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Country Report

Switzerland



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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, CR, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) and 2 non-EU countries (CH, TR) 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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Statistics

Table 1: Applications and granting of protection status at first instance in 2014*

	Total applicants in 2014	Asylum	Temporary admission		Rejections (in-merit and admissibility)	Otherwise closed / discontinued	Asylum rate	Temporary admission rate		Rejection rate
	A	B	C	D	E	F	B/(B+C+D+E)%	C/(B+C+D+E)%	D/(B+C+D+E)%	E/(B+C+D+E)%
Total numbers	23765	6199	7924		10088	2504	26%	33%	0%	42%
Breakdown by countries of origin of the total numbers										
Eritrea	6923	2272	1359		697	64	52%	31%	0%	16%
Syria	3819	916	1905		221	174	30%	63%	0%	7%
Sri Lanka	1277	1228	247		245	62	71%	14%	0%	14%
Nigeria	908	0	21		880	107	0%	2%	0%	98%
Somalia	813	205	537		197	49	22%	57%	0%	21%
Afghanistan	747	289	1566		308	38	13%	72%	0%	14%
Tunisia	733	4	0		633	272	1%	0%	0%	99%
Morocco	699	4	6		541	245	1%	1%	0%	98%
Georgia	466	0	9		371	115	0%	2%	0%	98%
Kosovo	405	13	99		353	64	3%	21%	0%	76%
Others *										
Russia	172	63	32		173	31	24%	12%	0%	65%
Serbia	244	1	58		222	42	0%	21%	0%	79%

*Other main countries in the EU. Numbers provided only for those nationalities that are NOT in the top 10.

Table 2: Gender/age breakdown of the total numbers of applicants in 2014

	Number	Percentage
Total number of applicants (A)*	23765	
Men (B)	16762	70,5
Women (C)	7002	29,5
Unaccompanied children (D)	795	3,34

* Use the same data as in table 1

Table 3: Comparison between first instance and appeal decision rates in 2014

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions (A)	26715		4165	
Positive decisions				
Total (B)*	14123	52,9		N/A
Asylum (Ba)	6199	23,2		N/A
Temporary admission (Bb)	7924	29,7		N/A
		Bc/A		N/A
Negative decision (C)	10088	37,8		N/A

* included is only the positive decisions granted within the asylum procedure.

The protection rate is higher if temporary admissions that are granted outside the asylum procedure (for example to Syrians who introduce a demand for a temporary admission to the cantonal authorities without filing an asylum application) are included.

Table 4: Applications processed under an accelerated procedure in 2014

	Number	Percentage
Total number of applicants (A)	23765	
Number of applications treated under an accelerated procedure at first instance (B)	1646	6,9

Table 5: Subsequent applications submitted in 2014

	Number of subsequent applications submitted
Total number	700
<i>Top 5 countries of origin</i>	
Sri Lanka	266
Serbien	47
Türkei	45
Irak	35
Eritrea / Iran / Kosovo (each)	31

Overview of the legal framework and practice

Title in English	Original title	Abbreviation	Weblink
Asylum Act	Loi sur l'asile	AsylA	http://www.admin.ch/opc/fr/classified-compilation/19995092/index.html English translation: http://www.admin.ch/opc/en/classified-compilation/19995092/index.html
Federal Act on Foreign Nationals	Loi fédérale sur les étrangers	FNA	http://www.admin.ch/opc/fr/classified-compilation/20020232/index.html English translation: http://www.admin.ch/opc/en/classified-compilation/20020232/index.html
Federal Act on Administrative Procedure	Loi fédérale sur la procédure administrative	APA	http://www.admin.ch/opc/fr/classified-compilation/19680294/index.html English translation : http://www.admin.ch/opc/en/classified-compilation/19680294/index.html
Federal Constitution of the Swiss Confederation	Constitution fédérale de la confédération suisse	Cst.	http://www.admin.ch/opc/fr/classified-compilation/19995395/index.html English translation: http://www.admin.ch/opc/en/classified-compilation/19995395/index.html

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

Title in English	Original title	Abbreviation	Weblink
Asylum Ordinance No. 1 on procedural aspects	Ordonnance 1 sur l'asile relative à la procédure	AO1	http://www.admin.ch/opc/fr/classified-compilation/19994776/index.html
Asylum Ordinance No. 2 on Financial Matters	Ordonnance 2 sur l'asile relative au financement	AO2	http://www.admin.ch/opc/fr/classified-compilation/19994777/index.html
Asylum Ordinance No. 3 on the processing of personal data	Ordonnance 3 sur l'asile relative au traitement de données personnelles	AO3	http://www.admin.ch/opc/fr/classified-compilation/19994786/index.html
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://www.admin.ch/opc/fr/classified-compilation/20131360/index.html

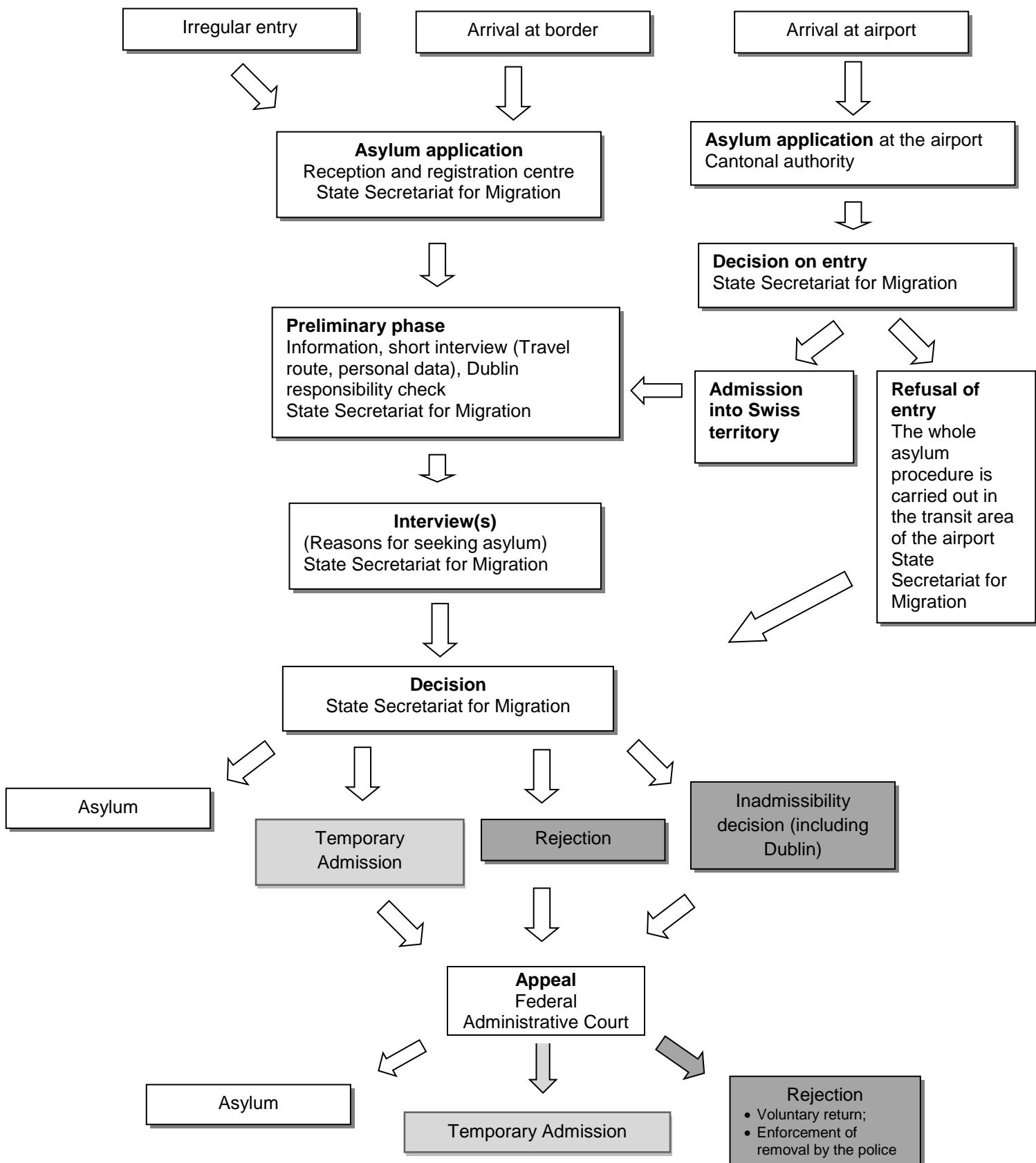
Ordinance on the Enforcement of the Refusal of Admission to and Deportation of Foreign Nationals	Ordonnance sur l'exécution du renvoi et de l'expulsion d'étrangers	OERE	http://www.admin.ch/opc/fr/classified-compilation/19994789/index.html
Ordinance on Admission, Period of Stay and Employment	Ordonnance relative à l'admission, au séjour et à l'exercice d'une activité lucrative	OASA	http://www.admin.ch/opc/fr/classified-compilation/20070993/index.html
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://www.admin.ch/opc/fr/classified-compilation/20072202/index.html
Directive III Asylum Sector	Directive III sur le domaine de l'asile		https://www.bfm.admin.ch/bfm/fr/home/publiservice/weisungen-kreisschreiben/asylgesetz.html

Asylum Procedure

A. General

1. Flow Chart

Overview of the Swiss Asylum Procedure



2. Types of procedures

Indicators:

Which types of procedures exist in your country? Tick the box:

- regular procedure: yes no
 - border procedure: yes no
 - admissibility procedure: yes no
 - accelerated procedure (labelled as such in national law): yes no
 - Accelerated examination (“fast-tracking” certain case caseloads as part of regular procedure): yes no
 - Prioritised examination (application likely to be well-founded or vulnerable applicant as part of regular procedure): yes no
 - Dublin Procedure yes no
 - others: Pilot procedure for accelerated procedure

Are any of the procedures that are foreseen in national legislation, not being applied in practice? If so, which one(s)?

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.¹ 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.

¹ Arts 66-79a AsylIA (Asylum Act, Loi sur l'asile).

3. List the authorities that intervene in each stage of the procedure (including Dublin)

Stage of the procedure	Competent authority in EN	Competent authority in original language (FR)
Decision on entry / denial of entry at the border	Border police	Police des frontières
Decision on entry / denial of entry at the airport	Airport police	Police aéroportuaire
Decision on entry / denial of entry into Swiss territory after lodging asylum claim at the airport	State Secretariat for Migration (former: Federal Office for Migration)	Secrétariat d'Etat aux migrations (ancien : Office fédéral des migrations)
Application	State Secretariat for Migration	Secrétariat d'Etat aux migrations (ancien : Office fédéral des 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 (specify the number of people involved in making decisions on claims if available)	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority? Y/N
State Secretariat for Migration (asylum department)	Around 488 (220 persons taking decisions on asylum claims) ²	Federal Department of Justice and Police	N

² SEM, Information given by e-mail, 25 February 2015 (numbers as of end of January 2015). This number does not include staff employed via mandate, such as transcript writers, interpreters, linguistic or country of origin experts, which amounts to around 770 persons (as of 2014) and varies with the fluctuations of asylum applications.

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 2014.³ Currently, a process of restructuring of the asylum system is under way. In this context, an accelerated asylum procedure has been tested since January 2014.⁴ Further, several adaptations in national law have become necessary due to the Dublin III Regulation.⁵

Overview of the current asylum procedure:

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.⁶ The Swiss asylum procedure is organized as a single procedure.

In most cases, asylum applications are filed in one of the five reception and processing centres that are run by the State Secretariat for Migration (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.⁷ 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).⁸ 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.⁹

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 three weeks.¹⁰ As a first step, the asylum seeker benefits from a preliminary advisory meeting about the asylum procedure.¹¹ But generally in practice, instead of holding an advisory meeting, the information is provided in the form of an explanatory leaflet. The SEM registers

³ 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://www.admin.ch/opc/de/federal-gazette/2014/2087.pdf>, p. 2088; SEM, *Asylgesetz mit markierten Änderungen (Erlass 3 und Erlass 1)* (Asylum Act with marked changes (Act 3 and Act 1)); https://www.bfm.admin.ch/dam/data/migration/rechtsgrundlagen/gesetzgebung/aend_asylg_neustruktur/annex_geltendes-recht-d.pdf.

⁴ Test Phases Ordinance (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*).

⁵ Entwurf Bundesbeschluss zur Weiterentwicklung des Dublin/Eurodac-Besitzstandes (Draft for a federal decree on the development of the Dublin/Eurodac rules), <https://www.bfm.admin.ch/dam/data/migration/rechtsgrundlagen/gesetzgebung/uebernahme-dublin3/vorentw-dublin3-d.pdf> (the time limit for a referendum expired in January 2015).

⁶ Article 19 AsylA.

⁷ Article 21 AsylA.

⁸ Article 16 para. 2 OA1.

⁹ Article 27 AsylA.

¹⁰ Article 26 AsylA.

¹¹ Article 25a AsylA.

the applicant and takes their 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.¹² 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 covers also the essential information about the journey to Switzerland and summarily the reasons for seeking asylum.¹³ 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.¹⁴ 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 their application, the application is cancelled without a formal decision.¹⁵ 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 three years (compliance with the Refugee Convention being reserved).¹⁶

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.¹⁷ 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.¹⁸

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 has the possibility to describe his reasons for flight and, if available, present pieces of evidence.¹⁹

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 fits the legal criteria of a refugee. As provided by the law, a person able to

¹² Article 26 AsylA.

¹³ Article 26 para. 2 AsylA.

¹⁴ Article 36 para. 1 AsylA.

¹⁵ Article 25a AsylA.

¹⁶ Article 8bis AsylA.

¹⁷ Article 31a AsylA.

¹⁸ Article 44 AsylA; Article 83 FNA (Foreign Nationals Act).

¹⁹ Article 29 AsylA.

demonstrate he meets these criteria is granted asylum in Switzerland.²⁰ 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 exclusion from asylum,²¹ 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.²² 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.

Appeal

If an applicant has not been granted asylum, he can submit an appeal against the decision of the SEM to the Federal Administrative Court.²³ 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 decisions, 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 removal is lawful, reasonable and possible.²⁴

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.²⁵

Accelerated procedures

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.²⁶ 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

²⁰ Article 49 AsylA.

²¹ Asylum is not granted if a person with refugee status is unworthy of it due to serious misconduct or if they have 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 departure, so-called subjective post-flight grounds (Article 54 AsylA).

²² Article 44 AsylA; Article 83 FNA.

²³ Article 105 AsylA.

²⁴ 108 AsylA

²⁵ Article 46 AsylA; Article 21 Abs 2 Test Phases Ordinance.

²⁶ Article 22 and 23 AsylA

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.²⁷

Since the beginning of 2014, an accelerated procedure has been tested in the federal reception centre in Zurich for a period of two 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.²⁸ 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 working days of the notification of the decision.²⁹ In the latter case, the applicant is transferred to a canton and integrated in the regular procedure, in general because further clarifications are necessary.³⁰ 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.³¹

Accelerated examination

In practice, the SEM also 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.³²

B. Procedures

1. Registration of the Asylum Application

Indicators :

- Are specific time limits laid down in law for asylum seekers to lodge their application?
 Yes No
- If so, and if available specify
 - o the time limit at the border:
 - o the time limit on the territory:
 - o the time limit in detention:
- 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,³³ since the Swiss parliament has decided to abolish the possibility to file asylum applications at Swiss representations abroad from 29

²⁷ Article 108 AsylA.

²⁸ Article 16-18 Test Phases Ordinance.

²⁹ Article 38 Test Phases Ordinance.

³⁰ Article 19 Test Phases Ordinance.

³¹ Article 23-18 Test Phases Ordinance.

³² SEM, *48-hour procedure extended to Kosovo and Georgia*, Press release of 26 March 2013, <https://www.bfm.admin.ch/bfm/en/home/aktuell/news/2013/2013-03-26.html>.

³³ Article 19 AsylA (Asylum Act, Loi sur l'asile).

September 2012 onwards.³⁴ Any statement from a person indicating that they are seeking protection in Switzerland from persecution elsewhere is considered as an application for asylum.³⁵

In general, foreign nationals without a valid permit of stay in Switzerland file an asylum application in one of the five reception and processing centres run by the State Secretariat for Migration (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 them to a reception and processing centre. The competent authority establishes their personal data, informs the closest reception and processing centre and issues a transit permit. The person has to present him-/herself at that reception and processing centre during the following working day.³⁶

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.³⁷

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.³⁸

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.³⁹

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 on the automatic fingerprint identification system (AFIS) or Eurodac. The SEM is immediately informed about the application. The applicant will then pass through the airport procedure⁴⁰ (see Asylum Procedure, B. 5. Border procedure).

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.

