁰⁰ In addition, a representative, a so-called person of confidence, is immediately to be appointed for each unaccompanied asylum-seeking child. The latter assists the unaccompanied child during the asylum procedure.²⁰¹ The person of confidence must be informed in advance about the fact that an interview takes place, but has the possibility to renounce the participation in the personal interview.²⁰² Since July 2015, the duty of the person of confidence starts with the first interview.²⁰³

In the test phase, the legal representative who is assigned to each asylum seeker is also the representative of unaccompanied asylum-seeking children.

The law provides the option to prepare a report on a person's age, but there is no specific identification mechanism. Whether a person's age shall be examined is up to the caseworker. In the context of the examination of the facts, the law foresees the use of scientific methods to assess the age.²⁰⁴ The Federal Administrative Court specifies that the age assessment can be ordered if there is a lack of sufficient proof considering the identity, in this case, the date of birth of the asylum seeker.²⁰⁵ The law does not specify who can trigger an age assessment, but in practice, it is the SEM. The asylum seeker carries the burden of proof.²⁰⁶ In practice, an x-ray of the hand is taken in case of doubt about the minority of the person. In the test procedure in Zurich, a combination of the following methods is used: skeletal age (x-ray of the hand, possibly CT scan of the sternum-clavicular joint), dental age plus physiognomy (sexual maturity and physical constitution). The Federal Administrative Court has stated that the x-ray of the hand by itself is not very reliable, as there is a standard deviation of two and a half to three years.²⁰⁷ As every age assessment can only be an age estimation, in case of a range of possible ages, the lowest possible age should be the relevant one for the purpose of the asylum procedure.

The age assessment requires the consent of the asylum seeking person. The person is not forced to consent, but if he or she does not, the SEM claims that the asylum seeker has not complied with the duty to cooperate and therefore loses his or her right to have the proceeding continued.

¹⁹⁸ Asylum Appeals Commission (predecessor of the Federal Administrative Court), decision E-MARK 1996/4 of 9 March 1995.

¹⁹⁹ Article 7(5) AO1.

²⁰⁰ Federal Administrative Court, Decision E-1928/2014 of 24 July 2014.

²⁰¹ Article 17 AsylA; Article 7 AO1.

²⁰² SEM, *Manuel Asile et retour. Requérants d'asile mineurs non accompagnés* (Manual on asylum and return, Unaccompanied minor asylum seekers), 14-15.

²⁰³ Article 7(2bis) AO1.

²⁰⁴ Article 7 AO1.

²⁰⁵ Federal Administrative Court, Decision E-1552/2013 of 2 April 2013, para 4.2.

²⁰⁶ Asylum Appeals Commission, Decision E-MARK 2004/30 of 29 October 2004.

²⁰⁷ Asylum Recourse Commission, JICRA 2000 Nr. 19.

If a person claims to be an unaccompanied minor, a representative (a so-called person of confidence) shall be appointed immediately.²⁰⁸ Since July 2015, the Asylum Ordinance 1 specifies that the duty of the representative starts with the first interview.²⁰⁹ 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. In practice, the representative is rarely invited at this stage of the procedure, which is problematic.²¹⁰ In other cases, the first interview is not considered as a decisive procedural step.²¹¹ This is problematic because the decisions of the SEM are often justified with contradictions between the first and the second interview, which makes the first interview also a decisive step.

If the asylum seeker is considered as an unaccompanied child by the SEM, a representative will be appointed in any case.

There are no eligibility requirements in national legislation related to being a representative of an unaccompanied child. The practice regarding representatives for unaccompanied children differs considerably between the cantons. In general it can be said that the support is often insufficient because too many children are supported by one representative, and some representatives are either insufficiently qualified or insufficiently committed to support the children effectively.²¹² With the increase of unaccompanied asylum-seeking children in 2014 and 2015, this problem became even more serious.

As of now, the duties of the representative are not precisely defined by law and are therefore not always clear in practice.²¹³ Since July 2015, the Asylum Ordinance 1 specifies that the representative must have knowledge of the asylum law and the Dublin procedure. He or she accompanies and supports 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.²¹⁴ The idea of the representative is to support the asylum seeker in the asylum procedure, but also concerning other legal, social or other problems. In practice, as long as the child is staying in the reception and processing centre (maximum 90 days), the representative mostly accompanies the child to the asylum interview or hearing and hands over their address in case of questions. The child and the representative often only meet shortly before the interview. Often the translator of the SEM is asked for help with the explanation of the representative's role. Under these circumstances there is almost no time to build any trust. Normally, the representative will change after a person is transferred to the canton and then stays the same person until the child has reached their 18th birthday. It must be added that the person of confidence is foreseen as an interim measure until child protection measures according to the Civil Code (such as appointing a guardian) are implemented. But unfortunately in practice, the person of confidence very often remains the child's representative, and no child protection measures are implemented.

²⁰⁸ Article 17(3) AsylA.

²⁰⁹ Article 7(2bis) AO1.

²¹⁰ Asylum Appeals Commission, Decision EMARK 2004/30 of 29 October 2004.

²¹¹ Federal Administrative Court, Decision BVGE 2011/23 (E-8648/2010) of 21 September 2011, paras 5.4.6 and 7.

²¹² For an overview of the shortcomings in the support for unaccompanied children in the asylum procedure see: Nora Lischetti, *Unbegleitete Minderjährige im schweizerischen Asylverfahren* (Unaccompanied minors in the Swiss asylum procedure), ASYL 1/12, 3ff.

²¹³ Asylum Appeals Commission, Decision EMARK 2006/14 of 16 March 2006.

²¹⁴ Article 7(3) AO1.

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 |

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 as safe countries of origin.²¹⁵ The list of safe countries of origin is published on the website of the SEM, and was last updated in June 2014.²¹⁶ It includes:

- EU and EEA Member States;
- Albania;
- Benin;
- Bosnia-Herzegovina;
- Burkina Faso;
- Ghana;
- India;
- Kosovo;
- FYROM;
- Moldova, excluding Transnistria;
- Mongolia;
- Montenegro;
- Senegal; and
- Serbia.

In cases of safe country of origin, the request will normally be decided without further investigations. Even though the decision will not be dismissed, the time limit for an appeal in these cases is 5 working days.²¹⁷

Safe third country

The Federal Council is also responsible for the designation of states where there is effective protection against *refoulement*²¹⁸ as safe third countries.²¹⁹ The Federal Council shall periodically review these decisions.²²⁰

This list includes so far all EU and EFTA member states.²²¹

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 he or she was previously resident.

²¹⁵ Article 6a(2)(a) AsyIA.

²¹⁶ SEM, *Liste des pays sûrs, dits «safe countries»* (List of safe countries of origin), June 2014, available in French at: <http://bit.ly/1LIQb7H>.

²¹⁷ Article 108(2) AsyIA.

²¹⁸ As defined in Article 5(1) AsyIA.

²¹⁹ Article 6a(2)(b) AsyIA.

²²⁰ Article 6a(3) AsyIA.

²²¹ SEM, Press release of 14 December 2007, available at: <http://bit.ly/1NgJbf5>.

G. Treatment of specific nationalities

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?²²² Yes No
❖ If yes, specify which: Albania, Algeria, Benin, Bosnia-Herzegovina, Burkina Faso, FYROM, Gambia, Ghana, India, Kosovo, Moldova, Mongolia, Montenegro, Morocco, Nigeria, Senegal, Serbia, EU/EFTA Member States

In 2015 (January-August), **Eritrea** was the top country of origin with 7,540 requests. The number has more than doubled compared to 2013, when 2,563 requests from Eritrean asylum seekers were made. The number of asylum applications from unaccompanied children rose in 2014 in general, but also from Eritrean children in particular. As a consequence of the high increase of requests from people speaking Tigrinya, there was a lack of interpreters in 2014. Most interpreters were used at the reception and processing centres with the translation of the first interview. Older cases could not be treated further because of the lack of interpreters. Nevertheless, in 2015 (January-August) 4,271 requests were treated and concluded. The recognition rate (asylum status) sank from a little over 50% in 2014 to 44.7% in 2015 (January-August). While most Eritrean asylum seekers (without third country constellations) are recognised as refugees, there have recently also been some negative decisions. In one case, the Federal Administrative Court ruled that in order to assume that the person has left Eritrea illegally, it is not sufficient that the person belongs to an age group that normally does not receive an exit visa.²²³ In the case of an unaccompanied minor asylum seeker, the Federal Administrative Court stated that the boy would not risk persecution in case of return to Eritrea, as he was only ten years old when he left Eritrea illegally. He was therefore not recognised as a refugee and received only a temporary admission.²²⁴

In 2015 (January-August), **Syrians** were the second largest group of asylum seekers. 1,424 requests were made by Syrian applicants, 2,712 could be processed. People from Syria (except Palestinians from Syria) at least get status F, which means a temporary admission. In February 2015, the Federal Administrative Court issued two leading case decisions regarding Syria. In a first judgment, it stated that considering the current circumstances in Syria, army deserters and conscientious objectors can risk persecution. 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.²²⁵ In a second judgment, the Court stated that even ordinary participants of demonstrations in Syria against the regime risk persecution if they have been identified by Syrian state security forces.²²⁶ Furthermore, in early March 2015 the Swiss Federal Council decided further measures to support victims of the Syria conflict. The local financial support will be raised by a further 50 million Swiss francs in addition to the 128 million Swiss francs already invested since the outbreak of the conflict. In addition, the Federal Council decided to provide 2,000 resettlement places to vulnerable people from the region of Syria and legal access to another 1,000 nuclear family members of persons with a temporary admission in Switzerland (normally, persons with a temporary admission have to wait three years after their decision to ask for family reunion. And among other preconditions they have to be independent from social support.).²²⁷ On 18 September 2015, the Federal Council decided that Switzerland will participate in the European relocation project for 40,000 persons in need of protection. Under this project, Switzerland will relocate up to 1,500 persons

²²² Whether under the “safe country of origin” concept or otherwise.

²²³ Federal Administrative Court, Decision D-4787/2013 of 20 November 2014.

²²⁴ Federal Administrative Court, Decision E-129/2015 of 20 January 2015.

²²⁵ Federal Administrative Court, Decision D-5553/2013 of 18 February 2015.

²²⁶ Federal Administrative Court, Decision BVGE 2015/3, D-5779/2013 of 25 February 2015.

²²⁷ SEM, *Bundesrat beschliesst zusätzliche Massnahmen für die Opfer des Syrienkonflikts* (Federal Council decides further measures for the victims of the Syria conflict), Press release of 6 March 2015, available in German, French and Italian at: <http://bit.ly/1GH8GQO>.

who have been registered in Italy and Greece. This number will be deducted from the resettlement contingent of 3,000 places for resettlement and humanitarian visas for Syrians.²²⁸ This means that there will be significantly less resettlement places for Syrians from Syria's neighbouring countries than originally announced.

The third largest group of asylum seekers in 2015 (January-August) were persons from **Afghanistan**. 1,271 persons asked for asylum in that period. 13.9% were granted asylum, while 49.5% received temporary admission. Returns to Afghanistan are generally considered unreasonable (which means a temporary admission is granted), with three exceptions: Returns to the cities of Kabul, Mazar-i-Sharif and Herat can be considered reasonable if certain conditions are met in the individual case, mainly a family or social network.²²⁹

The fourth largest group of asylum seekers in 2015 (January-August) came from **Sri Lanka**. Since two asylum seekers from Sri Lanka had been arrested at the airport of Colombo in summer 2013 after they had been sent back from Switzerland, the SEM stopped all forced returns to Sri Lanka until May 2014 and reviewed its practice.²³⁰ In May 2014, the results of the review process were available and the SEM updated its criteria for the examination of asylum requests made by Sri Lankans. All asylum seekers got the opportunity to have their asylum applications re-examined on the basis of updated criteria to determine their current level of risk.²³¹

A moratorium exists for people from Sierra Leone, Liberia and Guinea because of the Ebola epidemic. This means that the treatment of asylum applications from nationals from these countries as well as the execution of returns to these countries is currently suspended (except for Dublin or third country cases or persons who have committed serious crimes or are a danger to Swiss internal or external security). Departure deadlines that are running or have already lapsed are prolonged upon request.²³²

Regarding **Iraq**, in November 2014 the Swiss Refugee Council called for temporary admissions for people from the north and a moratorium on forced returns for people with a negative asylum decision.²³³ So far, the SEM has not reacted to this demand, but the Federal Administrative Court has asked the SEM to update its COI in this regard.²³⁴ Persons from central and southern Iraq usually receive a form of protection.

