aida
Asylum Information Database

Country Report: Switzerland

2017
Update

SWISS REFUGEE COUNCIL
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Acknowledgements & Methodology

This report was written by Seraina Nufer, Sarah Frehner, Adriana Romer, Marie Khammas,Constantin Hruschka, Guillaume Bégert and Fabienne Bratoljic, legal unit of the Swiss Refugee Council, and was edited by ECRE.

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

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

The information in this report is up-to-date as of 31 December 2017, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 20 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.

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This report is part of the Asylum Information Database (AIDA), funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative by the Network of European Foundations, and the European Union's Asylum, Migration and Integration Fund (AMIF). The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of EPIM or the European Commission.

Epim
European Programme for Integration and Migration

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Glossary & List of Abbreviations

48-hour procedure	Procedure established in August 2012 to treat asylum requests from safe European countries within 48 hours if no further examination is required
Testphase	Pilot accelerated procedure introduced in Zurich in January 2014
AFIS	Automated Fingerprint Identification System
AOZ	Asyl-Organisation Zurich, running the “testphase” reception centre in Zurich
AS	Official Journal of Swiss law (Amtliche Sammlung)
CoE	Council of Europe
EJPD	Federal Department of Justice and Police | Eidgenössisches Justiz- und Polizeidepartment
ELISA	Organisation providing legal aid to asylum seekers at Geneva airport
Eurodac	European fingerprint database
FOM	Federal Office for Migration (now SEM)
FNA	Foreign Nationals Act
KSMM	Coordination Unit against the Trafficking and Smuggling of Migrants | Koordinationsstelle gegen Menschenhandel und Menschenschmuggel
NCPT	National Commission for the Prevention of Torture
OSAR	Swiss Refugee Council | Organisation suisse d’aide aux réfugiés
SCSA	Swiss Conference for Social Assistance
SEM	State Secretariat for Migration | Secrétariat d’état aux migrations
TAF	Federal Administrative Court | Tribunal administratif fédéral
TRACKS	Project on Identification of Trafficked Asylum Seekers’ Special Needs

Statistics

Overview of statistical practice

The SEM publishes detailed statistics on the number of asylum applications and types of decisions on a monthly and a yearly basis. SEM statistics include figures on the application of the Dublin Regulation.[1]

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

Applications and granting of protection status at first instance: 2017

	Applicants in 2017	Pending at end 2017	Asylum	Temporary admission	Rejection	Asylum rate	Temp. Adm. rate	Rejection rate
Total	18,088	20,503	6,360	7,839	4,312	34.4%	42.3%	23.3%

Breakdown by countries of origin of the total numbers

Eritrea	3,375	3,516	3,464	1,860	1,093	54%	29%	17%
Syria	1,951	3,168	1,070	1,296	89	43.6%	52.7%	3.6%
Afghanistan	1,217	5,424	402	2,568	274	12.3%	79.2%	8.5%
Turkey	852	765	165	33	177	44%	8.8%	47.2%
Somalia	843	827	146	480	87	20.5%	67.3%	12.2%
Sri Lanka	840	1391	320	88	393	40%	11%	49%
Guinea	797	96	5	30	112	3.4%	3.4%	76.2%
Nigeria	700	112	2	15	47	3.1%	23.4%	73.5%
Georgia	670	180	5	31	164	0%	15.9%	84.1%
Iraq	653	1249	220	543	191	23%	57%	20%

Source: SEM, Asylum Statistics 2017: http://bit.ly/2DnrgAV.

1 SEM, *Statistiques en matière d'asile*, available at: http://bit.ly/2DnrgAV.
2 This calculation method is also used by Vivre Ensemble: https://asile.ch/statistiques/suisse/.

Gender/age breakdown of the total number of applicants: 2017

	Number	Percentage
Total number of applicants	18,088	-
Men	8,202	45.3%
Women	2,412	13.4%
Children	6,934	38.3%
Unaccompanied children	755	4.2%

Source: SEM, Statistics provided by email, 12 January 2018.

Comparison between first instance and appeal decision rates: 2017

Decisions at Federal Administrative Court level are not available for 2017.

Overview of the legal framework

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

Title (EN)	Original Title (FR)	Abbreviation	Web Link
Asylum Act	Loi sur l'asile	AsylA	http://bit.ly/1GpuAId (FR) http://bit.ly/1FjUQQe (EN)
Federal Act on Foreign Nationals	Loi fédérale sur les étrangers	FNA	http://bit.ly/1Bfa0LT (FR) http://bit.ly/1Bfa26s (EN)
Federal Act on Administrative Procedure	Loi fédérale sur la procédure administrative	APA	http://bit.ly/1IhNNtx (FR) http://bit.ly/1BQdG52 (EN)
Federal Constitution of the Swiss Confederation	Constitution fédérale de la confédération suisse	Constitution	http://bit.ly/1dHqBgj (FR) http://bit.ly/1HNtIPO (EN)

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

Title (EN)	Original Title (FR)	Abbreviation	Web Link
Asylum Ordinance No. 1 on procedural aspects	Ordonnance 1 sur l'asile relative à la procédure	AO1	http://bit.ly/1ejpzYG (FR)
Asylum Ordinance No. 2 on Financial Matters	Ordonnance 2 sur l'asile relative au financement	AO2	http://bit.ly/1FjVey4 (FR)
Asylum Ordinance No. 3 on the processing of personal data	Ordonnance 3 sur l'asile relative au traitement de données personnelles	AO3	http://bit.ly/1GJx1ql (FR)
Ordinance on the Conduct of Test Phases for Accelerated Asylum Measures	Ordonnance sur la réalisation de phases de test relatives aux mesures d'accélération dans le domaine de l'asile (Ordonnance sur les phases de test)	Test Phases Ordinance	http://bit.ly/1BjwYB5 (FR)
Ordinance on the Enforcement of the Refusal of Admission to and Deportation of Foreign Nationals	Ordonnance sur l'exécution du renvoi et de l'expulsion d'étrangers	OERE	http://bit.ly/1IGDUs6 (FR)
Ordinance on Admission, Period of Stay and Employment	Ordonnance relative à l'admission, au séjour et à l'exercice d'une activité lucrative	OASA	http://bit.ly/1GJzYaB (FR)
Ordinance of the DFJP on the management of federal reception centres in the field of asylum	Ordonnance du DFJP relative à l'exploitation des logements de la Confédération dans le domaine de l'asile		http://bit.ly/1MYJoQv (FR)
Directive III on the Field of Asylum	Directive III sur le domaine de l'asile		http://bit.ly/1TpuYgF (FR)

Overview of the main changes since the previous report update

The report was last updated in **February 2017**.

Asylum procedure

- **Appeal:** In October 2017, The Federal Court ordered the Federal Administrative Court (the only asylum appeal body) to waive the requirement of an advance payment for unaccompanied asylum-seeking children in appeal procedures. According to the Court, the present practice of the Federal Administrative Court in requiring an advance payment in such situations constitutes a measure that disproportionately restricts access to justice for unaccompanied asylum-seeking children.

- **Accelerated procedure:** As part of the restructuring of the asylum procedure, the SEM confirmed the implementation of another pilot phase in the federal centres of **Boudry** (canton of Neuchâtel) and **Chevrilles** (canton of Fribourg), both located in the French-speaking part of the country. This new pilot project, also based on the accelerated procedure, will start in April 2018.

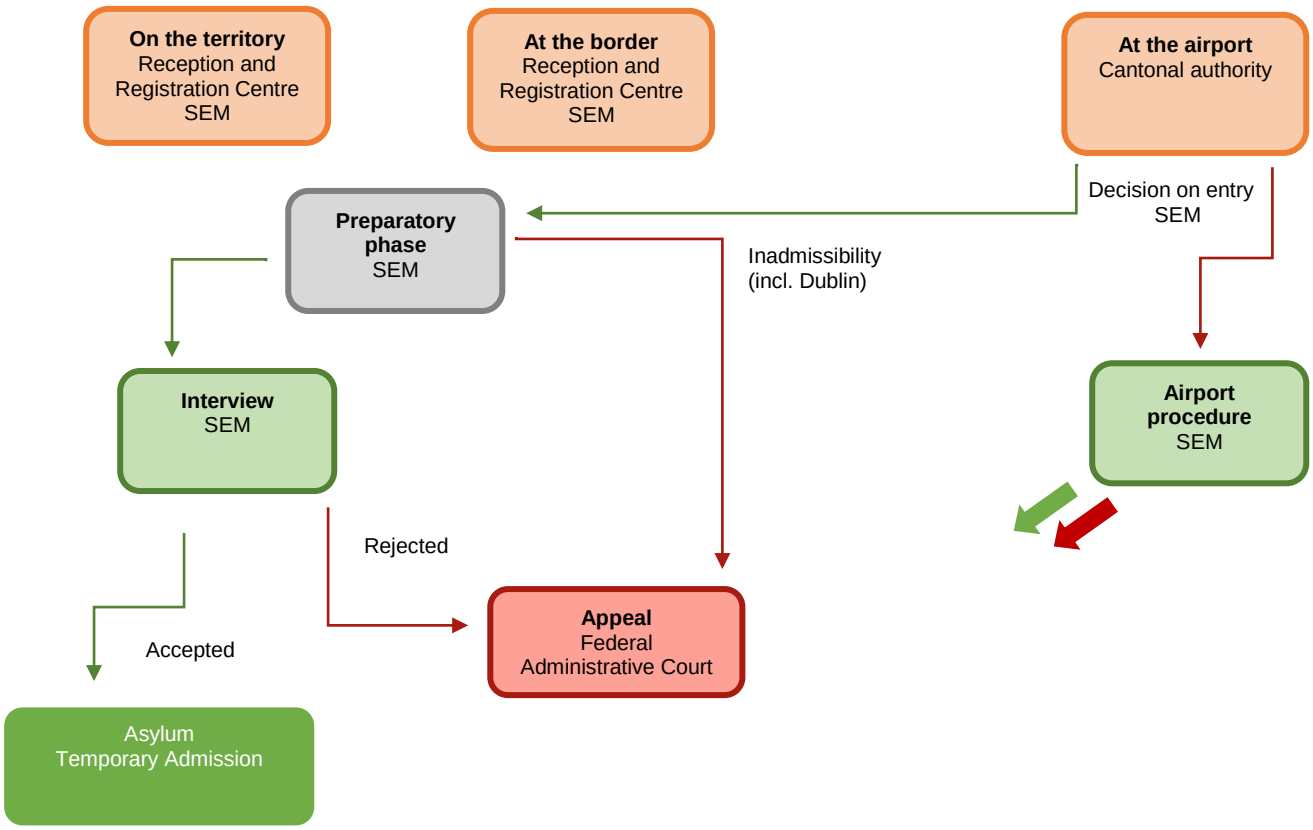
Detention of asylum seekers

- **Detention of families:** In a Dublin case concerning an Afghan family, the Federal Court ruled that the order of administrative detention pronounced by the canton of Zoug against parents whose three young children were simultaneously subject to a placement in a foster care, constituted a violation of the right to family life. In this judgment of 28 April 2017, the Federal Court recalled that such a measure is only admissible as an *ultima ratio* and after a thorough examination of other less coercive measures.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

❖ Regular procedure:	☒ Yes	☐ No
▪ Prioritised examination:[3]	☒ Yes	☐ No
▪ Fast-track processing:[4]	☒ Yes	☐ No
❖ Dublin procedure:	☒ Yes	☐ No
❖ Admissibility procedure:	☒ Yes	☐ No
❖ Border procedure:	☒ Yes	☐ No
❖ Accelerated procedure:[5]	☐ Yes	☒ No
❖ Other: Pilot accelerated procedure (Testphase)	☒ Yes	☐ No

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

Swiss asylum law provides the possibility to grant temporary protection ("*protection provisoire*", "S permit") to persons in need of protection during a period of serious general danger, in particular during a war or civil war as well as in situations of general violence.[6] 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 this has not been implemented. In fact, the Federal Council recently announced that it is thinking about abolishing the status, as it has not been used.

No decision has been made yet.[7] The reform of temporary admission has been the subject of ongoing parliamentary discussions, the most current proposal not suggesting an overall reform, but punctual changes such as a new name and facilitated change of canton.[8] So far, there has been no decision regarding the "S permit".

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

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

3 For applications likely to be well-founded or made by vulnerable applicants.
4 Accelerating the processing of specific caseloads as part of the regular procedure.
5 Labelled as "accelerated procedure" in national law.
6 Articles 66-79a AsylA.
7 Federal Council, *Vorläufige Aufnahme und Schutzbedürftigkeit: Analyse und Handlungsoptionen (Temporary Admission and Protection Needs: Analysis and Options for Action)*, 12 October 2016, 55.
8 Parliament, 'Représentation équitable des sexes au Conseil fédéral : la Commission ne veut pas de disposition constitutionnelle', 19 January 2018, available in French at: http://bit.ly/2GigTAn.

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

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
State Secretariat for Migration (Asylum Department)	1,004 498 on asylum	Federal Department of Justice and Police	☐ Yes ☒ No

Source: SEM, Information provided by email, 12 January 2018.

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 2019. 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.[9] Currently, a process of restructuring of the asylum system is under way. The parliament accepted this proposal in September 2015. It was confirmed by the Swiss people in a referendum on 5 June 2016.[10] In view of the proposed new asylum system, an accelerated asylum procedure has been tested since January 2014.[11]

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.[12] The Swiss asylum procedure is organised as a single procedure.

In most cases, asylum applications are filed in one of the 6 reception and processing centres that are run by the SEM. If this is not the case, the concerned asylum applicants are directed to one of those centres, where the first part of the asylum procedure will be carried out.[13] 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 below). The stay at the reception and processing centres is limited to a maximum of 90 days, but can be extended.[14] 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.[15]

Preparatory phase: The preparatory phase ("*phase préparatoire*") starts after the submission of the application and usually takes place in a reception and processing centre. This phase takes at most 3 weeks.[16] As a first step, the asylum seeker benefits from a preliminary advisory meeting about the asylum procedure.[17] But generally in practice, instead of holding an advisory meeting, the information is provided in the form of an explanatory leaflet. The SEM registers the applicant and takes his or her

9 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)*, available at: http://bit.ly/1TpyhEu, 2088; SEM, *Asylgesetz mit markierten Änderungen (Erlass 3 und Erlass 1) (Asylum Act with marked changes (Act 3 and Act 1))*, available at: http://bit.ly/1J0Rjy8.
10 Federal Council, Referendum on Asylum Act of 5 June 2016, available at: http://bit.ly/2j034yE.
11 Test Phases Ordinance.
12 Article 19 AsylA.
13 Article 21 AsylA.
14 Article 16(2) AO1.
15 Article 27 AsylA.
16 Article 26 AsylA.
17 Article 25a AsylA.

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.[18] Further, an official of the SEM conducts a first, relatively short interview with the applicant. The interview encompasses issues on the identity, the origin and the living conditions of the applicant. It also covers the essential information about the journey to Switzerland and summarily the reasons for seeking asylum.[19] 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.[20] This is often granted during the first interview.

Cancellation and inadmissibility decision: On this basis, the SEM decides whether an application should be examined and whether it should be examined in substance.

If the application cannot be considered as an asylum claim according to the Asylum Act or if the application is not sufficiently justifiable and the asylum seeker withdraws his or her application, the application is cancelled without a formal decision.[21] Furthermore, the application of asylum applicants who fail to cooperate without valid reason or who fail to make themselves available to the authorities for more than 20 days is cancelled without a formal decision and the persons concerned cannot file a new application within 3 years (compliance with the Refugee Convention being reserved).[22]

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.[23] 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.[24]

Substantive decision: If Switzerland is responsible for examining the application in substance (no inadmissibility decision), the applicant undergoes a second interview regarding the grounds for asylum, where he or she has the possibility to describe his or her reasons for flight and, if available, present pieces of evidence.[25]

After the second interview, the SEM carries out a substantive examination of the application. In a first step, the SEM examines whether the applicant can prove or credibly demonstrate that he or she fits the legal criteria of a refugee. As provided by the law, a person able to demonstrate that he or she meets these criteria is granted asylum in Switzerland.[26] If this is the case, a positive asylum decision is issued.

If the SEM considers however that an applicant is not eligible for refugee status or that there are reasons for his or her exclusion from asylum,[27] it will issue a negative asylum decision. In this case, the

18 Article 26 AsylA.
19 Article 26(2) AsylA.
20 Article 36(1) AsylA.
21 Article 25a AsylA.
22 Article 8-bis AsylA.
23 Article 31a AsylA.
24 Article 44 AsylA; Article 83 FNA.
25 Article 29 AsylA.
26 Article 49 AsylA.
27 Asylum is not granted if a person with refugee status is unworthy of it due to serious misconduct or if he or she has violated or endangered Switzerland's internal or external security (Article 53 AsylA). Further, asylum

SEM has to examine in a second step whether the removal of the applicant is lawful, reasonable and possible.[28] 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. A reform of the status of temporary admission has been suggested by the Federal Council and is currently discussed by the parliament.[29]

In practice, to date the SEM treats asylum applications of citizens from certain European visa-waiver-countries (Serbia, Macedonia, Bosnia and Herzegovina) since August 2012, as well as from Kosovo and Georgia since March 2013 and from Hungary in October 2014, in an accelerated manner. In these cases, the procedures are notably concluded within 48 hours from the first interview. Applications that require further clarification of the facts are exempted from this accelerated treatment.[30]

Appeal: If an applicant has not been granted asylum, he or she can submit an appeal against the decision of the SEM to the Federal Administrative Court.[31] The latter is the first and last court of appeal in asylum matters in Switzerland. An applicant has thus only one possibility to appeal against a negative decision in the asylum procedure (except for extraordinary proceedings such as application for reconsideration or revision). An appeal can be made against negative substantive and inadmissibility decisions. However, the time limit for lodging an appeal depends on the type of the contested decision. The time limit is 30 days in the case of a substantive negative asylum decision (no granting of asylum). It is only 5 working days in the case of an inadmissibility decision, a decision in the airport procedure, or if the applicant originates from a so-called safe country of origin (according to the list of the Federal Council) and is obviously not eligible for refugee status and his or her removal is lawful, reasonable and possible.[32]

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.[33]

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.[34] As a first step, the SEM has to decide whether entry into the territory should be allowed or not. In case entry is provisionally refused to an applicant, the whole asylum procedure is generally carried out in the transit area of the airport. The SEM then has to issue the asylum decision within a maximum of 20 days after the asylum application. If that time limit is not met, the SEM allocates

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is not granted if the grounds for asylum are only due to the flight from the applicant's native country or country of origin or if they are only due to the applicant's conduct after his or her departure, so-called subjective post-flight grounds (Article 54 AsylA).

28 Article 44 AsylA; Article 83 FNA.

29 Federal Council, *Vorläufige Aufnahme und Schutzbedürftigkeit: Analyse und Handlungsoptionen (Temporary Admission and Protection Needs: Analysis and Options for Action)*, 12 October 2016, available in German at: http://bit.ly/2jmjdN9, 55. The most current proposal does not suggest an overall reform, but punctual changes such as a new name and facilitated change of canton Political Institutions Committee of the Council of States: 19 January 2018, available at: http://bit.ly/2nzfcH1.

30 SEM, '48-hour procedure extended to Kosovo and Georgia', 26 March 2013, available at: http://bit.ly/1GpBzRB.

31 Article 105 AsylA.

32 Article 108 AsylA.

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

34 Articles 22 and 23 AsylA.

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.[35]

Since the beginning of 2014, an accelerated procedure has been tested in the federal reception centre in Zurich (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.[36] The accelerated test procedure takes up to 10 working days and ends with an asylum decision of the first instance or with a transfer to the so-called "extended procedure" if the decision of the first instance cannot be notified within the federal centre. In the first case, an appeal to the Federal Administrative Court can be lodged within 10 days of the notification of the decision (5 working days in case of inadmissibility decisions or safe country of origin decisions).[37] If no decision can be taken in the federal centre, the applicant is transferred to a canton and integrated in the regular procedure, in general because further clarifications are necessary.[38] 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.[39] As part of the restructuring, the SEM confirmed in November 2017 the implementation of another pilot phase in the federal centres of Boudry (canton of Neuchâtel) and Chevrilles (canton of Fribourg), both located in the French-speaking part of the country. This new pilot project, also based on the accelerated procedure, will start in April 2018.[40]

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☒ Yes ☐ No

During the summer of 2016, there have been reports of persons refused entry and prevented from asking for asylum by the Swiss border guards at the Italian border in **Chiasso**. Among these, there were also several unaccompanied children. Until the Italian Ministry of the Interior partially opened an unofficial camp, these persons were stranded in a park near the station of the Italian town of **Como**.

Throughout 2017, there were fewer persons trying to cross the southern border compared to 2016, as illustrated by the number of removals from Switzerland. The vast majority of removals were still recorded at the southern border:

Removals from Switzerland: 2016-2017		
Location	2016	2017
Removals from the southern border	25,025	16,425
Total number removals	26,267	17,526

Source: Federal Customs Administration, 11 January 2018.

35 Article 108 AsylA.
36 Articles 16-18 Test Phases Ordinance.
37 Article 38 Test Phases Ordinance.
38 Article 19 Test Phases Ordinance.
39 Articles 23 and 18 Test Phases Ordinance.
40 SEM, 'Restructuring of asylum: launch of a pilot project at Boudry and Chevrilles', 30 November 2017, available in French at: http://bit.ly/2mmTfcV.

Nevertheless, the number of removals at the southern border, in particular in **Chiasso**, remained important compared to the situation prior to summer 2016.[41] In February 2017, a person died trying to cross the border between Como and Chiasso after being electrocuted on top of a train.[42] In March 2017, a second person was severely injured while crossing the border in the same way.

Although these removal measures mainly concern irregular migrants who failed to fulfill the conditions for entry into Switzerland, there are strong indications that several persons were prevented from asking for protection in some individual cases. The Swiss Refugee Council continues to stress that, in case of doubt, the person must be directed to the reception and processing centre in Chiasso, where it is in the competence of the SEM (and not the border guard) to examine whether or not there is a well-founded claim for asylum.

In this regard, the Swiss Refugee Council, together with other charitable organisations as well as UNHCR, has pursued the dialogue with the Swiss authorities throughout 2017. A positive development should be stressed in the measures taken by Swiss border guards, especially concerning the communication with the migrants arrested / checked at the border in Chiasso and the proceedings of removal. Nevertheless, the situation remains critical: there are no specific protection measures granted to children during the removal proceedings. Children still end up in the camp in Como, where they do not have access – or have access after long waiting periods – to the specific protection measures provided by law.[43] The removal procedure does not guarantee access to an effective remedy either, as the person is immediately removed to Italy without a formal decision or access to independent legal counselling.