Due to the Dublin Association Agreement that came into force on 1 March 2008⁴¹, Switzerland applies the Dublin Regulation. Therefore the SEM has to examine whether Switzerland (or another state) is

³⁴ Curia vista, Objets parlementaires (Information on parliamentary decisions), 10.052 *Loi sur l'asile. Modification (Change of the Asylum Act)*, www.parlement.ch/f/suche/Pages/geschaefte.aspx?gesch_id=20100052 (FR, DE, IT).

³⁵ Article 18 AsylA.

³⁶ Section 2 AsylA (Article 19 and 21); Article 8 para. 1 and 2 Asylum Ordinance No. 1 on procedural aspects (AO1, *Ordinance 1 sur l'asile relative à la procédure*).

³⁷ Changes of law of 28 September 2012. Article 19 para. 2 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; SEM, Directive III Asylum Sector, *Das Asylverfahren (The asylum procedure)*, p. 4-5,

www.bfm.admin.ch/dam/data/bfm/rechtsgrundlagen/weisungen/asyl/asylverfahren/1_asylverfahren-f.pdf (FR).

³⁸ Article 8 para. 4 Asylum Ordinance 1; SEM, Directive III Asylum Sector, *Das Asylverfahren*, para. 1.1.1.3.

³⁹ Article 8 para. 3 Asylum Ordinance 1; SEM, Directive III Asylum Sector, *Das Asylverfahren*, para. 1.1.1.4.

⁴⁰ Article 22 ff. AsylA.

⁴¹ 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

competent for examining an application (see Asylum Procedure, B. 3. 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.⁴²

According to Swiss Asylum Law, asylum seekers are obliged to cooperate in the establishment of the facts during the asylum procedure (duty to cooperate).⁴³ Since 1 February 2014, 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 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 three years (compliance with the Refugee Convention being reserved).⁴⁴ This provision seems to be problematic with regard to the access to the asylum procedure as well as to the right to an effective remedy.⁴⁵ But since the latter has been introduced only recently, it is too early to know its consequences in practice.

2. Regular procedure

General (scope, time limits)

Indicators:

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance (in months): 5 working days for inadmissibility decisions and 10 days for all the other decisions (different time limits are foreseen within the pilot phase as well as the airport procedure). However, the time limits are neither compulsory nor respected in practice.
 N/A
- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? Yes No
- As of 31st December 2014, the number of cases for which no final decision was taken one year after the asylum application was registered (at first instance only) 9543

The State Secretariat for Migration (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. But the section of the SEM dealing with asylum is a specialized section within the SEM.⁴⁶

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 five working days of the submission of the application, or within at most five 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 ten working days of the submission of the application.⁴⁷ However, the procedural deadlines set in Swiss law are only directory provisions and have no compelling character. Within the airport procedure, decisions must be issued within 20 days of the submission of the application. Otherwise, the SEM allocates the applicant to a canton.⁴⁸

In practice, the length of the asylum procedure diverges significantly from what is foreseen by law. In 2013, the average length of the asylum procedure from the registration of the application to the final decision of the first instance was 258 days. According to the SEM, the increase of the average length of

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.

⁴² Schweizerische Flüchtlingshilfe (Swiss Refugee Council) (ed.), *Handbuch zum Asyl- und Wegweisungsverfahren (Manual on the asylum and return procedure)*, 2009, p. 65 ff.; Article 21 AsylA.

⁴³ Article 8 para. 1, 2 and 3 AsylA.

⁴⁴ Article 8 para 3bis AsylA.

⁴⁵ 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)*, in: ASYL 2/14, p. 3ff.

⁴⁶ SEM website, www.bfm.admin.ch/bfm/en/home/ueberuns.html (EN, DE, FR, IT).

⁴⁷ Article 37 AsylA.

⁴⁸ Article 23 para. 2 AsylA.

the first instance procedure compared to 2012 (163 days) is attributable to the efforts to reduce the number of asylum applications that have been pending for a long time. Persons with Dublin inadmissibility decisions had to wait 53 days on average to get their decision in 2013. In 2013, about 66% of all the decisions of the first instance took less than 6 months after registration of the application.⁴⁹

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.⁵⁰ 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. In this context, applications with the least degree of acceptance and for which the execution of the removal was possible were examined as a priority, while applications from nationals of countries of origin with high rates of grant of protection (such as Eritrea, Iraq, Somalia, Sri Lanka, Afghanistan, Turkey, China/Tibet) were examined with the lowest priority. The setting of priority was determined by the intention to avoid further pull effects.⁵¹ This prioritization has been maintained by the SEM.⁵²

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 criticized by the Federal Administrative Court.⁵³

The average length of the appeal procedure between 2008 and 2010⁵⁴ was 524 days. In this period a downward trend has been observed from 644 in 2008 to 436 in 2010. 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).⁵⁵ 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.⁵⁶

Appeal

Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure:
 Yes No
 - if yes, is the appeal judicial administrative
 - If yes, is it suspensive Yes No
- Average processing time for the appeal body to make a decision: 524 days (between 2008 and 2010)

⁴⁹ SEM, Migration report 2013, <http://www.bfm.admin.ch/dam/data/bfm/publiservice/berichte/migration/migrationsbericht-2013-d.pdf> (DE).

⁵⁰ E-mail from an official of the SEM of 22 January 2014.

⁵¹ Eidgenössisches Justiz- und Polizeidepartment (EJDP) (Federal Department on Justice and Police), *Bericht über Beschleunigungsmassnahmen im Asylbereich* (Report on acceleration measures in the area of asylum), 2011, p. 13-15.

⁵² Mario Gattiker, *Vom Gebot der Beschleunigung des Asylverfahrens zur Neustrukturierung des Asylbereichs* (From the imperative of acceleration of the asylum procedure to the restructuring of the asylum domain), in: Asyl, Sondernummer Asylsymposium 2013, p. 9-14.

⁵³ Federal Administrative Court, decision D-5658/2014 of 13 November 2014.

⁵⁴ Unfortunately, no more recent statistical data on the length of the appeal procedure are available.

⁵⁵ Eidgenössisches Justiz- und Polizeidepartment (EJDP), *Bericht über Beschleunigungsmassnahmen im Asylbereich*, 2011, p. 16-17.

⁵⁶ Eidgenössisches Justiz- und Polizeidepartment (EJDP), *Bericht über Beschleunigungsmassnahmen im Asylbereich*, 2011, Annex 2.

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 (Tribunal administratif fédéral, TAF).⁵⁷ It is a judicial review: the TAF is the first and last court of appeal in asylum matters in Switzerland. A further appeal to the Federal Supreme Court is not possible (except if it concerns an extradition request).⁵⁸ 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.⁵⁹ 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 (on 1 February 2014).⁶⁰ Appropriateness of a decision means constellations 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.⁶¹ 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.⁶² However, as the change is relatively new, there is not sufficient practical experience yet.

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 four official languages,⁶³ 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 help for persons who want to write an appeal themselves, the Swiss Refugee Council offers a model of an appeal with explanations in different languages on its website.⁶⁴

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.⁶⁵

⁵⁷ Article 105 AsylA. Most judgments of the Federal Administrative Court can be found here: <http://www.bvger.ch/publiws/?lang=de>.

⁵⁸ Article 83 lit. c, d Federal Supreme Court Act (Loi sur le Tribunal fédéral).

⁵⁹ Article 106 AsylA.

⁶⁰ Article 106 para. 1 AsylA.

⁶¹ 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, judgment E-641/2014 of 13 March 2015.

⁶² 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 AsylG)* (*Cancellation of the examination of appropriateness in the area of asylum*), in: ASYL 2/13, p. 11ff.

⁶³ Article 33a Administrative Procedure Act (APA, Loi sur la procédure administrative).

⁶⁴ Swiss Refugee Council OSAR, *Fiches d’information sur la procédure d’asile* (*Information leaflets on the asylum procedure*), <http://www.osar.ch/aide/fiches-dinformation.html> (in several languages).

⁶⁵ Article 33a and 52 APA.

The time limit for lodging an appeal depends on the type of the contested decision.⁶⁶ It is 30 days in case of a negative asylum decision. The time limit is 5 working days in case of an inadmissibility decision (see also: Asylum Procedure, B. 4. Admissibility procedures, Appeal), 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 removal is lawful, reasonable and possible.

The time limits for lodging an appeal in the airport procedure or in the trial centre differ from the regular procedure. An appeal has to be made within 5 working days in the airport procedure⁶⁷ (see Asylum Procedure, B. 5. Border procedure) and within 10 working days in the trial phase in case of negative substantive decisions (see Asylum Procedure, B. 6. Accelerated procedures).⁶⁸

Directory provisions in Swiss law set time limits for decisions of the TAF. It should decide within 5 working days on appeals against inadmissibility decisions, against decisions in the airport procedure as well as in the case of negative decisions because the applicant is from a safe country of origin and obviously is not eligible for refugee status and the removal is lawful, reasonable and possible. In all other cases, the Court normally has to take decisions on appeals against decisions of the SEM within 20 days.⁶⁹ In reality, the average processing time for the Court to take a decision was 524 days between 2008 and 2010.⁷⁰

In general, an appeal has automatic suspensive effect in Switzerland.⁷¹ Appeals against inadmissibility decisions within the Dublin procedure (Dublin transfer decisions) are an exception: They have no automatic suspensive effect (see Asylum Procedure, B. 3. Dublin, Appeal).

Different obstacles to appeal 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, the totality or part of the advance payment can be waived.⁷² 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).⁷³ Another important obstacle is the short time limit of five working days for lodging an appeal in case of inadmissibility or safe country of origin decisions (see above). In general, this time limit causes difficulties, especially for persons that are familiar neither with the environment and the languages nor with the asylum system in Switzerland. The time limit seems especially problematic in the case of the remote federal accommodation centres (Aussenstellen).⁷⁴ These centres are usually located (or, in the case of those planned to be opened, will be located) in remote zones and are used in most cases to accommodate applicants in a Dublin procedure⁷⁵ (for further information see also Asylum Procedure, B. 2. Legal assistance). Another obstacle is set by the limitation of the cognition of the TAF since 1 February 2014 (no examination of appropriateness of the decision anymore, see above).

Within the appeal procedure, the Court has the possibility to order a hearing if the facts are not elucidated in a sufficient manner.⁷⁶ In practice, it has hardly ever made use of this possibility.

⁶⁶ Article 108 AsylA.

⁶⁷ Article 108 para. 2 and 3 AsylA.

⁶⁸ Article 38 Test Phases Ordinance (Ordonnance sur les phases de test).

⁶⁹ Article 109 AsylA.

⁷⁰ Eidgenössisches Justiz- und Polizeidepartment (EJDP), Bericht über Beschleunigungsmassnahmen im Asylbereich, 2011, p. 16.

⁷¹ Article 55 para. 1 APA.

⁷² Article 63 para. 4 Administrative Procedure Act.

⁷³ For example European Court of Human Rights, *M.A. v Switzerland*, Application No. 52589/13, Judgment of 18 November 2014.

⁷⁴ Article 26 para. 3 AsylA; Ordinance of the DFJP on the management of federal reception centres in the field of asylum.

⁷⁵ Swiss Refugee Council OSAR, Etat des lieux du centre fédéral de Bremgarten «Obere Allmend», 2014, p. 8.

⁷⁶ Article 14 APA.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the regular procedure?
 ○ If so, are interpreters available in practice, for interviews? Yes No
- In the regular procedure, is the interview conducted by the authority responsible for taking the decision? Yes No
- 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.⁷⁷ 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.⁷⁸ An interpreter can be present during the preliminary interview if necessary.⁷⁹ The minutes of the interview are generally written down. In case the SEM intends to take an inadmissibility decision (see Asylum Procedure, B. 4. Admissibility procedures), the applicant is granted the right to be heard. The same applies if the person deceives the authorities regarding their identity and this deception is confirmed by the results of the identification procedure or other evidence, if the person bases his or her application primarily on forged or falsified evidence, or if they seriously and culpably fail to cooperate in some other way.⁸⁰ 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 reasons for flight and, if available, to present pieces of evidence. In principle, the SEM has the possibility to entrust the cantonal 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 them.⁸¹ Also, a representative of an authorized 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 they have no party rights.⁸²

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 applicant⁸³ (carried out by the same interpreter who had already translated during the interview). 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 organizations 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.

⁷⁷ Article 19 para. 2 AsylA.

⁷⁸ Article 26 para. 2 AsylA.

⁷⁹ Article 19 para. 2 AO1.

⁸⁰ Article 36 AsylA.

⁸¹ Article 29 AsylA.

⁸² Article 30 AsylA.

⁸³ Article 29 para. 3 AsylA.

Swiss Asylum Law provides for certain gender-sensitive measures in the context of the personal interviews. It stipulates that persons of the same sex conduct the interview of an applicant if concrete evidence for gender-based persecution exists or if the situation in the country of origin indicates a gender-based persecution.⁸⁴ 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 they fear because of their membership of a particular social group or if they are a victim of human trafficking.⁸⁵ In practice, this 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.⁸⁶ Furthermore, the right of every asylum applicant who is of sound mind and therefore deemed capable of making reasonable judgements to have their own reasons for asylum examined is enshrined in Asylum Law in case an application is made by spouses, registered partners and families.⁸⁷ 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 judgement. The assessment of this capability depends on the maturity and the development of the child in question.⁸⁸ Usually, a person is considered as able to make a judgement 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.⁸⁹ A recent decision of the Federal Administrative Court (Tribunal administratif fédéral, TAF) further stresses the importance of that duty and clarifies in a detailed manner how this should be put into practice during the personal interview.⁹⁰ In addition, a representative, a so-called person of confidence, is immediately to be appointed for each unaccompanied asylum-seeking child (see also Asylum Procedure, E. 3. Age assessment and legal representation of unaccompanied children). The latter assists the unaccompanied child during the asylum procedure.⁹¹ 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.⁹²

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”.⁹³ 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.⁹⁴ 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.⁹⁵

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 organizations attending interviews regarding

⁸⁴ Article 6 AO1.

⁸⁵ SEM, *Manuel Asile et retour, Les persécutions liées au genre*, (*Manual on asylum and return, Gender-specific persecution*), p. 14-15, <https://www.bfm.admin.ch/dam/data/bfm/asyl/verfahren/hb/d/hb-d7-f.pdf> (FR).

⁸⁶ Article 17 para. 2 AsylA.

⁸⁷ Article 5 AO1.

⁸⁸ Asylum Appeals Commission (predecessor of the Federal Administrative Court), decision EMARK 1996/4 of 9 March 1995.

⁸⁹ Article 7 para. 5 AO1.

⁹⁰ Federal Administrative Court, decision E-1928/2014 of 24 July 2014.

⁹¹ Article 17 AsylA; Article 7 AO1.

⁹² SEM, *Manuel Asile et retour. Requérants d’asile mineurs non accompagnés* (*Manual on asylum and return, Unaccompanied minor asylum seekers*), p. 14-15.

⁹³ Article 29 para. 1bis AsylA.

⁹⁴ SEM, *Handbuch Asyl und Rückkehr. Anhörung zu den Asylgründen* (*Manual on asylum and return, Interview regarding the reasons for asylum*), p. 8, <https://www.bfm.admin.ch/dam/data/bfm/asyl/verfahren/hb/c/hb-c7-d.pdf> (DE); Asylum Appeals Commission, decision EMARK 1999/2 of 27 October 1998, para. 5.

⁹⁵ SEM, *Kompetenzprofil Dolmetschende BFM* (*Federal Office for Migration, competence profile for interpreters*), 2011.

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* emphasized 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 organizations 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.⁹⁶ Recently, the TAF has criticized in a decision the efforts made by the SEM to remedy the shortage of interpreters in Tigrinya.⁹⁷ 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.

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the regular procedure in practice?
 Yes not always/with difficulty No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a negative decision?
 Yes not always/with difficulty No
- In the first instance procedure, does free legal assistance cover:
 representation during the personal interview legal advice both Not applicable
- In the appeal against a negative decision, does free legal assistance cover
 representation in courts legal advice both Not applicable

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.

The right to free administration of justice is enshrined in the Federal Constitution. In both the first instance procedure and in the appeal procedure,⁹⁸ 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.⁹⁹

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

⁹⁶ *Ibid.*

⁹⁷ Federal Administrative Court, decision D-5658/2014 of 13 November 2014.

⁹⁸ Article 8 para. 1 Cst (Federal Constitution, Constitution fédérale); Article 29 para. 1 and 3 Cst.

⁹⁹ Article 65 para. 1 and 2 APA.

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.¹⁰⁰ 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.¹⁰¹ 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,¹⁰² 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).¹⁰³ 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.¹⁰⁴ Most of the legal advisors have a university degree in law, but are not attorneys. Even if de facto they provide generally 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 (Tribunal administratif fédéral, TAF) that the independent legal advisory offices could replace the granting of free administration of justice.¹⁰⁵ There exist a certain number of private lawyer's offices specialized in asylum and foreigners' law, but the costs are quite high (often advance payment required) and against the background of the restrictive practice of the State Secretariat for Migration (SEM) and the Court regarding free administration of justice, this constitutes an important obstacle for applicants.