Asylum requests from people from **Bosnia-Herzegovina, Macedonia, Kosovo, Georgia and Hungary** are normally treated within 48 hours, except if further examinations are required (see section on Regular Procedure: Fast-Track Processing). Statistics on this topic can be found at the website of SEM.²³⁵

²²⁸ SEM, Humanitarian crisis in Syria, available at: <http://bit.ly/1FQ3Jsl>.

²²⁹ Federal Administrative Court, Decisions D-7950/2009 of 30 December 2011 (Mazar-i-Sharif), D-2312/2009 of 28 October 2011 (Herat), BVGE 2011/7 of 16 June 2011 (Afghanistan in general and Kabul).

²³⁰ Neue Zürcher Zeitung, *Umstrittene Rückführungen nach Sri Lanka: Lehren aus Fehleinschätzungen im Asylverfahren* (Controversial returns to Sri Lanka: Lessons learnt from misjudgment in the asylum procedure), 26 May 2014, available in German at: <http://bit.ly/1TNcaYO>; NGO information platform humanrights.ch, *Les renvois forcés vers le Sri Lanka ne doivent pas reprendre* (Returns to Sri Lanka must not be taken up again), 4 June 2014, available in French at: <http://bit.ly/1eGVLfT>.

²³¹ SEM, *Arrest of two asylum seekers in Sri Lanka: results of review process now available*, Press Release of 26 May 2014, available at: <http://bit.ly/1HfpRL0>.

²³² There is no official statement but we received this information from the SEM in November 2014.

²³³ Swiss Refugee Council, *Irak: Situation dramatique (Iraq: dramatic situation)*, Press release of 12 November 2014, available in French and German at: <http://bit.ly/1Cs6wAw>.

²³⁴ Federal Administrative Court, for example Decision E-99/2013 of 17 December 2014.

²³⁵ SEM, *Annual asylum statistics 2014*, available in French at: <http://bit.ly/1ldsQUY>; *Annual asylum statistics 2013*, available in French at: <http://bit.ly/1J4mtSm>; *Monthly asylum statistics, August 2015*.

Reception Conditions

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 usually takes place in one of the 5 federal registration and processing centres (and their related remote locations), ruled under federal legislation.²³⁶ Asylum seekers stay in a federal centre for up to 90 days, and are then allocated to a canton (see section on [Freedom of Movement](#)).

1. [Criteria and restrictions to access reception conditions](#)

Indicators: Criteria and Restrictions to Reception Conditions

- Does the law make 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
❖ Testphase procedure	<input checked="" type="checkbox"/> Yes	<input 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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
- 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 him or herself from own resources, and under the condition that no third party is required to support him or her on the basis of a statutory or contractual obligation.²³⁷ For organisational reasons, accommodation in asylum centres is however available for all asylum seekers, regardless of their financial resources.²³⁸ Note also that 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.²³⁹ In addition, asylum seekers who work must pay a special charge (see section on [Access to the labour market](#)).

Regular procedure

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

²³⁶ The setup of federal reception and processing centres is foreseen by Article 26 AsylA; the Ordinance of the DFJP on the management of federal reception centres in the field of asylum (the Ordinance of the DFJP) provides operating rules for all federal centres; further internal rules are applied in each centre.

²³⁷ Article 81 AsylA.

²³⁸ 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 ff AsylA. On the side of financial organisation, accommodation is however counted in within the social assistance budget.

²³⁹ Article 85(1) AsylA.

In the federal reception and processing centres, reception conditions are similar for all asylum seekers regardless of the type of procedure they will go through. 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) or fast-track examination (48h procedure)

According to national law, asylum seekers whose application may be dismissed without proceeding to a substantive examination,²⁴⁰ or rejected within the 48-hour procedure,²⁴¹ are entitled to the same reception conditions as persons in a regular procedure, until formal dismissal or rejection of their application. In practice, however, they may have special reception conditions, due to the short term perspective of a foreseen removal.

Swiss legislation is based on the idea that dismissal or quick rejection of an application will occur within the 90 days of the stay in the federal centre. Quickly rejected or dismissed asylum seekers shall in principle not be allocated to a canton, unless their appeal has not been decided within a reasonable time or they are prosecuted or convicted of a felony or misdemeanour committed in Switzerland.²⁴² Theoretically, return should occur directly from a federal centre, without any allocation to a canton. The persons concerned (especially Dublin cases) may in practice also be transferred to a remote location (directly related to a federal reception and processing centre) where they can stay up to 12 months without cantonal assignation.²⁴³

However, in practice asylum seekers are often assigned to a canton even in case of dismissal or 48-hour procedures. Based on the argument of an imminent transfer or return, asylum seekers whose application is likely to end up within one of these two procedures will mostly be transferred in shelters dedicated to such types of procedures. Those shelters are known for their Spartan housing conditions, which are supposed to support the Swiss political policy of making the country less attractive.²⁴⁴

Asylum seekers are entitled to social benefits until the decision of rejection or dismissal becomes enforceable. This is the case 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.

Test centre in Zurich (accelerated procedure)

Asylum seekers are randomly assigned to the test phase that currently takes place in Zurich.²⁴⁵ Not only is the procedure different, but asylum seekers are also housed in separate reception centres. Entitlement to material reception conditions remains the same as in the regular procedure, even though the responsibility between the Confederation, cantons, and the municipalities may be distributed in a different way.²⁴⁶ Asylum seekers benefit from accommodation, social assistance, health care and education for children under 16.²⁴⁷ Asylum seekers in the test phase are not entitled to work.²⁴⁸ Like in

²⁴⁰ See sections on Dublin and Admissibility Procedure.

²⁴¹ In case of certain safe countries of origin, see section on Regular Procedure: Fast-Track Processing.

²⁴² Article 27(4) AsyIA.

²⁴³ Article 16b AO1.

²⁴⁴ SEM, *Bénéficiaires de longue durée de l'aide d'urgence* (Long-term beneficiaries of emergency aid), Rapport final, February 2012, available in French at: <http://bit.ly/1TNcnLP>.

²⁴⁵ See section on Accelerated Procedure.

²⁴⁶ According to Article 11 Test Phases Ordinance, cantons and municipalities may be requested to accommodate asylum seekers assigned to the test centre, in case the centre in Zurich does not have enough places. Hosting cantons become responsible for providing social assistance and benefits.

²⁴⁷ The canton of Zurich is responsible for providing for health insurance and education for asylum seekers present in the test centre on the cantonal territory, with support from the Confederation (Article 31(3)-(4) OTest).

²⁴⁸ Article 29 Test Phases Ordinance.

the regular procedure, full entitlement to reception conditions ends with the enforceable decision of rejection or dismissal. After exclusion from social assistance, rejected and dismissed asylum seekers are entitled to emergency aid in case of need.

Airport procedure (border procedure)

When an asylum seeker applies for asylum at the airport of Geneva or Zurich, the Swiss authorities must decide whether to permit entry into Switzerland within 20 days.²⁴⁹ 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 shall provide persons with a place of stay and appropriate accommodation until they leave the country.²⁵⁰ While the asylum seekers are in the airport procedure, they are provided with accommodation in the transit zone (they cannot go out of the airport), food and first necessity goods. The accommodation centre in the transit zone of Geneva has a capacity of 30 places, in Zurich of 60 places. Asylum seekers may be held at the airport or exceptionally at another location for a maximum of 60 days. On the issue of a legally binding removal order, asylum seekers may be transferred to a prison specifically for deportees.²⁵¹

Appeal procedure

The appeal procedure is part of the overall procedure and does not affect the 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. There should therefore be no change of reception conditions during the appeal procedure, neither regarding accommodation, nor regarding 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 are excluded from receiving 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.²⁵² This restriction of 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.²⁵³ The level of accommodation conditions depends on the cantonal practice.

To our knowledge, in general all asylum seekers have been able to access the material reception conditions up to now, despite the growing pressure that reception facilities face and the deterioration of conditions that result with it.

In December 2011, there were a few cases in which asylum seekers were denied entry into the federal reception and processing centre in Basel because it was full. The concerned persons received a paper according to which they should return in a few days, and they had to sleep rough or found a place to sleep with charity organizations or private persons.²⁵⁴ But such cases are rare in Switzerland.

In some isolated cases, it has been reported that some delay in the renewal of the personal documents had led to the denial of access to the accommodation centre and had for consequences that the person

²⁴⁹ For details on the airport procedure see section [Border Procedure](#).

²⁵⁰ Article 22(3) AsylA.

²⁵¹ Article 22(5) AsylA.

²⁵² The legal basis for the restriction is Article 82(2) AsylA (in force since 1 February 2014). For the reception conditions under the emergency aid scheme, see [Forms and levels of material reception conditions](#).

²⁵³ For more information on subsequent applications, see section on [Subsequent Applications](#).

²⁵⁴ See the report in national Swiss television SRF 1 on 20 December 2011, available in German at: <http://bit.ly/1HfxMaU>.

had to sleep rough.²⁵⁵ While those cases cannot be excluded, they remain to our knowledge limited in number.

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 as of 30 June 2014 (in original currency and in €): CHF 1,128 / €940

Social assistance for asylum seekers includes cover of 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,²⁵⁶ social benefits in the form of non-cash benefits whenever possible, or vouchers or cash.²⁵⁷ 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.

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 entire 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 specific centres regulated under the emergency aid scheme. Persons under a Dublin procedure may also be accommodated in those centres before they receive a formal dismissal decision.

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.²⁵⁸ The provision on social benefits is under the responsibility of the Confederation as long as the person is staying in a federal reception and processing centre. After allocation to a canton, the canton shall provide social assistance or emergency aid on the basis of Article 80 AsylA. Fixing of the amount,

²⁵⁵ Le Courrier, 'Les critiques pleuvent sur l'EVAM qui se défend' (The critics confront EVAM which defends itself), 6 October 2014.

²⁵⁶ Article 28 AsylA.

²⁵⁷ 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.

²⁵⁸ Article 81 AsylA.

granting and limiting welfare benefits are regulated by cantonal law when it falls under cantonal responsibility.²⁵⁹ This results in large differences of treatment among cantons.

Social assistance globally includes all the costs related to basic living (around 1/3 of social costs), housing costs (1/3 of social costs), health costs (1/3 of social costs) and other costs resulting from a special situation (around 10%).²⁶⁰ The reception and processing centres provide for most of the first necessity goods in kind, which are food, clothes, toiletries and first aid care. As a consequence, the additional financial allowance in the federal centres is relatively low with 3.- CHF a day, paid once a week. In the federal centre in Vallorbe for instance, the payment occurs on Thursday and requires the asylum seeker to be present, otherwise the amount of 21.- CHF is lost. The financial allowance remains at the disposal of asylum seekers for telephone cards, cigarettes, coffee, internet access, printing documents, etc.

It should be noted that the granting and the amount of financial allowance depends on whether the person is entitled to full, partial or no social benefits according to their income. According to national statistics on social assistance,²⁶¹ 87.5 % of all asylum seekers received social benefits on 30 June 2014. 92% of the asylum seekers and temporarily admitted persons who got social benefits on 30 June 2014 received social assistance as their only support. This high percentage reflects the prohibition of work during the first 3 to 6 months of the asylum procedure (see section on Access to the Labour Market). Moreover, the large majority of persons having an income continue to resort to social assistance as they do not earn enough in order for them not having to resort to social aid at all.²⁶²

On national average, beneficiaries subjected to asylum law monthly received an average of 1,094.- CHF of net income to cover their needs as of June 2014. The amount however strongly varies from one canton to another. It includes basic social assistance, accommodation, health care costs as well as specific needs when necessary.²⁶³ The national law requires that it is provided in the form of non-cash benefits wherever possible. The law also provides that the level of support is lower than what is granted to the local population.²⁶⁴

Asylum seekers are also entitled to child allowances for children living abroad. These are however withheld during asylum procedures and shall be paid only when the asylum seeker is recognised as a refugee or temporarily admitted in accordance with Article 83(3)-(4) FNA.²⁶⁵

Emergency aid

Persons subject to a legally binding removal decision for which a departure deadline has been fixed are excluded from receiving social assistance.²⁶⁶ This exclusion from social assistance also extends to persons in a subsequent procedure (application for re-examination, revision or subsequent application).²⁶⁷ 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.