2. Registration of the asylum application

Indicators: Registration

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

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,[44] since the Swiss Parliament has decided to abolish the possibility to file asylum applications at Swiss representations abroad from 29 September 2012 onwards.[45] Any statement from a person indicating that he or she is seeking protection in Switzerland from persecution elsewhere is considered as an application for asylum.[46]

In general, foreign nationals without a valid permit of stay in Switzerland file an asylum application in one of the 6 federal reception and processing centres run by the SEM. If a person requests asylum at the border or following detention for illegal entry in the vicinity of the border or within Switzerland, the competent authorities shall normally assign him or her to a reception and processing centre. The competent authority establishes his or her personal data, informs the closest reception and processing centre and issues a transit permit. The person has to present him or herself at that reception and processing centre during the following working day.[47]

41 See various press releases of the Swiss Refugee Council, as well as news articles on the topic, at: http://bit.ly/2j09q10.
42 Open Migration, *The border crossing deaths in Como,* 10 August 2017, available at: http://bit.ly/2vFInwp.
43 Save the Children, *Border intervention*, April-June 2017, available in Italian at: http://bit.ly/2DEr5pk, 23 et seq.
44 Article 19 AsylA.
45 Curia vista, *Objets parlementaires*, *10.052 Loi sur l'asile. Modification* (Amendment of the Asylum Act), available in French, German and Italian at: http://bit.ly/1R3t815.
46 Article 18 AsylA.
47 Articles 19 and 21 AsylA; Article 8(1)-(2) AO1.

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.[48]

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.[49]

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 or she is issued an N permit by the cantonal authority.[50]

If an application is filed at a border control point at an international airport, the competent cantonal authority establishes the personal data of the concerned person and takes a picture, as well as the fingerprints in order to check possible matches in the automatic fingerprint identification system (AFIS) or Eurodac. The SEM is immediately informed about the application. The applicant will then pass through the airport procedure (see section on Border Procedure).[51]

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 2008,[52] Switzerland applies the Dublin Regulation. Therefore, the SEM has to examine whether Switzerland (or another state) is competent for examining an application (see section on Dublin). It is therefore not possible anymore to refuse entry to asylum applicants or return them directly to neighbouring states without registering them and examining their application (at least) formally.[53]

According to the Asylum Act, asylum seekers are obliged to cooperate in the establishment of the facts during the asylum procedure (duty to cooperate).[54] 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

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

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

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

51 Article 22ff AsylA.

52 Accord entre la Confédération suisse et la Communauté européenne relatif aux critères et aux mécanismes permettant de déterminer l'Etat responsable de l'examen d'une demande d'asile introduite dans un Etat membre ou en Suisse (Agreement between the Swiss Confederation and the European Community regarding the criteria and mechanisms to determine the responsible state for examining an asyulm application introduced in a member state or in Switzerland), 26 October 2004, No. 0.142.392.68.

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

54 Article 8(1)-(3) AsylA.

to have the asylum procedure continued. The applications of the latter are cancelled without a formal decision being taken and the persons concerned cannot file a new application within 3 years (compliance with the Refugee Convention being reserved).[55] This provision seems to be problematic with regard to access to the asylum procedure, as well as to the right to an effective remedy.[56] There is not much experience in practice, as the persons concerned probably often do not get in touch with legal advisory offices, therefore the cases are not made known to the Swiss Refugee Council. So far, the Federal Administrative Court has not clarified whether or not there is a right to an appeal against the decision to cancel the application in these cases.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: 10 working days
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
3. Backlog of pending cases at first instance as of 31 December 2017: 20,503

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

The Asylum Act sets time limits for making a decision on the asylum application at first instance. In the case of inadmissibility decisions, the decision should be made within 5 working days of the submission of the application, or within at most 5 working days of the moment when the concerned Dublin state has accepted the transfer request. In all the other cases, decisions should be made within 10 working days of the submission of the application.[57] 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.[58]

In practice, the length of the asylum procedure at first instance diverges significantly from what is foreseen by law. In 2017, the average duration was 339.8 days,[59] an increase from an average 249.4 days in 2016.[60]

20,503 applications were pending at first instance on 31 December 2017.[61]

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

55 Article 8(3-bis) AsylA.
56 Seraina Nufer, *Die Abschreibung von Asylgesuchen nach dem neuen Art. 8 Abs. 3bis AsylG,* ASYL 2/14, 3ff.
57 Article 37 AsylA.
58 Article 23(2) AsylA.
59 SEM, Information provided by email, 12 January 2018.
60 SEM, Information provided by email, 18 January 2017.
61 SEM, *Asylum Statistics*, December 2017.

1.2. Prioritised examination and fast-track processing

The SEM prioritises the examination of applications by unaccompanied children in practice.[62] In addition, there are two specific fast-track procedures introduced for specific nationalities:

48-hour procedure

In August 2012, a so-called "48-hour procedure" was set in place, which has the purpose to treat asylum requests from safe European countries within 48 hours if no further examination is required. At the time, asylum claims from Bosnia-Herzegovina, the Former Yugoslav Republic of Macedonia (FYROM) and Serbia were included in those procedures.[63] In March 2013, the 48-hour procedure was extended to asylum claims from Kosovo and Georgia.[64] In October 2014, the 48-hour procedure was also applied for asylum requests by persons from Hungary.[65]

Where applicants fall under the Safe Country of Origin concept, the procedure may be described as accelerated since appeals must be lodged within 5 working days. This is not formally an accelerated procedure, however.

Fast-track procedure

In addition, since April 2013, the SEM has introduced a fast-track procedure for the following countries of origin with a very low recognition rate: Nigeria, Gambia, Morocco, Tunisia, Senegal and Algeria. These cases cannot be treated in the 48-hour procedure, as the organisation of return to non-visa-waiver-countries is more complicated. In these cases, the SEM plans to take a decision within 20 days. The asylum seekers are not transferred to the cantons, but the procedures are normally concluded while they are still in the federal reception and processing centres.[66]

In January 2016, the SEM confirmed that it will maintain its treatment strategy: manifestly unfounded cases as well as applications from countries with a low recognition rate (48-hour procedure and fast-track procedure) and Dublin cases are treated with priority. The SEM acknowledges that this can lead to longer procedures for persons who are in need of protection.[67]

In 2017, 4,945 cases were treated in the fast-track procedure and the 48-hour procedure. Out of these cases, 33 were granted asylum and 201 persons were granted temporary admission.[68]

62 SEM, Information provided by email, 3 August 2017.
63 SEM, 'Special measures for asylum seekers from safe European countries', 21 August 2012, available at: http://bit.ly/1IdjPeq.
64 SEM, '48-hour procedure extended to Kosovo and Georgia', 26 March 2013, available at: http://bit.ly/1GpBzRB.
65 SEM, 'Asylum applications from Hungarian citizens: procedures dealt with within 48 hours', 29 October 2014, available in French, German and Italian at: http://bit.ly/1TNbFhA.
66 SEM, Interview in the SonntagsZeitung, 22 September 2013, available at: http://bit.ly/1jPXp9V; Interview in the Neue Zürcher Zeitung, 30 May 2015, available at: http://bit.ly/1Ljxhxt.
67 SEM, 'Asylum: situation still under pressure in 2016' 28 January 2016, available in French at: http://bit.ly/2kn8O5O.
68 SEM, Statistics provided by email, 12 January 2018.

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? ☒ Yes ☐ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? ☒ Yes ☐ No
3. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

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.[69] 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.[70] An interpreter can be present during the preliminary interview if necessary.[71] The minutes of the interview are generally written down. In case the SEM intends to take an inadmissibility decision (see section on Admissibility Procedure), the applicant is granted the right to be heard. The same applies if the person deceives the authorities regarding his or her identity and this deception is confirmed by the results of the identification procedure or other evidence, if the person bases his or her application primarily on forged or falsified evidence, or if he or she seriously and culpably fails to cooperate in some other way.[72] In those cases, there is no second interview.

In all the other cases, the applicant has a second interview, the so-called interview on the grounds for asylum. On this occasion, the applicant has the possibility to describe his or her reasons for flight and, if available, to present pieces of evidence. In principle, the SEM has the possibility to entrust the cantonal authorities with the conduct of the second interview in view of an acceleration of the procedure. However, this is not done in practice. If necessary, an interpreter is present during the interview. A representative and an interpreter of the applicant's choice can accompany him or her.[73] Also, a representative of an authorised charitable organisation (coordinated by the Swiss Refugee Council) is present in the interview. This person participates as an independent observer in order to clarify facts, suggest further clarification or raise objections to the minutes, but he or she has no party rights.[74]

Interpretation

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".[75] 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.[76] 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

69 Article 19(2) AsylA.
70 Article 26(2) AsylA.
71 Article 19(2) AO1.
72 Article 36 AsylA.
73 Article 29 AsylA.
74 Article 30 AsylA.
75 Article 29(1-bis) AsylA.
76 SEM, *Handbuch Asyl und Rückkehr. Anhörung zu den Asylgründen* (Manual on asylum and return, Interview regarding the reasons for asylum), available in German at: http://bit.ly/1Fk7AXb, 8; Asylum Appeals Commission, Decision EMARK 1999/2 of 27 October 1998, para 5.

SEM, does not sufficiently master that language. The SEM has a code of conduct applicable for its interpreters.[77]

Even if, in general, an interpreter is present during the interviews, a certain number of problems have been identified with regard to simultaneous translation. Internal, unpublished surveys on procedural problems conducted by the representatives of charitable organisations attending interviews regarding the grounds for asylum (coordinated by the Swiss Refugee Council) regularly name difficulties relating to simultaneous translation as a main problem.

The representatives of charitable organisations also point out that several interpreters are not impartial, sometimes even have close ties to the regime in the country of origin, or that they are not professional (imprecise, no literal translation but a summary, lacking linguistic competence). Problems have also been identified in relation to the difference in accent or dialect between the interpreter and the applicant, especially in cases where the applicant's mother tongue was Tibetan, Kurdish of Syria or Dari. Furthermore, they have pointed out the use of interpreters in other languages than the applicants' mother tongue (languages less mastered by the applicants concerned) as a consequence of the lack of interpreters. This has especially been observed in languages (such as Tigrinya, Syrian Kurdish) that are often required because they are spoken by important communities of applicants. Currently, there is no lack of interpreters of certain languages, but this can change again depending on the number of asylum seekers from certain countries.

Moreover, as the restructuring of the asylum system is underway, the Accelerated Procedure will be extended to the whole country in 2019. In this procedure, every asylum seeker is supported by a legal representative. Therefore, it appears obvious that the needs of effective and qualified interpreters is going to increase substantially by 2019. As such, it is up to the main actors – especially the competent authorities – to put in place an adequate solution to ensure the efficiency and the quality of interpretation.[78]

Finally, the other mentioned problems regarding interpretation have persisted during 2017.[79]

Transcript

Neither audio nor video recording of the personal interview is required under Swiss legislation. However, written minutes are taken of the interview and signed by the persons participating in the interview at the end, after a translation back into the language of the applicant (carried out by the same interpreter who had already translated during the interview).[80] Before signing the minutes, the applicant has the possibility to make further comments or corrections to the minutes. In general, the transcription is considered sufficiently verbatim, but the Swiss Refugee Council and other charitable organisations have positively commented on the possibility to use audio or video recording as it would provide for a means to check the content and course of the interview, as well as of the performance of the interpreter if necessary. Video conferencing has only very rarely been used for the interviews. In the test procedure in **Zurich**, the pilot project for a new accelerated asylum procedure, the SEM tested interpretation via Skype for Business, in order to reduce costs. Due to technical problems and lack of data protection regulation, the SEM renounced, until further notice, the use of video conferencing.

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

78 For further details see: Swiss Refugee Council, *L'interprétariat dans le domaine de l'asile n'est pas une question mineure (*Interpreting in asylum field is not a minor issue*)* of 5 July 2017, available in French at: http://bit.ly/2sJTOn7.

79 Information provided by the Swiss Refugee Council project coordinator for the test procedure, 13 December 2017.

80 Article 29(3) AsylA.

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☒ Yes ☐ No
2. Average processing time for the appeal body to make a decision: Not available

Swiss law provides for an appeal mechanism in the regular asylum procedure. The first and last competent authority for examining an appeal against inadmissibility and substantive decisions of the SEM is the Federal Administrative Court (*Tribunal administratif fédéral*, TAF).[81] A further appeal to the Federal Supreme Court is not possible (except if it concerns an extradition request or detention in Dublin cases).[82] 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.[83] 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 Asylum Act as of 1 February 2014.[84] Appropriateness of a decision means situations in which the first instance authority has a certain margin of appreciation in which it can manoeuver. 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. The Court can examine the SEM's decisions on asylum only regarding the violation of federal law, including the abuse and exceeding as well as undercutting (but not the inappropriate use) of discretionary powers or incorrect and incomplete determination of the legally relevant circumstances.[85] 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.[86] In practice, the limitation of the Court's competence has proven to be extremely problematic especially in Dublin cases when it comes to the question whether or not Switzerland should apply the sovereignty clause for humanitarian reasons (see section on Dublin: Appeal).

The appeal must meet a certain number of formal criteria (such as written form, official language, mention of the complaining party, signature and date, pieces of evidence if available). The proceedings in front of the court shall be conducted in one of the 4 official languages,[87] 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

81 Article 105 AsylA. Most judgments of the Federal Administrative Court can be found here: http://bit.ly/1NgE8vb.
82 Article 83(c)-(d) Federal Supreme Court Act (*Loi sur le Tribunal fédéral*).
83 Article 106 AsylA.
84 Article 106(1) AsylA.
85 For a more detailed analysis of the discretionary power of the first instance authority and the competence of the Federal Administrative Court, see Federal Administrative Court, Decision E-641/2014 of 13 March 2015.
86 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), ASYL 2/13, 11ff.
87 Article 33a APA.

no legal basis for this procedure; it depends on the goodwill of the responsible judge. As a service to persons who want to write an appeal themselves, the Swiss Refugee Council offers a template for an appeal with explanations in different languages on its website.[88]

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.[89]

The time limit for lodging an appeal against negative decisions on the merits is 30 days. The Court normally has to take decisions on appeals against decisions of the SEM within 20 days.[90] In reality, the average processing time for the Court to take a decision was longer in some cases. Between 1 January and 19 August 2016, 35 procedures could be conducted within 20 days, and nine procedures could only be conducted within 436 days.[91] Information for 2017 is not available.

In general, an appeal has automatic suspensive effect in Switzerland.[92] Appeals in Dublin cases are an exception: suspensive effect is not automatic but can be granted upon request.

Different obstacles to appealing a decision can be identified. One important obstacle is the fact that the Court may demand an advance payment (presumed costs of the appeal proceedings), under the threat of an inadmissibility decision in case of non-payment. Only for special reasons can the full or part of the advance payment be waived.[93] 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).[94] In October 2017, The Federal Court enjoined the TAF to waive demanding an advance payment for unaccompanied asylum-seeking children in appeal procedures. According to the Court, the present practice of TAF consisting in requiring an advance payment in such situations constitutes a measure that disproportionately restricts access to justice for unaccompanied asylum-seeking children.[95]

Another obstacle is set by the limitation of the competence of the TAF.

Within the appeal procedure, the Court has the possibility to order a hearing if the facts are not elucidated in a sufficient manner.[96] In practice, it has hardly ever made use of this possibility.

88 Swiss Refugee Council, *Fiches d'information sur la procédure d'asile* (Information leaflets on the asylum procedure), available in several languages at: http://bit.ly/1QPhrAg.
89 Article 33a and 52 APA.
90 Article 109 AsylA.
91 Federal Administrative Court, Data provided by email, 17 August 2016 and 25 September 2016.
92 Article 55(1) APA.
93 Article 63(4) APA.
94 For example ECtHR, *MA v Switzerland*, Application No 52589/13, Judgment of 18 November 2014.
95 Federal Court, Decision 12T_2016, 16 October 2017.
96 Article 14 APA.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

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

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

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

The right to free administration of justice is enshrined in the Federal Constitution. In both the first instance procedure and in the appeal procedure,[97] 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.[98]

The right to free administration of justice is specifically regulated in asylum law. Contrary to the general provision in the Federal Act on Administrative Procedure, the legal representation is generally presumed to be necessary in the asylum procedure. It is therefore no longer a precondition to establish the necessity of legal representation, except for appeals within a Dublin procedure, a revision procedure or a re-examination procedure. A legal representative has to hold a university degree in law.[99] 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.

Restrictive practices regarding free legal assistance continue to be in Switzerland during the first instance procedure as well as during the appeal procedure. 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,[100] in the appeal procedure the dismissal has in general been justified with the lack of merit of an appeal. The merits test is carried out on the basis of the file only (no hearing). These observations were made before the abolition of the necessity test in the Asylum Act in February 2014. There is no comprehensive recent report on how practices have changed since, but the observation concerning the appeal procedure might still be applicable. The practice does not seem to be uniform, as single judges decide on the matter. Furthermore, legal advisory offices have repeated practical difficulties in obtaining access to free legal assistance. For example, legal advisory offices are granted a lower amount than private lawyers. Furthermore, collaborators of legal advisory offices are only recognised as free legal representatives if they work a certain amount of days per week; in one case it was stated that a part-time position of 25 % was insufficient.

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

97 Articles 8(1) and 29(1) and (3) Constitution.
98 Article 65(1)-(2) APA.
99 Article 110a AsylA.
100 Asylum Appeals Commission, Decision EMARK 2001/11 of 10 July 2001.

mostly projects of NGOs and they are for the most part funded by donations.[101] 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 that the independent legal advisory offices could replace the granting of free administration of justice.[102] There exist a certain number of private lawyers' offices specialised in asylum and foreigners' law, but the costs are quite high (often an advance payment is required) and against the background of the restrictive practice of the SEM and the Court regarding free administration of justice, this constitutes an important obstacle for applicants.

Furthermore, access to legal assistance can be difficult for persons in detention, as their means to contact and find a legal representative within the short time limits for appeal (especially in case of inadmissibility decisions) are limited.

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

A legislative amendment is foreseen, which was adopted by the parliament on 25 September 2015 and approved by the Swiss people in a referendum on 5 June 2016,[103] called "*Erlass 2– Neustrukturierung des Asylbereichs*".[104] It is a restructuring of the asylum system modelled according to the pilot project for an accelerated procedure in the test centre. Once the new system will enter into force, there will be state-funded legal assistance for every asylum seeker provided by the law in the future. This would apply both to the regular and admissibility procedure. The amendment is expected to enter into force in March 2019.

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

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

103 Federal Council, Referendum on Asylum Act of 5 June 2016.

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

2. Dublin

2.1. General

Dublin statistics: 2017

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	8,370	2,297	**Total**	6,113	885
Italy	4,231	981	Germany	2,932	417
Germany	1,380	631	France	1,429	53
France	581	168	Greece	338	101

Source: SEM, Asylum Statistics 2017.

The Dublin III Regulation is applied directly since 1 January 2014 according to a decision of the Federal Council of 18 December 2013.

Application of the Dublin criteria

According to the SEM, in 2017 Switzerland made a total of 8,370 requests for take charge or take back to other Member States, compared to 15,203 in 2016. They were based on the following criteria:

Outgoing Dublin requests by criterion: 2016-2017		
Dublin III Regulation criterion	2016	2017
Family provisions: Articles 8-11	95	76
Documentation and entry: Articles 12-15	6,173	2,870
Dependency and humanitarian clause: Articles 16 and 17(2)	119	50
"Take back": Article 18(1)(b)	7,481	4,202
"Take back": Article 18(1)(c)	37	53
"Take back": Article 18(1)(d)	1,278	1,116
"Take back": Article 20(5)	20	3
Total outgoing requests	**15,203**	**8,370**

Source: SEM, Statistics provided by email, 18 January 2017; 12 January 2018.

The Federal Administrative Court clarified in 2015 that the presence of a family member or sibling in a pending asylum procedure in Switzerland qualifies as "legally present" for the purposes of Article 8(1) of the Dublin III Regulation.[105] It also confirmed that Article 9 and 10 of the Dublin III Regulation are directly applicable, and that there is a reduced standard of proof to establish the competence of a Member State in the Dublin procedure.[106]

The family criteria in particular are generally applied narrowly. The SEM's practice regarding the effective relationship and regarding the definition of family members in the Dublin III Regulation is strict. A few recent examples can illustrate this:

105 Federal Administrative Court, Decision D-5785/2015, 10 March 2016.
106 Federal Administrative Court, Decision E-6513/2014, 3 December 2015.

Concept of "spouses": In one case, the SEM was of the opinion that the applicant could not derive anything in its favour on the basis of the spouse living in Switzerland, since a lasting relationship was required under the notion of spouses under Article 2(g) of the Dublin Regulation. In this context, Article 8 ECHR must be observed. In order to determine the actual relationship, various factors should be taken into account in the opinion of the SEM, in particular common housing, financial interdependence, the bonding of partners and the stability and duration of the relationship. The SEM concluded that the relationship could not be seen as a lasting relationship.

The TAF disagreed and stated that:

- Asylum seekers can refer directly to Article 9 of the Dublin Regulation;
- Article 2(g) of the Regulation, which defines family members, does not impose any further requirements for (formal) spouses, whereas a permanent relationship is required for unmarried partners;
- Article 9 of the Regulation requires that the family member residing in Switzerland is entitled to stay in Switzerland in his or her capacity as a beneficiary of international protection. In addition to refugee status, international protection also includes protection status due to a serious threat to life and limb resulting from arbitrary violence in the context of armed conflict. This shall also include a temporary admission due to unreasonableness, which is justified by a precarious security situation.[107]

Best interests of the child: According to a doctor's report and information from the centre's management, a woman was not capable of providing adequate care such as nourishment for the children. The family (2 siblings and the father, all resident in Switzerland) have taken care of the applicant and especially the children since their first day in Switzerland. Centre management stated that the loss of the family environment could endanger the welfare of the child. Nevertheless, the Federal Administrative Court confirmed the decision of the SEM to transfer the woman and her children to Italy.[108]

Siblings: Five adult siblings left Syria together and entered Switzerland via Greece and Croatia. Switzerland considered itself responsible for three siblings, and initiated a Dublin procedure for one man and one woman, despite their identical starting position. The Federal Administrative Court considers equality in terms of law in the sense of Article 8 of the Federal Constitution as violated.[109]

The dependent persons and discretionary clauses

In addition to the cases in which Switzerland must apply the sovereignty clause because the transfer to the responsible Dublin State would violate one of its international obligations, Article 29a(3) AO1 provides the possibility to apply the sovereignty clause on humanitarian grounds. Case-law has held that the sovereignty clause is not self-executing, which means that applicants can rely on the clause only in connection with another provision of national law.[110] There are no general criteria publicly available in Switzerland on when the humanitarian clause or the sovereignty clause are implemented. The SEM is very reluctant to show in a transparent manner which criteria are decisive for using the sovereignty clause. The Federal Administrative Court's competence to examine the SEM's decision regarding humanitarian reasons is very limited, which leads to less jurisprudence and transparency on the issue. However, the Court sent some cases back to the SEM, because it had failed to examine whether or not to apply a discretionary clause (see section on Dublin: Appeal).

The sovereignty clause is used only in exceptional cases and is usually based on Article 29a(3) AO1. According to Swiss case-law,[111] the interpretation of humanitarian reasons should be similar to the

107 Federal Administrative Court, Decision BVGE 2017/IV/1, 10 February 2017.
108 Federal Administrative Court, Decision F-905/2017, 12 July 2017.
109 Federal Administrative Court, Decision E-2246/2016, 4 October 2017.
110 Federal Administrative Court, Decision E-5644/2009, 31 August 2010.
111 Federal Administrative Court, Decision E-7221/2009, 10 May 2011.

interpretation of the humanitarian clause of the Dublin Regulation.[112] Therefore, a sharp distinction cannot be made between the grounds mostly accepted by Swiss authorities to use the sovereignty clause and grounds mostly accepted to use the humanitarian clause. In most cases in which Switzerland decides to examine an application even if another state is responsible, the cases concern Dublin member states with problematic conditions. Another category are particularly vulnerable persons, for example families (especially single mothers with children) or persons with severe medical problems that cannot be taken charge of because of the deficiencies of the reception conditions or of the asylum system in the responsible Member State. However, the threshold is high. A high risk of detention in case of a transfer back to the responsible state has also been stated as a reason (for further information see section on Dublin: Appeal).