In addition to the problems mentioned above (no entitlement to the services from independent legal advisory offices, no service covering all the needs), the relatively short time limit of five working days for lodging an appeal in several cases also forms an obstacle to access to legal assistance (see also Asylum Procedure, B. 2. Appeal and 3. Dublin, Legal assistance).

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

¹⁰⁰ Article 110a AsylA.

¹⁰¹ ECRE, *Survey on legal aid for asylum seekers in Europe*, 2010, p. 33, www.ecre.org/component/downloads/downloads/268.html.

¹⁰² Asylum Appeals Commission, decision EMARK 2001/11 of 10 July 2001.

¹⁰³ ECRE, *Survey on legal aid for asylum seekers in Europe*, 2010.

¹⁰⁴ See for example Caritas,

www.caritas.ch/fileadmin/media/caritas/Dokumente/Was_wir_tun_Schweiz/Factsheet_d_Rechtsberatung_2014.pdf (DE), or HEKS (Swiss Church Aid), <https://www.heks.ch/themen/anwaltschaft-fuer-sozial-benachteiligte/rechtsberatung-in-der-schweiz/> (DE).

¹⁰⁵ 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, in: *Asyl* 13/2, p. 4 ff.

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).

Within the accelerated procedure in the Zurich test centre, all applicants are entitled to free legal assistance (advice and representation). See Asylum Procedure, B. 6. Accelerated procedures, Legal assistance.

A legislative amendment is foreseen, which is now being discussed in the parliament, called “Erlass 2–Neustrukturierung des Asylbereichs”.¹⁰⁶ It is a restructuring of the asylum system modelled according to the pilot project for an accelerated procedure in the test centre. If the amendment passes as currently foreseen, 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. But it is not known yet if and when this amendment would enter into force.

3. Dublin

Indicators:

- Number of outgoing requests in the previous year (2014): 14'900
- Number of incoming requests in the previous year (2014): 4'041
- Number of outgoing transfers carried out effectively in the previous year (2014): 2'638
- Number of incoming transfers carried out effectively in the previous year (2014): 933

Procedure

Indicator:

- If another EU Member State accepts responsibility for the asylum applicant, how long does it take in practice (on average) before the applicant is transferred to the responsible Member State? N/A

The Dublin III Regulation is applied directly since the 1 January 2014 according to a decision of the Federal Council of 18 December 2013. Excepted are the provisions concerning legal protection and detention, which do not comply with current Swiss law. The latter are not applied yet and Switzerland has to implement the provisions by July 2015. A bill¹⁰⁷ has been proposed and the time limit for a referendum ran out in January 2015.

According to Swiss law, the State Secretariat for Migration (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.¹⁰⁸ The Federal Council has the possibility to provide exceptions to taking the fingerprints for children under the age of 14.¹⁰⁹ In practice, all applicants over 14 years of age are systematically fingerprinted and checked in EURODAC after the registration of the application in

¹⁰⁶ Federal Office for Migration, *Le Conseil fédéral adopte le message relatif à la restructuration du domaine de l'asile* (*The Federal Council adopts the message regarding the restructuring of the asylum domain*), Press release of 3 September 2014, www.bfm.admin.ch/bfm/fr/home/aktuell/news/2014/ref_2014-09-034.html (FR, DE, IT), Message of the Federal Council: www.bfm.admin.ch/dam/data/migration/rechtsgrundlagen/gesetzgebung/aend_asylg_neustruktur/bot-f.pdf (FR).

¹⁰⁷ Entwurf Bundesbeschluss zur Weiterentwicklung des Dublin/Eurodac-Besitzstandes (Draft for a federal decree on the development of the Dublin/Eurodac rules), www.bfm.admin.ch/dam/data/migration/rechtsgrundlagen/gesetzgebung/uebernahme-dublin3/vorent-dublin3-d.pdf (DE).

¹⁰⁸ Article 102a^{bis} AsylA.

¹⁰⁹ Article 99 AsylA.

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.¹¹⁰

The SEM does not publish any information about how much time a transfer to the responsible Member State takes on average. It is striking that the number of Dublin requests for outgoing transfers made by Switzerland in 2014 (14,900) is far higher than the number of outgoing transfers actually carried out (2,638).

In addition to the cases in which Switzerland must apply the sovereignty clause because the transfer to the responsible Dublin Member State would violate one of its international obligations, Article 29a para. 3 of the Asylum Ordinance No. 1 provides the possibility to apply the sovereignty clause for 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.¹¹¹ There are no general criteria publicly available in Switzerland about 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, while the Federal Administrative Court (Tribunal administratif fédéral, TAF) has not yet established case law with regard to it. The sovereignty clause is used only in exceptional cases and is usually based on Article 29a para. 3 OA1. According to Swiss case law,¹¹² the interpretation of humanitarian reasons in the sense of Article 3 para. 2 Dublin Regulation should be similar to the interpretation of the humanitarian clause of the Dublin Regulation.¹¹³ 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 Asylum Procedure, B. 3. Dublin, Appeal). There is no information available about the number of cases in which the humanitarian clause or the sovereignty clause have been applied by the Swiss authorities.

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 in addition to the general grounds. In this case, detention can be ordered by the competent cantonal authority if an applicant had denied that he possesses or possessed a permit of stay or a visa from another Dublin Member State or that he has already filed an asylum application in another Dublin Member State. Detention can be ordered only in case the responsible Member State has accepted the request for transfer or in case of a EURODAC match and when the request for transfer has already been made.¹¹⁴ The article regulating detention during the preparation of a decision within the Dublin procedure (Article 75 al. 1bis FNA) does not comply with the Dublin III Regulation (Article 28 para. 1 Dublin Regulation), as according to the latter, a person cannot be detained for the sole reason that they are in a Dublin procedure. In addition, the detention must be proportional and detention must be used only as a measure of last resort. Because of this non-compliance, the paragraph in question will be replaced by article 76a e-AuG.¹¹⁵ The latter is foreseen to regulate detention within the Dublin procedure only. Different aspects of the new provisions seem to be problematic, especially the manner in which

¹¹⁰ Article 20, Article 22 and Article 26 AsylA, Article 16 Test Phases Ordinance.

¹¹¹ Federal Administrative Court, decision BVGE 2010/45 (E-5644/2009) of 31 August 2010.

¹¹² Federal Administrative Court, decision BVGE 2011/9 (E-7221/2009) of 10 May 2011.

¹¹³ Article 16 and 17 para. 2 Dublin III Regulation.

¹¹⁴ Article 75 FNA (Federal Act on Foreign Nationals, Loi fédérale sur les étrangers).

¹¹⁵ Entwurf Bundesbeschluss zur Weiterentwicklung des Dublin/Eurodac-Besitzstandes (Draft for a federal decree on the development of the Dublin/Eurodac rules).

the risk of absconding is defined as well as the maximum duration of detention that exceeds the maximum duration stipulated by the Dublin Regulation.

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. In addition to the general grounds, detention pending deportation can be ordered to an applicant who has received a Dublin decision on the sole ground that the decision has been issued in the canton and that the enforcement of the removal is foreseeable.¹¹⁶

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.¹¹⁷

In Switzerland, authorities make use of detention as a means to ensure the departure of the concerned applicants in practice. As the cantonal authorities are competent for the execution of an expulsion or removal order and the way in which they ensure the latter, the use of such measures differs between cantons.

As mentioned above, the Dublin III Regulation is directly applied in Switzerland, except certain provisions. Therefore, voluntary transfers should in principle be possible.¹¹⁸ Nevertheless, in practice, voluntary transfers are tested only within the accelerated procedure in the test centre in Zurich. Since the leading case 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 five days must be granted, allowing the concerned applicant to leave Switzerland or to make an appeal and to ask for suspensive effect.¹¹⁹ This case-law has since been codified in the Asylum Act.¹²⁰

After the registration of the asylum application, the applicant benefits from a preliminary advisory meeting about the asylum procedure according to Swiss law.¹²¹ Generally, the information is provided in form of an explanatory leaflet in practice. The SEM provides a specific information leaflet about the Dublin procedure to asylum seekers in the reception and processing centres.

If another Dublin Member State is presumed responsible for processing the asylum application, the applicant concerned is granted the right to be heard.¹²² This can be carried out either orally or in written form¹²³ 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 EUROCAC 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 the Dublin procedure has not even started yet. This deprives the applicant of procedural rights as, according to the Court of Justice of the European Union (CJEU), that the authorities are “to inform the applicant that it proposes to reject his application and notify him of the arguments on which it intends to base its rejection, so as to enable him to make known his views in that regard.”¹²⁴ 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

¹¹⁶ Article 76 FNA.

¹¹⁷ Article 79 FNA.

¹¹⁸ Article 29 Dublin III Regulation.

¹¹⁹ Federal Administrative Court, decision BVGE 2010/1 (E-5841/2009) of 2 February 2010.

¹²⁰ Article 107a AsylA.

¹²¹ Article 25 AsylA.

¹²² Article 36 para. 1 AsylA.

¹²³ Article 29 para. 2 Cst.

¹²⁴ Court of Justice of the European Union, MM, Case C-277/1, Judgment of 22 November 2012, para. 95.

his/her views in the light of a 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."¹²⁵

In principle, the applicant is entitled to inspection of the files relevant for the decision-making.¹²⁶ The inspection can only be refused if this would contradict essential public interest, essential private interests or interests of non-completed official investigations.¹²⁷ 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.¹²⁸ 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 (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.¹²⁹

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

Appeal

Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:
 Yes No
 - o if yes, is the appeal judicial administrative
 - o If yes, is it suspensive Yes No
- Average processing time for the appeal body to make a decision: N/A

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 (Tribunal administratif fédéral, TAF). The time limit to lodge an appeal against a Dublin transfer decision is 5 working days in the regular and the airport procedure.¹³⁰ Contrary to other asylum appeals, appeals against Dublin transfer decisions (inadmissibility decisions) do not have automatic suspensive effect. Until 1 February 2014, asylum seekers could ask for suspensive effect (without limitations as to the grounds) in their appeal. As of 1 February 2014, it is now possible to apply for suspensive effect in the appeal "solely on the grounds of a specific danger in the responsible state" during the time limit for appeals since 1 February 2014.¹³¹ These limitations are incompatible with Article 27 of the Dublin Regulation. Therefore, the respective article of the Asylum Act is foreseen to be modified within the context of the current implementation process of the Dublin III Regulation (the time limit for holding a referendum ended in January 2015).¹³² 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.¹³³ In practice, it has hardly ever made use of this possibility.

As mentioned under Asylum Procedure, B. 3. Dublin, Procedure, transfers can no longer be enforced immediately after the notification of the decision, even if appeals against Dublin transfer decisions have

¹²⁵ *Ibid.*, para. 87.

¹²⁶ Article 26 APA.

¹²⁷ Article 27 APA.

¹²⁸ Article 17 para. 5 AsylA.

¹²⁹ Article 13 AsylA.

¹³⁰ Article 108 para. 2 AsylA.

¹³¹ Article 107a AsylA.

¹³² Entwurf Bundesbeschluss zur Weiterentwicklung des Dublin/Eurodac-Besitzstandes (Draft for a federal decree on the development of the Dublin/Eurodac rules).

¹³³ Article 14 PA.

no suspensive effect. A time limit of five 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

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 Asylum Procedure, B. 3. Dublin, Suspension of transfers). 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 recently, in the case *Tarakhel vs Switzerland*¹³⁶, the European Court of Human Rights has stated that a transfer of an Afghan family (8 family members at the moment of the decision) to Italy 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 (violation of Article 3 ECHR) due to the insufficient capacity of accommodation in the Italian asylum system. 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.¹³⁷ As this judgment was published only very recently, and the *Tarakhel* case was published in the beginning of November 2014 only, it is too early to know what precise change of transfer practice to Italy – as well as to other Dublin Member States with insufficient reception conditions – this judgement will generate. A preliminary analysis of Swiss jurisprudence since *Tarakhel* (other than the mentioned judgment) has shown that in many cases the practice regarding Italy is still strict and the judges still state that there are no systemic deficiencies. However, there are some judgments that show that guarantees in the sense of *Tarakhel* are also needed in case of other vulnerabilities (not only families), while others state that guarantees are only needed in case of families.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the Dublin procedure?
 Yes No
 ○ If so, are interpreters available in practice, for interviews?
 Yes No

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,¹³⁸ but they do 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

¹³⁴ Article 107a para. 2 AsylA, Federal Administrative Court, decision BVGE 2010/1 (E-5841/2009) of 2 February 2010.

¹³⁵ Article 107a AsylA.

¹³⁶ European Court of Human Rights, *Tarakhel v Switzerland*, Application No. 29217/12, 4 November 2014.

¹³⁷ Federal Administrative Court, judgment E-6629/2014 of 12 March 2015.

¹³⁸ Article 36 AsylA.

regular asylum procedure where the application is examined in substance (for information regarding the respect of provisions on conducting interviews or the manner in which specific caseloads or nationalities are treated, see Asylum Procedure, B. 2. Regular procedure, Personal interview).

Neither audio nor video recording of the personal interview is required under Swiss legislation. However, minutes are taken of the interview and signed by the persons participating in the interview in the end, after a translation back into the language of the applicant¹³⁹ (carried out by the same interpreter who had already translated during the interview). 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, and complaints in this regard are rare. Problems are rather reported with respect to the quality of simultaneous translation (See Asylum Procedure, B. 2. Regular procedure, Personal interview).

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at the first instance in the Dublin procedure in practice? Yes not always/with difficulty No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a Dublin decision? Yes always/with difficulty No

The right to free administration of justice is enshrined in the Federal Constitution and the Asylum Act.¹⁴⁰ 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.¹⁴¹ 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 Asylum Procedure, B. 6. Accelerated procedures, Legal assistance).

The relatively short time limit of five 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 regard to the remote federal accommodation centres (Aussenstellen).¹⁴² 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.¹⁴³ (For further information see also Asylum Procedure, B. 2. Regular procedure, Legal assistance).

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.

¹³⁹ Article 29 para. 3 AsylA.

¹⁴⁰ Article 8 para. 1 Cst., Article 29 para. 1 and 3 Cst., Article 110a AsylA.

¹⁴¹ ECRE, Survey on legal aid for asylum seekers in Europe (2010), p. 33.

¹⁴² Article 26 para. 3 AsylA, Ordinance of the DFJP on the management of federal reception centres in the field of asylum.

¹⁴³ OSAR: Etat des lieux du centre fédéral de Bremgarten «Obere Allmend», 2014, p. 8.

Suspension of transfers

Indicator:

- Are Dublin transfers systematically suspended as a matter of policy or as a matter of jurisprudence to one or more countries? Yes No
 - o If yes, to which country/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,¹⁴⁴ its practice regarding transfers to **Greece** has been influenced by the judgement of the European Court of Human Rights of the 21 January 2011, *M.S.S. vs Belgium and Greece* (No. 30696/09), the judgment of the Court of Justice of the European Union of 21 December 2011, *N.S. vs Secretary of State for the Home Department* (C-411/10), as well as two ensuing leading case decisions of the Federal Administrative Court (Tribunal administratif fédéral, TAF) of 16 August 2011¹⁴⁵ and of the 17 October 2011.¹⁴⁶ 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).¹⁴⁷ In most of the cases Switzerland relinquishes transfers to Greece and applies the sovereignty clause,¹⁴⁸ transfers can even be suspended for whole categories of applicants.¹⁴⁹

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 the reception conditions. Therefore, it is necessary to examine in individual cases whether an applicant risks a violation of their basic rights in case of a transfer to Malta because they belong to a category with particular vulnerabilities.¹⁵⁰ 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.¹⁵¹ 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.

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

¹⁴⁴ SEM, *Manuel Asile et retour, Procédure Dublin (Manual asylum and return, Dublin procedure)*, p. 14.

¹⁴⁵ Federal Administrative Court, decision BVGE 2011/35 (D-2076/2010) of 16 August 2011.

¹⁴⁶ Federal Administrative Court, decision E-5604/2011 of 17 October 2011.

¹⁴⁷ Federal Administrative Court, decision BVGE 2011/35 (D-2076/2010) of 16 August 2011 and decision E-5604/2011 of 17 October 2011.

¹⁴⁸ SEM, *Manuel asile et retour, Procédure Dublin*, p. 14.

¹⁴⁹ FOM, Dublin Office 1, Information given in writing, 29 March 2012.

¹⁵⁰ Federal Administrative Court, decision BVGE 2012/27 (D-7126/2013) of 5 February 2014.

¹⁵¹ SEM, *Manuel asile et retour, Procédure Dublin*, p. 14; see for example Federal Administrative Court, decision E-2093/2012 of 9 October 2013.