Emergency aid consists of minimal cantonal benefits for persons in need and unable to provide for themselves. The Federal Supreme Court has set some basic guidance regarding what emergency aid

²⁵⁹ Article 3(2) AO2.

²⁶⁰ Federal Office for Statistics, *Statistique de l'aide sociale dans le domaine de l'asile (eAsyl), Résultats nationaux 2014* (Social assistance statistics in the asylum domain, national results 2014), Neuchâtel, June 2015, available in French at: <http://bit.ly/1FSSxuB>, 23.

²⁶¹ *Ibid*, 6.

²⁶² *Ibid*, 6.

²⁶³ *Ibid*, 28.

²⁶⁴ Article 82(3) AsylA.

²⁶⁵ Article 84 AsylA.

²⁶⁶ Article 82(1) AsylA.

²⁶⁷ Article 82(2) AsylA (in force since 1 February 2014).

must entail in order to respect human dignity.²⁶⁸ But the concrete fixing and granting of the emergency aid is regulated by cantonal law, which results in large differences of treatment between asylum seekers. In some cantons this task is delegated to municipalities or relief organisations.²⁶⁹ The Confederation compensates cantons for the assistance costs.

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, with access sometimes restricted to night time), where living conditions are reduced to a minimum and are known to be quite rough.²⁷⁰ Under emergency aid, people may have to live with around 8.- CHF a day, which must cover the expenses for food, transportation, household items and any other needs. This amount is ridiculously low in comparison with the high living costs in Switzerland. Further restriction is currently applied by granting the entire amount in the form of non-cash benefits or vouchers (which can only be used in one particular supermarket chain), as it is 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 (or disintegration) and health of asylum seekers, despite the chance of being granted a legal status at the end of the procedure.

3. Types of accommodation

Indicators: Types of Accommodation

- | | |
|---|---------------|
| 1. Number of reception centres: ²⁷¹ | Not available |
| 2. Total number of places in the reception centres: ²⁷² | 1,900 |
| 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 checked="" 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 | |

While the Confederation is responsible for setting up and running the 5 reception and processing centres as well as their related “remote locations”, cantons are in charge of their own reception centres. Asylum applications are lodged exclusively in the federal centres, where the first steps of the procedure take place.

As a general comment on the reception issue, it should be noted that cantonal reception structures were reorganised in 2007,²⁷³ after the DFJP decided to reduce financial allocation to the cantons. This

²⁶⁸ See Muriel Trummer, *Bundesgerichtliche Rechtsprechung zur Auslegung der Nothilfe für abgewiesene Asylsuchende* (Jurisprudence of the Federal Supreme Court regarding the interpretation of emergency aid for rejected asylum seekers), in: ASYL 4/12, 24ff.

²⁶⁹ Contact details of cantonal coordination offices for asylum issues are available at: <http://bit.ly/1LtvLuH>. 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* (Assistance Guide 2013: Overview of Regulation of 3 December 2008 on the assistance and emergency aid granted in application of the law on assistance to asylum seekers and certain categories of foreigners and directives of the Department of the Interior / EVAM), available in French at: <http://bit.ly/1eGZqTZ>.

²⁷⁰ 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* (The problem of rejected asylum seekers who receive emergency aid over a long period of time), Bern, 26 May 2010, available in French at: <http://bit.ly/1N9NXqE>.

²⁷¹ Both permanent and for first arrivals.

²⁷² Only at federal level, including reception and processing centres (1,200) and federal remote locations (700); number of places at cantonal level is not available.

politically motivated decision was based on the fact that the number of asylum seekers had gone down to around 10,800 applications lodged in 2005, and the assumption that the number of asylum applications would remain stable at this level. The reality did not follow political assumptions and cantons have since then been put under great pressure as the number of asylum applications rose anew to around 22,000 annual applications in the years since 2011.²⁷⁴ As a result of the 2007 reduction of allocated means and the increasing number of asylum applicants, several cantons had to open emergency structures to fill the lack of existing facilities. Rising numbers of arriving asylum seekers within short periods of time in 2014 and 2015 have presented a challenge to the cantons. For example in the Canton of **Argovia** in the summer of 2015, asylum seekers had to be temporarily accommodated in army tents.²⁷⁵

While the Federal Supreme Court held that reception conditions in a civil protection shelter do not violate the human dignity of persons under emergency aid,²⁷⁶ the situation in such shelters seems largely unsatisfactory for asylum seekers who are still in a procedure. These cases stay marginal yet and mostly affect single men. In **Geneva**, in 2015 a protest committee has formed against accommodation of asylum seekers in underground bunkers.²⁷⁷ At the federal level, additional reception centres have also been set up, see below on “Remote locations”.

Here is an overview of the different kinds of centres, principally at the federal level, as cantons all have their own specificities.

Federal reception and processing centres²⁷⁸

After entering Switzerland, persons in need for protection mostly go to one of the 5 reception and processing centres to lodge an asylum application. Asylum seekers spend the first weeks/months (up to 90 days according to the Asylum Act) in those centres, until they are assigned to a canton.

The reception and processing centres are located close to Swiss borders:

- ❖ **Altstätten** (Canton of St. Gallen);
- ❖ **Basel** (Canton of Basel);
- ❖ **Kreuzlingen** (Canton of Thurgau);
- ❖ **Vallorbe** (Canton of Vaud); and
- ❖ **Chiasso** (Canton of Ticino).

Fixed accommodation capacity of the federal centres are approximately 1,200 beds, between 200 and 300 in each one. Centres are often overcrowded and may have to house more people than their initial capacity. The running of the centres and security matters are entrusted to private companies.²⁷⁹ The

²⁷³ For a statistical analysis, see Vivre ensemble, «*Afflux des demandeurs d'asile*»: un abus de langage! (“Influx of asylum seekers”: an abuse of language!), 19 December 2008, available in French at: <http://bit.ly/1Gyonqt>.

²⁷⁴ In 2014, 23,765 persons applied for asylum in Switzerland; in 2013, 21,465 applications; in 2012, 28,631 applications; in 2011, 22,551 applications; in 2010, 15,567 applications; in 2009, 17,326 applications; in 2008, 11,062; in 2007, 10,844 applications; in 2006, 11,173; in 2005, 10,795 applications. For a graphic illustration, see Vivre ensemble, available in French at: <http://bit.ly/1GyonXn>.

²⁷⁵ Neue Zürcher Zeitung, Asylsuchende werden erstmals in Zelten einquartiert (Asylum seekers are accommodated in tents for the first time), 21 July 2015, available in German at: <http://bit.ly/1Pff6Mp>.

²⁷⁶ Federal Supreme Court, decision 8C_912/2012 of 22 November 2013. For a comment on that decision, see Swiss Centre of Expertise in Human Rights, *Héberger un requérant d'asile débouté dans des abris de protection civile est conforme au droit* (Accommodating an asylum seeker in civil protection shelters is in line with the law), 12 March 2014, available in French at: <http://bit.ly/1CsdPrX>.

²⁷⁷ See <http://stopbunkers.wordpress.com/>.

²⁷⁸ Legal provisions related to the management of the reception and processing centres are in the Asylum Act, the Ordinance of the DFJP on the management of federal reception centres in the field of asylum and internal regulations of the registration centres. Further information is available on the website of the SEM, at: <http://bit.ly/1dfDc9V>.

²⁷⁹ The SEM delegates the task of managing the operation of reception and processing centres to third parties (Article 26 para. 2ter). Thus, the ORS Service AG (Basel, Vallorbe, Chiasso) and AOZ Asyl Organisation Zürich (Kreuzlingen, Altstätten) are responsible for coaching services. Security services at the lodges are provided by the companies Securitas AG (Basel, Kreuzlingen, Vallorbe, Chiasso) and Abacon Sicherheit AG

federal reception and processing centres can be described as semi-closed, as the hours when asylum seekers may leave and return are limited. For more information, see section on [Freedom of Movement](#).

Remote locations

The emergency law adopted in September 2012 introduced the ability for the Confederation to open new accommodation facilities in order to reduce the number of applicants assigned to the cantons. If necessary, the SEM can therefore decide to open new reception and registration centres or – in case of an extraordinary influx of asylum seekers – external hosting centres (such as civil protection facilities).²⁸⁰ There are currently 4 remote locations (these change with time, as they are only used temporarily):

- ❖ **Ticino, Losone, Biasca, Chiesa, Stabio, Casa Giardino** (TI): located in former military barracks and civil protection facilities, with a capacity of 370 beds in total.²⁸¹ The capacity in Losone will be augmented starting from autumn 2015 for 6 to 8 months.²⁸²
- ❖ **Bremgarten** (AR): military shelter for newly arrived asylum seekers, with a capacity of 150 beds. The infrastructure is primarily used to host families under the Dublin procedure.²⁸³ The average length of stay ranges from two weeks to two months.²⁸⁴
- ❖ **Perreux** (NE): the site has a maximum accommodation capacity of 250 beds.²⁸⁵ The capacity will be augmented starting from autumn 2015 for 6 to 8 months.²⁸⁶
- ❖ **Les Rochats** (VD): The military cantonment with a capacity of 120 beds, will operate for three years.²⁸⁷ The capacity will be augmented starting from autumn 2015 for 6 to 8 months.²⁸⁸
- ❖ **Menzingen** (ZG): Military barracks with 120 beds.²⁸⁹
- ❖ **Glaubenberg** (OW): Military camp with 400 places, it will be used as a federal asylum centre starting from 2 November 2015 for 6 months. From summer 2015, part of the centre will continue to be used to accommodate asylum seekers for 3 years.²⁹⁰

(Altstätten). Finally, the mandates of patrols operating in the vicinity of the centres have been awarded to four companies: Abacon Sicherheit AG (Kreuzlingen) Juggers Security SA (Vallorbe), Securitas (Altstätten) and Prosegur SA (Chiasso).

²⁸⁰ Article 26a AsylA and Article 16a AO1.

²⁸¹ SEM, *Ouverture prochaine d'un centre d'hébergement pour requérants d'asile à Losone* (Next opening of an accommodation centre for asylum seekers in Losone), Press release of 8 September 2014, available in French, German and Italian at: <http://bit.ly/1N9U7qD>; SEM, press release of 16 June 2015, available at: <http://bit.ly/1OTlg5D>.

²⁸² SEM, *Situation en matière d'asile : la Confédération ouvre de nouveaux hébergements et rencontre les experts des cantons* (Asylum situation: the Confederation opens new centres and meets with the cantonal experts), Press release of 24 September 2015, available in French, German and Italian at: <http://bit.ly/1YEGkN>.

²⁸³ SEM, *Ouverture d'un centre d'hébergement pour requérants d'asile à Bremgarten* (Opening of a centre of accommodation for asylum seekers in Bremgarten), Press release of 5 August 2013, available in French, German and Italian at: <http://bit.ly/1fAcDhe>.

²⁸⁴ *Rapport à l'attention de l'Office fédéral des migrations sur la visite de la Commission nationale de prévention de la torture dans des centres d'hébergement fédéraux pour requérants d'asile en 2013* (Report to the Federal Office for Migration on the visit of the National Commission for the Prevention of Torture (NCPT) to the federal reception centres for asylum seekers in 2013), Bern 24. April 2014 ('NCPT Report 2014'), available in French at: <http://bit.ly/1FADEGt>, 6.