In 2017, the SEM applied the sovereignty clause in 845 cases. Out of these, 473 cases concerned **Greece**, 241 **Hungary**, 65 **Italy** and 66 other Dublin States. The specific reasons for the application of the sovereignty clause are not recorded statistically.[113] There were fewer applications of the sovereignty clause than in 2016, when the clause was used in 3,331 cases. This was partly due to the fact that there were significantly fewer asylum applications in Switzerland in 2017. Furthermore, in 2016 a large part of the applications of the sovereignty clause concerned persons who travelled along the Balkan route from Greece. After the Balkan route was practically closed, fewer persons were able to travel from Greece and Hungary to Switzerland, which had consequences for the number of applications of the sovereignty clause as well.[114]

These numbers show that, like the family criteria, the humanitarian clause and the sovereignty clause are only rarely applied by Switzerland.[115]

2.2. Procedure

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility?[116]
   - ❖ Answer to negative Dublin decision 8.3 days
   - ❖ Negative Dublin decision to transfer 239.8 days

According to Swiss law, the SEM has to transmit the fingerprints of applicants to the Central Unit of the Eurodac System within the framework of the Application of the Dublin Association Agreements.[117] The Federal Council has the possibility to provide exceptions to taking the fingerprints for children under the age of 14.[118] In practice, all applicants over 14 years of age are systematically fingerprinted and checked in Eurodac after the registration of the application in Switzerland. This is part of all types of asylum procedures carried out in Switzerland, regardless of where an application is filed. The Dublin procedure is systematically applied in all cases where the data check or other indications suggest that another Dublin Member State is responsible for examining an asylum application.[119]

The Federal Administrative Court stated that if a person fails to cooperate to be fingerprinted, this is a severe violation of the duty to cooperate according to the Asylum Act. This is also the case if the asylum

112 Articles 16 and 17(2) Dublin III Regulation.
113 SEM, Statistics provided by email, 12 January 2018.
114 SEM, Information provided by email, 23 January 2018. For more information concerning the application of the sovereignty clause by the Swiss authorities since 2014, see: Swiss Refugee Council, 'Le mythe de la générosité dans l'application du règlement Dublin', 21 December 2017, available in French at: http://bit.ly/2kX8rwm. See also the reply of the Federal Council of 1 February 2017 to a parliamentary question 16.4111 of 16 December 2016, available in German at: http://bit.ly/2kC9e76.
115 In November 2017, the Swiss Refugee Council and a broad coalition of NGOs submitted to the Federal Council the "Dublin call" (*Appel de Dublin*). This call urges the authorities to handle the asylum applications lodged by vulnerable persons. For further information, see the website of the coalition available in French at: http://bit.ly/2pFSRKW.
116 Average duration in 2017: SEM, Information provided by email, 12 January 2018.
117 Article 102a-bis AsylA.
118 Article 99 AsylA.
119 Articles 20, 22 and 26 AsylA; Article 16 Test Phases Ordinance.

seeker wilfully destroys the skin of his or her fingertips. However, the SEM must clarify with an expert whether or not the manipulation of the fingertips was wilful or due to external influences.[120] Article 8(3-bis) of the Asylum Act states that persons who fail to cooperate without valid reason lose their right to have the proceedings continued. Their applications are cancelled without a formal decision being taken and no new application may be filed within three years; the foregoing is subject to compliance with the Refugee Convention of 28 July 1951. So far, we have not seen any such cases in practice.

If another Dublin State is presumed responsible for processing the asylum application, the applicant concerned is granted the right to be heard.[121] This can be carried out either orally or in written form,[122] and provides the opportunity for the applicant to make a statement and to present reasons against a transfer to the responsible state. In practice, the right to be heard is mostly only granted once and is carried out orally. If a Eurodac hit is found or other evidence is available, the right to be heard is already granted during the first interview conducted by the SEM.

It seems problematic that the applicant is confronted with this question only at this stage of the procedure, when the responsibility has not yet been fully established. At this point in time, the presumed responsible state has not yet received the request by the Swiss authorities to take charge or take back the applicant. This means that the right to be heard is granted at a moment when consultations between Member States in the Dublin procedure have not even started yet. This deprives the applicant of procedural rights as, according to the Court of Justice of the European Union (CJEU) in *MM*, the authorities are "to inform the applicant that they propose to reject his application and notify him of the arguments on which they intend to base their rejection, so as to enable him to make known his views in that regard."[123] The right to be heard cannot effectively be exercised as long as the intended outcome of the Dublin procedure is not clear. According to the *MM* standard, the applicant should be able to provide his or her views in the light of an intended concrete decision:

> "The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely."[124]

In principle, the applicant is entitled to inspection of the files relevant for the decision-making.[125] The inspection can only be refused if this would contradict essential public interest, essential private interests or interests of non-completed official investigations.[126] 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.[127] The files should include information about the evidence on which the request for taking back was made and the reply of the requested Member State. In case of Dublin transfer decisions (which are inadmissibility decisions), the SEM can notify the decision directly to asylum applicants even if they are represented by a legal representative. The latter must be informed immediately about the notification.[128]

Individualised guarantees

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

120 Federal Administrative Court, Decision BVGE 2011/27, 30 September 2011.
121 Article 36(1) AsylA.
122 Article 29(2) Constitution.
123 CJEU, Case C-277/11 *MM*, Judgment of 22 November 2012, para 95.
124 *Ibid*, para 87.
125 Article 26 APA.
126 Article 27 APA.
127 Article 17(5) AsylA.
128 Article 13 AsylA.

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.[129] After this judgment, there have been several cases which the Court sent the matter back to the first instance authority because of insufficient guarantees.[130] However, in one case the Court stated that the Italian authorities had provided a sufficient guarantee by providing a list of SPRAR projects in **Italy** in which a number of places have been reserved for families returned under Dublin, as well as by accepting that the applicants in the concrete case constituted a family, mentioning the ages of all family members.[131] In December 2015, the Court found that the list of SPRAR projects was six months old and therefore outdated.[132] In April 2016, referring to the updated list of February 2016, the Court again stated that the list represented a sufficient guarantee, if the Italian authorities acknowledged that it was a family in the individual case, mentioning the names and dates of birth of all family members.[133] In November 2016, the Court found that the list was no longer sufficient as a guarantee, as it was outdated (nine months old).[134] Since the Italian authorities provide an updated list of SPRAR places for families on a regular basis, this issue was not that relevant anymore in 2017.

In cases of pregnant women, the Court states that no *Tarakhel* guarantees must be obtained.[135] It also pointed out that the unborn child cannot rely on the Convention on the Rights of the Child.[136] *Tarakhel* is only applied in the case of families in the Dublin procedure, not for other categories of persons.[137] There have been only two exceptions: In two exceptional cases the Court asked for individual guarantees regarding reception conditions and access to medical treatment regarding mentally ill persons (not families) and regarding **Hungary** and **Slovenia** (not Italy).[138] Therefore in some special cases it is possible that Switzerland requests a Member State for detailed information about a possible medical treatment or an ongoing treatment, especially for persons who are suffering from tuberculosis. However, these are not deemed as guarantees with the meaning of the *Tarakhel* judgment.[139]

From the moment of the *Tarakhel* judgment until the beginning of September 2015, 5 families were transferred from Switzerland to Italy under the Dublin procedure. The families are not granted the right to be heard regarding the guarantees before the first instance decision.[140] So the only moment they can make a statement regarding the guarantees is in the appeal. While 41 families and single parents with children (117 persons in total) were transferred to Italy under Dublin in 2016,[141] the number was 36 families and single-parent families (93 persons) in 2017.[142]

So far it is not transparent how the individual guarantees for families will actually be implemented after transfer. In order to document the proceedings in individual cases, in 2016 the Swiss Refugee Council

129 Federal Administrative Court, Decision BVGE 2015/4, E-6629/2014, 12 March 2015.
130 For example, Federal Administrative Court, Decision E-936/2015, 21 April 2015 regarding a Nigerian woman who claimed to have been forced into prostitution in Italy, and who had asked for asylum in Switzerland with her two children; Decision E-3564/2014, 16 March 2015 regarding a single mother with her child.
131 Federal Administrative Court, Decision D-4394/2015, 27 July 2015.
132 Federal Administrative Court, Decision E-6261/2015, 9 December 2015.
133 Federal Administrative Court, Decision D-6358/2015, 7 April 2016.
134 Federal Administrative Court, Decision E-4969/2016, 21 November 2016.
135 Federal Administrative Court, Decisions E-406/2015, 2 April 2015 and D-4978/2016, 6 September 2016.
136 Federal Administrative Court, Decision E-406/2015, 2 April 2015.
137 Recently confirmed by the Federal Administrative Court, leading case Decision D-2177/2015, 11 December 2017: Sri Lankan applicant with medical problems. However, in the individual case the Court ordered that the sovereignty clause must be applied due to the length of the procedure.
138 Federal Administrative Court, Decision D-2677/2015, 25 August 2015 regarding **Slovenia** and a mentally ill person who needs special trauma treatment. *Tarakhel* was not directly mentioned in the decision, but the Court states the need for guarantees. Regarding **Hungary** and a traumatised man: Federal Administrative Court, Decision D-6089/2014, 10 November 2014.
139 SEM, Information provided by email, 3 August 2017.
140 SEM, Dublin Office, Email of 9 September 2015.
141 SEM, Information provided by email, 20 January 2017.
142 SEM, Information provided by email, 18 January 2018.

and the Danish Refugee Council started a joint monitoring project, to follow up on what happens to individual families and vulnerable persons after they have been transferred to Italy.

The report covering the first phase of the project shows that the monitored families were treated very differently upon arrival in Italy. In some cases, the persons could only be accommodated after a certain period of time and with the intervention of third parties. There seemed to be arbitrary or at least unpredictable practice as to which kind of assistance the returned families would get from the Italian authorities. Furthermore, the quality of the accommodation provided varies considerably. The cases show that the relevant regional authorities and/or responsible persons of the reception facility were not always informed in advance of the medical condition and special needs of the applicants. Therefore it cannot be guaranteed whether families returned to Italy will be accommodated in line with the preconditions set out in *Tarakhel*.[143]

The project will continue at least until the end of 2018 and has been extended to cover all persons returned to Italy under the Dublin Regulation.

Transfers

According to the SEM, in 2017 it took on average 239.8 days between the Dublin inadmissibility decision and the transfer. From the positive answer of the responsible Member State to the Dublin inadmissibility decision, it takes another 8.3 days.[144] One reason for this long duration could be the prolongation of the transfer deadline in case of an appeal which is granted suspensive effect. The transfer will then be further delayed if the Federal Administrative Court sends the case back to the SEM for additional clarifications and a new decision, which in turn can be appealed again.

The ratio of Dublin transfers carried out compared to outgoing requests has slightly improved in 2017 and reached 27.4% (2,297 transfers and 8,370 requests) compared to 24.6% in 2016 (3,750 transfers and 15,203 requests).[145] However, it still indicates that only a bit more than one quarter of requests made by Switzerland result in actual transfers.

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. The Federal Administrative Court as well as the Federal Court have defined some important ground rules for detention in Dublin cases (see section on Grounds for Detention: Dublin Procedure). The use of detention differs between cantons.

As the Dublin III Regulation is directly applied in Switzerland, voluntary transfers should in principle be possible.[146] Nevertheless, in practice, voluntary transfers are tested only within the accelerated procedure in the test centre in **Zurich**. In 2016, there were 33 voluntary transfers to Dublin member states, and in 2017, a total of 17.[147] Since the leading decision of the Federal Administrative Court of 2 February 2010, the transfer can no longer be enforced immediately after the notification of the decision, even if appeals against Dublin transfer decisions have no suspensive effect. A time limit of 5 days must be granted, allowing the applicant concerned to leave Switzerland or to make an appeal and to ask for suspensive effect.[148] This case-law has since been codified in the Asylum Act.[149] In a decision to strike out the application from the list of cases, the ECtHR considered the access to an effective remedy in Dublin cases in Switzerland sufficient.[150] This statement is problematic because the ECtHR bases it on

143 Danish Refugee Council and Swiss Refugee Council, *Is mutual trust enough? The situation of persons with special reception needs upon return to Italy*, 9 February 2017, available at: http://bit.ly/2l2Wd7m.
144 SEM, Information provided by email, 12 January 2018.
145 SEM, *Asylum Statistics 2017; Asylum Statistics 2016*.
146 Article 29 Dublin III Regulation.
147 SEM, Information provided by email, 12 January 2018.
148 Federal Administrative Court, Decision BVGE 2010/1 (E-5841/2009), 2 February 2010.
149 Article 107a AsylA.
150 ECtHR, *M.G. and E.T. v. Switzerland*, Application No 26456/14, Decision of 17 November 2016.

a false interpretation of Swiss law: it cites the provision in the Asylum Act that relates to non-Dublin-cases, in which the asylum seeker can stay on Swiss territory until the end of the proceedings. On the contrary, in Dublin cases this is precisely not the case, as there is no automatic suspensive effect.

2.3. Personal interview

Indicators: Dublin: Personal Interview

☐ Same as regular procedure

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

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

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

During the preparatory phase, the applicant has a short preliminary interview mainly on the identity, the journey to Switzerland and summarily the reasons for seeking asylum. If the SEM intends to take a Dublin transfer decision (inadmissibility decision), the applicant is granted the right to be heard at the end of the personal interview,[151] but he or she does not undergo a second interview regarding the grounds for asylum. The omission of the second interview in cases of Dublin and other inadmissibility decisions constitutes the fundamental difference between the personal interview within the Dublin procedure and the personal interviews within the regular asylum procedure where the application is examined in substance (see section on Regular Procedure: Personal Interview).

2.4. Appeal

Indicators: Dublin: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☐ Yes ☒ No

In case of a Dublin transfer decision (inadmissibility decision), an appeal can be submitted – as in all the other cases – to the Federal Administrative Court (TAF). The time limit to lodge an appeal against a Dublin transfer decision is 5 working days.[152]

Contrary to other asylum appeals, appeals against Dublin transfer decisions (inadmissibility decisions) do not have automatic suspensive effect. However, as mentioned in Dublin: Procedure, transfers cannot be enforced immediately after the notification of the decision. A time limit of 5 working days must be granted.[153] This allows the concerned applicant to make an appeal and to ask for suspensive effect. The Court has to decide on the suspensive effect within another 5 working days.[154]

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.[155] In practice, it has hardly ever made use of this possibility.

151 Article 36 AsylA.
152 Article 108(2) AsylA.
153 Article 107a(2) AsylA; Federal Administrative Court, Decision E-5841/2009, 2 February 2010.
154 Article 107a AsylA.
155 Article 14 APA.

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, Hungary, Italy or Bulgaria (see Dublin: Suspension of Transfers).

However, the Court can only examine errors of law, not whether or not the decision of the first instance authority was "appropriate" (see section on Regular Procedure: Appeal). This limitation is very relevant in the Dublin procedure. Many Dublin cases do not fall under the compulsory criteria of the Dublin III Regulation or under Articles 3 or 8 ECHR. Therefore, especially in cases regarding family ties which fall outside those strict definitions, the notion of humanitarian reasons for which Switzerland can apply the sovereignty clause becomes crucial.

The Court stated that whether or not there are humanitarian reasons for applying the sovereignty clause is a question of "appropriateness", where the SEM has a margin of appreciation. As long as it decides within this margin, the Court cannot examine whether or not the decision was appropriate. For example, in one case an Afghan mother and her minor son travelled to Switzerland via Bulgaria. The older son/brother lives in Switzerland with subsidiary protection. Because he is already an adult, the SEM decided to send the mother and younger brother back to Bulgaria, despite the fact that the applicants claimed that the boy needed the support of his older brother. The Court confirmed this decision: it admitted that the criteria according to which the SEM had examined the humanitarian reasons were strict, however, they were objective and clear. Therefore, the Court could not examine the decision by the SEM.[156]

Nevertheless, the Federal Administrative Court confirmed in a leading case decision of 21 December 2017 that the asylum seeker can rely on the correct application of the Dublin responsibility criteria, in line with the CJEU jurisprudence in *Ghezelbash* and *Mengesteab*.[157]

2.5. Legal assistance

Indicators: Dublin: Legal Assistance
☒ Same as regular procedure

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

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

The right to free administration of justice is enshrined in the Federal Constitution and the Asylum Act.[158] 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. Therefore, in the Dublin procedure just as in the regular procedure, legal assistance is in most cases provided by independent legal advisory offices that are part of NGOs. The test phase constitutes an exception to this, as state-funded free legal assistance is guaranteed to all applicants whose procedures are carried out in the test centre in the trial taking place in Zurich (see section on Accelerated Procedure: Legal Assistance).

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

156 Federal Administrative Court, Decision D-3794/2014, 17 April 2015.
157 Federal Administrative Court, Decision E-1998/2016, 21 December 2017.
158 Articles 8(1) and 29(1) Constitution; Article 110a AsylA.

regard to the remote federal accommodation centres ("*Aussenstellen*").[159] 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.[160]

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.

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

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

Greece: 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,[161] its practice regarding transfers to **Greece** has been influenced by the judgments of the ECtHR in *MSS v Belgium and Greece* and the CJEU in *NS v Secretary of State for the Home Department*, as well as two ensuing leading case decisions of the Federal Administrative Court of 16 August 2011[162] and of 17 October 2011.[163] 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).[164] In 2014, the Court confirmed that this practice is still valid.[165] In November 2017, the SEM announced a reinstatement of Dublin procedures for cases in which the person was in possession of a Greek visa. This does not apply to vulnerable persons.[166] This means that in most of the cases Switzerland still relinquishes transfers to Greece and applies the sovereignty clause.

On the other hand, if the person already has a protection status in Greece (and therefore does not fall under Dublin, but under the safe third country clause), the Swiss authorities are generally of the opinion that the person can be transferred there. This has been the case even with vulnerable persons: For example, the Federal Administrative Court even confirmed the transfer of a psychologically fragile mother with four daughters who fled Greece because of the violent husband/father, the eldest daughter being suicidal.[167] Only in few cases, the Court asked the SEM to further clarify the situation of the individual applicant after return to Greece, in order to examine whether or not the transfer decision could be upheld.[168] According to SEM statistics, 1 person was transferred to Greece under Dublin and 24

159 Article 26(3) AsylA, Ordinance of the DFJP on the management of federal reception centres in the field of asylum.
160 Swiss Refugee Council, 'Etat des lieux du centre fédéral de Bremgarten «Obere Allmend»', 2014, 8.
161 SEM, *Manuel Asile et retour, Procédure Dublin (Manual asylum and return, Dublin procedure),* 14.
162 Federal Administrative Court, Decision D-2076/2010, 16 August 2011.
163 Federal Administrative Court, Decision E-5604/2011, 17 October 2011.
164 Federal Administrative Court, Decision D-2076/2010, 16 August 2011 and E-5604/2011, 17 October 2011.
165 Federal Administrative Court, Decision E-6955/2013, 27 January 2014.
166 SEM, Information provided by email, 6 November 2017.
167 Federal Administrative Court, Decision D-206/2016, 10 February 2016.
168 Federal Administrative Court, Decisions E-6347/2014, 20 November 2014 and E-1192/2014, 17 March 2014.

persons were transferred under the readmission agreement in 2017. In 2016, 17 persons were transferred to Greece under the readmission agreement.[169]

Hungary: Regarding Dublin transfers to Hungary, the Federal Administrative Court took an internal decision in February 2016 to suspend all transfers until a new leading case judgement will be issued.[170] However, the SEM has not interpreted this as an instruction to suspend transfers to Hungary at the first instance level as well. This means that the SEM still issued Dublin transfer decisions, and if the person did not manage to file an appeal to the Court in time, it was possible that they were transferred to Hungary. On the other hand, if the person filed an appeal, the transfer was suspended. The Swiss Refugee Council has criticised this situation, as it lead to unequal treatment and arbitrary situations.

In May 2017 the TAF issued a reference judgment in which it summarised the latest developments in the Hungarian asylum system and the effects on Dublin returnees.[171] The Court highlighted the responsibility of the SEM to gather all elements necessary for the assessment and that it was not the responsibility of the appeal authority to carry out complex supplementary investigations. Otherwise, the Federal Administrative Court would overstep its jurisdiction with a decision on the merits of the matter and deprive the party concerned of the legal right of appeal. Therefore, the Court annulled the contested decision and referred it back to the SEM for a full determination of the facts and a new decision. In March 2017, 199 appeals regarding a Dublin transfer to Hungary were pending at the TAF, and it is very likely that all of them were referred back to the SEM for further examination. Many of the cases concern persons who are waiting for about two years only for the examination of responsibility under Dublin, which is not in line with the objective of rapid determination of the Member State responsible under the Dublin III Regulation.

According to SEM statistics, 12 persons were transferred to Hungary under Dublin in 2017, while 65 persons were transferred in 2016.[172]

Italy: Overall in many cases the Swiss practice regarding Italy is still strict and the judges still state that there are no systemic deficiencies. The sovereignty clause is only applied in cases of very vulnerable persons, or in case of a combination of different special circumstances.

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. Regarding the necessary guarantees for families before Dublin transfers to Italy according to *Tarakhel*, see Dublin: Procedure.

Croatia: With the developments along the Balkan Route, the Dublin cases with Croatia have increased. The Federal Administrative Court confirms most transfers, as it is of the opinion that asylum seekers have access to sufficient reception conditions and medical treatment in Croatia.[173] A total 15 persons were returned to Croatia in 2017, while 89 persons were returned in 2016.[174]

Bulgaria: Transfers are generally carried out, even in the case of families and vulnerable persons.[175] In a decision from September 2017,[176] the Court implied doubts about the rejection of the applicant's claim in Bulgaria. An earlier asylum application was rejected by Germany, the applicant was deported to Morocco in 2013 and tortured there for three and a half months. Neither the SEM nor the Court have received the decision to reject the application from the Bulgarian authorities. The court stated:

169 SEM, *Asylum Statistics 2017; Asylum Statistics 2016*.
170 See Neue Zürcher Zeitung, ‚Marschhalt bei Dublin-Fällen', 26 February 2016, available in German at: http://bit.ly/21mLQpE.
171 Federal Administrative Court, Decision D-7853/2015, 31 May 2017.
172 SEM, *Asylum Statistics 2017; Asylum Statistics 2016*.
173 Federal Administrative Court, Decision D-1611/2016, 22 March 2016.
174 SEM, *Asylum Statistics 2017; Asylum Statistics 2016*.
175 For example in the case of a man who claimed to have been detained and mistreated in Bulgaria, with diabetes and psychological problems: Federal Administrative Court, Decision E-521/2016, 13 June 2016.
176 Federal Administrative Court, Decision E-305/2017, 5 September 2017.