European Court of Human Rights stated in the case *Tarakhel vs Switzerland*¹⁵² 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 (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 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.¹⁵³ As this judgment was published only very recently, and the *Tarakhel* case was published in the beginning of November 2014 only, it is too early to know what precise change of transfer practice to Italy – as well as to other Dublin Member States with insufficient reception conditions – this judgement will generate. A preliminary analysis of Swiss jurisprudence since *Tarakhel* (other than the mentioned judgment) has shown that in many cases the practice regarding Italy is still strict and the judges still state that there are no systemic deficiencies. However, there are some judgments that show that guarantees in the sense of *Tarakhel* are also needed in case of other vulnerabilities (not only families), while others state that guarantees are only needed in case of families.

4. Admissibility procedures

General (scope, criteria, time limits)

In Switzerland, all asylum seekers have to undergo the admissibility procedure. This procedure should take place in the first three weeks after the application for asylum has been filed, this phase is called the preparatory phase.¹⁵⁴ Within this time, the State Secretariat for Migration (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 (inadmissibility decision).

The reasons to dismiss an asylum application are similar, but not identical to the ones mentioned in Article 33 of the recast Asylum Procedures Directive (APD), they can be found in Article 31a para. 1-3 AsylA. The most relevant because of the Dublin Association Agreement is the reason given at 2(b), which is applicable if the person concerned can travel to a third country that is responsible under an international agreement for conducting the asylum and removal procedures (see Asylum Procedure, B. 3. Dublin). Another reason is very similar to Article 33 (2) c) APD, it says that an application will be dismissed if a person can return to a safe third country (identified by the Federal Council in a separate list, namely all EU and EFTA countries¹⁵⁵ in which he or she was previously resident. Further reasons to dismiss a person's application for asylum are the following: If the person can return to a third country in which he or she was previously resident; if the person can continue to a third country for which they hold

¹⁵² European Court of Human Rights, *Tarakhel v Switzerland*, Application No. 29217/12, 4 November 2014.

¹⁵³ Federal Administrative Court, judgment E-6629/2014 of 12 March 2015.

¹⁵⁴ Article 26 AsylA.

¹⁵⁵ Federal Office for Migration, *Pays de l'UE et de l'AELE désignés comme Etats tiers sûrs (EU and EFTA countries designated as safe third countries)*, Press release of 14 December 2007, <http://www.admin.ch/aktuell/00089/index.html?lang=fr&msg-id=16275> (FR, DE, IT). For further information see Asylum Procedure, F. The safe country concepts.

a visa and in which they can seek protection or if the person can continue to a third country in which persons with whom they have a close relationship or dependants live. The last three grounds do not apply if there are indications that there is no effective protection against *refoulement* in the individual case.¹⁵⁶

Another reason to dismiss an application is if the application for asylum is made exclusively for economic or medical reasons.¹⁵⁷ In this case, normally a second interview will take place¹⁵⁸ before the SEM takes the decision to dismiss the application.

Decisions to dismiss an application must normally be made within five working days of the application being filed or after the Dublin state concerned has agreed to the transfer request.¹⁵⁹ In practice, these time limits are rarely respected. Since this specific rule entered into force just in February 2014, there is no legal practice considering these time limits. But there are several decisions from the Federal Administrative Court (Tribunal administratif fédéral, TAF) 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 2014¹⁶⁰ 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 the law designated, which expresses itself in the formulation of Article 37 AsylA "normally".

Appeal

Indicators:

- Does the law provide for an appeal against the decision in the admissibility procedure:
 Yes No
 - o if yes, is the appeal judicial administrative
 - o If yes, is it suspensive? Yes (except Dublin) No

An appeal against a decision to dismiss an application must be filed within five working days instead of 30 days in the regular procedure. Both appeals have to be submitted to the Federal Administrative Court (Tribunal administratif fédéral, TAF).

The time limit of five working days is relatively short. If the decision is made while the asylum seeker is still located in one of the five 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-/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 five working days can be an obstacle for an appeal in these cases.

In general, an appeal has automatic suspensive effect in Switzerland.¹⁶¹ Appeals against inadmissibility decisions also have automatic suspensive effect, except for Dublin decisions (see: Asylum Procedure, B. 3. Dublin, Appeal).

¹⁵⁶ Article 31a para. 2 AsylA.

¹⁵⁷ Article 31a para. 3 AsylA

¹⁵⁸ Article 36 para. 2 AsylA

¹⁵⁹ Article 37 AsylA

¹⁶⁰ Federal Administrative Court, decision D-1643/2014 of 14 April 2014.

¹⁶¹ Article 55 para. 1 APA.

Normally, the court should decide appeals against inadmissibility decisions within five working days,¹⁶² 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 State Secretariat for Migration (SEM) acted within the law when it decided to dismiss the application.¹⁶³

The other modalities of the appeal are the same as in the regular procedure. For more information, see B. 2. Regular procedure, Appeal. For appeals in the Dublin procedure, see Asylum Procedure, B. 3. Dublin, Appeal).

Personal Interview

/ Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the admissibility procedure?
 ○ If yes, is the personal interview limited to questions relating to nationality, identity and travel route?
 ○ If so, are interpreters available in practice, for interviews?
- Are personal interviews ever conducted through video conferencing?
- Yes No
- Yes No
- Yes No
- Yes No

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 their country. The authority responsible is the State Secretariat for Migration (SEM). See also B. 2. Regular procedure, Personal interview.

If the SEM decides to dismiss an application according to Article 31a para. 1 AsylA, 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 according to Article 29 AsylA will take place. Regarding the second interview, see B. 2. Regular procedure, Personal interview.

The first summary interview is the same as in the regular procedure (see B. 2. 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 writer¹⁶⁴). If the person requesting asylum is an unaccompanied minor, his or her person of confidence is also allowed to take part in the hearing and will be invited by the SEM (Article 17 para. 3 AsyA), because the hearing is a decisive procedural step.

¹⁶² Article 109 AsylA.

¹⁶³ Federal Administrative Court, decision BVGE 2012/4 (E-6490/2011) of 9 February 2012, para. 2.2.

¹⁶⁴ 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.

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the admissibility procedure in practice? Yes not always/with difficulty No
- Do asylum seekers have access to free legal assistance in the appeal procedure against an admissibility decision? Yes not always/with difficulty No

The same applies as in the regular procedure. See B. 2. Regular procedure, Legal assistance.

5. Border procedure (border and transit zones)

General (scope, time-limits)

Indicators:

- Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? Yes No
- Are there any substantiated reports of refoulement at the border (based on NGO reports, media, testimonies, etc.)? Yes No
- Can an application made at the border be examined in substance during a border procedure? Yes No

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.¹⁶⁵

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 State Secretariat for Migration (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 their 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.¹⁶⁶ 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 an 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.¹⁶⁷

The SEM examines if Switzerland is responsible to carry out the procedure according to the Dublin Regulation. The SEM authorizes entry into the territory if Switzerland is responsible according to the Dublin III Regulation, and if the asylum seeker appears to be at risk under any of the grounds stated in the refugee definition at Article 3 para. 1 AsylA or under threat of inhumane treatment in the country from which they have directly arrived; or if the asylum seeker establishes that the country from which they have directly arrived would force them to return to a country in which they appear to be at risk, in

¹⁶⁵ Article 21 para. 1 AsylA.

¹⁶⁶ Article 22 AsylA and Article 12 AO1.

¹⁶⁷ Article 22 para. 5 AsylA.

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.¹⁶⁸ The asylum seeker is then accommodated in a special accommodation facility within the transit zone of the airport.¹⁶⁹

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.¹⁷⁰ In a great majority of cases, the time limit is respected in practice; people are sent to the responsible canton automatically after 20 days.

Appeal

Indicators:

- Does the law provide for an appeal against a decision taken in a border procedure?
 Yes No
 - o if yes, is the appeal judicial administrative
 - o If yes, is it suspensive? Yes No

Against a decision taken during the airport procedure an appeal can be made within five working days.¹⁷¹ 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 cases the person has to ask for suspensive effect. (For further information, see Asylum Procedure, B. 2. Regular Procedure, Appeal, and 3. 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 another language because the airport procedure does not provide the same options to translate documents as the regular procedure.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the border procedure?
 Yes No
 - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route?
 Yes No
 - o If so, are interpreters available in practice, for interviews? Yes No
- Are personal interviews ever conducted through video conferencing? Yes No

In the airport procedure, a first interview will take place in every case. In Zurich, the airport police conduct the interview, in Geneva it is the State Secretariat for Migration (SEM). In case of unaccompanied minors, their person of confidence participates in the first interview (contrary to the regular procedure), see Asylum Procedure, E. 3. Other than this, there is no difference between the first

¹⁶⁸ Article 22 para. 1bis, 1ter, 2 AsylA.

¹⁶⁹ 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 (see below Detention of Asylum Seekers, B. Introduction).

¹⁷⁰ Article 23 para. 2 AsylA.

¹⁷¹ Article 108 para. 2 AsylA and Article 23 para. 1 AsylA.

interviews in the regular procedure and the ones in the airport procedure. See Asylum Procedure, B. 2. Regular procedure, Personal interview, and B. 4. Inadmissibility 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 Asylum Procedure, B. 2. Regular procedure, Personal interview).

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the border procedure in practice? Yes not always/with difficulty No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under a border procedure? Yes not always/with difficulty No

The legislation does not provide access to state-funded free legal assistance during the airport procedure. But in practice, there is a legal advisory office in the transit zone of the airports in Zurich and in Geneva. There is no difference considering legal assistance between the regular procedure and the airport procedure. See Asylum Procedure, B. 2. Regular procedure, legal assistance.

6. Accelerated procedures

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 test phase ("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 ordinance¹⁷² 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 by a free legal representative who takes part in the whole procedure. This support ends at the earliest after the State Secretariat for Migration (SEM) takes the first decision, if the legal representative decides that he 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 three weeks. After this, the accelerated procedure itself will take place, it shall last between eight and ten working days, in certain cases, the period can be extended for a few days. If a decision cannot be made in this time 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.

¹⁷² Test Phases Ordinance (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).

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. At the moment, a legal amendment is planned, called “Erlass 2 – Neustrukturierung des Asylbereichs”.¹⁷³ It is a restructuring of the asylum system. In the draft, an accelerated procedure very similar to the one in the test phase is foreseen for all of Switzerland.¹⁷⁴ It is not known yet if and when this amendment will enter into force.

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.¹⁷⁵

There exist also other procedures which are handled in an expedited manner. The airport procedure is described in Asylum Procedure, B. 5. Border procedure.

Dublin procedures have a time limit of five working days for an appeal; the Dublin procedure is described in Asylum Procedure, B. 3. Dublin. The same time frame for appeals is applied for all inadmissibility decisions.¹⁷⁶ Those decisions also have to be made within five working days of the application being filed or after the Dublin Member State concerned has agreed to the transfer request,¹⁷⁷ although in practice, these time limits are rarely respected. See also Asylum Procedure, B. 4. Admissibility procedures.

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.¹⁷⁸ In those cases, the time limit for an appeal is also five working days.¹⁷⁹

Accelerated examination (not foreseen by law, but in practice):

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, Macedonia and Serbia were included in those procedures.¹⁸⁰

¹⁷³ Federal Office for Migration, *Le Conseil fédéral adopte le message relatif à la restructuration du domaine de l'asile* (*The Federal Council adopts the message regarding the restructuring of the asylum domain*), Press release of 3 September 2014, www.bfm.admin.ch/bfm/fr/home/aktuell/news/2014/ref_2014-09-034.html (FR, DE, IT), Message of the Federal Council: www.bfm.admin.ch/dam/data/migration/rechtsgrundlagen/gesetzgebung/aend_asylg_neustruktur/bot-f.pdf (FR).

¹⁷⁴ For more information on the planned restructuring process, see the final report of the working group of federal and cantonal authorities on *Planification générale de la restructuration du domaine de l'asile* (*General planning of the restructuring of the asylum domain*), 18 February 2014, www.bfm.admin.ch/dam/data/bfm/aktuell/news/2014/2014-03-28/ber-agna-f.pdf (FR).

¹⁷⁵ SEM, Evaluation Testbetrieb, Zusammenfassung der Zwischenergebnisse (*Evaluation of the test procedure, summary of the intermediate results*), February 2015, <https://www.bfm.admin.ch/dam/data/bfm/aktuell/news/2015/2015-02-16/eval-amtsbericht-d.pdf> (DE, FR, IT), p. 9.

¹⁷⁶ Article 108 AsylA.

¹⁷⁷ Article 37 AsylA.

¹⁷⁸ Article 40 AsylA.

¹⁷⁹ Article 108 AsylA.

¹⁸⁰ SEM, *Special measures for asylum seekers from safe European countries*, Press Release of 21 August 2012, <https://www.bfm.admin.ch/bfm/en/home/aktuell/news/2012/2012-08-21.html>.

In March 2013 the 48-hour procedure was extended to asylum claims from Kosovo and Georgia.¹⁸¹ In October 2014, the 48-hour procedure was also applied for asylum requests by persons from Hungary.¹⁸²

Appeal

Indicators:

- Does the law provide for an appeal against a decision taken in an accelerated procedure?

Yes No

o if yes, is the appeal: judicial administrative

o If yes, is it suspensive? Yes (Except in the Dublin procedure)

No

There are no differences for appeals against decisions in the accelerated procedure compared to the regular procedure except for the time limits. See: Asylum Procedure, B. 2. Regular procedure, Appeal, B. 3. Dublin, Appeal, B. 4. Admissibility procedures, 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 five 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 ten 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 they will make an appeal or not. If not, the asylum seeker has to try to find other support within the time period if they wish to make an appeal anyway.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the accelerated procedure?

No

Yes

o If yes, is the personal interview limited to questions relating to nationality, identity and travel route? Yes No

o If so, are interpreters available in practice, for interviews? Yes No

- 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 State Secretariat for Migration (SEM) conducting the interviews. Whether or not there is a second interview with a representation of the authorized charitable organizations present depends on whether or not inadmissibility grounds or other grounds apply, see Asylum Procedure, B. 2. Regular procedure, Personal interview, B. 3. Dublin, Personal interview, and B. 4. Admissibility procedures, Personal interview.

In the accelerated procedure within the test phase a legal representative is always present in the interviews. Apart from this, there are no differences in the accelerated procedure considering the personal interviews.

¹⁸¹ SEM, *48-hour procedure extended to Kosovo and Georgia*, Press release of 26 March 2013, <https://www.bfm.admin.ch/bfm/en/home/aktuell/news/2013/2013-03-26.html>.

¹⁸² 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, http://www.ejpd.admin.ch/ejpd/fr/home/aktuell/news/2014/ref_2014-10-29.html (FR, DE, IT).

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in accelerated procedures in practice? Yes not always/with difficulty No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under an accelerated procedure? Yes not always/with difficulty No

In the test phase, all applicants are entitled to free legal assistance (advice and representation) during the preliminary phase and the accelerated procedure (Taktenphase). 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 will not make an appeal against a negative decision because he considers that the application is *prima facie* without merit.¹⁸³ 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.¹⁸⁴

There is a legislative amendment foreseen, which is now being discussed in the parliament, called "Erlass 2– Neustrukturierung des Asylbereichs". It is a restructuring of the asylum system modelled according to the pilot project for an accelerated procedure in the test centre. If the amendment passes as currently foreseen, there will be state-funded legal assistance for every asylum seeker provided by the law in the future. This would apply both in the regular and admissibility procedure. But it is not known yet if and when this amendment would enter into force.

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

Indicators:

- Is sufficient information provided to asylum seekers on the procedures in practice? Yes not always/with difficulty No
- Is sufficient information provided to asylum seekers on their rights and obligations in practice? Yes not always/with difficulty No
- Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? Yes (to NGOs) not always/with difficulty No
- Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? Yes not always/with difficulty No
- 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 not always/with difficulty No

¹⁸³ Article 23-28 Test Phases Ordinance.

¹⁸⁴ SEM, Evaluation Testbetrieb, Zusammenfassung der Zwischenergebnisse (*Evaluation of the test procedure, summary of the intermediate results*), February 2015, <https://www.bfm.admin.ch/dam/data/bfm/aktuell/news/2015/2015-02-16/eval-amtsbericht-d.pdf> (DE, FR, IT), p. 13f.

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 State Secretariat for Migration (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.¹⁸⁵

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 they received this leaflet and if they understood their 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.¹⁸⁶ Additionally, close to each of the five reception and processing centres there is legal advisory office run by an NGO, where information is provided as well.

On the website of the Transnational Dublin Project (ERF project)¹⁸⁷, brochures and information about Switzerland and the Dublin Regulation can be found. This information is also sometimes given to the asylum seekers by legal advisors, but since they have not been updated they are not often used anymore.

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 see a film about the procedure in different languages, 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 five 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.¹⁸⁸

¹⁸⁵ Article 25a AsylA.

¹⁸⁶ Swiss Refugee Council OSAR, *Fiches d'information sur la procédure d'asile* (Information leaflets on the asylum procedure), <http://www.osar.ch/aide/fiches-dinformation.html>.