²⁸⁵ SEM, *Perreux devient un centre d'hébergement fédéral pour requérants d'asile* (Perreux becomes a federal accommodation centre for asylum seekers), Press release of 17 October 2013, available in French, German and Italian at: <http://bit.ly/1K9P0r2>.

²⁸⁶ SEM, *Situation en matière d'asile : la Confédération ouvre de nouveaux hébergements et rencontre les experts des cantons* (Asylum situation: the Confederation opens new centres and meets with the cantonal experts), Press release of 24 September 2015, available in French, German and Italian at: <http://bit.ly/1YEGkN>.

²⁸⁷ SEM, *Ouverture prochaine d'un centre d'hébergement pour les requérants d'asile aux Rochats* (Next opening of an accommodation centre for asylum seekers in Rochats), Press release of 10 April 2014, available in French, German and Italian at: <http://bit.ly/1Kc9gtU>.

²⁸⁸ SEM, *Situation en matière d'asile : la Confédération ouvre de nouveaux hébergements et rencontre les experts des cantons* (Asylum situation: the Confederation opens new centres and meets with the cantonal experts), Press release of 24 September 2015, available in French, German and Italian at: <http://bit.ly/1YEGkN>.

²⁸⁹ SEM, Press release of 11 May 2015, available at: <http://bit.ly/1Nh1TDp>.

All remote locations are located in former military shelters. The National Commission for the Prevention of Torture (NCPT) considers that these military installations are only suitable for short stays of up to 3 weeks.²⁹¹ In practice, people stay longer. National law even provides for a maximum stay of 12 months.²⁹² As in the federal reception and processing centres, the regime is semi-closed.

Specific centres for uncooperative asylum seekers

The opening of specific centres for uncooperative asylum seekers is foreseen by the Asylum Act under Article 26(1bis) and Article 16b AO1. None has been opened yet as cantons seem reluctant to settle such a centre on their territory (for more information and a definition of uncooperative asylum seekers, see section on Reduction or withdrawal of reception conditions).

Test centre in Zurich

The SEM opened a test centre in Zurich to test new asylum procedures. Asylum seekers are randomly attributed to the test procedures after lodging an asylum application in one of the regular reception and processing centres.²⁹³ Current reception capacity amounts to 300 beds (with an additional 30 beds in reserve). From 20 July 2015 until October 2015 (possibility of prolongation), an additional 48 persons can be accommodated in a civil protection facility in Zurich.²⁹⁴

Transit zones in Geneva and Zurich Airports

The SEM shall provide persons who lodged an asylum application at the airport with a place of stay and appropriate accommodation.²⁹⁵ Maximum stay in the transit zone is 60 days.²⁹⁶ The accommodation centre in the transit zone of Geneva has a capacity of 30 places, in Zurich of 60 places.

Reception centres at the cantonal level

Each canton has its own reception system that usually includes several types of housing (collective dwelling, family apartment, home for unaccompanied children, etc. Generally, asylum seekers will be placed in shelters according to the type of procedure they go through (more specifically on the supposed length of their stay in Switzerland) and on their personal situation (family, unaccompanied children, vulnerable persons, single men, etc).

Some cantons (Appenzell Innerrhoden, Glarus, Zug, Appenzell Ausserrhoden or Aargau) house their beneficiaries almost exclusively in collective centres, while others make little use of collective structures (Ticino, Neuchâtel). Overall, 59% of the beneficiaries are housed in individual accommodations, 39% in collective centres and the remaining 2% in other types of housing (includes institutions, staying with relatives etc).²⁹⁷

²⁹⁰ SEM, *Camp militaire du Glaubenberg reconverti en centre fédéral pour requérants d'asile* (Military camp Glaubenberg is turned into a federal centre for asylum seekers), Press release of 29 September 2015, available in French, German and Italian at: <http://bit.ly/1MbqDXH>.

²⁹¹ NCPT Report 2014, 8, para 26.

²⁹² Article 16a AO1.

²⁹³ See Accelerated Procedure.

²⁹⁴ SEM, *Le centre pilote de Zurich augmente provisoirement sa capacité d'hébergement* (The test centre in Zurich temporarily increases its accommodation capacity), Press release of 14 July 2015, available in French, German and Italian at: <http://bit.ly/1Nh25Ck>.

²⁹⁵ Article 22(3) AsylA, see Border Procedure.

²⁹⁶ Article 22(5) AsylA.

²⁹⁷ Federal Office for Statistics, *Statistique de l'aide sociale dans le domaine de l'asile (eAsyl), Résultats nationaux 2014* (Social assistance statistics in the asylum domain, national results 2014), Neuchâtel, June 2015, 17.

Many cantons organise the accommodation structure in 2 phases: the first one in collective shelters, the second in private accommodation. The moment asylum seekers are transferred in individual accommodation depends on the canton of allocation and its accommodation capacity.²⁹⁸

Accommodation for unaccompanied children varies considerably among the cantons. Some cantons have specialized centres for unaccompanied children. Younger children are often accommodated in foster families or children's homes. Many cantons do not have specialized centres for unaccompanied children, and therefore some are accommodated in normal asylum seekers' centres together with adults. This is criticised by NGOs, as it does not provide an appropriate environment for the unaccompanied children and they are not cared for sufficiently. Due to the increase in the number of unaccompanied minors 2014 and 2015, some cantons increased their reception capacities: the canton of **Argovia** opened a new specialised centre for unaccompanied minors (who had previously been accommodated together with adults) in spring 2015,²⁹⁹ the canton of **Berne** opened a second specialized reception centre for unaccompanied minors in autumn 2014.³⁰⁰

There are no special centres for families or other vulnerable persons, but the competent authorities try to take their needs into account within the existing structures, for example by accommodating families in a room of their own, or providing families with individual housing (at the cantonal level) as soon as possible.

4. 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? Not available
3. Are unaccompanied children ever accommodated with adults in practice? Yes No

At the federal level

In the reception and processing centres, asylum seekers are usually housed in single-sex dorms. Places to rest or get isolated are mostly inexistent. Rooms contain at a minimum two or three beds (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. The National Commission for the Prevention of Torture (NCPT), however, regrets that the shared rooms are not cleaned more regularly.

Asylum seekers share common showers and toilet facilities which are poorly equipped in terms of privacy. The NCPT also observed that some centres have a real lack of sanitary equipment. Sanitary facilities may be very dirty according to the delegations of the NCPT. Ventilation is a common problem, especially in the sanitary facilities, but also within the entire centres.³⁰¹

²⁹⁸ *Ibid.*, 17.

²⁹⁹ Canton of Argovia, Press release of 29 April 2015, Unterkunft für unbegleitete minderjährige Asylsuchende in Aarau (Accommodation for unaccompanied minors in Aarau), available at: <http://bit.ly/1FQ5k1f>.

³⁰⁰ Canton of Berne, Press release of 23 October 2014, Zusätzliche Unterkunftsplätze für unbegleitete minderjährige Asylsuchende in Belp (Additional reception places for unaccompanied minor asylum seekers in Belp), available at: <http://bit.ly/1j9xief>.

³⁰¹ For a more detailed description of each centre, see NCPT, *Rapport à l'attention de l'Office fédéral des migrations sur la visite de la Commission nationale de prévention de la torture dans les centres d'enregistrement et de procédure de l'Office fédéral des migrations* (Report to the Federal Office for Migration on the visit of the National Commission for the Prevention of Torture (NCPT) to the federal reception and processing centres of the Federal Office for Migration), Bern, 24 July 2012 ('NCPT Report 2012'), available in French at: <http://bit.ly/1HdLQgK>, 10ff.

When reception and processing centres get crowded, the authorities may decide to open special shelters from the civil protection. Those emergency centres are not adapted for longer stay. The air is quite bad in there, while sanitary facilities are mostly insufficient for the amount of persons present in the centres. As a general remark, federal centres are often reported to be overcrowded, which can lead to a rise of tension among asylum seekers.

Federal centres are not adapted to children and family needs and the situation can be rather tough also for women. No specific measures are taken for those specific persons. Families are even separated in some federal centres because of a lack of adapted structures.³⁰² The law simply 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.³⁰³ There are very few leisure activities for children, and no or only very limited schooling. In practice, authorities strive for the assignment of those persons to a canton adapted to their specific needs, as soon as possible. The general tension that exists within the centres, due to the high psychological pressure asylum seekers are living under, to the coexistence of persons with very different backgrounds, or even due to alcohol or drug issues that may occur in the centres, can make the situation very difficult for children, single women or other vulnerable persons.³⁰⁴

In its 2014 report on remote locations, the NCPT considers that despite the short length of stay, the special needs of children and families should be taken into account appropriately. For example, the Commission criticized that in some of the remote locations there was no room for baby care and no play corner with toys for children. Also, the Commission noted that families had no room for privacy. Except for one remote centre, which provided a snack for children in the afternoon as well as warm milk before bedtime, there were no special services for children. There was also a lack of activities offered to children. The Commission recommends improvements on these points.³⁰⁵

Asylum seekers are subject to body-search by security personnel every time they enter or go out of the centres. Security personnel is also authorised to seize goods when asylum seekers enter or go out of the centre.³⁰⁶

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 and the cooking as well as security tasks.³⁰⁷ Asylum seekers may voluntarily help to serve meals or help in the kitchen. They cannot cook their own food in the federal centres, but specific diets are mostly respected.

There is a chaplaincy service in every reception and processing 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.

³⁰² *Ibid*, 10.

³⁰³ Article 4(1) Ordinance of the DFJP on the management of federal reception centres in the field of asylum.

³⁰⁴ Alcohol and drugs are strictly prohibited within the centres, which, however, does not prevent some breaches of the regulation from happening in practice, under Article 4(2) Ordinance of the DFJP on the management of federal reception centres in the field of asylum.

³⁰⁵ NCPT Report 2014, p. 8 para. 27, 36.

³⁰⁶ According to Article 3 of the Ordinance of the DFJP, security personal is allowed to seize travel and identity documents, dangerous objects, assets, electronic devices that may disturb the tranquility, alcohol, drugs and food. Prohibited weapons and drugs are given to the police immediately (Article 3 of the Ordinance of the DFJP).

³⁰⁷ The SEM delegates the task of managing the operation of reception and processing centres to third parties under Article 26(2ter) AsylA. Thus, the ORS Service AG (Basel, Vallorbe, Chiasso) and AOS Asyl Organisation Zürich (Kreuzlingen, Altstätten) are responsible for running the centres. Security services at the lodges are provided by the companies Securitas AG (Basel, Kreuzlingen, Vallorbe, Chiasso) and Abacon Sicherheit AG (Altstätten). Finally, the mandates of patrols operating in the vicinity of the centres have been awarded to four companies: Abacon Sicherheit AG (Kreuzlingen) Juggers Security SA (Vallorbe), Securitas (Altstätten) and Prosegur SA (Chiasso).

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.³⁰⁸ The occupational programmes must respond to a local or regional general interest of the town or municipality. They cannot 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. Programme. 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. Persons staying in a specific centre for uncooperative asylum seekers receive the incentive allowance in the form of non-cash benefits.

For more information on the reception conditions in the reception and processing centres, please see the mentioned reports of the NCPT on the situation in those centres.³⁰⁹

Transit zone in the airports

Reception conditions in the transit zone are known to be minimal. Asylum seekers may move freely in the transit area. They are entitled to a daily walk outdoors, even though the walk is restricted in time (one hour a day) and in space (in Geneva, it is a square of 60m²). There is no occupation programme in the transit areas, neither for adults, nor for children.

A project of construction of a new reception area at the airport of Geneva is strongly criticised by UNHCR and the independent organisation for defence of asylum seekers present at the airport (ELISA). Mostly contested are the complete isolation of asylum seekers (considered as detention by UNHCR) and the difficulties of access for third persons, especially legal representatives.³¹⁰

Test centre in Zurich

As a model example of the proposed amendment for restructuring the whole asylum system, the federal centre in Zurich is known to offer relatively good reception conditions to asylum seekers. Most rooms accommodate two asylum seekers, some accommodate four to six asylum seekers. Some rooms are reserved for families, unaccompanied children and other vulnerable persons. The centre is equipped with internet facilities, sport equipment and the personnel offer German courses to the asylum seekers. Children directly join a class in the centre upon their arrival.³¹¹ See the section on Access to Education for more information.