> "It is therefore not possible to ascertain whether and to what extent the Bulgarian authorities have examined the complainant's allegations of torture, which are an important indication of a concrete and serious danger of renewed torture, and to what extent they have reached this conclusion. The contrary assertion of the lower instance must be qualified as a mere guesswork prior to this situation. The Federal Administrative Court considers the complainant's allegations that he has been tortured in his home country to be credible in the current file situation and regards it as an important indication that he is likely to face the concrete and serious danger of renewed torture on his return to Morocco. It cannot therefore be ruled out that, in the case of a transfer of the complainant to Bulgaria, Switzerland may be in danger of breaching the principle of non-refoulement, which is why it is advisable that Switzerland starts the national asylum procedure. A transfer to Bulgaria is not permitted."[177]

2.7. The situation of Dublin returnees

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

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

In Switzerland, all asylum seekers have to undergo the admissibility procedure. This procedure should take place in the first 3 weeks after the application for asylum has been filed, and is called the "preparatory phase".[178] Within this time, the SEM records the asylum seekers' personal details and normally takes their fingerprints and photographs. It may collect additional biometric data, prepare reports on a person's age, verify evidence and travel and identity documents and make enquiries specific to origin and identity. At this time, the asylum seekers will normally be interviewed by the SEM about their identity and their itinerary, and summarily about the reasons for leaving their country. On the basis of the gathered information, the SEM reaches the decision on admissibility, which answers the question if the asylum request will be examined substantively or dismissed by an inadmissibility decision.

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

An application is inadmissible where the asylum seeker:

(a) Can return to a Safe Third Country in which he or she has previously resided;
(b) Can be transferred to the responsible country [under the Dublin Association Agreement];
(c) Can return to a third country in which he or she has previously resided;
(d) Can travel to a third country for which he or she has a visa and where he or she may seek protection;
(e) Can travel to a third country where he or she has family or persons with whom he or she has close links; or
(f) Has applied solely for economic or medical reasons. In this case, normally a second interview will take place before the SEM takes the decision to dismiss the application.[179]

The grounds relating to countries not listed as "safe third countries" in the Swiss list (see Safe Third Country) do not apply if there are indications that there is no effective protection against *refoulement* in the individual case.[180]

177 *Ibid*, para E.2.
178 Article 26 AsylA.
179 Article 36(2) AsylA.
180 Article 31a(2) AsylA.

Decisions to dismiss an application must normally be made within 5 working days of the application being filed or after the Dublin state concerned has agreed to the transfer request.[181] In practice, these time limits are rarely respected. There are several decisions from the Federal Administrative Court about delay of justice in relation to the similar rule before the revision of the law in February 2014. In a decision of 14 April 2014,[182] the Court said that in view of the numerous pending files, not every asylum procedure could be decided within the provided time limit. Based on these special circumstances, the Court considered it unavoidable that the procedures take more time than what the law designated, which expresses itself in the term "normally" used in Article 37 AsylA.

The SEM delivered the following inadmissibility decisions in 2017:

Inadmissibility decisions: 2017	
Ground for inadmissibility	Number
Safe third country: Article 31a(1)(a)	184
Responsibility of another Dublin State: Article 31a(1)(b)	5,838
Country where the applicant has previously resided: Article 31a(1)(c)	10
Country where the applicant has family or persons with close links: Article 31a(1)(e)	1
Application made exclusively for economic or medical reasons: Article 31a(3)	120
Subsequent application: Article 111c(1)	28
Total	**6,211**

Source: SEM, Statistics provided by email, 18 January 2018.

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

☒ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure? ☒ Yes ☐ No
   - ❖ If so, are questions limited to identity, nationality, travel route? ☒ Yes ☐ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No

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

Every asylum seeker will be granted a first personal interview with questions about his or her identity, the itinerary, and summarily about the reasons for leaving his or her country. No personal interview is conducted with accompanied children under 12 years of age.[183]

If the SEM decides to dismiss an application according to Article 31a(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 will take place according to Article 29 AsylA.

The first summary interview is the same as in the regular procedure (see section on Regular Procedure: Personal Interview). The right to be heard regarding the inadmissibility decision is usually granted at the end of the first interview. So the people who are present are the same as in the regular first interview

181 Article 37 AsylA.
182 Federal Administrative Court, Decision D-1643/2014, 14 April 2014.
183 SEM, Information provided by email, 12 January 2018.

(employee of the SEM who leads the interview, interpreter, sometimes a transcript writer).[184] However, the right to be heard can also be granted in writing. If the person requesting asylum is an unaccompanied minor, the Swiss Refugee Council is of the opinion that his or her person of confidence must always also be allowed to take part in the hearing, because the hearing is a decisive procedural step.[185] However, this is only systematically done in Dublin cases and in the airport procedure. In the other cases, the SEM is of the opinion that the person of confidence must only be invited for the second interview.

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against an inadmissibility decision? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive
     - Dublin transfer decisions ☐ Yes ☒ No
     - Other grounds ☒ Yes ☐ No

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

The time limit of 5 working days is relatively short. If the decision is made while the asylum seeker is still located in one of the 6 federal reception and processing centres, a legal advisory office close to the centre will be open at least one day a week. The legal advisors in the office can explain the decision to the person concerned and may support an appeal. But if the legal advisory office does not see any chance of success and refuses to write an appeal, the time limit can be very short for another lawyer or the person him or herself to write an appeal. Also, for asylum seekers located in remote accommodation facilities, there may not be a legal advisory office nearby, so the short period of 5 working days can be an obstacle to an appeal in these cases.

In general, an appeal has automatic suspensive effect in Switzerland.[186] Appeals against inadmissibility decisions also have automatic suspensive effect, except for Dublin decisions (see section on Dublin: Appeal).

Normally, the court should decide appeals against inadmissibility decisions within 5 working days,[187] which is not the case in practice. Like in regular procedure appeals, no personal hearing in front of the court takes place in practice.

Contrary to appeals in the regular procedure, the scope for the Court is limited to the question of whether the SEM acted within the law when it decided to dismiss the application.[188]

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

184 If there is no transcript writer present, the employee from the SEM will write the transcript, there has to be a transcript in any case of all interviews and also of the right to be heard.
185 Article 17(3) AsylA.
186 Article 55(1) APA.
187 Article 109 AsylA.
188 Federal Administrative Court, Decision BVGE 2012/4 (E-6490/2011) of 9 February 2012, para. 2.2.

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance
☒ Same as regular procedure

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

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

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

4. Border procedure (border and transit zones)

4.1. General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
2. Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☒ No
3. Is there a maximum time limit for a first instance decision laid down in the law? ☒ Yes ☐ No
   - ❖ If yes, what is the maximum time limit? 20 days

Switzerland has no land border with third countries. All neighbouring states are Schengen and Dublin Member States. There is therefore no special procedure at land borders; persons who request asylum at the border or following their detention for illegal entry in the vicinity of the border shall normally be assigned by the competent authorities to a reception and processing centre, where they enter the same procedure as any other asylum seeker.[189] However, since the summer of 2016 this has not always been guaranteed in practice at the southern Swiss border with Italy. In 2017, the number of removals at the Southern border – in particular in **Chiasso** – remained important compared to the situation prior to summer 2016 (see Access to the Territory).

There is a special procedure for people who ask for asylum at the airport. If a person arrives at the airport of **Zurich** or **Geneva**, the airport police inform the SEM immediately. As a next step, the airport police (in Zurich) or the SEM (in Geneva) shall record the person's personal details and take his or her fingerprints and photographs. The competent authority may record additional biometric data and summarily ask asylum seekers about their itinerary and the reasons for leaving their country.[190] If a person requests asylum at another airport in Switzerland, the person will be transferred to a reception and processing centre and will enter the regular procedure.

In Zurich and Geneva, accommodation will be provided during the time of the airport procedure (see Detention of Asylum Seekers). Asylum seekers may be held at the airport or exceptionally at another location for a maximum of 60 days.[191]

189 Article 21(1) AsylA.
190 Article 22 AsylA and Article 12 AO1.
191 Article 22(5) AsylA.

The SEM examines if Switzerland is responsible to carry out the procedure according to the Dublin Regulation. The SEM authorises entry into the territory if Switzerland is responsible according to the Dublin III Regulation, and if the asylum seeker appears to be at risk under any of the grounds stated in the refugee definition at Article 3(1) AsylA or under threat of inhumane treatment in the country from which he or she has directly arrived; or if the asylum seeker establishes that the country from which he or she has directly arrived would force him or her to return to a country in which he or she appears to be at risk, in violation of the prohibition of *refoulement*. If it cannot immediately be verified if the mentioned conditions are fulfilled, the entry into the territory is temporarily denied.[192] The asylum seeker is then accommodated in a special accommodation facility within the transit zone of the airport.[193]

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

In 2017, 207 requests of entry were lodged, out of which 46 in the airport of **Geneva** and 161 in **Zurich**. The main countries of origin were Turkey, Iran, Syria and Sri Lanka. 169 asylum claims were lodged in the international airports of Zurich and Geneva, 2 of which by unaccompanied children.[195]

4.2. Personal interview

Indicators: Border Procedure: Personal Interview
☐ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure? ☒ Yes ☐ No
   - ❖ If so, are questions limited to nationality, identity, travel route? ☐ Yes ☒ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No

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

In the airport procedure, a first interview will take place in every case. In **Zurich**, the airport police conduct the interview, while in **Geneva** it is the SEM. In case of unaccompanied minors, their person of confidence participates in the first interview (see section on Legal Representation of Unaccompanied Children). Other than this, there is no difference between the first interviews in the regular procedure and the ones in the airport procedure (see sections on Regular Procedure: Personal Interview and Admissibility Procedure: Personal Interview).

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

192 Article 22(1-bis), (1-ter) and (2) AsylA.
193 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.
194 Article 23(2) AsylA.
195 SEM, Information provided by email, 18 January 2018.

4.3. Appeal

Indicators: Border Procedure: Appeal
☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?
   ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☒ Yes ☐ No
     - ○ Dublin cases ☐ Yes ☒ No

Against a decision taken during the airport procedure an appeal can be made within 5 working days.[196] The Federal Administrative Court is the competent appeal authority, like in the regular procedure. As in the regular procedure, appeals have automatic suspensive effect, except for Dublin decisions, in which case the person has to ask for suspensive effect (for further information, see sections on Regular Procedure: Appeal and Dublin: Appeal).

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

4.4. Legal assistance

Indicators: Border Procedure: Legal Assistance
☒ Same as regular procedure

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

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

The law does not provide access to state-funded free legal assistance during the airport procedure. However, in practice, there are legal advisory offices run by NGOs 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 section on Regular Procedure: Legal Assistance).

5. Accelerated procedure ("Testphase")

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

In general, there is no so-called accelerated procedure foreseen in Swiss law, but in January 2014, a pilot project started, which is called "Testphase". It is a pilot project for accelerated procedures, where every step of the asylum process will take place in the same area. For this project, a special ordinance[197] 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**. There will be a second test procedure in **Boudry** (canton of Neuchâtel) and **Chevrilles** (canton of Fribourg) starting in April 2018. The whole Swiss asylum system will be restructured similarly along the lines of these test centres. The Swiss

196 Article 108(2) AsylA and Article 23(1) AsylA.
197 Test Phases Ordinance.

Parliament approved the new asylum law on 25 September 2015,[198] and the people approved it in a referendum on 5 June 2016.[199] The amendment expected to enter into force in March 2019.

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

Once the asylum application is made, the preparatory phase starts, the SEM records the asylum seekers' personal details and normally takes their fingerprints and photographs. It may collect additional biometric data, prepare reports on a person's age, verify evidence and travel and identity documents and make enquiries specific to origin and identity. This phase shall last no longer than 3 weeks. After this, the accelerated procedure itself will take place, it shall last between 8 and 10 working days, while in certain cases, the period can be extended for a few days. If a decision cannot be made in this time frame, the person will be transferred to a canton and the application will be processed in the regular procedure. These time limits are respected in practice.

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

An evaluation of the test phase in **Zurich** showed that on average, the asylum procedure could be accelerated by 39%. Furthermore, the provision of legal advice and legal representation supports fair and correct procedures, which has a positive effect on the quality of decisions. It also helps improve acceptance of the decisions by the asylum seekers. The appeal rate was 33% lower than in the ordinary procedure.[200] As the evaluation was submitted based on observations of a relative short period of time of setting up and running in the test centre in Zurich, it appears premature to draw definite conclusions. Consequently, it will be necessary to pursue the assessment of the viability of the new procedure in the future, especially regarding to the legal protection.

There exist also other procedures which are handled in an expedited manner:

- The 48-hour procedure and the fast-track procedure are described in Fast-Track Processing.
- The airport procedure is described in the Border Procedure.
- Dublin procedures have a time limit of 5 working days for an appeal; the Dublin procedure is described in the section on Dublin. The same time frame for appeals is applied for all inadmissibility decisions.[201] Those decisions also have to be made within 5 working days of the application being filed or after the Dublin Member State concerned has agreed to the transfer request,[202] although in practice, these time limits are rarely respected. See also the section on the Admissibility Procedure.
- If a person comes from a safe country of origin, the request will not be dismissed, but the application shall be rejected without further investigations.[203] In those cases, the time limit for an appeal is also 5 working days.[204]

198 Draft of the new Asylum Act, text adopted by the parliament, 24 September 2015, available in German at: http://bit.ly/1LbCYKw.
199 Federal Council, Referendum on Asylum Act of 5 June 2016.
200 SEM, 'Test phase aiming at acceleration of asylum procedures: objectives reached', 14 March 2016, available in French at: http://bit.ly/2jUW98T.
201 Article 108 AsylA.
202 Article 37 AsylA.
203 Article 40 AsylA.
204 Article 108 AsylA.

5.2. Personal interview

Indicators: Accelerated Procedure: Personal Interview

☒ Same as regular procedure

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

There is always at least one interview, in the accelerated procedure as well as in the regular procedure. In the accelerated procedure it is also the SEM conducting the interviews. Whether or not there is a second interview with a representation of the authorised charitable organisations present depends on whether or not inadmissibility grounds or other grounds apply (see sections on Regular Procedure: Personal Interview, Dublin: Personal Interview and Admissibility Procedure: Personal Interview).

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

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☒ Yes ☐ No
     - ○ Dublin cases ☐ Yes ☒ No

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

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

In the accelerated procedure in the test phase, the time limit for appeals against substantive decisions is 10 days (except for Dublin cases: 5 working days), but as described before, a free legal representative will support the asylum seeker with the appeal if they think there is a prospect of success. The legal representative has to inform the asylum seeker within a short period of time if he or she will make an appeal or not. If not, the asylum seeker has to try to find other support within the time period if he or she wishes to make an appeal anyway.

5.4. Legal assistance

Indicators: Accelerated Procedure (test procedure in Zurich): Legal Assistance
☐ Same as regular procedure

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

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

In the test phase, all applicants are entitled to free legal assistance (advice and representation) during the preliminary phase and the accelerated procedure. An applicant can explicitly renounce free legal assistance. Only persons with a university degree in law can work as legal representatives. The legal representative is already assigned to the applicant before the first interview takes place. The latter attends the personal interviews and is given the possibility to write a statement in case the SEM plans to take a negative decision. If the client is an unaccompanied minor, the legal representative also takes over the function of the person of confidence. The legal representation ends with the coming into force of a decision of the SEM or with the decision to continue the asylum procedure outside of the test phase. It also ends if the legal representative informs the applicant that he or she will not make an appeal against a negative decision because he considers that the application is *prima facie* without merit.[205] 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 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 quality of the asylum decisions of the SEM. Furthermore, free legal representation leads to a more targeted use of appeals.[206]

Under the restructuring of the asylum system modelled according to the pilot project for an accelerated procedure in the test centre, there will be state-funded legal assistance for every asylum seeker provided by the law in the future. This will apply both to the regular and admissibility procedure. The amendment expected to enter into force in March 2019.

205 Article 23-28 Test Phases Ordinance.
206 SEM, 'Test phase aiming at acceleration of asylum procedures: objectives reached', 14 March 2016, available in French at: http://bit.ly/2jUW98T.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☐ For certain categories ☒ No
   - ❖ If for certain categories, specify which:

2. Does the law provide for an identification mechanism for unaccompanied children? ☐ Yes ☒ No

1.1. Screening of vulnerability

There is no requirement in law or another mechanism in place to systematically identify vulnerable persons in the asylum procedure. Only the obligation to identify victims of human trafficking has recently been introduced in the Swiss legislation,[207] to respond to European requirements.[208]

There is no screening for potential vulnerabilities. According to the law,[209] asylum seekers must state any serious health problems of relevance to the asylum and removal procedures of which they were aware when filing the application for asylum (see section on Use of Medical Reports).

It is difficult 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. Also, so far the efforts to improve the identification have been limited. If the interviewer of the SEM suspects a possible victim, they should inform a person within the SEM who is specially responsible for the topic of human trafficking. This way, on the one hand, the Coordination Unit against the Trafficking and Smuggling of Migrants can be informed, and on the one hand, the hearing should be conducted by a person who has been schooled in the interviewing of victims of trafficking.

At the beginning of 2014, the SEM assured of its ambition to improve the protection of victims of human trafficking. There is a specialised working group coordinated by the Coordination Unit against the Trafficking and Smuggling of Migrants (*Koordinationsstelle gegen Menschenhandel und Menschenschmuggel*, KSMM), which will provide input to the National Action Plan against trafficking.[210] The SEM has drafted internal guidelines on how to proceed in cases of asylum seeker victims of trafficking. A recent decision of the Federal Administrative Court sees the identification of victims of trafficking as the state's obligation and highlights the importance of identification within the asylum procedure.[211] However, it does not explicitly state that a failure to fulfil this obligation represents a violation of Article 10 of the Council of Europe (CoE) Convention. The Swiss Refugee Council took part in the transnational TRACKS project which aims at identifying the special needs of victims of human trafficking in the asylum procedure.[212]

The SEM does not collect statistics on vulnerable applicants.[213]

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207 Article 35 and 36 of the Ordinance on Admission, Period of Stay and Employment.
208 Article 10 Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16 May 2005.
209 Article 26-bis AsylA.
210 National Action Plan to Fight Human Trafficking 2017-2020, available at: http://bit.ly/2Dw8F5Z.
211 Federal Administrative Court, Decision D-6806/2013 of 18 July 2016.
212 Identification of Trafficked Asylum Seekers' Special Needs. See description at: http://bit.ly/2j9Or6Q.
213 SEM, Information provided by email, 3 August 2017.

1.2. Age assessment of unaccompanied children

The law provides the option to prepare a report on a person's age, but there is no specific identification mechanism. Whether a person's age shall be examined is up to the caseworker. In the context of the examination of the facts, the law foresees the use of scientific methods to assess the age.[214] The Federal Administrative Court specifies that the age assessment can be ordered if there is a lack of sufficient proof considering the identity, in this case, the date of birth of the asylum seeker.[215] The law does not specify who can trigger an age assessment, but in practice, it is the SEM. The asylum seeker carries the burden of proof.[216] In practice, an x-ray of the hand is taken in case of doubt about the minority of the person. In the test procedure in Zurich, a combination the following methods is used: skeletal age (x-ray of the hand, possibly CT scan of the sternum-clavicular joint), dental age plus physiognomy (sexual maturity and physical constitution). The Federal Administrative Court has stated that the x-ray of the hand by itself is not very reliable, as there is a standard deviation of two and a half to three years.[217] In a recent judgment of 8 September 2016, the Federal Administrative Court came to the conclusion that the results of the combined examination did not provide a clear conclusion as to how probable it was that the applicant was over 18 years old.[218] In another case, the Court stated that with these methods the age of the applicant could not be proven, but there was a high probability that he was over 18 years old, so it confirmed the SEM's conclusion that he was an adult.[219]

As every age assessment can only be an age estimation, in case of a range of possible ages, the lowest possible age should be the relevant one for the purpose of the asylum procedure.

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

There are no statistics available on the number and outcome of age assessments conducted in Switzerland.

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

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

There is no specific unit to carry out the procedures for vulnerable persons, but there are experts for specific topics within the SEM ("thematic specialists") who can be asked for advice or asked to get involved in difficult cases (for example regarding unaccompanied minors, gender-specific violence or victims of trafficking). These collaborators also treat asylum applications themselves, but they are responsible for the development of practice indications and decision-making aids etc. on their topic. One to three collaborators per unit is specialised on unaccompanied minors.[220]

In addition, all caseworkers are trained on interviewing children and adolescents by internal and external trainers.[221]

214 Article 7 AO1.
215 Federal Administrative Court, Decision E-1552/2013 of 2 April 2013, para 4.2.
216 Asylum Appeals Commission, Decision EMARK 2004/30 of 29 October 2004.
217 Asylum Appeals Commission, JICRA 2000 Nr. 19.
218 Federal Administrative Court, Decision A-1987/2016 of 6 September 2016, 8.4.2.
219 Federal Administrative Court, Decision D-859/2016 of 7 April 2016, 6.3.
220 SEM, Information provided by email, 3 August 2017.
221 *Ibid*.

2.1. Adequate support during the interview

If there are indications or if the situation in the country of origin is indicating gender-specific violence and persecution, 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.[222] The Asylum and Return Compendium of the SEM specifies that men who are victims of gender-specific violence and persecution should be able to choose the gender of the interviewing official in the second interview.[223] That rule is also applicable to the interpreter and the recorder of the minutes. According to the SEM, such measures are taken if an applicant mentions an act of persecution of sexual nature as well as if an applicant mentions an act of persecution motivated by gender that he or she fears because of his or her membership of a particular social group or if he or she is a victim of human trafficking.[224] 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.[225] Furthermore, the right of every asylum applicant who is of sound mind and therefore deemed capable of making reasonable judgements to have his or her own reasons for asylum examined is enshrined in Asylum Law in case an application is made by spouses, registered partners and families.[226]

2.2. Exemption from special procedures

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.

However, it is possible, on an individual basis, to exempt an applicant from the airport procedure if stay in the transit zone is deemed to be too costly on the basis of the indications given by care staff, medical reports and medical consultations on his or her vulnerability.

The number of applicants exempted from the airport procedure was 217 in 2016 and 69 in 2017.[227]

3. Use of medical reports

Indicators: Use of Medical Reports

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

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

According to the law,[228] 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

222 Article 6 AO1.
223 SEM, *Manual on asylum and return, Article C6, Befragung zur Person* (Interview on personal data), available in German at: http://bit.ly/1RvsMQW.
224 SEM, *Manuel Asile et retour, Les persécutions liées au genre* (Manual on asylum and return, Gender-specific persecution), available in French at: http://bit.ly/1JUVABE, 14-15.
225 Article 17(2) AsylA.
226 Article 5 AO1.
227 SEM, Information provided by email, 3 August 2017 and 12 January 2018.
228 Article 26-bis AsylA.

in practice very problematic because traumatised people often do 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 one case, the Court stated that the applicant brought forward his health problems (kidney stones and epilepsy) too late, and they were not proven, which is why they did not have to be taken into account.[229] It is not clear how these health problems could not be proven.