¹⁸⁷ Transnational Dublin Project, Switzerland, <http://www.dublin-project.eu/dublin/Switzerland>.

¹⁸⁸ 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), in: ASYL 1/15, p. 14ff.

D. Subsequent applications

Indicators:

- Is a removal order suspended during the examination of a first subsequent application?
 - o At first instance Yes No
 - o At the appeal stage Yes No
- Is a removal order suspended during the examination of a second, third, subsequent application?
 - o At first instance Yes No
 - o At the appeal stage Yes No

The legislation 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 Asylum Ordinance No. 1 on procedural aspects. Every application within five 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). The responsible authority is the State Secretariat for Migration (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 five years after the asylum decision or removal order became legally binding (except for unmotivated or repeated subsequent applications with the same motivation, see in this section below).

The subsequent application should not be confused with the request for a 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 specialized 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.¹⁸⁹

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 of the Federal Act on Administrative Procedure and if it would be possible to launch an appeal to the Federal Administrative Court (Tribunal administratif fédéral, TAF) directly on this basis.¹⁹⁰ The procedure until now was to ask the SEM for a declaratory ruling according to Article 25 of the Federal Act on Administrative Procedure. This declaratory ruling can be subject to an appeal.¹⁹¹ The appeal has to be addressed to the TAF within 30 days of notification of the decision.¹⁹² In this procedure, suspensive effect can be requested. A personal interview does not take place in front of the Court. The scope of the Court is limited to the question of whether the informal decision of the SEM was legally correct because the application actually stated the same grounds.¹⁹³ In one case, the Court stated that it

¹⁸⁹ Martina Caroni et al., *Migrationsrecht (Migration law)*, 3rd, vastly revised edition, Berne 2014, p. 342 f.

¹⁹⁰ Federal Administrative Court, decision D-3019/2014 and D-3033/2014 of 27 August 2014, p. 7.

¹⁹¹ Article 44 APA

¹⁹² Article 50 APA

¹⁹³ Federal Administrative Court, decision D-3019/2014 and D-3033/2014 of 27 August 2014, p. 8.

was wrong of the SEM to dismiss the case without a formal decision, as it had not taken into account that the health situation of the applicant's girlfriend had changed since the first application.¹⁹⁴

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.

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

1. Special procedural guarantees

Indicators:

- Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? Yes No Yes, but only for some categories (specify)
- Are there special procedural arrangements/guarantees for vulnerable people?
 Yes No Yes, but only for some categories (victims of gender-specific prosecution)

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 legislation¹⁹⁵ to respond to European requirements.¹⁹⁶ Furthermore, 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.¹⁹⁷ The Asylum and return Compendium of the State Secretariat for Migration (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.¹⁹⁸ (See also Asylum Procedure, B. 2. Regular procedure, Personal interview).

There is no screening for potential vulnerabilities. According to the law¹⁹⁹, 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 very problematic in practice 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 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 has only been introduced in February 2014, there is not enough experience with the practice yet.

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

¹⁹⁴ Federal Administrative Court, judgment D-6531/2014 of 16 February 2015.

¹⁹⁵ Article 35 and 36 of the Ordinance on Admission, Period of Stay and Employment.

¹⁹⁶ Article 10 Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16 May 2005.

¹⁹⁷ Article 6 AO1.

¹⁹⁸ SEM, *Manual on asylum and return*, Article C6, *Befragung zur Person (Interview on personal data)*, <https://www.bfm.admin.ch/dam/data/bfm/asyl/verfahren/hb/c/hb-c6-d.pdf> (DE).

¹⁹⁹ Article 26^{bis} AsylA.

should inform the head of the section, so a special gender-specific hearing can take place. At the beginning of 2014, the SEM assured 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.

2. Use of medical reports

Indicators:

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
 Yes Yes, but not in all cases No
- 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 State Secretariat for Migration (SEM) the right to have access to their medical reports. The asylum seeker is not forced to sign, but if they do not, the SEM will claim that the asylum seeker has failed their duty to cooperate and therefore loses their right to have the proceeding continued.

According to the law²⁰⁰, 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, also 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 not adequately considered for the consideration of the person's credibility.

²⁰⁰ Article 26^{bis} AsylA.

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

Indicators:

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

The procedure for unaccompanied children does not differ if the person is at the airport or in the normal procedure, except at the airport and in the Dublin procedure. The representative is already present during the first interview. In the regular procedure, the representative is only present in the second interview. 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 law²⁰¹ foresees the use of scientific methods to assess the age. The Federal Administrative Court (Tribunal administratif fédéral, TAF) 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.²⁰² The law does not specify who can trigger an age assessment, but in practice, it is the State Secretariat for Migration (SEM). The asylum seeker carries the burden of proof.²⁰³

The age assessment requires the consent of the asylum seeking person. The person is not forced to consent, but if they do not, the SEM claims that the asylum seeker has failed their duty to cooperate and therefore loses their right to have the proceeding continued.

If a person claims to be an unaccompanied minor, a representative (a so-called person of confidence) shall be appointed immediately.²⁰⁴ But the law does not specify what "immediately" means. In practice the person will be appointed when a decisive procedural step is carried out. What is to be considered as a decisive procedural step is not standardized. In the regular procedure, the first short interview does not count as a decisive procedural step. But in Dublin procedures and in the airport procedure, the representative is also present in the first 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.²⁰⁵ In other cases, the first interview is not considered as a decisive procedural step.²⁰⁶ 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

²⁰¹ Article 7 AO1.

²⁰² Federal Administrative Court, decision E-1552/2013 of 2 April 2013, para. 4.2.

²⁰³ Asylum Appeals Commission, decision EMARK 2004/30 of 29 October 2004.

²⁰⁴ Article 17 para. 3 AsylA.

²⁰⁵ Asylum Appeals Commission, decision EMARK 2004/30 of 29 October 2004.

²⁰⁶ Federal Administrative Court, decision BVGE 2011/23 (E-8648/2010) of 21 September 2011, para. 5.4.6 and 7.

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.²⁰⁷ With the increase of unaccompanied asylum-seeking children in 2014, 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 (foreseen changes in law see next paragraph).²⁰⁸ 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 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 remains the child's representative, and no child-protection measures are implemented.

Currently, changes in the Asylum Act and the Asylum Ordinance 1 on procedural aspects have been proposed²⁰⁹ which define the tasks and competences of the person of confidence a bit further. According to the draft, the person of confidence must have knowledge of asylum law and the law on the Dublin procedure. The person of confidence must (among others) fulfil the following tasks: advice before and during the interviews; help with naming and obtaining elements of proof; help in contact with authorities and with health care institutions. The new provisions also specify that the representative is already responsible during the first interview. These are positive changes that have been advocated by NGOs for a long time. However, these changes are not yet in force.

F. The safe country concepts (if applicable)

Indicators:

- Does national legislation allow for the use of safe country of origin concept in the asylum procedure? Yes No
- Does national legislation allow for the use of safe third country concept in the asylum procedure? Yes No
- Does national legislation allow for the use of first country of asylum concept in the asylum procedure? Yes No
- Is there a list of safe countries of origin? Yes No
- Is the safe country of origin concept used in practice? Yes No
- Is the safe third country concept used in practice? Yes No

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.²¹⁰ The list of safe countries of origin is

²⁰⁷ 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)*, in: ASYL 1/12, p. 3ff.

²⁰⁸ Asylum Appeals Commission, decision EMARK 2006/14 of 16 March 2006.

²⁰⁹ Draft Article 7 para. 2bis and para. 3 AO1: Adaptations d'ordonnances en raison de nouveautés en lien avec l'acquis de Dublin/Eurodac (Changes of ordinances in connection with the changes according to the Dublin and Eurodac Regulations), www.bfm.admin.ch/dam/data/migration/rechtsgrundlagen/gesetzgebung/dublin-eurodac/vorentw-f.pdf (FR)

²¹⁰ Article 6a para. 2 letter a AsylA.

published on the website of the State Secretariat for Migration (SEM).²¹¹ The Federal Council is also responsible for the designation of states where there is effective protection against *refoulement*²¹² as safe third countries.²¹³ The Federal Council shall periodically review these decisions.²¹⁴ This list includes so far all EU and EFTA member states.²¹⁵

According to the legislation, 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.

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 five working days.²¹⁶

G. Treatment of specific nationalities

In 2014 Eritrea was the top country of origin with 6,923 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, 4,382 requests were treated and concluded. The recognition rate (asylum status) stayed at a little over 50%. There were no Eritreans sent to the test phase centre anymore because the accelerated procedure has strict time requirements which could not be met due to the lack of interpreters. While most Eritrean asylum seekers (without third country constellations) are recognized 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.²¹⁷ 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 recognized as a refugee and received only a temporary admission.²¹⁸

In 2014, Syrians were the second largest group of asylum seekers. 3,819 requests were made by Syrian applicants, 3,216 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.²¹⁹ In a second judgment, the Court stated that even ordinary participants of demonstrations against the regime risk persecution if they have been identified by Syrian state security forces.²²⁰ 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

²¹¹ State Secretariat for Migration, *Liste des pays sûrs, dits «safe countries» (List of safe countries of origin)*, June 2014, www.bfm.admin.ch/dam/data/bfm/asyl/verfahren/weiteres/safe-countries-f.pdf (FR).

²¹² As defined in Article 5 para. 1 AsylA.

²¹³ Article 6a para. 2 letter b AsylA.

²¹⁴ Article 6a para. 3 AsylA.

²¹⁵ Federal Office for Migration, *Pays de l'UE et de l'AELE désignés comme Etats tiers sûrs (EU and EFTA countries designated as safe third countries)*, Press release of 14 December 2007, www.admin.ch/aktuell/00089/index.html?lang=fr&msg-id=16275 (FR, DE, IT).

²¹⁶ Article 108 para. 2 AsylA.

²¹⁷ Federal Administrative Court, judgment D-4787/2013 of 20 November 2014.

²¹⁸ Federal Administrative Court, judgment E-129/2015 of 20 January 2015.

²¹⁹ Federal Administrative Court, judgment D-5553/2013 of 18 February 2015.

²²⁰ Federal Administrative Court, judgment D-5779/2013 of 25 February 2015.

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.).²²¹

The third largest group of asylum seekers are persons 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 State Secretariat for Migration (SEM) stopped all forced returns to Sri Lanka until May 2014 and reviewed its practice.²²² 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.²²³

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.²²⁴

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.²²⁵ So far, the SEM has not reacted to this demand. 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 hours²²⁶, except if further examinations are required. See Asylum Procedure, B. 6. Accelerated procedures.

Statistics on this topic can be found at the website of SEM.²²⁷

²²¹ 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, www.bfm.admin.ch/bfm/de/home/aktuell/news/2015/ref_2015-03-061.html (DE, FR, IT).

²²² 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, www.nzz.ch/aktuell/schweiz/lehren-aus-fehleinschaetzungen-im-asylverfahren-1.18310329 (DE); 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, www.humanrights.ch/de/menschenrechte-schweiz/inneres/asyl/umsetzung/aufklaerung-gerechtigkeit-sri-lanka?search=1 (FR).

²²³ SEM, *Arrest of two asylum seekers in Sri Lanka: results of review process now available*, Press Release of 26 May 2014, www.news.admin.ch/message/index.html?lang=en&msg_id=53120.

²²⁴ There is no official statement from the State Secretariat for Migration but we received this information from the State Secretariat for Migration in November 2014.

²²⁵ Swiss Refugee Council OSAR, *Irak: Situation dramatique* (*Iraq: dramatic situation*), Press release of 12 November 2014, www.osar.ch/medias/communiques-de-presse/2014/irak-situation-dramatique.html (FR, DE).

²²⁶ This procedure is described in Asylum Procedure, B. 6. Accelerated procedures.

²²⁷ See SEM, Annual asylum statistics 2014,

<https://www.bfm.admin.ch/dam/data/bfm/publiservice/statistik/asylstatistik/jahr/2014/stat-jahr-2014-f.pdf> (FR).

SEM, Annual asylum statistics 2013,

<https://www.bfm.admin.ch/dam/data/bfm/publiservice/statistik/asylstatistik/jahr/2013/stat-jahr-2013-f.pdf> (FR)

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions up to 90 days

Indicators:

- Are asylum seekers entitled to material reception conditions according to national legislation :
 - o During the accelerated procedure? (*test centre in Zurich*)
 Yes Yes, but limited to reduced material conditions No
 - o During admissibility procedures: (*dismissed application*)
 Yes Yes, but limited to reduced material conditions No
 - o During border procedures: (*airport procedure*)
 Yes Yes, but limited to reduced material conditions No
 - o During the regular procedure:
 Yes Yes, but limited to reduced material conditions No
 - o during the Dublin procedure:
 Yes Yes, but limited to reduced material conditions No
 - o During the appeal procedure (first appeal and onward appeal):
 Yes Yes, but limited to reduced material conditions No
 - o In case of a subsequent application:
 Yes Yes, but limited to reduced material conditions No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?
 Yes for social assistance and emergency aid
 No for accommodation

Preliminary remarks on the entitlement to material reception conditions:

General entitlement, relation to personal resources and obligation to reimburse

Material reception conditions primarily consist of an accommodation, food, health care and limited financial allowance according to the specific entitlement to social assistance. Assistance benefits are granted only when a person is unable to maintain themselves from their own resources, and under the condition that no third party is required to support him/her on the basis of a statutory or contractual obligation (Article 81 AsylA). For organisational reasons, accommodation in asylum centres is however available for all asylum seekers, regardless of their financial resources (Article 28 AsylA²²⁸). Note also that social assistance, departure and enforcement costs as well as the costs of the appeal procedure must be reimbursed subsequently (Article 85 para. 1 AsylA) if the person has the necessary means at a later point in time. In addition, asylum seekers who work must pay a special charge (see B. 1. Access to the labour market).

Federal and cantonal responsibility

Both the Confederation and the cantons are responsible to provide 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 five federal registration and processing centres (and their related remote locations), ruled under federal legislation.²²⁹ Asylum seekers stay in a federal centre for up to 90 days.

²²⁸ Article 28 para. 2 AsylA states that the SEM and the cantonal authorities may allocate asylum seekers 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 organization, accommodation is however counted in within the social assistance budget.

²²⁹ The set up 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.

If they have not already received a negative decision during this period, they are then assigned to one of the 26 Swiss cantons according to a distribution key. The distribution key is laid down in Article 21 para. 1 of the Asylum Ordinance No. 1 on procedural aspects and allocates a certain percentage of asylum seekers to each canton according to its population (for example Zurich: 17%, Lucerne 4,9%). Art. 22 Asylum Ordinance No. 1 states that the SEM distributes the asylum seekers as equally as possible among the cantons, taking into account family members already living in Switzerland, nationalities and cases requiring particular care. Art. 27 para. 3 Asylum Act states that 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, it 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 family unity grounds (only core family) are hardly ever successful.

From the allocation to the canton on, cantonal authorities become responsible for the provision of material reception conditions. They provide for an accommodation in a cantonal centre as well as for social or emergency assistance to all persons present on their territory (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. The allocation to a canton is made on a random basis (with regard to family unity²³⁰), and results 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.²³¹

From social assistance to emergency aid

After exclusion from social assistance (when a person is subjected to a legally binding removal decision for which a departure deadline has been fixed or during a subsequent asylum application²³²), everyone is entitled to ask for emergency aid. This minimal aid is based on the constitutional provision according to which everyone has the right to assistance and care, and to the financial means required for a decent standard of living (Article 12 Constitution?). For more information, see Reception Conditions, A. 2. Forms and levels of reception conditions.

Entitlement during the various types of procedures:

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 reception conditions include: accommodation, food, health care, financial allowance and adapted measures in case of special needs. Full entitlement stops at the moment the application is dismissed, rejected or accepted. 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.

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

²³⁰ Concerning cantonal attribution, see Reception Conditions, B. 9. Freedom of movement.

²³¹ 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 the Asylum Ordinance No. 2 on Financial Matters.

²³² Article 82 para. 1 and 2 AsylA.

may change significantly. General legal entitlement to reception conditions is ruled by national law and should therefore be similar within all cantons, but the implementation of those national provisions is largely dependent on cantonal regulation and varies in practice.

As a general comment on the reception issue, it should be noted that cantonal reception structures were reorganised in 2007,²³³ after the DFJP (Federal Department of Justice and Police, Département fédéral de justice et police) decided to reduce financial allocation to the cantons. This 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 2011.²³⁴ 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.

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,²³⁵ 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.

Admissibility procedure (including Dublin) or accelerated examination (48h procedure)

According to the national law, asylum seekers whose application may be dismissed without proceeding to a substantive examination,²³⁶ or rejected within an accelerated examination (48 hours procedure)²³⁷ 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 (Article 27 para. 4 AsylA). 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 (Article 16b of Asylum Ordinance No. 1 on procedural aspects).