At the cantonal level

As explained under the section on Types of Accommodation, reception conditions differ largely from one canton to another. Individual housing provides comfortable housing conditions, while most asylum seekers stay in collective centres, at least at first arrival in the canton. Cantonal authorities strive to house families in individual accommodations, even though this is not always possible. Only few cantons have specific reception centres for unaccompanied children (e.g. Vaud, Berne, Zurich, Basel, Argovia). 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.

³⁰⁸ Article 6a Ordinance of the DFJP.

³⁰⁹ NCPT, *Report 2012*; *Report 2014*.

³¹⁰ For more information, see *Vivre ensemble*, *Rejet du recours contre un lieu de détention pour requérants d'asile* (Rejection of the appeal against a detention area for asylum seekers), 15 December 2014, available in French at: <http://bit.ly/1SJDDsX>.

³¹¹ AOZ (organisation running the accommodation centre in Zurich), information given by e-mail, 10 February 2015.

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 dispose of financial resources.

Regular protests also occurred in the past months, especially in the canton of **Vaud** and in **Geneva** concerning the housing of asylum seekers in military shelters.³¹² Due to a lack of places, asylum seekers are sometimes housed in shelters usually reserved for rejected asylum seekers. Conditions are particularly difficult in those bunkers, with overcrowded rooms and no windows.

5. 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

The national law provides for the possibility to refuse (completely or partially), reduce or withdraw social benefits under explicit and exhaustive 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 the 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 himself. The exclusion from social assistance does not impact on the entitlement to emergency aid. Even though reception conditions are not ideal, 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 needs.

³¹² The canton of Vaud adopted a subsidy to improve the housing conditions for asylum seekers, following several complaints from Eritrean asylum applicants, see in 24 Heures, *Vaud débloque 110,2 millions pour l'accueil des requérants* (Vaud releases 110.2 million for the reception of asylum seekers), 22 December 2014, available in French at: <http://bit.ly/1HdUyIt>. Protest in Geneva against the housing of asylum seekers in bunkers, see: <https://stopbunkers.wordpress.com/>.

The Asylum Act also provides for the possibility to exclude persons from a registration centre (or a remote location) who, through their behaviour, endanger others in that centre, disturb the peace or refuse to obey staff orders. The exclusion can however not exceed 24 hours and is subject to a decision made by the SEM.³¹³

An internal directive on disciplinary rules within federal centres provides for other kind of disciplinary sanctions:³¹⁴ denial of exit permits, elimination of pocket money, ban on entering specific spaces, excluding reception and processing centres or remote locations and transfer to another unit.³¹⁵

Specific centres for uncooperative asylum seekers

The urgent revision of the Asylum Act in September 2012 introduced a legal basis for the creation of specific centres for uncooperative asylum seekers. Article 26(1bis)-(1ter) state that asylum seekers who endanger public security and order or who by their behaviour seriously disrupt the normal operation of the reception and processing 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 reception and processing centres. So far no such specific centres have been set up, so this form of accommodation has not had any practical relevance yet.

According to the law, the decision to send someone to a specific centre is taken either by the federal or the cantonal authorities. It must imperatively take into account the principle of family unity.³¹⁶ The law does not further define the extent of this requirement. As there is no experience with specific centres yet, it is uncertain whether a person could be placed in such a centre if this would result in a family separation. The decision to place a person in a specific centre must respect the principle of proportionality. This is particularly important as it can only be contested with the appeal against the decision of the SEM regarding the asylum application, which is taken much later in the procedure. Therefore, no separate remedy exists against the decision to be assigned to a specific centre for uncooperative asylum seekers.

Grounds for assignment to a specific centre are defined in Article 16b(1)-(3) 3 AO1. According to this provision, a person can be assigned to a specific centre if he or she is in a reception and processing centre and endangers public security and order or who by his or her behaviour seriously disrupts the normal operation of the reception and processing 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 reception and processing centre is assumed in three 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.
- Thirdly, if the person repeatedly hinders the normal conduct of the centre, especially by refusing to do housework or disregarding sleeping hours. The wording of this provision is very vague and therefore leaves a considerable discretion to the authority. As mentioned before, no specific

³¹³ Article 13 Ordinance of the DFJP on the on the management of federal reception centres in the field of asylum.

³¹⁴ SEM, *Directive interne concernant le prononcé de mesures disciplinaires dans les centres d'enregistrement et de procédure (CEP) ainsi que dans les sites délocalisés* (Internal directive concerning disciplinary measures in the reception and processing centres and in the remote locations), Directive ODM no 01/12, 1 October 2012.

³¹⁵ NCPT, *Report 2014*, 11, para. 37.

³¹⁶ Article 16b(1) AO1.

centre has been opened so far, so there is no practical experience with the application of the mentioned criteria.

6. 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 available for asylum seekers. They are in principle not open to the public.³¹⁷

Family members and other visitors

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 allowed every day from 2:00pm to 4:00pm, only in rooms provided for this purpose. Visitors are therefore not allowed to enter the living area reserved for asylum seekers. 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.³¹⁸

Federal reception centres are equipped with public telephones, as well as fax machines, if this mode of communication is necessary to contact a lawyer or a legal representative.³¹⁹ Telephone cards must be bought by asylum seekers from their own limited budget. It should also be noted that there are usually only two public telephones available for about 300 asylum seekers, which makes access sometimes difficult, while also the noise levels can make a proper conversation very difficult. 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. There is no internet access available in the federal reception centres. In some centres, there are NGOs or volunteers running cafés for asylum seekers, where they might also access the internet. Or they might have the possibility to use the internet at the NGO legal advisory offices next to the federal reception centres. Otherwise, they have to find internet access by themselves, and may be charged at a very expensive rate according to local bid. Asylum seekers do receive regular mail sent to them in the reception centre.

Legal representation

The SEM has to facilitate contact with legal representatives and is required by law to make available lists of legal advisors and legal representatives with all contact details in every reception centre. The legal advisers and legal representatives can meet with their clients during visiting hours³²⁰ and communicate with them outside visiting hours.³²¹ Asylum seekers usually have the possibility to contact or meet with a legal representative, while it remains difficult for the representative to enter the reception centre. The right of asylum seekers to contact UNHCR is not specifically regulated in Swiss law. A visit should be possible on request, even though the law does not address this specific point.

NGOs

Church representatives can access the registration centres and remote locations during the opening hours on presentation of accreditation. The national law does not make any specific reference to the access of NGOs. If necessary, it should be possible to arrange a visit with the SEM upon prior request.

³¹⁷ Article 2 Ordinance of the DFJP.

³¹⁸ Article 10 Ordinance of the DFJP.

³¹⁹ Article 7 Ordinance of the DFJP.

³²⁰ Article 9(2) Ordinance of the DFJP.

³²¹ Article 7(3) Ordinance of the DFJP.

Airport procedure

Third parties are usually not allowed to visit. Church representatives can access housing on presentation of their accreditation as long they announce their arrival and departure with the staff running the accommodation centre in the transit zone. Contact with a legal representative is possible provided that an appointment was made and this must be communicated to the responsible staff. The organisation ELISA which currently provides legal assistance to asylum seekers in the airport of Geneva fears that the new construction project of a reception centre within the airport (with no access to the public transit zone) will make the contact with asylum seekers more difficult. This view is shared by UNHCR.³²²

7. Addressing special reception needs of vulnerable persons

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?
 Yes No

Identification of persons in a situation of vulnerability

The issue of reception conditions for vulnerable persons has become a subject of concern in the last years, but little has been set up concretely to provide solutions. National law does not define the categories of persons who are considered as vulnerable. Only the obligation of identification of victims of human trafficking has recently been introduced in the Swiss legislation,³²³ to respond to European requirements.³²⁴ Except for that unique provision, situations of vulnerability often remain undetected unless they appear to be obvious (unaccompanied children, handicapped persons, seriously ill, etc.). Trauma is not regularly examined, due to the limited means available for medical personnel in the federal centres, among other factors.

Specific structures

Every asylum seeker is housed in a reception and processing centre, regardless of his or her situation of vulnerability. In terms of accommodation conditions, the Ordinance of the DFJP states that special needs of children, families and individuals in need of supervision are taken into account as far as possible in the allocation of beds.³²⁵ Except for some arrangements for families and children in the reception and processing centres, little is done at the federal level. In the federal reception and processing centres, families are usually accommodated in separate rooms. Unaccompanied children are usually housed together with single women or single women with children.³²⁶ In some of the remote centres, there is a lack of privacy for families, as all families are accommodated in one large room, separated only by bed sheets.

There is general consensus that current structures are not adapted for persons in need for specific support. In practice, authorities are therefore expected to transfer vulnerable persons into cantonal structures as soon as possible, as those are more likely to offer adapted facilities.

³²² On that subject, see Vivre ensemble, *TAF, Aéroport de Genève: Le recours contre la construction du nouveau centre d'hébergement est irrecevable* (Federal Administrative Court, Airport Geneva: The appeal against the building of a new reception centre is inadmissible), 11 December 2014, available in French at: <http://bit.ly/1Bgbj8F>.

³²³ Article 35 and 36 Ordinance on Admission, Period of Stay and Employment.

³²⁴ Article 10 Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16 May 2005.

³²⁵ Article 4 Ordinance of DFJP.

³²⁶ SEM, Information given by e-mail, 30 January 2015.

The compliance of cantonal structures with the needs of vulnerable persons is very variable, as no requirement is provided by national law. The support of unaccompanied children shows, for instance, a clear discrepancy between declared intention and the reality (see also section on Types of Accommodation). The SEM used to assign unaccompanied children to the cantons in which specific structures were set up. It now requires all cantons to provide for specific structures and announced that the cantonal attribution of unaccompanied children would occur according to the regular distribution key for asylum seekers (see section on Freedom of Movement), regardless of the existent structures. Unless all cantons consent to important efforts, this recent decision might be at the expense of vulnerable asylum seekers. Some cantons have opened new centres for unaccompanied minors (see section on Types of Accommodation).

Traumatised persons

Several organisations provide assistance to traumatised asylum seekers, through individual support or public researches. 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 traumatized by extreme violence.³²⁷ Other similar initiatives are available in Geneva, Lausanne and Zurich, mostly from civil society.³²⁸ However, the capacities of these institutions are insufficient compared to the needs. According to national law,³²⁹ the SEM also financially supports the setup of facilities for the treatment of traumatized asylum seekers, in particular the teaching and research in the field of specialised supervision of those asylum seekers.

8. Provision of information

Asylum seekers receive an information leaflet at the moment they lodge their asylum application. This 8-page document contains information on the asylum procedure and the rights and obligations of the asylum seeker.³³⁰ The leaflet also covers information about accommodation, especially the rules in the federal reception and processing centres, social assistance and access to the labour market. The leaflet is available in several languages and should be translated if necessary. The staff of the SEM should ensure that asylum seekers fully understand the information provided during the personal interview. Despite mostly positive feedback from asylum seekers that they have understood the information, it appears that many asylum seekers do not get a full understanding of the useful information in practice.

General information on the asylum procedure is also available on the website of the Swiss Refugee Council in 20 languages.³³¹ The asylum procedure, as well as the rights and obligations of foreigners according to their status is outlined on the website, in German and in French, partially also in English.³³²

Test Centre in Zurich

The Testphase procedure provides for free legal advice and representation during the first instance procedure. Every asylum seeker assigned to the test centre in Zurich gets an appointment with a legal advisor who provides a personalised overview of the procedure and its possible outcomes. Moreover, asylum seekers also watch a short film that present the main steps of the procedure and the intervening actors. As a result, asylum seekers are much better informed on the legal process within the test centre than in the regular procedure. The film and the information provided by the legal advisors also cover questions regarding accommodation, health insurance, allowance and access to the labour market.