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

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

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

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

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

In Switzerland, unaccompanied children are entitled to an asylum procedure – and hence to pass a personal interview within the asylum procedure – if they are deemed capable of making such a judgment. The assessment of this capability depends on the maturity and the development of the child in question.[230] Usually, a person is considered as able to make a judgment at the age of 14. Regarding the personal interview of children, especially unaccompanied children, Swiss law provides for special measures. The interviewer shall take into account the special nature of being a child.[231] The Federal Administrative Court has stressed the importance of that duty and clarified in a detailed manner how this should be put into practice during the personal interview.[232] In addition, a representative, a so-called person of confidence, is immediately to be appointed for each unaccompanied asylum-seeking child. The latter assists the unaccompanied child during the asylum procedure.[233] 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.[234] The duty of the person of confidence starts with the first interview.[235]

229 Federal Administrative Court, Decision D-5129/2014, 7 January 2015.
230 Asylum Appeals Commission (predecessor of the Federal Administrative Court), Decision EMARK 1996/4, 9 March 1995.
231 Article 7(5) AO1.
232 Federal Administrative Court, Decision E-1928/2014 of 24 July 2014.
233 Article 17 AsylA; Article 7 AO1.
234 SEM, *Manuel Asile et retour. Requérants d'asile mineurs non accompagnés,* 14-15.
235 Article 7(2-bis) AO1.

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

If a person claims to be an unaccompanied minor, a representative (a so-called person of confidence) shall be appointed immediately.[236] The Asylum Ordinance 1 specifies that the duty of the representative starts with the first interview.[237] This means that in all the procedures, the representative should be present in the first as well as the second interview. Also when a hearing takes place because the SEM does not believe that the person is a minor and is about to treat the person as an adult, a representative should be attending because the change of the asserted birth date should be considered as a decisive procedural step. In practice, the representative is rarely invited at this stage of the procedure, which is problematic.[238] In other cases, the first interview is not considered as a decisive procedural step.[239] This is problematic because the decisions of the SEM are often justified with contradictions between the first and the second interview, which makes the first interview also a decisive step.

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

There are no eligibility requirements in national legislation related to being a representative of an unaccompanied child. The practice regarding representatives for unaccompanied children differs considerably between the cantons. In general it can be said that the support is often insufficient because too many children are supported by one representative, and some representatives are either insufficiently qualified or insufficiently committed to support the children effectively.[240] With the increase of unaccompanied asylum-seeking children in 2014 and 2015, this problem became even more serious. In May 2016, the Conference of the Cantonal Social Directors published recommendations on unaccompanied minor asylum seekers in order to work towards a certain uniformity.[241]

As of now, the duties of the representative are not precisely defined by law and are therefore not always clear in practice.[242] The Asylum Ordinance 1 specifies that the representative must have knowledge of the asylum law and the Dublin procedure. He or she accompanies and supports the minor in the asylum or Dublin procedure. The Ordinance lists a few examples of tasks that the representative must fulfil: advice before and during interviews; support in naming and obtaining elements of proof; support especially in the contact with authorities and medical institutions.[243] The idea of the representative is to support the asylum seeker in the asylum procedure, but also concerning other legal, social or other problems. In practice, as long as the child is staying in the reception and processing centre (maximum 90 days), the representative mostly accompanies the child to the asylum interview or hearing and hands over their address in case of questions. The child and the representative often only meet shorty before the interview. Often the translator of the SEM is asked for help with the explanation of the representative's role. Under these circumstances there is almost no time to build any trust. Normally, the representative will change after a person is transferred to the canton and then stays the same person until the child has reached their 18th birthday. It must be added that the person of confidence is foreseen as an interim measure until child protection measures according to the Civil Code (such as appointing a guardian) are implemented. But unfortunately in practice, the person of confidence very often remains the child's representative, and no child protection measures are implemented.

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236 Article 17(3) AsylA.
237 Article 7(2-bis) AO1.
238 Asylum Appeals Commission, Decision EMARK 2004/30 of 29 October 2004.
239 Federal Administrative Court, Decision BVGE 2011/23 (E-8648/2010) of 21 September 2011, paras 5.4.6 and 7.
240 For an overview of the shortcomings in the support for unaccompanied children in the asylum procedure see: Nora Lischetti, *Unbegleitete Minderjährige im schweizerischen Asylverfahren*, ASYL 1/12, 3ff.
241 Konferenz der kantonalen Sozialdirektorinnen und Sozialdirektoren (SODK), *Empfehlungen der SODK zu unbegleiteten minderjährigen Kindern und Jugendlichen aus dem Asylbereich*, 20 May 2016, available in German at: http://bit.ly/2jmj4JE.
242 Asylum Appeals Commission, Decision EMARK 2006/14 of 16 March 2006.
243 Article 7(3) AO1.

755 asylum applications were lodged by unaccompanied children in 2017.

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? ☒ Yes ☐ No

2. Is a removal order suspended during the examination of a first subsequent application?
   - ❖ At first instance ☐ Yes ☒ No
   - ❖ At the appeal stage ☐ Yes ☒ No

3. Is a removal order suspended during the examination of a second, third, subsequent application?
   - ❖ At first instance ☐ Yes ☒ No
   - ❖ At the appeal stage ☐ Yes ☒ No

The Asylum Act provides a specific procedure for subsequent applications. The procedure is described in Article 111c AsylA and in Article 111d AsylA and regarding the costs in Article 7c AO1 on procedural aspects. Every application within 5 years since the asylum decision or removal order became legally binding must be submitted in writing with a statement of the grounds.

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

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

There is no obligation for the SEM to provide a personal interview. Nevertheless, it has the duty to examine all arguments carefully and individually.[244]

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. The Federal Administrative Court has clarified that, normally, there is no legal remedy to appeal this dismissal decision.[245] However, if the SEM has applied this provision incorrectly, there is the right to an effective remedy for denial of justice.[246]

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.

The following subsequent applicants were registered in 2017:

244 Martina Caroni et al., *Migrationsrecht* (Migration law), 3rd (vastly revised) edition, Berne 2014, 342 f.
245 Federal Administrative Court, Decision E-3979/2014, 3 November 2015.
246 Federal Administrative Court, Decision E-5007/2014, 6 October 2016.

Subsequent applicants in Switzerland: 2017	
Country of origin	Number of applicants
Sri Lanka	85
Eritrea	57
Turkey	49
Syria	40
Iraq	31
Somalia	31
Total	**564**

Source: SEM, Asylum Statistics 2017.

F. The safe country concepts

Indicators: Safe Country Concepts

1. Does national legislation allow for the use of "safe country of origin" concept? ☒ Yes ☐ No
   - ❖ Is there a national list of safe countries of origin? ☒ Yes ☐ No
   - ❖ Is the safe country of origin concept used in practice? ☒ Yes ☐ No
2. Does national legislation allow for the use of "safe third country" concept? ☒ Yes ☐ No
   - ❖ Is the safe third country concept used in practice? ☒ Yes ☐ No
3. Does national legislation allow for the use of "first country of asylum" concept? ☒ Yes ☐ No

1. Safe country of origin

The Federal Council is responsible for designating states in which, on the basis of its findings, there is protection against persecution as safe countries of origin.[247] The common list of safe countries of origin and safe third countries is published in the Annex 2 of Asylum Ordinance 1 on procedural aspects (AO1),[248] and was last updated in June 2015.It includes:

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

In cases of safe country of origin, the request will normally be decided in the 48-hour procedure without further investigations. Even though the decision will not be dismissed, the time limit for an appeal in these cases is 5 working days.[249]

247 Article 6a(2)(a) AsylA.
248 Annex 2 AO1, available in French at: http://bit.ly/2FMt9sO.
249 Article 108(2) AsylA.

2. Safe third country

The Federal Council is also responsible for the designation of states where there is effective protection against *refoulement*[250] as safe third countries.[251] The Federal Council shall periodically review these decisions.[252]

2.1. Safety criteria

The following requirements must be met:[253]

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

According to the Asylum Appeals Commission (predecessor of the Federal Administrative Court), what is relevant is the possibility to find actual protection in the third country. This is not the case if there is no access to the asylum procedure or if the third country only applies the Refugee Convention to European Refugees.[254] According to the materials of the Federal Council in preparation of the mentioned provision, it is also necessary that the third country accepts the readmission of the person in question.[255]

This list includes so far all EU and EFTA member states.[256]

2.2. Connection criteria

According to the law, the SEM shall normally dismiss an application for asylum if the asylum seeker can return to a safe third country as described above in which he or she was previously resident. In practice, these are normally cases in which the asylum seeker already has international protection (or another type of residence permit) in an EU/EFTA-member state. If the person was there as an asylum seeker or had merely passed through, the Dublin Regulation applies, and not the safe third country rule (all countries on the safe third country list are Dublin member states as well).

G. Relocation

Indicators: Relocation		
1.	Number of persons effectively relocated since the start of the scheme	1,476
2.	Are applications by relocated persons subject to a fast-track procedure?	☐ Yes ☒ No

Relocation statistics: 22 September 2015 – 31 December 2017

Relocation from Italy			Relocation from Greece		
	Requests	Relocations		Requests	Relocations
Total	:	897	**Total**	:	579

Source: SEM, Statistics provided by email, 12 January and 9 February 2018.

250 As defined in Article 5(1) AsylA.
251 Article 6a(2)(b) AsylA.
252 Article 6a(3) AsylA.
253 Federal Council, Bundesblatt (Federal Gazette) 2002, available in German at: http://bit.ly/2j9UF6I, 6877ff.
254 Asylum Appeals Commission, Decisions EMARK 2000/10, 2001/14.
255 Federal Council, Bundesblatt (Federal Gazette) 2002, 6884.
256 SEM, 'Bezeichnung aller EU- und EFTA-Staaten als sichere Drittstaaten', 14 December 2007, available in German at: http://bit.ly/1NgJbf5.

Switzerland has pledged 1,500 places under the relocation scheme so far, and 1,476 persons have been relocated, mainly nationals of Eritrea (881) and Syria (551) and few people from Iraq (40) and Central African Republic (4).

1. Relocation procedure

On average, the duration of the procedure, from the relocation request to the arrival of the person in Switzerland, is around 4 months. According to the SEM, the proceedings conducted by Greece lasted, on average, about 3 weeks longer than those conducted by Italy. This difference in the duration of the proceedings can be explained from the fact that the examination of the dossiers submitted by Greece concerned more complex profiles of individuals. In cases of relocation of unaccompanied children from Italy, the procedure was slightly longer as Italy has certain additional procedural requirements regarding the organisation of the departure.

So far over 5% of all the requests have been rejected for security reasons.

Normally, there is no prioritisation of cases. The SEM treats the requests in the order in which they arrive. In certain individual cases, the Italian or Green authorities ask for an accelerated treatment (for example for medical reasons). As far as possible, the SEM takes this into account. So far there have not been any particular difficulties relocating vulnerable groups.[257]

2. Post-arrival treatment

Upon arrival, relocated persons enter the normal asylum procedure and are treated like persons who apply for asylum directly in Switzerland.[258]

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

1. Provision of information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? ☒ Yes ☐ With difficulty ☐ No

   ❖ Is tailored information provided to unaccompanied children? ☐ Yes ☒ No

According to the Asylum Act, before opening the asylum proceedings, an “advisory preliminary meeting” should take place between the asylum seeker and a person from the SEM. In this meeting, the asylum seeker should be informed about the asylum procedure and it must be clarified with the asylum seeker whether an application for asylum has been filed under the Asylum Act and if this application is sufficiently justifiable.[259]

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

257 All information in this section: SEM, Information provided by email, 12 January 2018.
258 *Ibid*.
259 Article 25a AsylA.

Refugee Council on the regular and the airport procedure, in 20 different languages.[260] Additionally, close to each of the 6 reception and processing centres, there is legal advisory office run by an NGO, where information is provided as well. The Swiss Refugee Council leaflets are written in a simplified manner, but it is still possible that not all information contained within will be fully understood by all asylum seekers. Also, in case of changes, updating the leaflet takes time due to translation into many languages.

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

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

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No

2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No

3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No

Asylum seekers at the border (airports) have effective access to 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 accommodation. In cases where there is no person on the ground to explain the decision and a possible appeal has to be filed within 5 working days, it can be very difficult for the asylum seeker to get support to understand the decision and also to write an appeal. First of all, the time limit is very short. Secondly, a ticket for transportation to a legal advisory office must be organised and finally, some legal advisory offices are only open one day per week. So the people located in the countryside face clear disadvantages especially regarding the access to legal advice and therefore also access to some information and support.[261]

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

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

I. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☒ Yes ☐ No
   - ❖ If yes, specify which: Syria

2. Are applications from specific nationalities considered manifestly unfounded?[262] ☒ Yes ☐ No
   - ❖ If yes, specify which: Albania, Algeria, Benin, Bosnia-Herzegovina, Burkina Faso, FYROM, Gambia, Ghana, India, Kosovo, Moldova, Mongolia, Montenegro, Morocco, Nigeria, Senegal, Serbia, EU/EFTA Member States

1. Eritrea

In 2017, Eritrea was the top country of origin with 3,375 requests. The recognition rate (asylum status) was 54% and the temporary admission rate was 29% in 2017. In June 2016, the SEM changed its policy regarding Eritrea. It stated that persons who left Eritrea illegally and had previously never been called to the military service, exempted from military service, or released from military service, will no longer be recognised as refugees. In January 2017, the Federal Administrative Court also changed its practice and ruled that the illegal exit of Eritrea can no more, in itself, justify the recognition of refugee status and that additional individual elements are required.[263] Confirming a more restrictive approach regarding Eritrean cases, the Court subsequently found, in August 2017, that the return of Eritrean nationals could not be generally considered as unreasonable. Thus, noting that the situation in Eritrea has improved significantly since 2005, the Court estimated that persons whose asylum request was rejected and who have already done their military service as well as those who "settled" their situation with the Eritrean State and benefit from the status of so-called "diaspora member", were not under the threat of being convicted or recruited for the national service.[264]

This practice change has been criticised by the Swiss Refugee Council and others, as it does not seem justified by the current country of origin information (COI) or the difficulty to obtain reliable COI.[265] The development of the statistics since then can be influenced by different factors, but the practice change seems to be one of them. Less Eritrean persons are granted refugee status, and more temporary admission. There are also more and more negative decisions. In the case of an unaccompanied minor asylum seeker, the Federal Administrative Court stated that the boy would not risk persecution in case of return to Eritrea, as he was only ten years old when he left Eritrea illegally. He was therefore not recognised as a refugee and received only a temporary admission.[266]

2. Syria

In 2017, Syrians were the second largest group of asylum seekers. 1,951 requests were made by Syrian applicants. Usually, people from Syria (except Palestinians from Syria) at least get status F, which means a temporary admission. The recognition rate (asylum status) was 43.6% and the temporary admission rate was 52.7% in 2017. 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.[267] In a second judgment, the Court stated that even ordinary participants of demonstrations in Syria against the regime risk persecution if they have been

262 Whether under the "safe country of origin" concept or otherwise.
263 Federal Administrative Court, Decision D-7898, 30 January 2017.
264 Federal Administrative Court, Decision D-2311/2016, 29 August 2017.
265 For further information, see Swiss Refugee Council, 'Décision du Tribunal administratif concernant le renvoi d'une Erythréenne – Le jugement est incompréhensible', 31 August 2017, available in French at: http://bit.ly/2FKqT5b.
266 Federal Administrative Court, Decision E-129/2015, 20 January 2015.
267 Federal Administrative Court, Decision D-5553/2013, 18 February 2015.

identified by Syrian state security forces.[268] Regarding the forced recruiting of persons by the Kurdish group YPG, the Court stated that this did not amount to a justified fear of persecution.[269]

In 2017, The Federal Administrative Court estimated, at least on two occasions, that the return to Syria was reasonable and lawful.[270] In one of these cases, the Court confirmed the withdrawal of a temporary admission based on the penal case of the person.[271] In March 2015 the Swiss Federal Council decided further measures to support victims of the Syria conflict. It 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.).[272]

On 18 September 2015, the Federal Council decided that Switzerland will participate in the Relocation scheme for 40,000 persons in need of protection. Under this project, Switzerland will relocate up to 1,500 persons who have been registered in Italy and Greece. This number will be deducted from the resettlement contingent of 3,000 places for resettlement and humanitarian visas for Syrians.[273] This means that there will be significantly less resettlement places for Syrians from Syria's neighbouring countries than originally announced. On 9 December 2016, the Federal Council announced that it intends to resettle another 2,000 persons in the following two years. It also budgeted 66 million CHF for local support for 2017, in addition to the 250 million already invested since the beginning of the Syrian conflict.[274]

3. Afghanistan

The third largest group of asylum seekers in 2017 were persons from Afghanistan. 1217 persons asked for asylum in that period. 12.3% were granted asylum, while 79.2% received temporary admission. Returns to Afghanistan are generally considered unreasonable (which means a temporary admission is granted), with three exceptions: Returns to the cities of Kabul, Mazar-i-Sharif and Herat can be considered reasonable if certain conditions are met in the individual case, mainly a family or social network.[275]

In a principle judgment released on 13 October 2017, the Federal Administrative Court reassessed the security situation in Afghanistan.[276] Firstly, the Court estimated that the general security situation in Afghanistan had deteriorated but remains better in Kabul. Thus, the Court considered the execution of the expulsion to Kabul to be reasonable under careful consideration of circumstances that are favourable in individual cases (sustainable network of relationships, the possibility of securing the minimum existence level, secure living conditions, good health status). Paragraph 7 includes a general analysis of the situation in Afghanistan based on numerous sources, which concludes that the security situation has deteriorated in all regions since 2011.

The situation of Kabul is considered separately under paragraph 8 of the ruling. The Court finds that the security situation in Kabul is extremely precarious,[277] and has clearly deteriorated in comparison with the BVGE 2011/7 judgment. The situation in Kabul is regarded as fundamentally life-threatening and

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268 Federal Administrative Court, Decision D-5779/2013, 25 February 2015.
269 Federal Administrative Court, Decision D-5329/2014, 23 June 2016.
270 Federal Administrative Court Decision F-177/2017, 7 February 2017.
271 Federal Administrative Court, Decision D-1105/2017, 31 May 2017.
272 SEM, 'Bundesrat beschliesst zusätzliche Massnahmen für die Opfer des Syrienkonflikts', 6 March 2015, available in German, French and Italian at: http://bit.ly/1GH8GQO.
273 SEM, *Humanitarian crisis in Syria*, available at: http://bit.ly/1FQ3Jsl.
274 Federal Council, 'Syrienkonflikt: Schweiz setzt Hilfe vor Ort fort und nimmt weitere Flüchtlinge auf', 9 December 2016, available in German at: http://bit.ly/2j9UwQK.
275 Federal Administrative Court, Decisions D-7950/2009, 30 December 2011 (Mazar-i-Sharif), D-2312/2009, 28 October 2011 (Herat), BVGE 2011/7, 16 June 2011 (Afghanistan in general and Kabul).
276 Federal Administrative Court, Decision D-5800/2016, 13 October 2017.
277 *Ibid*, para E.8.2.3.

thus unacceptable.[278] However, this rule may be deviated from if there are particularly favourable factors which would prevent the returning person from being placed in a situation which would threaten his or her existence and on the basis of which, in exceptional cases, it can be assumed that the execution is reasonable. In summary, the Court considers an expulsion to Kabul to be reasonable only if the conditions are particularly favourable - in particular single, healthy men with a sustainable network of relationships, an opportunity to secure the minimum subsistence level and a secure housing situation - to be reasonable.[279] Accordingly, the Court put higher demands in place than in the past with regard to the clarification of a sustainable social/family network. The network must be able to guarantee "in particular economic progress and housing". Pursuant to the Court, it may exceptionally be reasonable for young healthy men with a sustainable social network to be deported to Kabul.

4. Sri Lanka

Regarding Sri Lanka, since two asylum seekers from Sri Lanka had been arrested at the airport of Colombo in summer 2013 after they had been sent back from Switzerland, the SEM stopped all forced returns to Sri Lanka until May 2014 and reviewed its practice.[280] 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.[281]

However, in July 2016, the SEM changed its practice regarding Sri Lanka. As it sees certain improvements in the security and human rights situation, asylum applications will be treated more restrictively.[282] In July 2016, the Federal Administrative Court updated its case law related to Sri Lanka in considering that the execution of removal to the northern (apart from the Vanni) and eastern provinces of the country was, in principle and under certain conditions, reasonable.[283] Subsequently, the Court continued the hardening of its practice through a principle judgment released in October 2017.[284] Thus, the Court argued that, since the end of the conflict in 2009, the security situation has improved significantly in the Vanni. As a result, it considered that a person with a sustainable network of relationships and the possibility of securing the minimum existence level with time should be able “to resettle there without undue difficulty”.[285] Regarding vulnerable profiles such as single women with or without children, persons with serious health issues or elderly, the Court concluded that the execution of the removal remained unreasonable.

5. Other nationalities

Regarding **Iraq**, in December 2015 the Federal Administrative Court stated that there is no situation of generalized violence in the northern Kurdish provinces. Therefore persons can be returned to northern

278 *Ibid*, para E.8.4.1.
279 *Ibid*, para E.8.4.2.
280 Neue Zürcher Zeitung, ‚Umstrittene Rückführungen nach Sri Lanka: Lehren aus Fehleinschätzungen im Asylverfahren‘, 26 May 2014, available in German at: http://bit.ly/1TNcaYO; NGO information platform humanrights.ch, ‘Les renvois forcés vers le Sri Lanka ne doivent pas reprendre’, 4 June 2014, available in French at: http://bit.ly/1eGVLFt.
281 SEM, ‘Arrest of two asylum seekers in Sri Lanka: results of review process now available’, 26 May 2014, available at: http://bit.ly/1HfpRL0.
282 SEM, ‘Anpassung der Asyl- und Wegweisungspraxis für Sri Lanka’, 7 July 2016, available in German at: http://bit.ly/2jV4utf.
283 Federal Administrative Court, Decision E-1866/2015, 15 July 2016.
284 Federal Administrative Court, Decision D-2619/2016, 16 October 2017.
285 The Swiss Refugee Council expressed strong reservations concerning the evaluation made by the Court regarding the security situation in the northern part of Sri Lanka, especially in the Vanni’s region. Indeed, this appreciation is mostly based on a UNHCR’s survey of 113 families who returned voluntarily from India to the northern part of the country. Therefore, it appears that the evaluation made does not rest on a detailed analysis. For further information see: Swiss Refugee Council, *Curieux sondages et requérant-e-s d’asile du Sri Lanka,* of 14 December 2017, available in French at: http://bit.ly/2AG5w5Z.

Iraq if they have a social or family network there.[286] Persons from central and southern Iraq usually receive a form of protection.

Asylum requests from people from **Bosnia-Herzegovina**, **Macedonia**, **Kosovo**, **Georgia** and **Hungary** are normally treated within 48 hours, except if further examinations are required. In addition, requests from nationals from **Nigeria**, **Gambia**, **Morocco**, **Tunisia**, **Senegal** and **Algeria** are conducted through a fast-track procedure (see Regular Procedure: Fast-Track Processing). Statistics on this topic can be found on the website of SEM.[287]

286 Federal Administrative Court, Decision E-3737/2015, 14 December 2015.
287 SEM, *Asylum Statistics 2017*, available at: http://bit.ly/2mvVoUm.

Reception Conditions

A. Access and forms of reception conditions

Both the Confederation and the cantons are responsible for providing material reception conditions to asylum seekers, depending on whether the person is in a federal or a cantonal reception centre. The first phase of the asylum procedure usually takes place in one of the 6 federal registration and processing centres (and their related remote locations), ruled under federal legislation.[288] Asylum seekers stay in a federal centre for up to 90 days, and are then allocated to a canton (see section on Freedom of Movement).