However, in practice asylum seekers are often assigned to a canton even in case of dismissal or "48 hours" 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

²³³ 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, www.asile.ch/vivre-ensemble/2008/12/19/decryptageafflux-des-demandeurs-dasile-un-abus-de-langage-quand-improvisation-rime-avec-diversion/ (FR).

²³⁴ 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, www.asile.ch/vivre-ensemble/documentation/statistiques/#lightbox/2/ (FR).

²³⁵ 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, www.skmr.ch/frz/domaines/questions-institutionnelles/nouvelles/abris-protection-civile.html (FR).

²³⁶ See B. 3. Dublin and B. 4. Admissibility procedures.

²³⁷ In case of certain safe countries of origin, see B. 6. Accelerated procedures.

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.²³⁸

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.²³⁹ 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.²⁴⁰ Asylum seekers benefit from an accommodation, social assistance, health care and education for children under 16.²⁴¹ Asylum seekers in the test phase are not entitled to work.²⁴² Like in 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.²⁴³ 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 State Secretariat for Migration (SEM) shall provide persons with a place of stay and appropriate accommodation until they leave the country.²⁴⁴ 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.²⁴⁵

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

²³⁸ SEM, *Bénéficiaires de longue durée de l'aide d'urgence (Long-term beneficiaries of emergency aid)*, Rapport final, February 2012, www.bfm.admin.ch/dam/data/bfm/asyl/sozialhilfe/ber-langzeitbezueger-faavu-f.pdf (FR).

²³⁹ See B. 6. Accelerated procedures.

²⁴⁰ 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.

²⁴¹ 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 para. 3, 4 OTest).

²⁴² Article 29 Test Phases Ordinance

²⁴³ For details on the airport procedure see B. 5. Border procedures.

²⁴⁴ Article 22 para. 3 AsylA.

²⁴⁵ Article 22 para. 5 AsylA.

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.²⁴⁶ 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.²⁴⁷ The level of accommodation conditions depends on the cantonal practice.

Any practical obstacles to reception conditions?

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.²⁴⁸ 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 had to sleep rough.²⁴⁹ While those cases cannot be excluded, they remain to our knowledge limited in number.

2. Forms and levels of material reception conditions

Indicators:

- Amount of the financial allowance/vouchers granted to asylum seekers on 30/06/2013 (per month, in original currency and in euros): On average 1'128.- CHF per month (= 940 Euro), mostly in non-cash benefits

Social assistance for asylum seekers includes cover of basic needs (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. The national law specifically provides for accommodation in a federal or cantonal centre (Article 28 AsylA), social benefits in the form of non-cash benefits whenever possible, or vouchers or cash (Article 81 and 82 para. 3 AsylA).²⁵⁰ Limited health insurance also ensures access to medical care according to Article 82a AsylA (see Reception Conditions, C.).

Accommodation:

The provision of accommodation facilities is ruled by Article 28 AsylA, according to which the authorities (the State Secretariat for Migration, 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

²⁴⁶ The legal basis for the restriction is Article 82 para. 2 AsylA (in force since 1 February 2014). For the reception conditions under the emergency aid scheme, please see Reception Conditions, A. 2. Forms and levels of material reception conditions.

²⁴⁷ For more information on subsequent applications, see D. Subsequent applications.

²⁴⁸ See the report in national Swiss television SRF 1 on 20 December 2011, <http://www.srf.ch/player/tv/10vor10/video/verschlossene-tueren-fuer-asylsuchende?id=d0cd0219-e1fe-423a-b03f-3c9856b2058e> (DE).

²⁴⁹ Le Courrier, (*Les critiques pleuvent sur l'EVAM qui se défend* The critics confront EVAM which defends itself), 6 October 2014 (FR).

²⁵⁰ National provisions on social assistance and emergency aid for asylum seekers are in chapter 5 of the AsylA. The Asylum Ordinance No. 2 on Financial Matters provides important precisions on the financing of welfare benefits.

their own accommodation facilities, which vary (see Reception Conditions, A. 3. Types of accommodation).

Food and clothing are not specifically mentioned in the legislation, even though it may be provided in the reception centres. In the federal centres, meals are served three 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 an 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.²⁵¹ 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 the Asylum Act (Article 80 AsylA). Fixing of the amount, granting and limiting welfare benefits are regulated by cantonal law when it falls under cantonal responsibility.²⁵² 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 %).²⁵³ 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 (Swiss Francs) 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,²⁵⁴ 95 % of the 15,721 asylum seekers who got social benefits on 30 June 2013 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 Reception conditions, B. 1. Access to the labour market). Moreover, the large majority of persons having an income continue to resort to

²⁵¹ Article 81 AsylA.

²⁵² Article 3 para. 2 of the Asylum Ordinance No. 2 on Financial Matters.

²⁵³ Federal Office for Statistics, *Statistique de l'aide sociale dans le domaine de l'asile (eAsyl), Résultats nationaux 2013 (Social assistance statistics in the asylum domain, national results 2013)*, Neuchâtel, juin 2014, p. 23, <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/13/03/04/01.Document.183292.pdf> (FR).

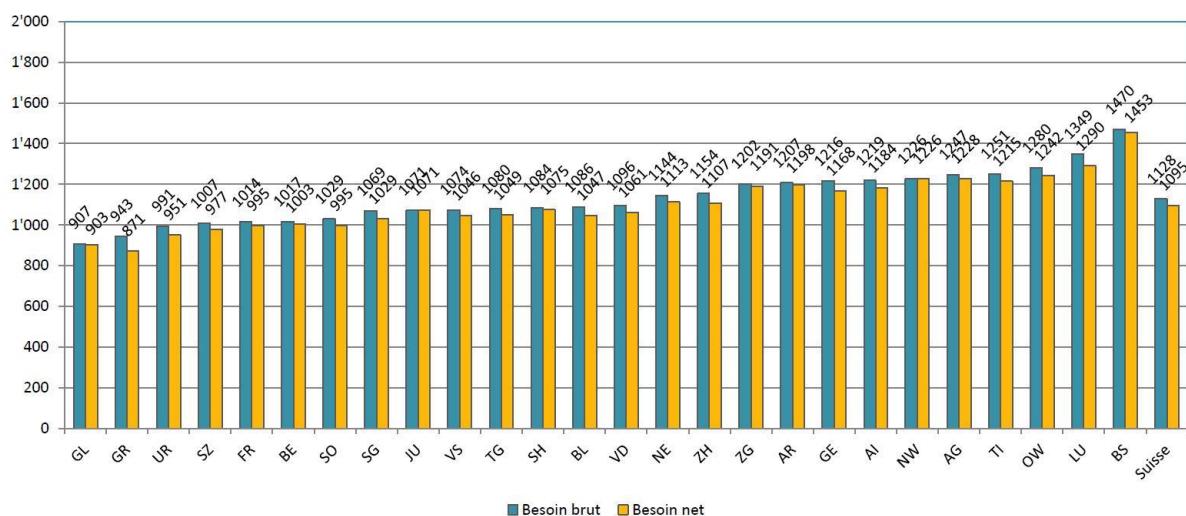
²⁵⁴ *Ibid.*, p. 6.

social assistance as they do not earn enough in order for them not having to resort to social aid at all. In total, 88 % of all asylum seekers received social assistance in June 2013.²⁵⁵

On national average, beneficiaries subjected to asylum law monthly received an average of 1,095.- CHF of net income to cover their needs (June 2013). 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.²⁵⁶ 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.²⁵⁷

Gross and net need of welfare, per person, per canton, June 2013²⁵⁸:

G7a. Besoin brut et net de l'aide sociale, par personne et par canton en juin 2013 (en francs suisses)



Le coefficient de variation CV des cantons dont les données ont été extrapolées se situe entre 1% et 4% (Suisse =1%) pour le besoin brut et net.

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 recognized as a refugee or temporarily admitted in accordance with Article 83 para. 3 and 4 of the Federal Act on Foreign Nationals.²⁵⁹

Emergency aid:

Persons subject to a legally binding removal decision for which a departure deadline has been fixed are excluded from receiving social assistance.²⁶⁰ This exclusion from social assistance also extends to persons in a subsequent procedure (application for re-examination, revision or subsequent application).²⁶¹ 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

²⁵⁵ *Ibid.*, p. 6.

²⁵⁶ *Ibid.*, p. 28.

²⁵⁷ Article 82 para. 3 AsylA.

²⁵⁸ Federal Office for Statistics, *Statistique de l'aide sociale dans le domaine de l'asile (eAsyl), Résultats nationaux 2013*, Neuchâtel, juin 2014, p. 9.

²⁵⁹ Article 84 AsylA.

²⁶⁰ Article 82 para. 1 AsylA.

²⁶¹ Article 82 para. 2 AsylA (in force since 1 February 2014).

must entail in order to respect human dignity.²⁶² 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 organizations. 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 nighttime), where living conditions are reduced to a minimum and are known to be quite rough.²⁶³ 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.

Contact details of cantonal coordination offices for asylum issues (adresses des coordinatrices et coordinateurs cantonaux en matière d'asile) are available under :
<https://www.bfm.admin.ch/dam/data/bfm/asyl/adr-asylkoordinatoren-df.pdf>

On cantonal practice, see also for example the Canton of Vaud:

Canton de 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 under <http://www.ebam.ch/documentation/guide-dassistance/> (FR).

²⁶² 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, p. 24ff.

²⁶³ 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*), Rapport final, Berne, le 26 mai 2010, www.bfm.admin.ch/dam/data/bfm/asyl/sozialhilfe/berlangzeitbezug-nothilfe-f.pdf (FR).

3. Types of accommodation

Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals): Around 1900 places at the federal level (1200 in reception and processing centres and 700 in federal remote locations). The number of places at the cantonal level is not available.
- Type of accommodation most frequently used in a regular procedure :
 Reception centre Hotel/hostel Emergency shelter private housing
other (please explain)
- Type of accommodation most frequently used in an accelerated procedure :
 Reception centre Hotel/hostel Emergency shelter private housing
other (please explain)
- Number of places in private accommodation: N/A
- Number of reception centres: N/A
- Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? Yes No
- What is, if available, the average length of stay of asylum seekers in the reception centres? N/A
- Are unaccompanied children ever accommodated with adults in practice? Yes No

While the Confederation is responsible to set up and run the five 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. Here is an overview of the different kinds of centres, principally at the federal level, as cantons all have their own specificities.

The types of reception centres at the federal level:

Federal reception and processing centres:²⁶⁴

After entering Switzerland, persons in need for protection mostly go to one of the five 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, in Altsttten (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.²⁶⁵ The 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 Reception conditions, A. 9. Freedom of movement.

²⁶⁴ 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, www.bfm.admin.ch/bfm/fr/home/asyl/asylverfahren/empfang/uebersicht_evz.html (EN, FR, DE, IT, EN).

²⁶⁵ 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 Zrich (Kreuzlingen, Altsttten) 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 (Altsttten). 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 (Altsttten) and Prosegur SA (Chiasso).

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 State Secretariat for Migration (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).²⁶⁶ There are currently four remote locations (these change with time, as they are only used temporarily):

- Losone (TI)²⁶⁷: located in former military barracks, with a capacity of 170 beds.
- Bremgarten (AR)²⁶⁸ : 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. The average length of stay ranges from two weeks to two months.²⁶⁹
- Perreux (NE)²⁷⁰: the site has a maximum accommodation capacity of 250 beds. Any subsequent increase in the number of places will be subject to further discussion with the canton and the town after an initial assessment has been made.
- Les Rochats (VD)²⁷¹: The military cantonment with a capacity of 120 beds, will operate for three years.

All remote locations are located in former military shelters, where the quality of air is particularly problematic. The National Commission for the Prevention of Torture (NCPT) considers that these military installations are only suitable for short stays of up to three weeks.²⁷² In practice, people stay longer. The national law even provides for a maximum stay of 12 months.²⁷³ 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 para. 1^{bis} (see also Article 16b et 16c of the Asylum Ordinance No. 1 on procedural aspects). 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 Reception Conditions, A. 5. 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

²⁶⁶ Article 26a AsylA and 16a of the Asylum Ordinance No. 1 on procedural aspects.

²⁶⁷ 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, www.bfm.admin.ch/bfm/fr/home/aktuell/news/2014/2014-09-08.html (FR, DE, IT).

²⁶⁸ 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, www.bfm.admin.ch/bfm/fr/home/aktuell/news/2013/2013-08-05.html (FR, DE, IT).

²⁶⁹ *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), Berne 24. April 2014 ('NCPT Report 2014'), p. 6 http://www.nkvf.admin.ch/dam/data/nkvf/berichte_2014/20140828-asylzentren/bericht-bfm-f.pdf (FR).

²⁷⁰ 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, www.bfm.admin.ch/bfm/fr/home/aktuell/news/2013/2013-10-170.html (FR, DE, IT).

²⁷¹ 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, www.bfm.admin.ch/bfm/fr/home/aktuell/news/2014/2014-04-10.html (FR, DE, IT).

²⁷² NCPT Report 2014, p. 8 para. 26.

²⁷³ Article 16a AO1.

processing centres.²⁷⁴ Current reception capacity amounts to 300 beds (with an additional 30 beds in reserve).

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.²⁷⁵ Maximum stay in the transit zone is 60 days.²⁷⁶ 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, Lucerne). Overall, half of the beneficiaries are housed in individual accommodations, the other half in collective centres and the remaining 2% in other types of housing (includes institutions, staying with relatives, etc).²⁷⁷

Many cantons organize the accommodation structure in two 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.²⁷⁸

This graph below provides an overview of the percentage of beneficiaries of social aid in the field of asylum great variations in the type of accommodations within each canton (situation on 30 June 2013). The blue color represents the proportion of collective centres, the yellow is for individual accommodations while the red accounts for all other types of accommodation.²⁷⁹

²⁷⁴ See Asylum Procedure, B. 6. Accelerated procedures.

²⁷⁵ Article 22 para. 3 AsylA, see Asylum Procedure, B. 5 Border procedure.

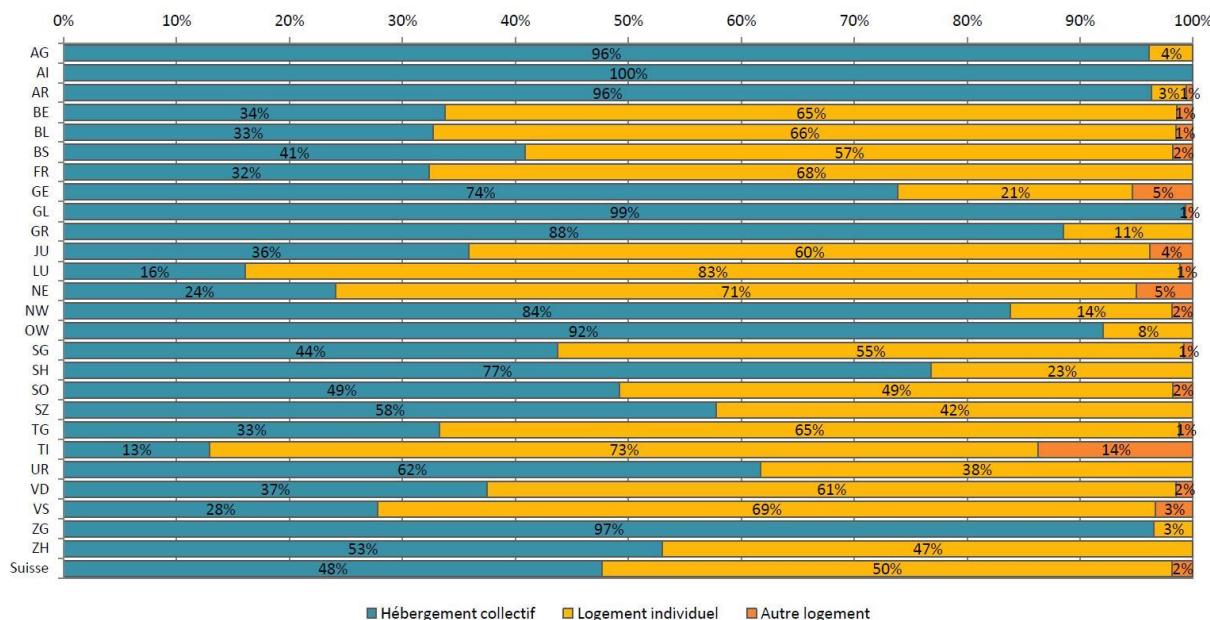
²⁷⁶ Article 22 para. 5 AsylA.

²⁷⁷ Federal Office for Statistics), *Statistique de l'aide sociale dans le domaine de l'asile (eAsyl), Résultats nationaux 2013 (Social assistance statistics in the asylum domain, national results 2013)*, Neuchâtel, juin 2014, p. 17, <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/13/03/04/01.Document.183292.pdf> (FR).

²⁷⁸ *Ibid.*, p. 17.

²⁷⁹ *Ibid.*, p. 18.