³²⁷ Swiss Red Cross, *Service ambulatoire pour victimes de la torture et de la guerre* (Outpatient clinic for victims of torture and war), available in French at: <http://bit.ly/1KcqXTR>.

³²⁸ For contacts and more information, see the website Support for Torture Victims, <http://bit.ly/1ldLMmq>.
³²⁹ Article 44 AO2.

³³⁰ The document is not available online.

³³¹ Swiss Refugee Council, *Fiches d'information sur la procédure d'asile* (Information leaflets on the asylum procedure), available in French at: <http://bit.ly/1QPPhAg>.

³³² Swiss Refugee Council, *La procédure d'asile en bref* (The asylum procedure in short), available in French at: <http://bit.ly/1HgfpCW>.

9. 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

Distribution across cantons

Asylum seekers who have not received a final decision on their application after the 90-day preparatory phase are assigned 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%, Lucerne 4.9%).

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 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 African asylum seekers being allocated to a German language canton, which makes integration much more difficult. Applications to change one's canton based on other than (core) family unity grounds are hardly ever successful.

Following the 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.³³³

Restrictions on free movement

As long as asylum seekers stay in a federal centre, they are submitted to the semi-closed regime of all federal centres (reception and processing centres and remote locations). Exits are only possible with a written authorisation delivered by the SEM once fingerprints and a photograph of the asylum applicant have been taken.³³⁴ Exit hours are strictly regulated in the ordinance, so that asylum seekers can go out from 9am to 5pm during the week (from Monday to Friday). They are allowed to stay out during the

³³³ 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.

³³⁴ General rules for the federal centres are set up in the Ordinance of the DFJP on the management of federal reception centres in the field of asylum.

weekend from 9am on Friday until 7pm on Sunday.³³⁵ Opening hours are substantially larger at the test centre in Zurich.³³⁶

In the remote locations, opening hours are from 6am until 10pm. Asylum seekers can leave the centres during the weekend, from 9am on Friday until 5pm on Sunday.

In case of late arrival or unjustified absence, asylum seekers are punished: they may be deprived of the possibility to go outside of the centre or their financial allowance. This measure seems to be applied in a systematic way and may in some cases be a disproportionate sanction, depending on the gravity of the infringement.

Permission to leave can be refused under certain circumstances.³³⁷ Article 12 of the Ordinance of the DFJP lists three such situations:

- (a) When the person needs to be present in order to proceed with steps in the asylum procedure;
- (b) When the person is required to participate in maintenance work of the premises; or
- (c) When the person has violated his or her obligation not to disturb the peace within the centre.

Prohibition to leave the centre is not subject to a formal or written decision unless the prohibition lasts for more than one day. For a longer period, the asylum seeker must – upon request – receive a formal decision which he or she can appeal.³³⁸

An internal directive on disciplinary rules within federal centres provides for other kinds of disciplinary sanctions:³³⁹ denial of exit permits, elimination of pocket money, ban on entering specific spaces, exclusion from the assigned centre and transfer to another centre.³⁴⁰

Some federal centres have a so called “reflection container”, installed within a short distance from the centre itself. These containers are intended for emergencies (pending the arrival of the police) to receive recalcitrant asylum seekers for them to calm down. During their visits, the delegations of the 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.³⁴¹

In addition to the mentioned restrictions of freedom of movement for asylum seekers in general, Article 74 FNA allows for restriction or exclusion orders. According to this provision, the competent cantonal authority may require a person not to leave the area he or she was allocated to or not to enter a specific area:

- (a) In case of threat to public security and order. This measure is intended to serve in particular to combat illegal drug trafficking;
- (b) 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 apply to asylum seekers in the Dublin procedure, as from a perspective of national law they are dismissed asylum seekers;
- (c) If the expulsion has been postponed due to specific circumstances such as medical reasons. This could also apply to asylum seekers with a Dublin transfer decision.

³³⁵ Asylum seekers assigned to a specific centre for uncooperative asylum seekers are not allowed to leave the centre during the weekend. Exit hours are from 9am to 5pm every day of the week.

³³⁶ From Sunday to Thursday, asylum seekers in the test centre in Zurich must return at 8pm, on Friday and Saturday at 10:30pm. They have the right to leave on Friday and return on Sunday by 8pm.

³³⁷ See Article 12 Ordinance of the DFJP.

³³⁸ Article 12(3)-(4) Ordinance of the DFJP.

³³⁹ Federal Office for Migration, *Directive interne concernant le prononcé de mesures disciplinaires dans les centres d'enregistrement et de procédure (CEP) ainsi que dans les sites délocalisés* (Internal directive concerning disciplinary measures in the reception and processing centres and in the remote locations), directive ODM no 01/12, 1 October 2012.

³⁴⁰ NCPT, *Report 2014*, 11, para 37.

³⁴¹ NCPT, *Report 2014*, 11, para 39.

However, we do not have information on the practical relevance of this provision for asylum seekers.

Moreover, reception conditions at the airport consist of a clear restriction to the freedom of movement, as asylum seekers are not allowed to go out of the transit zone until the SEM formally authorised the entry into Switzerland. In compliance with the jurisprudence of the European Court of Human Rights,³⁴² a legal remedy against that restriction is available under Article 108(4) AsyIA, which states that a review of the legality and the appropriateness of the allocation of a place of stay at the airport may be requested by means of appeal at any time. An appeal may therefore be lodged in front of the Federal Administrative Court.

B. 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? 3-6 months
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: Building, housing, hotel and food sectors (in Zurich)
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

According to national legislation,³⁴³ asylum seekers cannot engage in any gainful employment during the first 3 months after filing an application for asylum. The canton of attribution may extend this restriction for a further 3 months if the asylum application is rejected at the first instance within the first 3 months period.³⁴⁴ After this time limit, asylum seekers are allowed to work if the following conditions are met:

- The general economic and employment situation must allow it;
- An employer must request to employ an asylum seeker;
- The salary and employment conditions customary for the location, profession and sector are fulfilled; and
- It must be established that no other Swiss or EU/EFTA resident or foreign national with a residence permit with the required profile can be found for the job.³⁴⁵ This means that Swiss or EU/EFTA residents and foreign persons with a residence permit have priority on the job market. These restrictions do not apply to occupational programmes for asylum seekers.³⁴⁶

The cantons can limit access to work to certain sectors.³⁴⁷ For example in the canton of **Zurich**, it is limited to the building industry, hospitals, homes, institutes (nursing and maintenance), food and drink manufacturing, hotels and catering, canteens, laundries, dry cleaners, sewing and mending shops, waste disposal (waste recycling), Engros-Markt Zurich.³⁴⁸

³⁴² ECtHR, *Amuur v France*, Application No. 19776/92, Judgment of 25 June 1996; *Mubilanzila Mayeka and Kaninko Mitunga v Belgium*, Application No. 13178/03, Judgment of 12 October 2006.

³⁴³ Article 43 AsyIA.

³⁴⁴ Article 43(1) AsyIA.

³⁴⁵ Article 52 Ordinance on Admission, Period of Stay and Employment.

³⁴⁶ Article 43(4) AsyIA.

³⁴⁷ FOM, Directive to the Foreign Nationals Act, Section 4.8.5.5.4, available in French at: <http://bit.ly/1fAG3fh>.

³⁴⁸ Canton of Zurich, Office for Economy and Labour, available at: <http://bit.ly/1fAG7M6>.

The authorisation to engage in gainful employment expires when the asylum application is rejected in a legally binding decision, on expiry of the deadline specified for departure. If the SEM extends the departure deadline as part of the ordinary procedure, gainful employment may continue to be authorised. Rejected asylum seekers who lodge a subsequent asylum application (second application, application for re-examination or revision) are not allowed to work unless the canton adopts special measures under the empowerment of the DFJP.

Issuance of working authorisation is under the competence of cantonal authorities and is subject to large variations in practice. Moreover, practice shows that it is very difficult for asylum seekers to access employment because of practical impediments. In addition to the priority of other persons seeking employment, the temporary nature of the legal status of the asylum seeker makes it very difficult to establish the stability requested to find and perform a job. Allocation to a canton also reduces the chance of finding work as the person is not allowed to work in another canton. Language knowledge and recognition of qualifications are further practical impediments.

*Special charge*³⁴⁹

The issuance of an authorisation to work by cantons is subject to the payment of the special charge established by national law for the reimbursement of social assistance benefits, departure and enforcement costs as well as the costs of the appeal procedure.³⁵⁰ The special charge is not calculated according to the individual costs generated, but serves to cover the overall costs generated by all these gainfully employed persons and their dependents. In practice, this special charge represents a substantial revenue shortfall as it amounts to 10% of the monthly income³⁵¹ of every gainful activity and is imposed during 10 years up to a global amount of CHF 15,000-.³⁵² It is deducted directly from the earned income of the person concerned by the employer and transferred to the Confederation. The special charge is not reimbursed, even if the person is recognised as a refugee. This is problematic in view of the Refugee Convention. It is foreseen to abolish the special charge in the future,³⁵³ and this has been welcomed by the Swiss Refugee Council. However, this change in law is not yet in force.

In addition to that, average incomes of asylum seekers are particularly low, as they often only find work in low-paid jobs. As explained under Forms and levels of material reception conditions, the majority of asylum seekers continues to depend partially on social assistance even after they have found work, because of the insufficient level of income.

At the test centre in Zurich, asylum seekers are not allowed to work during the entire procedure as long they are in the accelerated procedure (See section on Criteria and restrictions to access reception conditions).³⁵⁴

2. Access to education

Indicators: Access to Education

- | | |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice? ³⁵⁵ | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

³⁴⁹ Regulation of the special charge is laid down in the AO2, Chapter 2.

³⁵⁰ Articles 85 and 86 AsyIA.

³⁵¹ Article 13 AO2.

³⁵² Article 10(2)(a) AO2.

³⁵³ See SEM, *Teilrevision des Bundesgesetzes über die Ausländerinnen und Ausländer (Ausländergesetz, AuG)* (Partial revision of the Federal Act on Foreign Nationals), available at: <http://bit.ly/1OUM852>.

³⁵⁴ Article 29a Test Phases Ordinance.

³⁵⁵ Access is very limited in the federal reception and processing centres.

Compulsory education for all children under 16

All children under 16 must attend school according to the Federal Constitution. This obligation is not always applied in a consistent way and its practical application heavily depends on the cantonal structures established for underage asylum seekers. There is no (or only very limited) school programme in the federal reception and processing centres where children (accompanied or unaccompanied) spend the first weeks of the asylum procedure. Therefore, in most cases education only begins when children are transferred to a canton.

The test centre in Zurich is for the moment an isolated case, since it provides an internal school for all asylum seekers from 4 to 16 years of age from the moment of their arrival. The educational programme of the internal school is oriented towards the one of integrative classes of public schools. The classes are accompanied and supervised by the school commission of the district.³⁵⁶

In Switzerland, regulation of education is a cantonal competence, which implies a wide range of practices according to the canton (or even the municipality) the child is assigned to. 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 some cases, it also happens that children stay several weeks, or even months, until they can be integrated in an educational programme, depending on their canton of attribution, their municipality, their age or even their status (difficulties are more likely to arise during a dismissal or safe country procedure).

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, even though this is coming more and more under political pressure from the right-wing political parties.

Furthermore, access to primary education can be hindered by the issue of age determination. Children who are considered to be over 16 have no access to compulsory education.

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, it may happen that young girls and boys 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 apprenticeship³⁵⁷ or to be accepted in a higher school, they can also be confronted with the problem of financing their study 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.

³⁵⁶ A.O.Z. (organisation running the accommodation centre in Zurich), information given by e-mail, 10 February 2015.

³⁵⁷ 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.

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 authorities, as well as from NGOs like Caritas, which has set up some specialised programmes for young migrants in some cantons.

C. 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 longer, 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 and dental care, both basic care and emergency care.³⁵⁸ Medical care within federal centres are delegated to the company or organisation in charge of general logistics and management of the centres (see section on Types of Accommodation).