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

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

❖ Regular procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Dublin procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Admissibility procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Border procedure	☐ Yes	☒ Reduced material conditions	☐ No
❖ Testphase procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ First appeal	☒ Yes	☐ Reduced material conditions	☐ No
❖ Onward appeal	☒ Yes	☐ Reduced material conditions	☐ No
❖ Subsequent application	☐ Yes	☒ Reduced material conditions	☐ No

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

❖ Social assistance and emergency aid	☒ Yes	☐ No
❖ Accommodation	☐ Yes	☒ No

Material reception conditions primarily consist of accommodation, food, health care and limited financial allowance according to the specific entitlement to social assistance. Assistance benefits are granted only when a person is unable to maintain him or herself from own resources, and under the condition that no third party is required to support him or her on the basis of a statutory or contractual obligation.[289] For organisational reasons, accommodation in asylum centres is however available for all asylum seekers, regardless of their financial resources.[290] Note also that social assistance, departure and enforcement costs as well as the costs of the appeal procedure must be reimbursed subsequently if the person has the necessary means at a later point in time.[291]

Regular procedure

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

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

289 Article 81 AsylA.

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

291 Article 85(1) AsylA.

In the federal reception and processing centres, reception conditions are similar for all asylum seekers regardless of the type of procedure they will go through. After cantonal attribution, reception conditions may change significantly. General legal entitlement to reception conditions is governed by national law and should therefore be similar in all cantons, but the implementation of those national provisions is largely dependent on cantonal regulation and varies in practice.

Admissibility procedure (including Dublin) or fast-track examination (48h procedure)

According to national law, asylum seekers whose application may be dismissed without proceeding to a substantive examination,[292] or rejected within the 48-hour procedure,[293] 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.[294] 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.[295]

However, in practice asylum seekers are often assigned to a canton even in case of dismissal or 48-hour procedures. Based on the argument of an imminent transfer or return, asylum seekers whose application is likely to end up within one of these two procedures will mostly be transferred in shelters dedicated to such types of procedures. Those shelters are known for their Spartan housing conditions, which are supposed to support the Swiss political policy of making the country less attractive.[296]

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.[297] 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.[298] Asylum seekers benefit from accommodation, social assistance, health care and education for children under 16.[299] Asylum seekers in the test phase are not entitled to work.[300] Like in

292 See sections on Dublin and Admissibility Procedure.
293 In case of certain safe countries of origin, see section on Regular Procedure: Fast-Track Processing.
294 Article 27(4) AsylA.
295 Article 16b AO1.
296 SEM, *Bénéficiaires de longue durée de l'aide d'urgence* (Long-term beneficiaries of emergency aid), Rapport final, February 2012, available in French at: http://bit.ly/1TNcnLP.
297 See section on Accelerated Procedure.
298 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.
299 The canton of Zurich is responsible for providing for health insurance and education for asylum seekers present in the test centre on the cantonal territory, with support from the Confederation (Article 31(3)-(4) OTest).
300 Article 29 Test Phases Ordinance.

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

Airport procedure (border procedure)

When an asylum seeker applies for asylum at the airport of Geneva or Zurich, the Swiss authorities must decide whether to permit entry into Switzerland within 20 days.[301] If entry into Swiss territory is allowed, the asylum seeker is assigned to a canton and is entitled to regular reception conditions. If entry is refused, the SEM shall provide persons with a place of stay and appropriate accommodation until they leave the country.[302] 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.[303]

Appeal procedure

The appeal procedure is part of the overall procedure and does not affect the entitlement to material reception conditions. Restrictions occur at the moment when the decision becomes enforceable, which means either at the moment the appeal authority rejects the appeal, or when the deadline for appeal expires. There should therefore be no change of reception conditions during the appeal procedure, neither regarding accommodation, nor regarding social assistance benefits.

Subsequent applications: application for re-examination, revision or subsequent applications

Swiss law provides for the restriction of reception conditions during the procedure for subsequent applications or applications for revision or re-examination. Therefore, persons in such procedures are excluded from receiving social assistance (as they are subject to a legally binding removal decision for which a departure deadline has been fixed) and receive only emergency aid for the duration of a procedure.[304] 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.[305] The level of accommodation conditions depends on the cantonal practice.

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

It only happens in very rare cases that persons are temporarily left without accommodation. In November 2015, the media made public that there were around 10 male asylum seekers in the city of Biel in the canton of **Berne** who were homeless after having been banned from a centre from some time, after having been released from detention or having been absent for some time. Due to the increased numbers of asylum seekers, the canton of Berne (among other cantons) has had to find additional accommodation for asylum seekers, such as private accommodation, hotels, apartments, holiday homes. [306]

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301 For details on the airport procedure see section Border Procedure.
302 Article 22(3) AsylA.
303 Article 22(5) AsylA.
304 The legal basis for the restriction is Article 82(2) AsylA (in force since 1 February 2014). For the reception conditions under the emergency aid scheme, see Forms and Levels of Material Reception Conditions.
305 For more information on subsequent applications, see section on Subsequent Applications.
306 Der Bund, 'Obdachlose Asylbewerber in Biel' (Homeless asylum seekers in Biel), 28 November 2015, available in German at: http://bit.ly/2jmqRXW.

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.[307] While those cases cannot be excluded, they remain to our knowledge limited in number.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers and temporarily admitted persons on average, as of 31 December 2017 (in original currency and in €):
   CHF 1,119 / 1,041 €

Social assistance for asylum seekers includes cover of basic needs such as food, clothes, transportation and general living costs, in the form of allowance or non-cash benefits, accommodation, health care and other benefits related to specific needs of the person. National law specifically provides for accommodation in a federal or cantonal centre,[308] social benefits in the form of non-cash benefits whenever possible, or vouchers or cash.[309] Limited health insurance also ensures access to medical care according to Article 82a AsylA (see section on Health Care).

Accommodation

The provision of accommodation facilities is governed by Article 28 AsylA, according to which the authorities (SEM or the cantonal authorities) may allocate asylum seekers to a place of stay and provide them with accommodation. The Confederation and the cantons each have their own accommodation facilities, which vary (see Types of Accommodation).

Food and clothing are not specifically mentioned in the law, even though they may be provided in the reception centres. In the federal centres, meals are served 3 times a day, on a regular schedule. Asylum seekers who do not show up at meal time will have to wait for the next service. Cantonal centres have their own systems, depending on the type of accommodation centres and the nature of social benefits (cash or non-cash benefits). The amount of daily financial allowance (including vouchers) varies according to the internal organisation of each centre and to the possibility to receive daily meals in kind. Clothing distribution is also regulated at a local level, in collaboration with NGOs. This support is part of the non-cash benefits of the social assistance.

Asylum seekers are provided with accommodation during the entire procedure. Accommodation is included in the right to social benefits. Asylum seekers do not have a choice regarding the allocated place of stay and will usually be moved from one centre to another during the entire procedure (first after the cantonal allocation, then within the canton according to their individual situation). In most cantons, rejected or dismissed asylum seekers are regrouped in specific centres regulated under the emergency aid scheme.

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.[310] The provision on social benefits is under the responsibility of the Confederation as long as the person is

307 Le Courrier, 'Les critiques pleuvent sur l'EVAM qui se défend' (The critics confront EVAM which defends itself), 6 October 2014.
308 Article 28 AsylA.
309 Articles 81 and 82(3) AsylA. National provisions on social assistance and emergency aid for asylum seekers are in Chapter 5 AsylA. The AO2 on Financial Matters provides important precisions on the financing of welfare benefits.
310 Article 81 AsylA.

staying in a federal reception and processing centre. After allocation to a canton, the canton shall provide social assistance or emergency aid on the basis of Article 80 AsylA. Fixing of the amount, granting and limiting welfare benefits are regulated by cantonal law when it falls under cantonal responsibility.[311] This results in large differences of treatment among cantons.

Social assistance globally includes all the costs related to basic living (more than $^1/_3$ of social costs), housing costs (a bit less than $^1/_3$ of social costs), health costs (a bit less than $^1/_3$ of social costs) and other costs resulting from a special situation (around 6%).[312] The reception and processing centres provide for most of the first necessity goods in kind, which are food, clothes, toiletries and first aid care. As a consequence, the additional financial allowance in the federal centres is relatively low with 3.- CHF a day, paid once a week. In the federal centre in **Vallorbe** for instance, the payment occurs on Thursday and requires the asylum seeker to be present, otherwise the amount of 21.- CHF is lost. The financial allowance remains at the disposal of asylum seekers for telephone cards, cigarettes, coffee, internet access, printing documents, etc.

It should be noted that the granting and the amount of financial allowance depends on whether the person is entitled to full, partial or no social benefits according to their income. According to national statistics on social assistance, 94.3% of all asylum seekers received social benefits on 30 June 2015. 94% of the asylum seekers and temporarily admitted persons who got social benefits on 30 June 2015 received social assistance as their only support.[313] This high percentage reflects the prohibition of work during the first 3 to 6 months of the asylum procedure (see section on Access to the Labour Market). However, there are also persons who work who continue to rely on social assistance as they do not earn enough.[314]

On national average, beneficiaries subjected to asylum law (asylum seekers and temporarily admitted persons) monthly received an average of 1,119.- CHF of net income to cover their needs as of June 2015. 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.[315] 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.[316]

Asylum seekers are also entitled to child allowances for children living abroad. These are however withheld during asylum procedures and shall be paid only when the asylum seeker is recognised as a refugee or temporarily admitted in accordance with Article 83(3)-(4) FNA.[317]

Emergency aid

Persons subject to a legally binding removal decision for which a departure deadline has been fixed are excluded from receiving social assistance.[318] This exclusion from social assistance also extends to persons in a subsequent procedure (application for re-examination, revision or subsequent application).[319] 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

311 Article 3(2) AO2.
312 Federal Office for Statistics, *Statistique de l'aide sociale dans le domaine de l'asile (eAsyl), Résultats nationaux 2015* (Social assistance statistics in the asylum domain, national results 2015), Neuchâtel, August 2016, available in French at: http://bit.ly/2jYq6oY, 23.
313 *Ibid*, 6.
314 *Ibid*, 51ff.
315 *Ibid*, 27.
316 Article 82(3) AsylA.
317 Article 84 AsylA.
318 Article 82(1) AsylA.
319 Article 82(2) AsylA.

must entail in order to respect human dignity.[320] But the concrete fixing and granting of the emergency aid is regulated by cantonal law, which results in large differences of treatment between asylum seekers. In some cantons this task is delegated to municipalities or relief organisations.[321] The Confederation compensates cantons for the assistance costs.

Like social benefits, emergency aid is provided in the form of non-cash benefits wherever possible. Persons under emergency aid are housed in specific shelters (often underground bunkers or containers, with access sometimes restricted to night time), where living conditions are reduced to a minimum and are known to be quite rough.[322] Under emergency aid, people may have to live with around 8.- CHF a day, which must cover the expenses for food, transportation, household items and any other needs. This amount is ridiculously low in comparison with the high living costs in Switzerland. Further restriction is currently applied by granting the entire amount in the form of non-cash benefits or vouchers (which can only be used in one particular supermarket chain), as it is encouraged by the national legislation.

This restriction of reception conditions raises serious problems for asylum seekers whose (subsequent) procedure is still running. Long term stay under emergency aid is known to be disastrous for the integration (or disintegration) and health of asylum seekers, despite the chance of being granted a legal status at the end of the procedure.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions? ☒ Yes ☐ No
2. Does the legislation provide for the possibility to withdraw material reception conditions? ☒ Yes ☐ No

National law provides for the possibility to refuse (completely or partially), reduce or withdraw social benefits under explicit and exhaustive conditions. General restriction conditions of social benefits are foreseen in Article 83(1) AsylA, which provides for partial or total withdrawal of material reception conditions where the asylum seeker:

(a) Has obtained them or attempted to obtain them by providing untrue or incomplete information;
(b) Refuses to give the competent office information about their financial circumstances, or fails to authorise the office to obtain this information;
(c) Does not report important changes in his or her circumstances;
(d) Obviously neglects to improve his or her situation, in particular by refusing to accept reasonable work or accommodation allocated to him or her;
(e) Without consulting the competent office, terminates an employment contract or lease or is responsible for its termination and thereby exacerbates his or her situation;
(f) Uses social benefits improperly;
(g) Fails to comply with the instructions of the competent office despite the threat of the withdrawal of social benefits;
(h) Endangers public security or order;

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

321 Contact details of cantonal coordination offices for asylum issues are available at: http://bit.ly/1LtvLuH. See also practice in the Canton of Vaud: *Guide d'assistance 2013 : recueil du Règlement du 3 décembre 2008 sur l'assistance et l'aide d'urgence octroyées en application de la loi sur l'aide aux requérants d'asile et à certaines catégories d'étrangers et des directives du Département de l'intérieur en la matière / EVAM Etablissement vaudois d'accueil aux migrants* (Assistance Guide 2013: Overview of Regulation of 3 December 2008 on the assistance and emergency aid granted in application of the law on assistance to asylum seekers and certain categories of foreigners and directives of the Department of the Interror / EVAM), available in French at: http://bit.ly/1eGZqTZ.

322 For more information on this subject, see Christian Bolliger, Marius Féraud, Büro Vatter AG (Politikforschung & -beratung), *La problématique des requérants d'asile déboutés qui perçoivent l'aide d'urgence sur une longue période* (The problem of rejected asylum seekers who receive emergency aid over a long period of time), Bern, 26 May 2010, available in French at: http://bit.ly/1N9NXqE.

(i) Has been prosecuted or convicted of a crime;
(j) Seriously and culpably fails to cooperate, in particular by refusing to disclose his or her identity; or
(k) Fails to comply with the instructions from staff responsible for the proceedings or from the accommodation facilities, thereby endangering order and security.

Restriction patterns are related to the obligation of the asylum seeker to collaborate with the authorities for the establishment of the facts (identity, financial situation, etc.), to reduce the reliance on social benefits by being ready to participate in the economic life, to reduce living expenditures, and to conform with Swiss law generally.

Emergency aid is however an unconditional right for everyone present on Swiss territory and unable to provide for himself. The exclusion from social assistance does not impact on the entitlement to emergency aid. Even though reception conditions are not ideal, every asylum seeker (even dismissed or rejected) should find an accommodation place during their stay in Switzerland and be able to provide for their own needs.

The Asylum Act also provides for the possibility to exclude persons from a registration centre (or a remote location) who, through their behaviour, endanger others in that centre, disturb the peace or refuse to obey staff orders. The exclusion can however not exceed 24 hours and is subject to a decision made by the SEM.[323]

An internal directive on disciplinary rules within federal centres provides for other kind of disciplinary sanctions:[324] 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.[325]

Specific centres for uncooperative asylum seekers

The urgent revision of the Asylum Act in September 2012 introduced a legal basis for the creation of specific centres for uncooperative asylum seekers. Article 26(1bis)-(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. However, it is planned that the first such centre will be opened in Les Verrières, Canton of **Neuchâtel** in 2018.[326]

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.[327] 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.

323 Article 13 Ordinance of the DFJP on the on the management of federal reception centres in the field of asylum.
324 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.
325 NCPT, *Report 2014*, 11, para. 37.
326 SEM, Information confirmed by email, 12 January 2018.
327 Article 16b(1) AO1.

Grounds for assignment to a specific centre are defined in Article 16b(1)-(3) 3 AO1. According to this provision, a person can be assigned to a specific centre if he or she is in a reception and processing centre and endangers public security and order or who by his or her behaviour seriously disrupts the normal operation of the reception and processing centre. A danger to public security and order is assumed if there are concrete indications that the behaviour of the asylum seeker will with great probability lead to a breach of public security and order.

A serious disruption of the normal operation of the reception and processing centre is assumed in three situations:

- First, if the asylum seeker seriously violates the house rules of the centre, especially if they have weapons or drugs, or if they repeatedly disregard a ban to leave the centre.
- Second, if the person defies the instructions for behaviour by the head of the centre or their deputy and by this behaviour namely repeatedly disturbs, threatens or endangers the staff or other asylum seekers.
- Thirdly, if the person repeatedly hinders the normal conduct of the centre, especially by refusing to do housework or disregarding sleeping hours. The wording of this provision is very vague and therefore leaves a considerable discretion to the authority. As mentioned before, no specific centre has been opened so far, so there is no practical experience with the application of the mentioned criteria.

4. Freedom of movement

Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country? ☒ Yes ☐ No
2. Does the law provide for restrictions on freedom of movement? ☒ Yes ☐ No

4.1. Dispersal across cantons

Asylum seekers who have not received a final decision on their application after 90 days are assigned to one of the 26 Swiss cantons according to a distribution key. The distribution key is laid down in Article 21(1) AO1 and allocates a certain percentage of asylum seekers to each canton according to its population (for example **Zurich**: 17%, **Lucerne** 4.9%).

Article 22 AO1 states that the SEM distributes the asylum seekers as equitably as possible among the cantons, taking into account family members already living in Switzerland, nationalities and cases requiring particular care. In accordance with Article 27(3) AsylA, when allocating an asylum seeker to a canton, the SEM shall take into account the legitimate interests of the cantons and the asylum seekers. However, this provision also states that asylum seekers may only contest the decision on allocation to the Federal Administrative Court if it violates the principle of family unity. In practice, the interests of the asylum seekers are hardly taken into account (except for family unity regarding core family members). This system is problematic, as it fails to seize opportunities that would facilitate integration, such as language or further family ties. For example, the allocation strictly according to the distribution key often leads to French speaking African asylum seekers being allocated to a German language canton, which makes integration much more difficult. Applications to change one's canton based on other than (core) family unity grounds are hardly ever successful.

Following the allocation to the canton, cantonal authorities become responsible for the provision of material reception conditions. They provide for accommodation in a cantonal centre as well as for social or emergency assistance to all persons present on their territory, whether legally or illegally. They may delegate implementation competences to municipalities.

Cantonal reception conditions are regulated by cantonal legislation and differ significantly from one canton to another. Therefore the allocation to a canton may result in large inequality in terms of material

reception conditions. The type of accommodation facilities, as well as the amount of financial allowance is specific to each canton. Some cantons are known to be restrictive in terms of reception conditions, or even lacking adapted structures for the needs of vulnerable persons.[328]

4.2. Restrictions on freedom of movement

Federal reception and processing centres

As long as asylum seekers stay in a federal centre, they are submitted to the semi-closed regime of all federal centres (reception and processing centres and remote locations). Exits are only possible with a written authorisation delivered by the SEM once fingerprints and a photograph of the asylum applicant have been taken.[329] Exit hours are strictly regulated in the ordinance, so that asylum seekers can go out from 9am to 5pm during the week (from Monday to Friday). They are allowed to stay out during the weekend from 9am on Friday until 7pm on Sunday.[330] Opening hours are substantially larger at the test centre in **Zurich**.[331]

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.[332] Article 12 of the Ordinance of the DFJP lists three such situations:
(a) When the person needs to be present in order to proceed with steps in the asylum procedure;
(b) When the person is required to participate in maintenance work of the premises; or
(c) When the person has violated his or her obligation not to disturb the peace within the centre.

Prohibition to leave the centre is not subject to a formal or written decision unless the prohibition lasts for more than one day. For a longer period, the asylum seeker must – upon request – receive a formal decision which he or she can appeal.[333]

An internal directive on disciplinary rules within federal centres provides for other kinds of disciplinary sanctions:[334] denial of exit permits, elimination of pocket money, ban on entering specific spaces, exclusion from the assigned centre and transfer to another centre.[335]

Some federal centres have a so called “reflection container”, installed within a short distance from the centre itself. These containers are intended for emergencies (pending the arrival of the police) to receive recalcitrant asylum seekers for them to calm down. During their visits, the delegations of the NCPT found that the use and purpose of these containers are not defined in any law or directive. It is thus required that those containers are not used for disciplinary reasons.[336]

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328 These large differences in treatment occur despite a fixed compensation system from the Confederation to the cantons. For details on the costs sharing system, see AO2.
329 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.
330 Asylum seekers assigned to a specific centre for uncooperative asylum seekers are not allowed to leave the centre during the weekend. Exit hours are from 9am to 5pm every day of the week.
331 From Sunday to Thursday, asylum seekers in the test centre in Zurich must return at 8pm, on Friday and Saturday at 10:30pm. They have the right to leave on Friday and return on Sunday by 8pm.
332 See Article 12 Ordinance of the DFJP.
333 Article 12(3)-(4) Ordinance of the DFJP.
334 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.
335 NCPT, *Report 2014*, 11, para 37.
336 NCPT, *Report 2014*, 11, para 39.

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

a. In case of threat to public security and order. This measure is intended to serve in particular to combat illegal drug trafficking;
b. If he or she has a final negative decision and specific indications lead to the belief that the person concerned will not leave before the departure deadline or has failed to observe the departure deadline. This provision could apply to asylum seekers in the Dublin procedure, as from a perspective of national law they are dismissed asylum seekers;
c. If the expulsion has been postponed due to specific circumstances such as medical reasons. This could also apply to asylum seekers with a Dublin transfer decision.

However, we do not have information on the practical relevance of this provision for asylum seekers. On the other hand, this has been practiced in certain cantons such as **Zurich** in the case of rejected asylum seekers under the emergency aid regime.[337]

In a 2017 report to the Commission Federal against Racism, Kiener and Medici concluded in their report that the current regulation of exit hours is too far-reaching in terms of personnel and time (social exchange and employment opportunities are severely restricted; even more so due to the remote location of the centres) and is therefore disproportionate.[338] It would on the contrary be possible to use milder means (obligation to notify when leaving and returning or general initial authorisations), in order to monitor the movements of asylum seekers without impinging on their personal freedom. The Federal Court has not yet commented on the proportionality of these regulations.

The centres are operated by private providers, which means that there are great management differences in practice. The same legal requirements apply, but the operating rules are different. Based on the legal report, the Federal Commission against Racism states that interventions by the providers are attributable to the State, which is thus responsible for protecting the fundamental rights of asylum seekers.

A report published in August 2017 by the Swiss Center of Expertise in Human Rights (SCHR) deals in detail with the question of when certain restrictions on the freedom of movement of asylum seekers associated with accommodation should be classified as detention.[339] The demarcation between restriction of liberty and deprivation of liberty is gradual and depends on the individual case and various factors. The intensity of the intervention can be regarded as a criterion for differentiation. Like the ECtHR, the Federal Court assumes a combination of temporal and spatial factors. In addition, qualitative criteria are also decisive.

Such criteria could be the existence of reporting obligations, the extent of supervision and surveillance, the organisation of the disciplinary regime or, in particular, the possibility of maintaining social contacts. The latter includes not only the exit hours, but also visiting hours and other communication options. The visiting hours are daily from 2 pm to 4:30 pm, but visitors are only allowed to enter the centres if they have a relationship to an asylum seeker and with the approval of the personnel. The cell phone ban in the centres was lifted in November 2017.