G3a. Bénéficiaires de l'aide sociale dans le domaine de l'asile selon le type de logement, par canton au 30 juin 2013



Le coefficient de variation CV (ou l'écart-type relatif) des cantons dont les données ont été extrapolées se situe entre 1% et 18% (Suisse =2%) pour les bénéficiaires dans des hébergements collectif et entre 3% et 24% (Suisse =2%) pour ceux qui sont logés dans des logements individuels. L'estimation des personnes vivant dans un autre logement est à considérer avec réserve pour les cantons de ZH, AG, SG et LU car leur CV est très élevé (Suisse=9%).

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 criticized by NGOs, as it does not provide an appropriate environment for the unaccompanied children and they are not cared for sufficiently.

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. Reception conditions

At the federal level:

The five reception and processing centres are located all along the Swiss border, while the federal remote locations are located further within the territory.

In the reception and processing centres, asylum seekers are usually housed in single-sex dorms. Places to rest or get isolated are mostly nonexistent. 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, an independent Swiss national commission set up to ensure, through regular visits and ongoing dialogue with the authorities, that the rights of persons deprived of their liberty are respected.) however regrets that the shared rooms are not cleaned more regularly. In the 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.²⁸⁰ In some of the

²⁸⁰ SEM, Information given by e-mail, 30 January 2015.

remote centres there is a lack of privacy for families, as all families are accommodated in one large room, separated only by bed sheets.

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. Aeration is a usual problem, especially in the sanitary facilities, but also within the entire centres.²⁸¹

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.²⁸² 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.²⁸³ 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.²⁸⁴

In its 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.²⁸⁵

Asylum seekers are subject to body-search by security personnel every time they enter or go out of the centres. Security personnel is also authorized to seize goods when asylum seekers enter or go out of the centre.²⁸⁶

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

²⁸¹ For a more detailed description of each centre, see 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*), Berne, 24 July 2012 ('NCPT Report 2012'), p. 10ff, www.nkvt.admin.ch/dam/data/nkvt/berichte_2012/121123_ber_evz-fr.pdf (FR).

²⁸² *Ibid.*, p. 10.

²⁸³ Article 4 para. 1 Ordinance of the DFJP on the management of federal reception centres in the field of asylum.

²⁸⁴ Alcohol and drugs are strictly prohibited within the centres, which, however, does not prevent some breaches of the regulation from happening in practice (Article 4 para. 2 Ordinance of the DFJP on the management of federal reception centres in the field of asylum).

²⁸⁵ NCPT Report 2014, p. 8 para. 27, 36.

²⁸⁶ 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).

provided by third parties, namely for cleaning tasks and the cooking as well as security tasks.²⁸⁷ 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.

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 (Article 6a of the Ordinance of the DFJP). 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.²⁸⁸

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 criticized by UNHCR and the independent organization for defence of asylum seekers present at the airport (ELISA). Mostly contested are the complete isolation of asylum seekers (considered as detention by the UNHCR) and the difficulties of access for third persons, especially legal representatives.²⁸⁹

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.

²⁸⁷ The State Secretariat for Migration (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 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).

²⁸⁸ NCPT Report 2012; NCPT Report 2014.

²⁸⁹ For more information on the subject 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, www.asile.ch/vivre-ensemble/2014/12/15/le-courrier-rejet-du-recours-contre-un-lieu-de-detention-pour-requerants-dasile/ (FR).

Children directly join a class in the centre upon their arrival.²⁹⁰ See Reception Conditions, B. 2. Access to education for more information.

At the cantonal level:

As explained under Reception Conditions, A. 3. 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). 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.

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 concerning the housing of asylum seekers in military shelters.²⁹¹ 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:

- Does the legislation provide for the possibility to reduce material reception conditions?
 Yes No
- 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 AsylA.²⁹² 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.

²⁹⁰ AOZ (organization running the accommodation centre in Zurich), information given by e-mail, 10 February 2015.

²⁹¹ 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, www.24heures.ch/vaud-regions/1102-millions-subventions-accueil-requerants/story/24028347 (FR).

²⁹² Article 83 para. 1 AsylA states that : «Social benefits or reduced benefits under Article 82 paragraph 3 must be completely or partially refused, reduced or withdrawn if the beneficiary: 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 their circumstances; d. obviously neglects to improve their situation, in particular by refusing to accept reasonable work or accommodation allocated to them; e. without consulting the competent office, terminates an employment contract or lease or is responsible for its termination and thereby exacerbates their 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 their identity ; k. fails to comply with the instructions from staff responsible for the proceedings or from the accommodation facilities, thereby endangering order and security.»

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.

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 State Secretariat for Migration (SEM).²⁹³

An internal directive on disciplinary rules within federal centres provides for other kind of disciplinary sanctions:²⁹⁴ 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.²⁹⁵

Specific centres

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 para. 1^{bis} and 1^{ter} 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.²⁹⁶ 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 the Asylum Ordinance No. 1 on procedural aspects, in Article 16b para. 1 to 3. According to this provision, a person can be assigned to a specific centre if they are in a reception and processing centre and endanger public security and order or who by their behaviour seriously disrupt 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

²⁹³ Article 13 of the Ordinance of the DFJP on the management of federal reception centres in the field of asylum.

²⁹⁴ 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.

²⁹⁵ NCPT Report 2014, p. 11 para. 37.

²⁹⁶ Article 16b para. 1 of the AO1.

considerable discretion to the authority. As mentioned before, no specific 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:

- 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 (Article 2 Ordinance of the DFJP on the management of federal reception centres in the field of asylum).

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 2:00 p.m. to 4:00 p.m., only in rooms provided for this purpose. Visitors are therefore not allowed to enter the living area reserved for asylum seekers. The State Secretariat for Migration (SEM) can change the visit schedule for organizational 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.²⁹⁷

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.²⁹⁸ 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. The 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 the legislation 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 hours²⁹⁹ and communicate with them outside the visiting hours.³⁰⁰ 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.

Non-governmental Organisation

²⁹⁷ Article 10 Ordinance of the DFJP on the management of federal reception centres in the field of asylum (Ordinance of the DFJP).

²⁹⁸ Article 7 Ordinance of the DFJP.

²⁹⁹ Article 9 para. 2 Ordinance of the DFJP.

³⁰⁰ Article 7 para. 3 Ordinance of the DFJP.

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.

Airport procedure

Third persons 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 organization 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.³⁰¹

7. Addressing special reception needs of vulnerable persons

Indicators:

- Is there an assessment of special reception needs of vulnerable persons in practice?
 Yes, partially No

The 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. The 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 legislation³⁰² to respond to European requirements.³⁰³ 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 are not regularly examined, due among others to the limited means available for medical personnel in the federal centres.

Specific structures:

Every asylum seeker is housed in a reception and processing centre, regardless of their situation of vulnerability. In terms of accommodation conditions, according to the Ordinance 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.³⁰⁴ Except for some arrangements for families and children in the reception and processing centres, little is done at the federal level.

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.

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

³⁰¹ 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, www.asile.ch/vivre-ensemble/2014/12/11/taf-aeroport-de-geneve-le-recours-contre-la-construction-du-nouveau-centre-dhebergement-est-irrecevable/ (FR).

³⁰² Article 35 and 36 of the Ordinance on Admission, Period of Stay and Employment.

³⁰³ Article 10 Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16 May 2005.

³⁰⁴ Article 4 Ordinance of DFJP.

clear discrepancy between declared intention and the reality (see also Reception Conditions, A. 3. Types of accommodation). The State Secretariat for Migration (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 seekers³⁰⁵, regardless of the existent structures. Unless all cantons consent to important efforts, this recent decision might be at the expense of vulnerable asylum seekers.

Traumatized persons

Several organizations provide assistance to traumatized 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 Berne³⁰⁶ offers a wide range of therapies that combine social work and different treatments for persons traumatized by extreme violence. Other similar initiatives are available in Geneva, Lausanne and Zurich, mostly from civil society.³⁰⁷ However, the capacities of these institutions are insufficient compared to the needs. According to national law,³⁰⁸ the SEM also financially supports the set up of facilities for the treatment of traumatized asylum seekers, in particular the teaching and research in the field of specialized supervision of those asylum seekers.

8. Provision of information

Asylum seekers receive an information leaflet at the moment they lodge their asylum application. This eight-page document informs about the asylum procedure, rights and obligations of the asylum seeker.³⁰⁹ 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 State Secretariat for Migration (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.³¹⁰ 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.³¹¹

A specific information leaflet on the Dublin procedure is also distributed to the concerned persons according to Article 4 of the Dublin III Regulation.

Test Centre in Zurich:

The test 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 personalized overview of the procedure and its possible outcomes. Moreover, they 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

³⁰⁵ For information regarding the distribution key, see Reception Conditions, A. 1. Criteria and restrictions to access reception conditions.

³⁰⁶ Swiss Red Cross, *Service ambulatoire pour victimes de la torture et de la guerre (Outpatient clinic for victims of torture and war)*, www.redcross.ch/fr/organisation/service-ambulatoire-pour-victimes-de-la-torture-et-de-la-guerre/aide-pour-les-personnes (FR).

³⁰⁷ For contacts and more information, see the website Support for Torture Victims, <http://www.torturevictims.ch/index.php?id=2&L=2> (EN).

³⁰⁸ Article 44 of the Asylum Ordinance No. 2 on Financial Matters.

³⁰⁹ The document is not available online.

³¹⁰ Swiss Refugee Council OSAR, *Fiches d'information sur la procédure d'asile (Information leaflets on the asylum procedure)*, <http://www.osar.ch/aide/fiches-dinformation.html>.

³¹¹ Swiss Refugee Council, *La procédure d'asile en bref (The asylum procedure in short)*, <http://www.osar.ch/aide/la-procedure-dasile-en-bref.html>.

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.

For more information regarding the provision of information to asylum seekers, see Asylum procedure, C. Information for asylum seekers and access to NGOs and UNHCR.

9. Freedom of 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 authorization delivered by the State Secretariat for Migration (SEM) once fingerprints and a photograph of the asylum applicant have been taken.³¹² Exit hours are strictly regulated in the ordinance, so that asylum seekers can go out from 9 am to 5 pm during the week (from Monday to Friday). They are allowed to stay out during the weekend from 9 am on Friday until 7 pm on Sunday.³¹³ Opening hours are substantially larger at the test centre in Zurich.³¹⁴

In the remote locations, opening hours are from 6 am until 10 pm. Asylum seekers can leave the centres during the weekend, from 9am on Friday until 5 pm 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.³¹⁵ 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 their 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 they can appeal.³¹⁶

An internal directive on disciplinary rules within federal centres provides for other kinds of disciplinary sanctions:³¹⁷ denial of exit permits, elimination of pocket money, ban on entering specific spaces, exclusion from the assigned centre and transfer to another centre.³¹⁸

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 National Commission for Prevention of Torture (CNPT) found that the use and purpose of these

³¹² 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.

³¹³ 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 9 am to 5 pm everyday of the week.

³¹⁴ From Sunday to Thursday, asylum seekers in the test centre in Zurich must return at 8 pm, on Friday and Saturday at 10.30 pm. They have the right to leave on Friday and return on Sunday by 8 pm.

³¹⁵ See Article 12 Ordinance of the DFJP.

³¹⁶ Article 12 para. 3 and 4 Ordinance of the DFJP.

³¹⁷ 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 (FR).

³¹⁸ NCPT Report 2014, p. 11 para. 37.

containers are not defined in any law or directive. It is thus required that those containers are not used for disciplinary reasons.³¹⁹

Once they have been assigned to a canton, asylum seekers are bound to their canton of attribution and must reside within that canton. Cantonal accommodations mostly have more flexible opening hours, even though rules on the management of cantonal centres remain under the cantonal competence. Any person who applies for asylum in Switzerland may stay in Switzerland until the conclusion of the procedure, and has freedom of movement within of the whole of Switzerland. However, they are not allowed to leave the national territory.³²⁰

Furthermore asylum seekers are attributed to a canton according to a general distribution key.³²¹ The decision of attribution can only be appealed in case of an infringement of family unity.³²² This strict measure may affect individuals strongly, especially when they have distant family members or find a working opportunity in another canton. Moreover, cultural links or other personal motives (for instance the knowledge of a national language) are not systematically taken into account for the cantonal attribution, despite the legal requirement to consider the interests of both the canton and the asylum seeker. A change of canton is nearly impossible, unless the person has strong family links to a specific canton.³²³ For further information on the distribution key, see Reception Conditions, A. 1. Criteria and restrictions to access reception conditions.

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

-in case of threat to public security and order. This measure is intended to serve in particular to combat illegal drug trafficking.

-if they have 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.

-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.

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

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 authorized the entrance into Switzerland. In compliance with the jurisprudence of the European Court of Human Rights,³²⁴ a legal remedy against that restriction is available under Article 108 para. 4 AsylA, 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.

³¹⁹ NCPT Report 2014, p. 11 para. 39.

³²⁰ Article 30 AO1.

³²¹ Article 21 of the AO1.

³²² Article 27 para. 3 AsylA. See on that subject two condemnations of Switzerland by the European Court for Human Rights (concerning cases of rejected asylum seekers), *Agraw v Switzerland*, Application No. 3295/06, and *Mengesha Kimfe vs. Switzerland*, Application No. 24404/05, 29 July 2010.

³²³ Article 27 para. 3 AsylA.

³²⁴ European Court of Human Rights, *Amuur v France*, Application No. 19776/92, Judgment of 25 June 1996; *Mubilanzila Mayeka and Kaninki Mitunga v Belgium*, Application No. 13178/03, Judgment of 12 October 2006.

B. Employment and education

1. Access to the labour market

Indicators:

- Does the legislation allow for access to the labour market for asylum seekers? Yes No
- If applicable, what is the time limit after which asylum seekers can access the labour market?
3 to 6 months
- Are there restrictions to access employment in practice? Yes No

According to national legislation³²⁵, asylum seekers cannot engage in any gainful employment during the first three months after filing an application for asylum. The canton of attribution may extend this restriction for a further three months if the asylum application is rejected at the first instance within the first three months period.³²⁶ 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 person with a residence permit with the required profile can be found for the job.³²⁷ 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.³²⁸ For more information on the occupational programmes, see Reception Conditions, A. 4. Reception Conditions.

The cantons can limit access to work to certain sectors.³²⁹ 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.³³⁰

The authorization 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 State Secretariat for Migration (SEM) extends the departure deadline as part of the ordinary procedure, gainful employment may continue to be authorized. 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 Federal Department of Justice and Police (Département fédéral de justice et police, DFJP).

Issuance of working authorization is under the competence of cantonal authorities and is subject to large variation in practice. Moreover, the 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. The attribution to a canton also

³²⁵ Article 43 AsylA.

³²⁶ Article 43 para. 1 AsylA.

³²⁷ Article 52 Ordinance on Admission, Period of Stay and Employment.

³²⁸ Article 43 para. 4 AsylA.

³²⁹ Federal Office for Migration, Directive to the Foreign Nationals Act, Section 4.8.5.5.4,

www.bfm.admin.ch/dam/data/bfm/rechtsgrundlagen/weisungen/auslaender/weisungen-aug-f.pdf (FR).

³³⁰ Canton of Zurich, Office for Economy and Labour,

www.awa.zh.ch/internet/volkswirtschaftsdirektion/awa/en/arbeitsbewilligungen/drittstaaten/asylsuchende.html (EN).

reduces the chance to find work as the person is not allowed to work in another canton. Language knowledge and recognition of competences are further practical impediments.

*Special charge*³³¹ – The issuance of an authorization 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.³³² 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 income³³³ of every gainful activity and is imposed during 10 years up to a global amount of 15,000.- CHF.³³⁴ 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 recognized as a refugee. This is problematic in view of the Refugee Convention.

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 Reception Conditions, A. 2. 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 Reception Conditions, A. 1. Criteria and restrictions to access reception conditions).³³⁵

2. Access to education

Indicators:

- Does the legislation provide for access to education for asylum seeking children? Yes No
- Are children able to access education in practice? Yes No

Compulsory education for children under 16 (both unaccompanied children and children in families):

All children under 16 must visit school according to the Federal Constitution. This obligation is not always applied in a consistent way and practical application heavily depends on the cantonal structures established for under age asylum seekers. There is no 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.³³⁶.

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,

³³¹ Regulation of the special charge is laid down in the Asylum Ordinance No. 2 on Financial Matters, chapter 2.

³³² Article 85 and 86 Asyl A.

³³³ Article 13 of the Asylum Ordinance No. 2 on Financial Matters.

³³⁴ Article 10 al. 2 let. a of the Asylum Ordinance No. 2 on Financial Matters.

³³⁵ Article 29a Test Phases Ordinance.

³³⁶ AOZ (organization running the accommodation centre in Zurich), information given by e-mail, 10 February 2015.

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 apprenticeship³³⁷ 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 dependant on the goodwill of cantonal and municipal authorities.