Upon arrival in the centre, asylum seekers must submit to a compulsory medical examination. They must fulfil a medical questionnaire, according to which more specific screenings will be processed (for instance tuberculosis screening in case of relevant symptoms). Paramedical staff may be present in the reception and processing centres in the daytime, but this is not always the case. When asylum seekers address medical issues, the staff (nurses in the best cases or employees of the organisation or company running the centre) first examine the gravity of the medical issue and decide to send the person to the doctor or hospital or not. The triage of cases is usually made by non-medical staff, namely by the company responsible for organisational matters during daytime and by the security company staff during night time. This first triage is problematic, as the staff does not have the requested medical knowledge to decide on medical issues.³⁵⁹ Taking into account the difficult situation of the persons living in such collective centres, from a physical and psychological perspective, it appears that access to medical staff is rather limited in practice and depends on the triage of often unqualified staff in the reception centre.³⁶⁰

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.³⁶¹ 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 the assignation to the canton. Since 1 August 2011,

³⁵⁸ Article 5 Ordinance of the DFJP on the management of federal reception centres in the field of asylum.

³⁵⁹ NCPT, *Report 2012*, 15.

³⁶⁰ Different views exist relating to this issue. For more information, see the report of the Federal Office for Health, *Die Gesundheitsvorsorgung von Asylsuchenden in den Empfangs- und Verfahrenszentren des Bundes* (Health care of asylum seekers in the federal reception and processing centres), June 2011, 11, paras. 4.2.1 and 4.2.2.

³⁶¹ Federal Act on Health Insurance, Loi fédérale du 18 mars 1994 sur l'assurance-maladie (LAMal), RS 832.10.

rejected and dismissed asylum seekers who have a right to emergency aid are also affiliated to a health insurance.³⁶²

Cantonal organisation for health support in the 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.

³⁶² Article 92d Ordinance on Health Insurance (Ordonnance sur l'assurance-maladie) of 28 June 1995, RS 832.102, in connection with Article 82a AsylA and Article 105a Federal Act on Health Insurance.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2015: ³⁶³	Not available
2. Number of asylum seekers in detention at the end of 2015: ³⁶⁴	Not available
3. Number of detention centres:	Not available
4. Total capacity of detention centres:	Not available

It is impossible to provide an overall number of detained asylum seekers or detention centres for asylum seekers in Switzerland in 2015 for mainly three reasons:

- (1) The detention of asylum seekers is mainly ordered at the cantonal level and many of the cantons are actually using normal prisons or other detention facilities for the detention of asylum seekers. This is illustrated by the fact that the Global Detention Project was not able to retrieve data from all the cantons for its 2011 Special report on Switzerland.³⁶⁵
- (2) The definition of detention of asylum seekers in Swiss law is not clear. This is again illustrated by the Global Detention Project report which also classifies the 5 Federal Reception Centres where asylum seekers need to lodge their asylum application, and also the accommodation in the transit zones of Geneva and Zurich airport, as detention facilities. If these facilities were to be classified as detention, the number of detained asylum seekers would be far higher than the official numbers. There are good legal reasons for classifying the mentioned centres in transit zones as detention, given that asylum seekers are locked in and their contacts to the outside world are significantly limited.³⁶⁶ Regarding the federal reception centres, the assessment depends on the concrete situation. Stefan Trechsel qualifies accommodation in remote locations that are very far from the next municipality as deprivation of freedom, because even if asylum seekers are allowed to leave the centre during certain hours, they do not have any real possibility of social contact, as the centres are so remote and the asylum seekers do not have the means for public transportation.³⁶⁷

It is also not clear whether persons in a Dublin procedure, after the order of the transfer to another Member State, are to be counted as asylum seekers according to the *Cimade and GISTI* ruling of the CJEU.³⁶⁸ Following the CJEU's conclusion, for the purpose of this report these persons are considered as asylum seekers. Therefore, this chapter includes detention of persons with a negative Dublin decision.

- (3) The legal basis for detention of asylum seekers in an ongoing procedure is Article 75 of the Foreign Nationals Act (FNA), under so-called "preparatory detention" ("*Vorbereitungshaft*"). However, the number of persons who are in preparatory detention might not be equal to all detained asylum seekers, as in addition there are persons already in detention who then apply for asylum. Basically, all immigration detention in Switzerland is applied for the purpose of removal, as no general detention of asylum seekers is foreseen.

³⁶³ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

³⁶⁴ Specify if this is an estimation.

³⁶⁵ See Michael Flynn and Cecilia Cannon, *Global Detention Project, Immigration Detention in Switzerland*, October 2011, available at: <http://bit.ly/1THRbx8>.

³⁶⁶ Stefan Trechsel, 'Die Unterbringung von Asylsuchenden zwischen Freiheitsbeschränkung und Freiheitsentzug' (The accommodation of asylum seekers between restrictions on liberty and deprivation of liberty), ASYL 3/14, 3ff. Reference is made to ECtHR, *Amuur v France*, Application No 19776/92, Judgment of 25 June 1996.

³⁶⁷ *Ibid.*

³⁶⁸ CJEU, Case C-179/11 *Cimade and GISTI v Ministre de l'Intérieur*, Judgment of 27 September 2012.

It should be noted that for the purpose of this report it was decided not to classify the stay of asylum seekers in the initial reception centres as detention, as it would not present the situation in Switzerland accurately, although the situation in the centres is can be qualified at a minimum as being close to a deprivation of liberty.

The competent authority for ordering detention is the SEM and the appeal instance is the Federal Administrative Court if the asylum seeking person is still in a federal centre at the point in time where detention is ordered. The “normal” detention cases are taking place in the cantons. In those cases, the cantonal authorities are responsible for ordering detention, and the cantonal courts and the Federal Supreme Court are the appeal instances.

Available statistics are not very reliable and may not give the whole picture which is why an exact number of detainees cannot be provided.

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:³⁶⁹ Yes No
2. Are asylum seekers detained in practice during the Dublin procedure? Frequently Rarely³⁷⁰ Never
3. Are asylum seekers detained during a regular procedure in practice? Frequently Rarely Never

The accelerated airport procedure is conducted at the Geneva and Zurich airport while the asylum seekers are (at least legally) staying in an accommodation facility in the transit zone of these airports. Despite the *Amuur* judgment of the ECtHR and the respective jurisprudence of the Swiss Federal Court,³⁷¹ the authorities and the respective Federal Administrative Court do not classify the stay in this accommodation facility as detention.³⁷² The airport procedure is regulated in Article 22-23 AsylA (see sections on Border Procedure, Criteria and restrictions to access reception conditions and Types of Accommodation).

Temporary Detention

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 his or her residence status may be ordered according to Article 73 FNA for a maximum of 3 days; so-called “temporary detention”.

³⁶⁹ Accommodation in airport transit zone with very restricted freedom of movement.

³⁷⁰ Since the new regulations on Dublin detention only entered into force in July 2015, practical experience since then is limited.

³⁷¹ See BGE (collection of decisions of the Swiss Federal Court (in German)) 123 II 193, Judgment of 27 May 1997.

³⁷² See the jurisprudence as put forward in Federal Administrative Court, Decision D-6502/2010 of 16 September 2010, which followed the precedent-setting decisions of the former Swiss Asylum Appeal Commission EMARK 1997 Nr. 19 and 1998 Nr. 7. There are other opinions on this issue: Stefan Trechsel, *Die Unterbringung von Asylsuchenden zwischen Freiheitsbeschränkung und Freiheitsentzug*.

Preparatory Detention

Preparatory detention during the asylum procedure maybe ordered according to Article 75 FNA on the following grounds, where the asylum seeker:³⁷³

- (a) Refuses to disclose his or her identity, lodges several applications for asylum using various identities or repeatedly fails to comply with a summons without sufficient reason or ignores other instructions issued by the authorities in the asylum procedure;
- (b) Leaves an area allocated to him or her in accordance with a restriction or exclusion order or enters an area he or she was prohibited from entering;³⁷⁴
- (c) Enters Swiss territory despite a ban on entry and cannot be immediately removed;
- (d) Was removed and lodged 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;
- (e) Lodges an application for asylum after an expulsion ordered by the Federal Office for Police to protect internal or external national security;
- (f) Stays unlawfully in Switzerland and lodges 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;
- (g) Seriously threatens other persons or considerably endangers the life and limb of other persons and is therefore being prosecuted or has been convicted;
- (h) Has been convicted of a felony; or
- (i) States to the competent authority that he or she does not hold or have not held a residence permit or a visa or has not applied for asylum in a Dublin Member State, and that state has approved the take charge or take back request or such application request has been made in response to a Eurodac hit.

In practice, only persons lodging an asylum application in detention facilities or prior to entering Switzerland via Geneva or Zurich airports are likely to be detained during the whole procedure. Otherwise, asylum seekers are only rarely taken in preparatory detention in practice.

Detention pending deportation

Detention pending deportation according to Article 76 FNA is relevant for persons who have received a negative decision. However, it also covers persons who have received a Dublin transfer decision. As these persons are considered asylum seekers for the purpose of this report, the relevant detention provision is also included. The last ground mentioned in the following list concerns specifically Dublin cases. However, the other grounds can also apply to persons in a Dublin procedure.

Once the SEM has issued a decision (expulsion or removal order), the cantonal authorities can order a so-called detention pending deportation ("*Ausschaffungshaft*") to ensure the enforcement of the decision. A person can be kept in detention if he or she is already in preparatory detention according to Article 75 FNA. In addition, he or she can be detained where he or she:

- (a) Refuses to disclose his or her identity, lodges several applications for asylum using various identities or repeatedly fails to comply with a summons without sufficient reason or ignores other instructions issued by the authorities in the asylum procedure;
- (b) Leaves an area allocated to him or her in accordance with a restriction or exclusion order or enters an area he or she was prohibited from entering;³⁷⁵
- (c) Enters Swiss territory despite a ban on entry and cannot be immediately removed;

³⁷³ Article 75(1)-(1bis) FNA.

³⁷⁴ Article 74 FNA.

³⁷⁵ Article 74 FNA.

- (d) Stays unlawfully in Switzerland and lodges 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;
- (e) Seriously threatens other persons or considerably endangers the life and limb of other persons and is therefore being prosecuted or has been convicted;
- (f) Has been convicted of a felony; or
- (g) States to the competent authority that he or she does not hold or have not held a residence permit or a visa or has not applied for asylum in a Dublin Member State, and that state has approved the take charge or take back request or such application request has been made in response to a Eurodac hit.
- (h) Is seeking to evade deportation, according to serious indications, in particular because he or she fails to comply with the obligation to cooperate with the authorities;
- (i) Based on his or her previous conduct, will refuse to comply with official instructions;
- (j) Is issued with a removal decision in a federal reception and processing centre or in a specific centre for uncooperative asylum seekers and enforcement of the removal is imminent;
- (k) Is issued with a removal decision to the responsible Dublin Member State in the canton concerned and the enforcement of the removal is imminent.

Detention in the Dublin procedure

A new detention regime based on the Dublin III Regulation entered into force on 1 July 2015.³⁷⁶ According to this provision, a person in the Dublin procedure can be detained if:

- (a) There are specific indications that the person intends to evade removal;
- (b) Detention is proportional; and
- (c) Less coercive alternative measures cannot be applied effectively.

The specific indications that lead to the assumption that the person intends to evade removal are defined as follows:

- (a) 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 his or her duty to cooperate or by repeatedly failing to comply with a summons without sufficient excuse.
- (b) His or her conduct in Switzerland or abroad leads to the conclusion that he or she wishes to defy official orders.
- (c) He or she submits two or more asylum applications under different identities.
- (d) He or she leaves the area that he or she is allocated to or enter an area from which he or she is excluded.
- (e) He or she enters Swiss territory despite a ban on entry and cannot be removed immediately.
- (f) He or she stays unlawfully in Switzerland and submits an application for asylum with the obvious intention of avoiding the imminent enforcement of removal.
- (g) He or she seriously threatens other persons or considerably endangers the life and limb of other persons and is therefore being prosecuted or have been convicted.
- (h) He or she has been convicted of a felony.
- (i) He or she denies to the competent authority that he or she holds or has held a residence document and/or a visa in a Dublin State or has submitted an asylum application there.