The study concludes that the accommodation in the reception and processing centres does not reach the intensity level of a deprivation of liberty if the daily possibility to leave the centre is guaranteed and if

337 Federal Court, Decision 2C_287/2017, 13 November 2017.
338 Regina Kiener and Gabriela Medici, 'Asylsuchende im öffentlichen Raum' (asylum seekers in the public space), Rechtsgutachten im Auftrag der Eidgenössischen Kommission gegen Rassismus EKR, February 2017.
339 Swiss Center of Expertise in Human Rights (SCHR), 'Freiheitsentzug und Freiheitsbeschränkung bei ausländischen Staatsangehörigen - Dargestellt am Beispiel der Unterbringung von Asylsuchenden in der Schweiz', written by Künzli Jörg/Frei Nula/Krummen David, 21 August 2017.

there are no further restrictions. So although there is not clear definition, we would rather suggest not to qualify the stay in the ordinary federal reception and processing centres as de facto detention.

Remote locations

It is more difficult to distinguish between deprivation of liberty and restriction of liberty in the case of remote locations, given the lack of possibilities of social contacts with people outside the centre. The location of the centre is decisive for the question of whether restrictions amount to *de facto* deprivation of liberty. Accommodation on a mountain pass, for example, from where the nearest lively town can only be reached by means of transport that asylum seekers cannot afford, is generally to be considered a deprivation of liberty in accordance with the case-law of the ECtHR.[340] In individual cases, the characteristics of a specific accommodation can lead to difficulties even in the case of less remote centres. Such is the case if, for example, a person's physical condition makes it more difficult to establish social contacts: this could happen to vulnerable persons such as children, the elderly or physically handicapped persons. Not only social contacts, but also access to legal assistance can be rendered difficult by the location of the centre.

The problem arises in particular with the remote locations of the reception and processing centres, which are usually located in former military facilities outside of larger towns and villages. As of 31 December 2017, there were 780 places in the seven branches. In the previous year, there were still 1732 places in 12 remote locations. Due to the decrease in the number of asylum applications, in 2017 the average occupancy rate was only 41%.[341]

In conclusion, even though there is no clear definition, for the purpose of this report the accommodation in the remote locations could be qualified as *de facto* detention (see Detention of Asylum Seekers).

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1.	Number of federal reception centres:	6
2.	Total number of places in the federal reception centres:[342]	2,638
3.	Total number of places in private accommodation:	Not available

4. Type of accommodation most frequently used in a regular procedure:
   ☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☒ Private housing ☐ Other

5. Type of accommodation most frequently used in an accelerated procedure:
   ☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other

While the Confederation is responsible for setting up and running the 6 reception and processing centres as well as their related “remote locations”, cantons are in charge of their own reception centres. Asylum applications are lodged exclusively in the federal centres, where the first steps of the procedure take place.

As a general comment on the reception issue, it should be noted that cantonal reception structures were reorganised in 2007, after the DFJP decided to reduce financial allocation to the cantons, based on a temporarily lower number of asylum seekers. Rising numbers of arriving asylum seekers in the following years, and within short periods of time in 2014 and 2015, have presented a challenge to the cantons.

340 ECtHR, *Stanev v. Bulgaria*, Application No 36760/06, Judgment of 17 January 2012.
341 SEM, information provided by email, 12 January 2018.
342 Only at Federal level. This figure includes the places in the following types of accommodation: the 6 federal reception and processing centres, the so-called remote locations centres, the 2 test centres of Zurich and the 2 international airport: SEM, Information provided by email, 12 January 2018.

Many cantons subsequently had to increase their reception capacity, and the use of underground bunkers increased. However, as the number of asylum seekers decreased in 2016 and 2017, there is currently no longer a challenge regarding reception capacity.

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,[343] the situation in such shelters seems largely unsatisfactory for asylum seekers who are still in a procedure. Single men are mostly affected, although there are sometimes also families who are accommodated in bunkers. In **Geneva**, in 2015 a protest committee has formed against accommodation of asylum seekers in underground bunkers.[344] As asylum claims have notably decreased since 2016, the situation seems to have improved as the average occupancy rate at the end of 2017 was 51% in the 6 reception and processing centres and 41% in the 12 remote locations centres in activity during the year.[345] Despite this significant decrease, it has to be pointed out that the federal authorities have partially continued to resort to civil protection shelters as well as remote locations.

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

1.1. Federal reception and processing centres[346]

After entering Switzerland, persons in need for protection mostly go to one of the 6 reception and processing centres to lodge an asylum application. Asylum seekers spend the first weeks/months (up to 90 days according to the Asylum Act) in those centres, until they are assigned to a canton.

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

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

The accommodation capacity of the federal centres was 1,438 beds. At the end of 2017, the occupancy rate of the 6 federal reception and processing centres was 51%.[347]

The running of the centres and security matters are entrusted to private companies.[348] 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 section on Freedom of Movement.

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

344 See: http://stopbunkers.wordpress.com/.

345 SEM, Information provided by email, 18 January 2018.

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

347 Only at Federal level: SEM, Information provided by email, 12 January 2018.

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

1.2. Remote locations

The emergency law adopted in September 2012 introduced the ability for the Confederation to open new accommodation facilities in order to reduce the number of applicants assigned to the cantons. If necessary, the SEM can therefore decide to open new reception and registration centres or – in case of an extraordinary influx of asylum seekers – external hosting centres (such as civil protection facilities).[349] While in February 2016, there were approximately 20 remote locations in different regions, their number was only 12 at the beginning of 2017. Finally, 8 federal remote locations centres are in activity at the beginning of 2018.[350]

All remote locations are located in former military shelters. The National Commission for the Prevention of Torture (NCPT) considers that these military installations are only suitable for short stays of up to 3 weeks.[351] In practice, people stay longer. National law even provides for a maximum stay of 12 months.[352] As in the federal reception and processing centres, the regime is semi-closed.

The Federal Council together with the cantons and towns is preparing an emergency plan in order to be able to provide for 3,000 additional reception places in case of a quick and significant rise in asylum applications.[353]

1.3. Specific centres for uncooperative asylum seekers

The opening of specific centres for uncooperative asylum seekers is foreseen by the Asylum Act under Article 26(1bis) and Article 16b AO1. None has been opened yet, but one is planned in Les Verrières, Canton of **Neuchâtel**, for 2018 (for more information and a definition of uncooperative asylum seekers, see section on Reduction or Withdrawal of Reception Conditions).

1.4. Test centres

The SEM opened a test centre in Zurich to test new asylum procedures. Asylum seekers are randomly attributed to the test procedures after lodging an asylum application in one of the regular reception and processing centres.[354] Current reception capacity amounts to 300 beds. At the beginning of 2017, an additional federal reception centre opened in **Embrach**, canton of Zurich, with a capacity of 120 places. This centre is also run in the context of the test procedure, and has the function of a so-called "departure centre", housing rejected asylum seekers until they leave Switzerland.[355] On the same model, the SEM planned the implementation of another pilot phase in the federal centres of **Boudry** (canton of Neuchâtel) and **Chevrilles** (canton of Fribourg), both located in the French-speaking part of the country. This new pilot project, also based on the accelerated procedure, will start in April 2018.

1.5. Reception centres at the cantonal level

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

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349 Article 26a AsylA and Article 16a AO1.
350 SEM, Information provided by email, 12 January 2018.
351 NCPT, *Report 2014*, 8, para 26.
352 Article 16a AO1.
353 Federal Council, 'Notfallplanung Asyl: Mögliche Nutzung militärischer Hallen in Brugg', 6 December 2016, available in German at: http://bit.ly/2j0zuZH.
354 See Accelerated Procedure.
355 SEM, 'Bundesasylzentrum Embrach (ZH) eröffnet 2017', 7 November 2016, available in German at: http://bit.ly/2jV7sOp.

Some cantons (**Appenzell Innerrhoden**, **Glarus**, **Zug**, **Aargau**) house asylum seekers mostly in collective centres, while others make fewer use of collective structures (**Ticino**, **Basel-City** and **Appenzell Ausserrhoden**). Overall, 52% of asylum seekers and temporarily admitted persons receiving social assistance are housed in individual accommodations, 45% in collective centres and the remaining 3% in other types of housing (includes institutions, staying with relatives etc.)[356]

Many cantons organise the accommodation structure in 2 phases: the first one in collective shelters, the second in private accommodation. The moment asylum seekers are transferred in individual accommodation depends on the canton of allocation and its accommodation capacity.[357]

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☐ Yes ☒ No
2. What is the average length of stay of asylum seekers in the reception centres?[358] 34.4 days
3. Are unaccompanied children ever accommodated with adults in practice? ☒ Yes ☐ No

2.1. Conditions in federal reception centres

In the reception and processing centres, asylum seekers are usually housed in single-sex dorms. Places to rest or get isolated are mostly inexistent. Rooms contain at a minimum two or three beds (usually reserved for couples and families) and up to several dozens of beds each, equipped with bunk beds. Asylum seekers are responsible for cleaning their rooms. The National Commission for the Prevention of Torture (NCPT), however, regrets that the shared rooms are not cleaned more regularly.

Asylum seekers share common showers and toilet facilities which are poorly equipped in terms of privacy. The NCPT also observed that some centres have a real lack of sanitary equipment. Sanitary facilities may be very dirty according to the delegations of the NCPT. Ventilation is a common problem, especially in the sanitary facilities, but also within the entire centres.[359]

As a general remark, federal centres were often reported to be overcrowded in the last years, which led to a rise of tension among asylum seekers. However, as asylum claims have notably decreased since 2016, the situation seems to have improved as the average occupancy rate was 51% in the 6 reception and processing centres and 41% in the remote locations, at the end of 2017.[360]

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.[361] 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.[362] 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

356 Federal Office for Statistics, *Statistique de l'aide sociale dans le domaine de l'asile (eAsyl), Résultats nationaux 2015* (Social assistance statistics in the asylum domain, national results 2015), Neuchâtel, August 2016, 20.
357 *Ibid*, 20.
358 SEM, Information provided by email, 9 February 2018.
359 For a more detailed description of each centre, see NCPT, *Rapport à l'attention de l'Office fédéral des migrations sur la visite de la Commission nationale de prévention de la torture dans les centres d'enregistrement et de procédure de l'Office fédéral des migrations*, Bern, 24 July 2012 ('NCPT Report 2012'), available in French at: http://bit.ly/1HdL0qK, 10ff.
360 SEM, information provided by email, 12 January 2018.
361 *Ibid*, 10.
362 Article 4(1) Ordinance of the DFJP on the management of federal reception centres in the field of asylum.

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.[363]

In its 2014 report on remote locations, the NCPT considers that despite the short length of stay, the special needs of children and families should be taken into account appropriately.[364] For example, the Commission criticised 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.[365]

Asylum seekers are subject to body-search by security personnel every time they enter or go out of the centres. Security personnel is also authorised to seize goods when asylum seekers enter or go out of the centre.[366]

Asylum seekers are required to participate in domestic work on request of the staff. Household tasks are shared between all asylum seekers according to a work breakdown schedule. The permission to leave the centre is denied until the given tasks have been accomplished. Generally, maintenance is provided by third parties, namely for cleaning tasks and the cooking as well as security tasks.[367] 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. In July 2016, a pilot project with Muslim chaplains was started in the test centre in **Zurich**.[368]

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.[369] The occupational programmes must respond to a local or regional general interest of the town or municipality. They must not compete with the private sector. They include work in protection of nature and the environment or for social and charitable institutions. Examples are cutting trees or hedges, fixing rural pathways, cleaning public spaces. There is no right to participate in occupational programmes. In case of shortage of places in the occupational programmes, places are distributed according to the principle of rotation of the participants. An incentive allowance may be paid to the asylum seeker. This amount is very low and can therefore not be

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

364 As the NCPT has extended its control activity to federal centers for asylum seekers since 2017, a yearly report will be published every year. See on the website of the NCPT available in French at: http://bit.ly/2n5uDFZ.

365 NCPT, Report 2014, 8, para. 27, 36.

366 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).

367 The SEM delegates the task of managing the operation of reception and processing centres to third parties under Article 26(2-ter) AsylA. 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).

368 SEM, 'Pilotprojekt für muslimische Seelsorge in Bundesasylzentren gestartet', 4 July 2016, available in German at: http://bit.ly/2j0EUDT.

369 Article 6a Ordinance of the DFJP.

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.[370]

2.2. Conditions in the test centres

As a model example of the proposed amendment for restructuring the whole asylum system, the federal centre in **Zurich** is known to offer relatively good reception conditions to asylum seekers. Most rooms accommodate two asylum seekers, some accommodate four to six asylum seekers. Some rooms are reserved for families, unaccompanied children and other vulnerable persons. The centre is equipped with internet facilities, sport equipment and the personnel offer German courses to the asylum seekers. Children directly join a class in the centre upon their arrival.[371] See the section on Access to Education for more information.

With regard to the so-called "departure centre" in **Embrach** in activity since March 2017, it can be emphasised that the reception conditions are relatively similar to those prevailing in the Zurich test centre with the notable exception of a more stringent security regime. Thus, the access and opening hours in the centre are more restricted while room checks appear to be more frequent and carried out during the evenings. According to Swiss Refugee Council's expert, the main reason of this discrepancy regarding the regime security between the two centres could be found in the fact that two different private companies are in charge of the security. Be that as it may, it appears that the model established in the centre of Embrach should be extended to the entire new procedures system by 2019.[372]

2.3. Conditions in cantonal-level facilities

As explained under the section on Types of Accommodation, reception conditions differ largely from on 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 some cantons have specific reception centres for unaccompanied children (e.g. **Vaud**, **Berne**, **Zurich**, **Basel**, **Argovia**). Generally speaking, asylum seekers benefit from less restrictive measures in the cantonal centres compared to the federal centres, as they mostly can go out at their convenience, or cook for themselves for instance.

Asylum seekers are however frequently confronted with the remoteness of reception centres, which impedes them to meet with family members, acquaintances or even consult a legal representative if they do not have financial resources.

Regular protests have also occurred, especially in the canton of **Vaud** and in **Geneva** concerning the housing of asylum seekers in military shelters.[373] 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.

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

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

372 Information provided by the Swiss Refugee Council project coordinator for the test procedure, 12 January 2018.

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

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers? ☒ Yes ☐ No
   - ❖ If yes, when do asylum seekers have access the labour market? 3-6 months
2. Does the law allow access to employment only following a labour market test? ☒ Yes ☐ No
3. Does the law only allow asylum seekers to work in specific sectors? ☒ Yes ☐ No
   - ❖ If yes, specify which sectors: Building, housing, hotel and food sectors (in Zurich)
4. Does the law limit asylum seekers' employment to a maximum working time? ☐ Yes ☒ No
   - ❖ If yes, specify the number of days per year
5. Are there restrictions to accessing employment in practice? ☒ Yes ☐ No

According to national legislation,[374] asylum seekers cannot engage in any gainful employment during the first 3 months after filing an application for asylum. The canton of attribution may extend this restriction for a further 3 months if the asylum application is rejected at the first instance within the first 3-month period.[375] After this time limit, asylum seekers are allowed to work if the following conditions are met:

- The general economic and employment situation must allow it;
- An employer must request to employ an asylum seeker;
- The salary and employment conditions customary for the location, profession and sector are fulfilled; and
- It must be established that no other Swiss or EU/EFTA resident or foreign national with a residence permit with the required profile can be found for the job.[376] 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.[377]

The cantons can limit access to work to certain sectors.[378] 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.[379]

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

Issuance of working authorisation is under the competence of cantonal authorities and is subject to large variations in practice. Moreover, practice shows that it is very difficult for asylum seekers to access employment because of practical impediments. In addition to the priority of other persons seeking employment, the temporary nature of the legal status of the asylum seeker makes it very difficult to establish the stability requested to find and perform a job. Allocation to a canton also reduces the

374 Article 43 AsylA.
375 Article 43(1) AsylA.
376 Article 52 Ordinance on Admission, Period of Stay and Employment.
377 Article 43(4) AsylA.
378 FOM, Directive to the Foreign Nationals Act, Section 4.8.5.5.4, available in French at: http://bit.ly/1fAG3fh.
379 Canton of Zurich, Office for Economy and Labour, available at: http://bit.ly/1fAG7M6.

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

Special charge

The special charge has been abolished as of 1 January 2018. Previously, the issuance of an authorisation to work by cantons was subject to the payment of a special charge (10% of the income) established by national law for the reimbursement of social assistance benefits, departure and enforcement costs as well as the costs of the appeal procedure.[380]

Average incomes of asylum seekers are particularly low, as they often only find work in low-paid jobs. As explained under Forms and Levels of Material Reception Conditions, some asylum seekers continue to depend partially on social assistance even after they have found work, because of the insufficient level of income.

At the test centre in Zurich, asylum seekers are not allowed to work during the entire procedure as long they are in the accelerated procedure (see section on Criteria and Restrictions to Access Reception Conditions).[381]

2. Access to education

Indicators: Access to Education		
1.	Does the law provide for access to education for asylum-seeking children?	☒ Yes ☐ No
2.	Are children able to access education in practice?[382]	☒ Yes ☐ No

2.1. Compulsory education

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

The test centre in Zurich is for the moment an isolated case, since it provides an internal school for all asylum seekers from 4 to 16 years of age from the moment of their arrival. The educational programme of the internal school is oriented towards the one of integrative classes of public schools. The classes are accompanied and supervised by the school commission of the district.[383]

In Switzerland, regulation of education is a cantonal competence, which implies a wide range of practices according to the canton (or even the municipality) the child is assigned to. In some cantons, children attend special classes for asylum seekers at their arrival (for example **Solothurn**), while others directly join the usual education system, mostly without knowing the language well (**Basel-City**). Some cantons organise special language classes for newly arrived asylum seekers (French, German or Italian according to the canton), until the children are able to join public school (**Berne**, **Zug**). In some cases, it also happens that children stay several weeks, or even months, until they can be integrated in an educational programme, depending on their canton of attribution, their municipality, their age or even their status (difficulties are more likely to arise during a dismissal or safe country procedure).

380 Articles 85 and 86 old AsylA.
381 Article 29a Test Phases Ordinance.
382 Access is very limited in the federal reception and processing centres.
383 AOZ (organisation running the accommodation centre in Zurich), information given by e-mail, 10 February 2015.

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.

2.2. Apprenticeship and studies

Lack of access to further education, in the form of an apprenticeship or studies, is an important problem in the integration process of asylum applicants over 16. Although the legislation allows asylum seekers to enter education programmes, many practical and administrative impediments deter potential employers to hire asylum seekers whose procedure has not been concluded yet. As asylum procedures may last for years, 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 apprenticeship[384] or to be accepted in a higher school, they can also be confronted with the problem of financing their study as they are excluded from the public scholarship programmes. Financing of post-compulsory education for asylum seekers is therefore highly dependent on the goodwill of cantonal and municipal authorities.

Some cantons adopted specific measures to bridge the educational gap that asylum seekers between 16 and 18 face. Such non-compulsory measures are highly dependent on the communal and cantonal authorities, as well as from NGOs like Caritas, which has set up some specialised programmes for young migrants in some cantons.

D. Health care

Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?
   ☒ Yes ☐ No
2. Do asylum seekers have adequate access to health care in practice?
   ☐ Yes ☒ Limited ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?
   ☐ Yes ☒ Limited ☐ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?
   ☒ Yes ☐ Limited ☐ No

According to national law, access to health care must be guaranteed for asylum seekers during the entire procedure and even longer, after dismissal or rejection of the application under the regime of emergency aid. Like most public allowances, health care falls within federal competence during the period spent in the reception and processing centre, while it becomes a cantonal one after the cantonal assignation. During the stay in a federal centre, asylum seekers should have access to all necessary medical and dental care, both basic care and emergency care.[385] Medical care within federal centres

384 The apprenticeship is the most common form of post-compulsory education in Switzerland. The apprentice learns a profession over 3 to 4 years within a company, while attending theoretical classes 2 days a week. First condition to access the apprenticeship is to get an apprenticeship contract with a company, which proves to be a difficult task even for young Swiss nationals.

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

are delegated to the company or organisation in charge of general logistics and management of the centres (see section on Types of Accommodation).

Upon arrival in the centre, asylum seekers must submit to a compulsory medical examination. They must fulfil a medical questionnaire, according to which more specific screenings will be processed (for instance tuberculosis screening in case of relevant symptoms). Paramedical staff may be present in the reception and processing centres in the daytime, but this is not always the case. When asylum seekers address medical issues, the staff (nurses in the best cases or employees of the organisation or company running the centre) first examine the gravity of the medical issue and decide to send the person to the doctor or hospital or not. The triage of cases is usually made by non-medical staff, namely by the company responsible for organisational matters during daytime and by the security company staff during night time. This first triage is problematic, as the staff does not have the requested medical knowledge to decide on medical issues.[386] 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.[387]

The national law provides for a generalised affiliation of all asylum seekers to a health insurance, according to the Federal Act of 18 March 1994 on Health Insurance.[388] 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.[389]

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.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

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

The issue of reception conditions for vulnerable persons has become a subject of concern in the last years, but little has been set up concretely to provide solutions. National law does not define the categories of persons who are considered as vulnerable. Only the obligation of identification of victims of human trafficking has been introduced in the Swiss legislation,[390] to respond to European requirements.[391] Except for that unique provision, situations of vulnerability often remain undetected unless they appear to be obvious (unaccompanied children, handicapped persons, seriously ill, etc.).

386 NCPT, *Report 2012*, 15.

387 Different views exist relating to this issue. For more infomation, see the 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, 11, paras. 4.2.1 and 4.2.2.

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

389 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.

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

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

Trauma is not regularly examined, due to the limited means available for medical personnel in the federal centres, among other factors.

Every asylum seeker is housed in a reception and processing centre, regardless of his or her situation of vulnerability. In terms of accommodation conditions, the Ordinance of the DFJP states that special needs of children, families and individuals in need of supervision are taken into account as far as possible in the allocation of beds.[392] Except for some arrangements for families and children in the reception and processing centres, little is done at the federal level. In the federal reception and processing centres, families are usually accommodated in separate rooms. Unaccompanied children are usually housed together with single women or single women with children.[393] In some of the remote centres, there is a lack of privacy for families, as all families are accommodated in one large room, separated only by bed sheets.

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

The compliance of cantonal structures with the needs of vulnerable persons is very variable, as no requirement is provided by national law. The SEM used to assign unaccompanied children to the cantons in which specific structures were set up. It now requires all cantons to provide for specific structures and announced that the cantonal attribution of unaccompanied children would occur according to the regular distribution key for asylum seekers (see section on Freedom of Movement), regardless of the existent structures. Unless all cantons consent to important efforts, this recent decision might be at the expense of vulnerable asylum seekers.