Some cantons adopted specific measures to bridge the educational gap that asylum seekers between 16 and 18 face. Such non-compulsory measures are highly dependant 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:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?
 Yes No
- In practice, do asylum seekers have adequate access to health care?
 Yes with limitations No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?
 Yes Yes, to a limited extent No
- If material reception conditions are reduced/ withdrawn are asylum seekers still given access to health care? Yes No

³³⁷ 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 a apprenticeship contract with a company, which proves to be a difficult task even for young Swiss nationals.

According to the 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.³³⁸ Medical care within federal centres are delegated to the company or organization in charge of general logistics and management of the centres (see Reception Conditions, A. 3. Types of accommodation).

At their 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 organization 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 organizational matters during daytime and by the security company staff during night time. This first tirage is problematic, as the staff does not have the requested medical knowledge to decide on medical issues.³³⁹ 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.³⁴⁰

The national law provides for a generalized affiliation of all asylum seekers to a health insurance, according to the Federal Act of 18 March 1994 on Health Insurance (HIA).³⁴¹ 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, rejected and dismissed asylum seekers who have a right to emergency aid are also affiliated to a health insurance.³⁴²

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.

³³⁸ Article 5 of the Ordinance of the DFJP on the management of federal reception centres in the field of asylum.

³³⁹ NCPT Report 2012, p. 15.

³⁴⁰ Different views exist relating to this issue. For more infomation, seethe report of the Federal Office for Health, *Die Gesundheitsvorsorgung von Asylsuchenden in den Emfangs- und Verfahrenszentren des Bundes* (*Health care of asylum seekers in the federal reception and processing centres*), June 2011, p. 11 (paras. 4.2.1 and 4.2.2).

³⁴¹ Federal Act on Health Insurance, Loi fédérale du 18 mars 1994 sur l'assurance-maladie (LAMal), RS 832.10.

³⁴² 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.

A. General

Indicators:

- Total number of asylum seekers detained in 2014 (including those detained in the course of the asylum procedure and those who applied for asylum from detention): N/A
- Number of asylum seekers detained or an estimation at the end of 2014 (specify if it is an estimation): no official statistics available
- Number of detention centres: no official number available (Global Detention Project number in 2011: 27 detention centres (+ 5 initial reception centres) and five different types of detention facilities in Switzerland)
- Total capacity: no official number available (Global Detention Project number in 2011: 476 places (this is not taking into account the places at the initial reception centres). According to the information provided by the Heads of the Justice and Police Departments of the "Latin cantons" there were 470 places in 2011 and 140.000 days of detention were executed. A map with detailed information was also provided.³⁴³

It is impossible to provide an overall number of detained asylum seekers or detention centres for asylum seekers in Switzerland in 2014 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 (GDP) was not able to retrieve data from all the cantons for its 2011 Special report on Switzerland.³⁴⁴
- 2) The definition of detention of asylum seekers in Swiss law is not clear. This is again illustrated by the GDP report which also classifies the five 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 as detention, as put forward by Stefan Trechsel, professor emeritus in criminal law, in a recent article in specialized Swiss journal ASYL. He classifies at a minimum the two airport facilities as detention centres and lists a number of reasons why also the stay in the initial reception centres may be classified as deprivation of liberty and not a mere restriction of the freedom of movement: the asylum seekers are locked in and their contacts to the outside world are significantly limited. Trechsel bases his conclusion on the arguments of the European Court of Human Rights in *Amuur v France* (Application No. 19776/92, Judgment of 25 June 1996). Regarding the federal reception centres, the assessment depends on the concrete situation. Trechsel qualifies the 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 a real possibility for social contact, as the centres are so remote and the asylum seekers do not have the means for public transportation³⁴⁵) 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 of 27 September 2011. Following the CJEU's conclusion, for the

³⁴³ For the map see: <http://www.cldjp.ch/data/lmc/carte-lcm.pdf>.

³⁴⁴ See Michael Flynn and Cecilia Cannon, Global Detention Project, Immigration Detention in Switzerland, October 2011, www.globaldetentionproject.org/fileadmin/publications/GDP_Swiss_detention_report.pdf.

³⁴⁵ Stefan Trechsel, *Die Unterbringung von Asylsuchenden zwischen Freiheitsbeschränkung und Freiheitserzug (The accommodation of asylum seekers between restrictions on liberty and deprivation of liberty)*, in: ASYL 3/14, p. 3ff.

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 Foreign Nationals Act (so-called preparatory detention (*Vorbereitungshaft*)). However, the number of persons who are in preparatory detention (*Vorbereitungshaft*) 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 for the purpose of removal, as no general detention of asylum seekers is foreseen.

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 can be qualified at a minimum as being close to a deprivation of liberty.

B. Grounds for detention

Indicators:

In practice, are most asylum seekers detained

- on the territory: Yes No
- at the border: Yes (accommodation in airport transit zone with very restricted freedom of movement) No

- Are asylum seekers detained in practice during the Dublin procedure?

- Frequently Rarely Never

- Are asylum seekers detained during a regular procedure in practice?

- Frequently Rarely Never

- Are unaccompanied asylum-seeking children detained in practice?

- Frequently (Very) Rarely Never

o If frequently or rarely, are they only detained in border/transit zones? Yes No

- Are asylum seeking children in families detained in practice? Frequently Rarely Never

- What is the maximum detention period set in the legislation (inc extensions): 18 months (according to the Return Directive) – the maximum period of detention prior to the final decision is six months according to Article 75 FNA. The maximum period of the detention during the airport procedure is 20 days (60 days in total).

In practice, how long in average are asylum seekers detained? No reliable statistics available

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,³⁴⁶ the authorities and the respective Federal Administrative Court do not classify the stay in this accommodation facility as detention.³⁴⁷ The airport procedure is regulated in Article 22-23 Asylum Act. For more information regarding the airport procedure, see Asylum Procedure, B. 5. Border procedure, and Reception Conditions, A. 1. Criteria and restrictions to access reception conditions and 3. Types of accommodation.

³⁴⁶ See BGE (collection of decisions of the Swiss Federal Court (in German)) 123 II 193 (judgment of 27 May 1997).

³⁴⁷ See the jurisprudence as put forward in the FAC judgment, 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, see: Stefan Trechsel (*Die Unterbringung von Asylsuchenden zwischen Freiheitsbeschränkung und Freiheitsentzug (The accommodation of asylum seekers between restrictions on liberty and deprivation of liberty)*), in: ASYL 3/14, p. 3ff.

Detention grounds in the law

1. 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 their residence status may be ordered according to Article 73 Foreign Nationals Act for a maximum of three days (so-called temporary detention).

2. Preparatory Detention

Preparatory detention during the asylum procedure maybe ordered according to Article 75 Foreign Nationals Act on the following grounds: if the asylum seekers

- refuse to disclose their identity, submit several applications for asylum using various identities or repeatedly fail to comply with a summons without sufficient reason or ignore other instructions issued by the authorities in the asylum procedure;
- leave an area allocated to them in accordance with a restriction or exclusion order (Article 74 FNA) or enter an area they were prohibited from entering;
- enter Swiss territory despite a ban on entry and cannot be immediately removed;
- were removed and submitted an application for asylum following a legally binding revocation of their residence or permanent residence permit or a non-renewal of the permit due to violation of or representing a threat to the public security and order or due to representing a threat to internal or external security;
- submit an application for asylum after an expulsion ordered by the Federal Office for Police to protect internal or external national security;
- stay unlawfully in Switzerland and submit an application for asylum with the obvious intention of avoiding the imminent enforcement of a removal or expulsion order; such an intention shall be suspected if it were possible and reasonable to file the asylum application earlier and if the application is submitted in close chronological relation to detention, criminal proceedings, the implementation of a penalty or the issue of a removal order;
- seriously threaten other persons or considerably endanger the life and limb of other persons and are therefore being prosecuted or have been convicted;
- have been convicted of a felony.
- state to the competent authority that they do not hold or have not held a residence permit or a visa or have 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 match.

3. 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.

After a first instance expulsion or removal order, a person can be kept in detention if they are already in preparatory detention according to Article 75 FNA. In addition, they can be detained if:

- they refuse during asylum or removal proceedings to disclose their identity, submit several applications for asylum using various identities or repeatedly fail to comply with a summons without sufficient reason or ignore other instructions issued by the authorities in the asylum procedure;
- they leave an area allocated to them in accordance with a restriction or exclusion order (Article 74 FNA) or enter an area they were prohibited from entering;
- they enter Swiss territory despite a ban on entry and cannot be immediately removed;
- they stay unlawfully in Switzerland and submit an application for asylum with the obvious intention of avoiding the imminent enforcement of a removal or expulsion order; such an intention shall be suspected if it were possible and reasonable to file the asylum application earlier and if the application is submitted in close chronological relation to detention, criminal proceedings, the implementation of a penalty or the issue of a removal order;
- they seriously threaten other persons or considerably endanger the life and limb of other persons and are therefore being prosecuted or have been convicted;
- they have been convicted of a felony;
- they state to the competent authority that they do not hold or have not held a residence permit or a visa or have 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 match;
- specific indications lead to the belief that they are seeking to evade deportation, in particular because they fail to comply with the obligation to cooperate with the authorities;
- their previous conduct leads to the conclusion that they will refuse to comply with official instructions,
- the decision to remove the person concerned is issued in a federal reception and processing centre or in a specific centre for uncooperative asylum seekers and enforcement of the removal is imminent,
- the decision to remove the person concerned to the responsible Dublin Member State is issued in the canton concerned and the enforcement of the removal is imminent.

The detention regime for Dublin cases is not yet based on the Dublin III Regulation and the recast Reception Conditions Directive as Switzerland is only bound to comply with Dublin changes within two years according to the Dublin Association Agreement with the EU. The revised provisions will soon enter into force (expected in early summer 2015).³⁴⁸

Detention in practice

Apart from the airport procedure and the test centre in Zurich (see Asylum Procedure, B. 5. and 6.), there is no accelerated procedure in Switzerland. Regarding the admissibility and Dublin procedures see Asylum Procedure, B. 3 and 4.

³⁴⁸ The proposal for the amendments of the detention provisions in the legal acts according the Dublin III Regulation may be found here: Entwurf Bundesbeschluss zur Weiterentwicklung des Dublin/Eurodac-Besitzstandes (Draft for a federal decree on the development of the Dublin/Eurodac rules), www.bfm.admin.ch/dam/data/migration/rechtsgrundlagen/gesetzgebung/uebernahme-dublin3/vorentw-dublin3-d.pdf (DE).

The proposal for the amendment of the asylum and other related ordinances may be found here: Verordnung über die Anpassung verschiedener Verordnungen aufgrund von Weiterentwicklungen im Bereich Schengen und Dublin (Ordinance on the modification of several ordinances because of further developments in the area of Schengen and Dublin), http://www.admin.ch/ch/dgg/documents/2644/Dublin-Eurodac_Entwurf_de.pdf (the respective consultation procedure ran until 16 March 2015)

Detention during the asylum procedure is normally only carried out at the airports of Zurich and Geneva and for some Dublin cases. It seems to be rarely applied outside of these procedures.

Article 81 para. 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.

The risk of absconding is not a pre-requisite in the law and cantonal practice is therefore very inconsistent. In the adopted proposal for a new detention provision for Dublin cases (according to Article 28 Dublin III Regulation), serious risk of absconding is assumed if there are concrete indications that the person will evade the execution of the transfer because one of the grounds for preparatory detention is fulfilled or because the person denies having or having had a visa, residence permit or making an asylum application in another Dublin Member State.³⁴⁹

Persons applying for protection in administrative detention are normally to be released from detention. In cases where the application is considered to be purposely trying to hinder deportation, detention may also be ordered or upheld (Article 75 and 76 FNA).

Alternatives to detention are not (yet) implemented in law or practice.

Individual circumstances are considered in the decision to detain in practice, but with a wide divergence in depth and individualization in the cantonal practice.

The competent authority for ordering detention is the State Secretariat for Migration (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.

The maximum period for detention under Articles 75 and 76 FNA is six months and may be extended up to 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 up to 12 months.³⁵⁰

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

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. Normally, asylum seekers are not detained during the procedure. In clear-cut Dublin cases detention prior to the first instance decision is more often used than in the regular procedure where basically no asylum seekers are detained in practice. The following cantons usually detain persons with Dublin transfer decisions: Lucerne, Schwyz, Zug, Aargau, Graubünden. Other cantons do not detain Dublin transferees (Zurich, Glarus, Solothurn, Baselland).³⁵¹ Several cantonal courts do not assess proportionality of the deprivation of liberty in Dublin cases as the foreigners act does not foresee explicitly such an assessment. In other cantons proportionality is assessed based on the fact that proportionality is a principle for all state measures according to Article 5 (2) of the Swiss Constitution and that is specifically applies to measures that may affect fundamental rights (Article 36 (3) of the Swiss Constitution).

³⁴⁹ *Ibid.*, Articles 75a (new) and 76a (new).

³⁵⁰ Article 79 FNA.

³⁵¹ Experience by legal advisory offices in the different cantons as of September 2014.

C. Detention conditions

Indicators:

- Does national legislation 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
- If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedures? Yes No
- Do detainees have access to health care in practice? Yes No
- If yes, is it limited to emergency health care? Yes No
- Is access to detention centres allowed to
 - o Lawyers: Yes Yes, but with some limitations No
 - o NGOs: Yes Yes, but with some limitations No
 - o UNHCR: Yes Yes, but with some limitations No
 - o Family members: Yes Yes, but with some limitations No

According to Article 81 para. 2 Foreign Nationals Act, suitable locations must be used for administrative detention. The detention together with persons in pre-trial or criminal detention must be avoided if possible and may only be practised as a temporary measure to deal with shortages in the area of administrative detention. In practice, 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 only. 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).³⁵²

Article 81 para. 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 Article 16 para. 3 and Article 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 ordered directly at one of the five Federal initial reception centres) ordered at the cantonal level and lies in these cases fully within the competency 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.³⁵³

Lawyers and UNHCR have access to detention centres. Family members have access during visiting hours. The access is dependent on the rules that apply in the detention centre ("Hausordnung") and may vary significantly.³⁵⁴

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.

³⁵² See the website on the intercantonal 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>.

³⁵³ See the reports issued by the Swiss national CAT committee (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://www.nkvt.admin.ch/nkvt/de/home/publiservice/berichte.html>.

³⁵⁴ The visiting rights and the concrete modus is also taken up by the NCPT in its reports.

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 criticized 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 criticizes that the detention regime for persons in administrative detention in the visited centres is far too strict. Because there is only one specialized institution in Switzerland ("Frambois" in the Canton of Geneva - see above), 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.³⁵⁵ The applicable cantonal laws differ very much.³⁵⁶

D. Procedural safeguards and judicial review of the detention order

Indicators:

- Is there an automatic review of the lawfulness of detention? Yes No

Review of all types of administrative detention is regulated in Article 80 Foreign Nationals Act (FNA). Article 80 para. 2 FNA stipulates that the legality and the appropriateness of detention must be reviewed at the latest within 96 hours by a judicial authority on the basis of an oral hearing.

However, in case of detention of persons with a Dublin transfer decision who have received their decision in the canton and whose transfer is imminent, the legality and the appropriateness of detention shall at the request of the detainee be revised by a judicial authority in a written procedure. 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.

According to Article 80 para. 3 FNA, the judicial authority may dispense with an oral hearing if

³⁵⁵ See the precedent setting decision by the Swiss Federal Court BGE 122 II 49 judgement of 2 May 1996, also referred to by the report of the NCPT on its activities 2013: Nationale Kommission zur Verhütung der Folter (National Commission for the Prevention of Torture), *Tätigkeitsbericht 2013 (Activity Report 2013)*, p. 20ff, http://www.nkvt.admin.ch/dam/data/nkvt/taetigkeitsberichte/140623_ber-d.pdf (DE).

³⁵⁶ 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://rsju.jura.ch/extranet/groups/public/documents/rsju_page/loi_142.41_ia4e77205a-6.hcsp. 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 criticized by the NCPT for non-proportional restriction of movement for persons in administrative detention in two reports in 2011 and 2013.

deportation is anticipated within eight days of the detention order and the person concerned has expressed their consent in writing. If deportation cannot be carried out by this deadline, an oral hearing must be scheduled at the latest twelve days after the detention order.

According to Article 80 para. 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 one month after the detention review. The judicial authority must issue a decision on the request on the basis of an oral hearing within eight working days. A further request for release in the case of preparatory detention may be submitted after one month or in the case of detention pending removal after two months (Article 80 para. 5 FNA).

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; the detainee becomes subject to a custodial sentence or measure (Article 80 para. 6 FNA)

Again, cantonal practice is very diverse with regard to judicial review. The 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.

The Swiss Refugee Council has not come across major difficulties in the use of detention. 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.

E. Legal assistance

Indicators:

- Does the law provide for access to free legal assistance for the review of detention?
 Yes No
- 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 organize 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 three months.³⁵⁷ 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.³⁵⁸

³⁵⁷ 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.

³⁵⁸ 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.