Different aspects of the new provisions seem to be 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) are not in line with Article 28 of the Dublin III Regulation. It remains to be seen how these discrepancies will be resolved. 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.

³⁷⁶ Article 76a FNA.

Practical experience with the new provision is limited. So far it seems that there continue to be significant cantonal differences. In **Basel**, it seems that the number of Dublin detainees has gone down, while in **Grisons**, persons with a negative Dublin decision continue to be detained systematically as long as there is room in the detention facility.³⁷⁷ This practice seems to be contrary to the intentions and preconditions of the Dublin III Regulation.

Before the specific Dublin detention regime entered into force, the following cantons usually detained persons with Dublin transfer decisions: Lucerne, Schwyz, Zug, Aargau, Graubünden. Other cantons did not detain Dublin transferees (Zurich, Glarus, Solothurn, Baselland).³⁷⁸

2. Alternatives to detention

Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?
 - Reporting duties
 - Surrendering documents
 - Financial guarantee
 - Residence restrictions
 - Other
2. Are alternatives to detention used in practice? Yes No

Alternatives to detention are not (yet) implemented in law and rarely in practice. Individual circumstances are considered in the decision to detain in practice, but with a wide divergence in depth and individualisation in the cantonal practice. In 2015, the UN Committee against Torture stated in its recommendations that Switzerland must apply alternative measures to detention.³⁷⁹

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
 - Frequently
 - Rarely
 - Never

❖ If frequently or rarely, are they only detained in border/transit zones? Yes No
2. Are asylum seeking children in families detained in practice?
 - Frequently
 - Rarely
 - Never

Article 81(3) FNA contains special rules, which require taking into account the specific needs for specific groups. The specific needs of vulnerable persons, unaccompanied children and families with children must be taken into account in the detention arrangements. The law prohibits the detention of children under 15. In practice vulnerable asylum seekers are hardly ever detained.

³⁷⁷ Information provided by NGOs providing legal advice in Basel and Grisons, September 2015.

³⁷⁸ Experience by legal advisory offices in the different cantons as of September 2014.

³⁷⁹ UN Committee Against Torture, *Observations finales concernant le septième rapport périodique de la Suisse*, Advanced unedited version, 13 August 2015, available at: <http://bit.ly/1LuTgEQ>, no. 17.

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? ³⁸⁰ | 22 days |

Maximum duration set by law

Altogether, detention can be ordered for a maximum of 6 months and it can be extended for a further period of up to 12 months where the person does not cooperate with the authorities.³⁸¹ Therefore the maximum period for detention under Articles 75 and 76 FNA is 18 months as foreseen in the Return Directive.

For children between 15 and 18, the maximum period of detention is 6 months and may be extended by up to 6 months, thereby totalling 12 months.³⁸²

For detention in the Dublin procedure, there are specific rules regarding duration:³⁸³

The person concerned may remain or be placed in detention from the date of the detention order for a maximum duration of:

- (a) 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;
- (b) Five weeks during a remonstrance procedure
- (c) 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 and the transfer of the person concerned to the competent Dublin State.

In addition, the law foresees the possibility to detain the person if he or she refuses to board the means of transport being used to effect the transfer to the competent Dublin State, or if he or she prevents the transfer in any other way through his or her personal conduct. In that case, he or she 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, as well as the maximum duration of detention in the Dublin procedure, exceed those foreseen in Article 28 of the Dublin III Regulation.

The detention served under the Dublin regime will be deducted from the maximum detention period of 6 months, with a prolongation possibility for another 12 months.

Duration of detention in practice

In practice, persons are detained for 22 days on average. However, the average duration varies according to the type of detention:³⁸⁴

- Preparatory detention: 32 days;
- Detention pending deportation: 21 days;

³⁸⁰ SEM, Statistics January 2011 – December 2013, Information given in a presentation on 4 April 2014.

³⁸¹ Article 79 FNA.

³⁸² *Ibid.*

³⁸³ Article 76a(3)-(5) FNA.

³⁸⁴ SEM, Statistics January 2011 – December 2013, Information given in a presentation on 4 April 2014.

- Coercive detention (if detention pending deportation is no longer possible and the person refuses to cooperate): 141 days. However, this type of detention is not used very often in practice.

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 as short as possible.³⁸⁵

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) FNA, suitable locations must be used for administrative detention. Detention together with persons in pre-trial or criminal detention must be avoided if possible and may only be practiced as a temporary measure to deal with shortages in the area of administrative detention.

In practice, however, asylum seekers are regularly detained together with other third-country nationals in prisons or pre-trial detention facilities as there is only one detention centre that is designed for administrative detention specifically. This centre is located in the canton of Geneva (“Frambois”) and resulted from an inter-cantonal cooperation (“*Concordat*”) of three cantons (Geneva, Vaud and Neuchâtel).³⁸⁶

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice? Yes No
 - ❖ If yes, is it limited to emergency health care? Yes No
2. Is access to detention centres allowed to
 - ❖ Lawyers: Yes Limited No
 - ❖ NGOs: Yes Limited No
 - ❖ UNHCR: Yes Limited No
 - ❖ Family members: Yes Limited No

Article 81(3) FNA 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. Federal law does not provide any more detailed preconditions for detention conditions, as detention is normally (with the rare exception of detention

³⁸⁵ UN Committee Against Torture, *Observations finales concernant le septième rapport périodique de la Suisse*, Advanced unedited version, 13 August 2015, available at: <http://bit.ly/1LuTgEQ>, no. 17.

³⁸⁶ 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), <http://cldjp.ch/index.html>. The legal basis for the detention centre and a description of the centre may be found at: <http://cldjp.ch/concordats/etrangers.html>.

ordered directly at one of the 5 federal initial reception centres) ordered at the cantonal level and lies in these cases fully within the competence of the respective cantons.

Detained asylum seekers have access to health care in practice. As asylum seekers are as a rule detained in detention centres for pre-trial detention and/or criminal detention, the health care provided is generally at an acceptable level.³⁸⁷ In some facilities there is medical personnel present, for example in the prison **Bässlergut** in Basel.

Lawyers and UNHCR 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.³⁸⁸ 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.

Differences between the cantons are huge with regard to e.g. the treatment of detainees, the cantonal legal basis for ordering and reviewing detention orders, the use of prisons or special facilities and many more aspects. Unfortunately, it is not possible to provide an overview of the practice in the cantons at this stage.

As some punctual examples, the following remarks made by the National Commission for the Prevention of Torture (NCPT) after its visits to several prisons can be mentioned. The Commission criticized the administrative detention of foreign nationals in the cantonal prison of **Schaffhausen**. According to the Commission, the different detention regimes cannot be sufficiently taken into account because of the old, unsuitable infrastructure.

Regarding the cantonal prison **Biberbrugg** in the canton of Schwyz, the Commission criticised that the shortage of staff on weekends led to limitations to the freedom of movement and visiting hours. According to the Commission, the situation of persons in administrative detention is especially problematic, and their detention regime should be more flexible than the one of persons in criminal detention.

Regarding the prison at **Zurich airport**, the Commission stated that none of its recommendations had been put into practice, and that the freedom of movement of persons in administrative detention was still too restricted and in contradiction with jurisprudence of the Swiss Federal Court. Generally, the Commission criticises that the detention regime for persons in administrative detention in the visited centres is far too strict. Because there is only one specialised institution in Switzerland ("**Frambois**" in the Canton of Geneva), persons in administrative detention are mostly placed in pre-trial detention facilities, where they are submitted to the same detention regime as other detainees, such as pre-trial detainees. Therefore, the Commission recommends separate wards in which a more flexible detention regime is possible, in accordance with the jurisprudence of the Swiss Federal Court.³⁸⁹ The applicable cantonal laws differ very much.³⁹⁰

³⁸⁷ 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. Available at: <http://bit.ly/1RpLJn>.

³⁸⁸ The visiting rights and the concrete *modus* is also taken up by the NCPT in its reports.

³⁸⁹ See the precedent-setting decision by the Swiss Federal Court BGE 122 II 49 Decision of 2 May 1996, also referred to by the report of the NCPT on its activities 2013: NCPT, *Tätigkeitsbericht 2013 (Activity Report 2013)*, available in German at: <http://bit.ly/1CooPGI20ff>, 20ff.

³⁹⁰ In the canton of Jura, administrative detention in the cantonal prison in **Porrentruy** is limited to one week (Article 16(2) of the cantonal law on the application of in the area of the foreigners law | *Loi d'application des mesures de contrainte en matière de droit des étrangers du 20 mai 1998*), RSJU 142.41, available at: <http://bit.ly/1GvgtOo>. In other cantons such strict time limits do not apply. The NCPT has reported on persons put into administrative detention in several cantons (e.g. Glarus, Jura (limited to one week), Schaffhausen, Schwyz, and St. Gallen (on rare occasions). The detention regime in the airport detention centre in Zürich was especially criticised by the NCPT for disproportionate restriction of movement for persons in administrative detention in two reports in 2011 and 2013.

In 2015, the UN Committee against Torture stated in its recommendations that Switzerland must continue its efforts to create specialised structures for administrative detention in all cantons, with a regime that is adapted to its purpose.³⁹¹

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 in Article 80 FNA. Article 80(2) FNA 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.

According to Article 80(3) FNA, 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 his or her consent in writing. If 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) FNA, 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 circumstances behind the enforcement of detention. 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 detainee may submit a request for release from detention 1 month after the detention review. The judicial authority must issue a decision on the request on the basis of an oral hearing within 8 working days. A further request for release in the case of preparatory detention may be submitted after 1 month or in the case of detention pending removal after 2 months.³⁹²

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 detention is granted; or the detainee becomes subject to a custodial sentence or measure.³⁹³

Review of Dublin detention is regulated in Article 80a FNA. In case of detention of persons in a Dublin procedure, the legality and the appropriateness of detention shall be revised by a judicial authority in a written procedure at the request of the detainee (not automatically, no oral hearing). This review may be requested at any time. In case of detention of persons with a Dublin transfer decision who have received this decision in a federal centre or a specific centre for uncooperative asylum seekers, jurisdiction and the procedure for the detention review are governed by the Asylum Act.

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. Unfortunately it is not possible to provide an overview of all cantonal practices.

³⁹¹ UN Committee Against Torture, *Observations finales concernant le septième rapport périodique de la Suisse*, Advanced unedited version, 13 August 2015, available at: <http://bit.ly/1LuTgEQ>, no. 17.

³⁹² Article 80(5) FNA.

³⁹³ Article 80(6) FNA.

The Swiss Refugee Council has not come across major difficulties in the use of detention. However, if the detained person is not represented by a lawyer, it can be difficult for him or her to bring forth the relevant legal arguments. In addition, detention practice depends on the practice of the cantons (which vary considerably), as well as on the judge. The accelerated procedure at the airport and asylum cases decided in administrative detention facilities are faster and might be sometimes lacking a bit of in-depth assessment. The quality of the procedure is far more dependent on the “quality” of the respective adjudicator and of the judge.

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

Generally, administrative detention of asylum seekers is rarely practiced. Nevertheless, there have been reports on difficulties with access to lawyers, to interpretation, to social services etc. Cantonal practice is also very diverse in this area. Legal assistance is sometimes difficult to organise and is not provided free of charge from the outset. The right to free legal assistance is regulated by cantonal procedural law. As a minimal constitutional guarantee, the Swiss Federal Court has ruled that free legal representation must be granted upon request in the procedure of prolonging detention after 3 months.³⁹⁴ Regarding the first review by a judge, free legal representation must only be granted if it is deemed necessary because the case presents particular legal or factual difficulties.³⁹⁵

³⁹⁴ Federal Court, Decision BGE 122 I 49 of 27 February 1996, para 2c/cc; Decision 134 I 92 of 21 January 2008, para 3.2.3.

³⁹⁵ Federal Court, Decision BGE 122 I 275 of 13 November 1996, para. 3.b. Free legal representation was granted in Decision 2C_906/2008 of 28 April 2009.