1. Reception of unaccompanied children

Accommodation for unaccompanied children still varies considerably among the cantons. Some cantons have specialised centres for unaccompanied children. Younger children are often accommodated in foster families or children's homes. Some cantons do not have specialised centres for unaccompanied children, and therefore some are accommodated in normal asylum seekers' centres together with adults. This is criticised by NGOs, as it does not provide an appropriate environment for the unaccompanied children and they are not cared for sufficiently. In May 2016, the Conference of the Cantonal Social Directors published recommendations on unaccompanied minor asylum seekers in order to work towards a certain uniformity.[394] Due to the increase in the number of unaccompanied minors 2014 and 2015, several cantons increased their reception capacities:[395] for example the canton of **Argovia** opened a new specialised centre for unaccompanied minors (who had previously been accommodated together with adults) in spring 2015,[396] the canton of **Berne** opened additional specialised reception centres for unaccompanied minors in autumn 2014,[397] January 2016,[398] and

392 Article 4 Ordinance of DFJP.
393 SEM, Information given by email, 30 January 2015.
394 Konferenz der kantonalen Sozialdirektorinnen und Sozialdirektoren (SODK), Empfehlungen der SODK zu unbegleiteten minderjährigen Kindern und Jugendlichen aus dem Asylbereich (Conference of the cantonal Social directors, Recommendations of the SODK regarding unaccompanied minors in the area of asylum), 20 May 2016, available at: http://bit.ly/2jmj4JE.
395 For a global and regularly updated view of the reception facilities for unaccompanied children in the cantons, see: Alliance for the Rights of Migrant Children, *Cartographie cantonale des structures de prise en charge pour MNA,* available at: http://bit.ly/2Fh73hA.
396 Canton of Argovia, 'Unterkunft für unbegleitete minderjährige Asylsuchende in Aarau' (Accommodation for unaccompanied minors in Aarau), 29 April 2015, available at: http://bit.ly/1FQ5k1f.
397 Canton of Berne, 'Zusätzliche Unterkunftsplätze für unbegleitete minderjährige Asylsuchende in Belp' (Additional reception places for unaccompanied minor asylum seekers in Belp), 23 October 2014, available at: http://bit.ly/1j9xief.
398 Canton of Berne, 'Eröffnung eines Ankunftszentrums in Huttwil', 15 December 2015, available at: http://bit.ly/2jt3kSJ.

autumn 2016,[399] as **Schwyz** did so in August 2016.[400] **Lucerne** ruled an emergency centre between 2015 and 2017,[401] which was subsequently replaced by a specific centre that opened its doors in November 2017 in **Kriens**. The canton of **Geneva** foresees the implementation of a new specific centre in 2019.[402]

In order to respond to the disparity of the care over systems in the cantons, rectify breaches and adjust the accompaniment measures of unaccompanied children in the context of the accelerated procedure, the SEM has launched in July 2017 a pilot project in **Basel**, **Zurich** and **Losone** (canton of Ticino). According to the authorities, the main change consists in the implementation of specific accommodation in the centres and a daily accompaniment provided by social educators.[403]

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.

2. Reception of traumatised persons

Several organisations provide assistance to traumatised asylum seekers, through individual support or public researches. The Outpatient Clinic for victims of torture and war ("*Service ambulatoire pour victimes de la torture et de la guerre*") in **Bern** offers a wide range of therapies that combine social work and different treatments for persons traumatised by extreme violence.[404] Other similar initiatives are available in Geneva, Lausanne and Zurich, mostly from civil society.[405] However, the capacities of these institutions are insufficient compared to the needs. According to national law,[406] the SEM also financially supports the setup of facilities for the treatment of traumatised asylum seekers, in particular the teaching and research in the field of specialised supervision of those asylum seekers.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

Asylum seekers receive an information leaflet at the moment they lodge their asylum application. This 8-page document contains information on the asylum procedure and the rights and obligations of the asylum seeker.[407] The leaflet also covers information about accommodation, especially the rules in the federal reception and processing centres, social assistance and access to the labour market. The leaflet is available in several languages and should be translated if necessary. The staff of the SEM should ensure that asylum seekers fully understand the information provided during the personal interview. Despite mostly positive feedback from asylum seekers that they have understood the information, it appears that many asylum seekers do not get a full understanding of the useful information in practice.

399 Canton of Berne, 'Zusätzliche Unterbringungsplätze in Beatenberg', 11 July 2016, available at: http://bit.ly/2j0EEF9.
400 Canton of Schwyz, 'Kanton führt temporäre Wohngruppe für unbegleitete minderjährige Asylsuchende', 30 June 2016, available at: http://bit.ly/2jt4PjL.
401 Canton of Lucerne, 'Neues Zentrum für unbegleitete minderjährige Asylsuchende in Kriens', 28 October 2015, available at: http://bit.ly/2jmlVCy.
402 Le Courrier, 'Nouveau foyer pour MNA à Genève: L'encadrement proposé ne convainc pas encore', 8 June 2017, available in French at: http://bit.ly/2ETX1Sq.
403 Le Temps, 'La Suisse doit faire mieux pour les réfugiés mineurs', 29 August 2017, available in French at : http://bit.ly/2rifoii.
404 Swiss Red Cross, *Service ambulatoire pour victimes de la torture et de la guerre*, available in French at: http://bit.ly/1KcqxTR.
405 For contacts and more information, see the website Support for Torture Victims: http://bit.ly/1IdLMmq.
406 Article 44 AO2.
407 The document is not available online.

General information on the asylum procedure is also available on the website of the Swiss Refugee Council in 20 languages.[408] 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.[409]

Test centres

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

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
   ☐ Yes ☒ With limitations ☐ No

Reception centres are only available for asylum seekers. They are in principle not open to the public.[410]

Family members and other visitors

In the federal centres, asylum seekers may receive visitors with the agreement of the staff, as long as the visitor can prove the existence of links with the asylum applicant. Visits are allowed every day from 2:00pm to 4:00pm, only in rooms provided for this purpose. Visitors are therefore not allowed to enter the living area reserved for asylum seekers. The SEM can change the visit schedule for organisational reasons. Visitors have to check in with the reception desk on arrival and departure and identify themselves. They are subjected to the same security rules as asylum seekers. The staff in charge of security is therefore empowered to search them and seize dangerous objects and alcoholic beverages for the duration of their visit.[411]

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.[412] Telephone cards must be bought by asylum seekers from their own limited budget. It should also be noted that there are usually only two public telephones available for about 300 asylum seekers, which makes access sometimes difficult, while also the noise levels can make a proper conversation very difficult. Swiss legislation does not allow asylum seekers to sign a cell phone contract in their own name, unless they have a residence permit in Switzerland. There is no internet access available in the federal reception centres. In some centres, there are NGOs or volunteers running cafés for asylum seekers, where they might also access the internet. Or they might have the possibility to use the internet at the NGO legal advisory offices next to the federal reception centres. Otherwise, they have to find internet access by themselves, and may be charged at a very expensive rate according to local bid. Asylum seekers do receive regular mail sent to them in the reception centre.

Legal representation

408 Swiss Refugee Council, *Fiches d'information sur la procédure d'asile* (Information leaflets on the asylum procedure), available in French at: http://bit.ly/1QPhrAg.
409 Swiss Refugee Council, *La procédure d'asile en bref* (The asylum procedure in short), available in French at: http://bit.ly/1HgfpCW.
410 Article 2 Ordinance of the DFJP.
411 Article 10 Ordinance of the DFJP.
412 Article 7 Ordinance of the DFJP.

The SEM has to facilitate contact with legal representatives and is required by law to make available lists of legal advisors and legal representatives with all contact details in every reception centre. The legal advisers and legal representatives can meet with their clients during visiting hours[413] and communicate with them outside visiting hours.[414] Asylum seekers usually have the possibility to contact or meet with a legal representative, while it remains difficult for the representative to enter the reception centre. The right of asylum seekers to contact UNHCR is not specifically regulated in Swiss law. A visit should be possible on request, even though the law does not address this specific point.

NGOs

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

G. Differential treatment of specific nationalities in reception

There is no difference in treatment in reception based on nationality. Asylum seekers of certain nationalities are dealt with in accelerated procedures (48-hour procedure or fast-track procedure), but this concerns primarily the procedure. The reception standards are the same as for asylum seekers of other nationalities.

413 Article 9(2) Ordinance of the DFJP.
414 Article 7(3) Ordinance of the DFJP.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention	
1. Total number of asylum seekers detained in 2017:[415]	Not available
2. Number of asylum seekers in detention at the end of 2017:[416]	94
3. Number of detention centres:	20
4. Total capacity of detention centres:	415

1. Statistics on detention

Overall, the number of asylum seekers placed in administrative detention decreased between 2011 and 2014, according to data provided by the SEM to the Global Detention Project: 7,540 in 2011 (33.43% of the total of asylum seekers), 6,806 in 2012 (23.77%), 6,039 in 2013 (28.13%) and 5,417 in 2014 (22.79%).

The number of asylum seekers in detention at the end of 2017 was 94, excluding those detained for the purpose of a Dublin procedure.

It is impossible to provide an overall number of detained asylum seekers or detention centres for asylum seekers in Switzerland in 2017 for mainly three reasons:

(1) The detention of asylum seekers is mainly ordered at the cantonal level and many of the cantons are actually using normal prisons or other detention facilities for the detention of asylum seekers. This is illustrated by the fact that the Global Detention Project was not able to retrieve data from all the cantons for its 2011 Special report on Switzerland.[417]

(2) The definition of detention of asylum seekers in Swiss law is not clear. This is again illustrated by the Global Detention Project report which also classifies the Federal Reception Centres where asylum seekers need to lodge their asylum application, and also the accommodation in the transit zones of Geneva and Zurich airport, as detention facilities. If these facilities were to be classified as detention, the number of detained asylum seekers would be far higher than the official numbers. There are good legal reasons for classifying the mentioned centres in transit zones as detention, given that asylum seekers are locked in and their contacts to the outside world are significantly limited.[418] Regarding the federal reception centres, the assessment depends on the concrete situation. Stefan Trechsel qualifies accommodation in remote locations that are very far from the next municipality as deprivation of freedom, because even if asylum seekers are allowed to leave the centre during certain hours, they do not have any real possibility of social contact, as the centres are so remote and the asylum seekers do not have the means for public transportation.[419]

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

415 Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.
416 This figure does not include Dublin detention cases.
417 See Michael Flynn and Cecilia Cannon, *Global Detention Project, Immigration Detention in Switzerland*, October 2011, available at: http://bit.ly/1THRBx8.
418 Stefan Trechsel, 'Die Unterbringung von Asylsuchenden zwischen Freiheitsbeschränkung und Freiheitsentzug' (The accommodation of asylum seekers between restrictions on liberty and deprivation of liberty), ASYL 3/14, 3ff. Reference is made to ECtHR, *Amuur v France*, Application No 19776/92, Judgment of 25 June 1996.
419 *Ibid*.

Switzerland accurately, although the situation in the centres can be qualified at a minimum as being close to a deprivation of liberty.

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.[420] Following the CJEU's conclusion, for the purpose of this report these persons are considered as asylum seekers. Therefore, this chapter includes detention of persons with a negative Dublin decision.

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

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

If statistics are available at all, they are not very reliable and may not give the whole picture which is why an exact number of detainees cannot be provided.

There are 20 detention facilities across Switzerland, including separate sections within prisons, with a total capacity of 415 places.

2. The question of *de facto* detention in Switzerland

The European Court of Human Rights (ECtHR) set out the relevant key criteria for the assessment of de facto detention, these being namely the possibility of movement and the degree of social contact. The ECtHR stated in *Ilias and Ahmed v. Hungary* that the detention of the persons concerned on the guarded and inaccessible grounds in the transit zone represented *de facto* detention within the meaning of Article 5 ECHR. As this detention took place without any formal decision, the ECtHR found that Article 5(1) ECHR had been violated.[421]

In Switzerland, there are many discussions on the distinction between deprivation and restriction of liberty. The term de *facto detention* has not yet been used in case law. There are, however, good legal reasons for considering the accommodation in remote centres as *de facto* detention. Whether or not the accommodation during the airport procedure, which takes place after arrival, qualifies as *de facto* detention, is also controversial.

In the period under review, several authors dealt with the different restrictions imposed on the asylum seekers' freedom of movement and, in particular, with the framing of their accommodation from a legal perspective. This definition effort is particularly relevant in the context of the restructuring of the asylum system, which will entail new forms of accommodation. The amendments will enter into force in March 2019 and provide for an Accelerated Procedure in larger federal centres. As asylum seekers will be staying in federal centres for longer periods than today, the conditions of their stay become all the more relevant. The first opening of a specific centre for "uncooperative" asylum seekers is planned in Les Verrières, Canton of **Neuchâtel** in April 2018. Even though it is still unclear how reception in these centres will be managed, general rules are likely to be stricter than in the current reception and

420 CJEU, Case C-179/11 *Cimade and GISTI v Ministre de l'Intérieur*, Judgment of 27 September 2012.
421 ECtHR, *Ilias and Ahmed v. Hungary*, Application No 47287/15, Judgment of 14 March 2017.

processing centres. In addition, the transfer to these centres cannot be subject to appeal and persons should remain in these centres during the whole procedure or for the maximum duration of 140 days. For these centres, the question of *de facto* detection will be raised anew.

In a legal opinion addressed to the attention of the Federal Commission against Racism, Kiener and Medici stated that a restrictive exit regime and the remote location of centres are particularly sensitive.[422] The possibilities of moving from one place to another, establishing social contacts and shaping everyday life are very limited. The Federal Court points out that reduced exit possibilities represent a significant encroachment on personal freedom, especially if the restrictions last longer than a few days.[423] This also applies to indirect interventions such as a time consuming and thus deterrent control procedures at the exit.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
   - ❖ on the territory: ☐ Yes ☒ No
   - ❖ at the border: ☒ Yes ☐ No
2. Are asylum seekers detained in practice during the Dublin procedure? ☐ Frequently ☒ Rarely ☐ Never
3. Are asylum seekers detained during a regular procedure in practice? ☐ Frequently ☒ Rarely ☐ Never

1.1. Detention at the airport

When an asylum seeker applies for asylum at the airport of **Geneva** or **Zurich**, the Swiss authorities must decide whether to allow his entrance into Switzerland within 20 days.[424] If entry into Swiss territory is allowed, the asylum seeker is assigned to a canton and is entitled to regular reception conditions. If entry is refused, the SEM shall provide persons with a place of stay and appropriate accommodation until they leave the country.[425] While the airport procedure is ongoing, asylum seekers are provided with accommodation in the transit zone. Asylum seekers may be held at the airport or exceptionally at another location for a maximum of 60 days, if entry cannot be granted immediately.

The aim of the arrival detention is to prevent unauthorised entry. According to the Federal Court and to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), it is an uncontested deprivation of liberty, in line with the *Amuur v. France* ruling of the ECtHR.[426] This is based on the assumption that the persons have not yet entered Switzerland.[427] From this moment on (i.e., once entrance into the country has been established), holding in transit is no

422 Kiener Regina und Medici Gabriela, 'Asylsuchende im öffentlichen Raum' (asylum seekers in the public space), Rechtsgutachten im Auftrag der Eidgenössischen Kommission gegen Rassismus EKR, February 2017.
423 Federal Court, Decision BGE 128 II 156 of 9th April 2002, para. 2c.
424 For details on the airport procedure, see section Border Procedure.
425 Article 22(3) AsylA.
426 Federal Court, Decision BGE 129 II 139, 27 May 1997, para. 4.4; CPT, *Rapport au conseil fédéral suisse relative à la visite effectuée en Suisse par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants du 24 septembre au 5 octobre 2007*, para 93.
427 Message concernant la modification de la loi sur l'asile, de la loi fédérale sur l'assurance-maladie et de la loi fédérale sur l'assurance-vieillesse et survivants du 4 septembre 2002 (message concerning the amendment of the Asylum act, the Federal Law on Health Insurance and the Federal Law on Old Age and Survivors' Insurance of 4 September 2002).

longer permitted under this legal title.[428] The Federal Administrative Court, however, goes further and considers it possible to carry out an arrest to prevent illegal entry even within a certain time and space *after* the border has effectively been crossed.[429] Yet this brings with it a new difficult question of demarcation.

In 2017, 169 asylum applications were filed at the airport. 69 people were exempted from the airport procedure. 85 decisions were made in the airport proceedings in 2017. Two of these cases concerned unaccompanied children.[430]

1.2. Temporary detention

Detention for identification purposes (as far as the person's personal cooperation is required) or for the purpose of issuing a decision in connection with his or her residence status may be ordered according to Article 73 FNA for a maximum of 3 days; so-called "temporary detention".

1.3. Preparatory detention

Preparatory detention during the asylum procedure maybe ordered according to Article 75 FNA on the following grounds, where the asylum seeker:[431]

(a) Refuses to disclose his or her identity, lodges several applications for asylum using various identities or repeatedly fails to comply with a summons without sufficient reason or ignores other instructions issued by the authorities in the asylum procedure;
(b) Leaves an area allocated to him or her in accordance with a restriction or exclusion order or enters an area he or she was prohibited from entering;[432]
(c) Enters Swiss territory despite a ban on entry and cannot be immediately removed;
(d) Was removed and lodged an application for asylum following a legally binding revocation of their residence or permanent residence permit or a non-renewal of the permit due to violation of or representing a threat to the public security and order or due to representing a threat to internal or external security;
(e) Lodges an application for asylum after an expulsion ordered by the Federal Office for Police to protect internal or external national security;
(f) Stays unlawfully in Switzerland and lodges an application for asylum with the obvious intention of avoiding the imminent enforcement of a removal or expulsion order. Such an intention shall be suspected if it were possible and reasonable to file the asylum application earlier and if the application is submitted in close chronological relation to detention, criminal proceedings, the implementation of a penalty or the issue of a removal order;
(g) Seriously threatens other persons or considerably endangers the life and limb of other persons and is therefore being prosecuted or has been convicted;
(h) Has been convicted of a felony; or
(i) States to the competent authority that he or she does not hold or have not held a residence permit or a visa or has not applied for asylum in a Dublin Member State, and that state has approved the take charge or take back request or such application request has been made in response to a Eurodac hit.

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

428 SKMR, S. 21.
429 Federal Administrative Court, Decision D-6502/2010 of 16 September 2010.
430 SEM, Information provided by email, 12 January 2018.
431 Article 75(1)-(1-bis) FNA.
432 Article 74 FNA.

1.4. Detention pending deportation

Detention pending deportation according to Article 76 FNA is relevant for persons who have received a negative decision. However, there is also a specific provision for 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.

Once the SEM has issued a decision (expulsion or removal order), the cantonal authorities can order a so-called detention pending deportation ("*Ausschaffungshaft*") to ensure the enforcement of the decision. A person can be kept in detention if he or she is already in preparatory detention according to Article 75 FNA. In addition, according to Article 76 FNA, he or she can be detained if he or she:

(a) Refuses to disclose his or her identity, lodges several applications for asylum using various identities or repeatedly fails to comply with a summons without sufficient reason or ignores other instructions issued by the authorities in the asylum procedure;
(b) Leaves an area allocated to him or her in accordance with a restriction or exclusion order or enters an area he or she was prohibited from entering;[433]
(c) Enters Swiss territory despite a ban on entry and cannot be immediately removed;
(d) Stays unlawfully in Switzerland and lodges an application for asylum with the obvious intention of avoiding the imminent enforcement of a removal or expulsion order. Such an intention shall be suspected if it were possible and reasonable to file the asylum application earlier and if the application is submitted in close chronological relation to detention, criminal proceedings, the implementation of a penalty or the issue of a removal order;
(e) Seriously threatens other persons or considerably endangers the life and limb of other persons and is therefore being prosecuted or has been convicted;
(f) Has been convicted of a felony; or
(g) Is seeking to evade deportation, according to serious indications, in particular because he or she fails to comply with the obligation to cooperate with the authorities;
(h) Based on his or her previous conduct, will refuse to comply with official instructions;
(i) Is issued with a removal decision in a federal reception and processing centre or in a specific centre for uncooperative asylum seekers and enforcement of the removal is imminent.

1.5. Detention in the Dublin procedure

According to Article 76a FNA, a person in the Dublin procedure can be detained if:[434]

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

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

(a) The person concerned disregards official orders in the asylum or removal proceedings, in particular by refusing to disclose their identity, thus failing to comply with his or her duty to cooperate or by repeatedly failing to comply with a summons without sufficient excuse.
(b) His or her conduct in Switzerland or abroad leads to the conclusion that he or she wishes to defy official orders.
(c) He or she submits two or more asylum applications under different identities.
(d) He or she leaves the area that he or she is allocated to or enter an area from which he or she is excluded.
(e) He or she enters Swiss territory despite a ban on entry and cannot be removed immediately.
(f) He or she stays unlawfully in Switzerland and submits an application for asylum with the obvious intention of avoiding the imminent enforcement of removal.

433 Article 74 FNA.
434 Article 76a FNA.

(g) He or she seriously threatens other persons or considerably endangers the life and limb of other persons and is therefore being prosecuted or have been convicted.
(h) He or she has been convicted of a felony.
(i) He or she denies to the competent authority that he or she holds or has held a residence document and/or a visa in a Dublin State or has submitted an asylum application there.
(j) If the person resists boarding a means of transport for the conduct of a Dublin transfer, or prevents the transfer in another way by his or her personal conduct.

Different aspects of the new provisions seem to be problematic. Especially the manner in which the risk of absconding is defined, as well as the maximum duration of detention (see section on Duration of Detention) are not in line with Article 28 of the Dublin III Regulation. It remains to be seen how these discrepancies will be resolved. As a non EU member state, Switzerland has no possibility to access the CJEU to clarify these issues. This is problematic especially from the perspective of the individual asylum seeker, as there is no effective remedy to contest the violation of EU law by Swiss law.

The Federal Court set down important principles in a leading case decision of May 2016:[435]

- A person may not be detained for the sole reason that he or she previously applied for asylum in another Dublin State. There must be an individual examination of specific indications for a high risk of absconding;
- The legality of the Dublin detention must in principle be reviewed by a judge within 96 hours from the moment of the written request of the detainee; and
- There must not be high formal requirements for the request to have the legality of the detention reviewed.

The Federal Administrative Court has also lifted detention decisions in Dublin cases on numerous occasions. It stated that the SEM had violated the person's right to be heard by not examining in an individual manner whether there was a high risk of absconding.[436] It also stated that when examining proportionality, a restriction order on the territory of the reception centre could be an alternative to detention.[437]

In practice, it seems that there continue to be significant cantonal differences. In **Basel**, it seems that the number of Dublin detainees has gone down, while in **Grisons**, persons with a negative Dublin decision continue to be detained systematically as long as there is room in the detention facility.[438] This practice seems to be contrary to the intentions and preconditions of the Dublin III Regulation.

2. Grounds for detention

Indicators: Alternatives to Detention

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

Alternatives to detention are not (yet) implemented in law and rarely in practice. Individual circumstances are considered in the decision to detain in practice, but with a wide divergence in depth

435 Federal Court, Decision 2C_207/2016 of 2 May 2016.
436 Federal Administrative Court, Decision D-2925/2016 of 17 May 2016, E-2850/2016 of 13 May 2016, D-2484/2016 of 27 April 2016.
437 Federal Administrative Court, decision D-2484/2016 of 27 April 2016, D-1626/2016 of 22 March 2016.
438 Information provided by NGOs providing legal advice in Basel and Grisons, September 2015.

and individualisation in the cantonal practice. In 2015, the UN Committee against Torture stated in its recommendations that Switzerland must apply alternative measures to detention.[439]

Regarding Dublin detention cases, the Federal Administrative Court has stated that a restriction order on the territory of the reception centre could be an alternative to detention, subject to an individual examination.[440] The Federal Court has also recalled that such a measure is only admissible as an *ultima ratio* and after a thorough examination of other less coercive measures.[441]

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

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

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

Over the recent years, the number of children placed in administrative detention has decreased:

Evolution of detention of children in Switzerland: 2011-2015

	2011	2012	2013	2014	2015
Children detained	176	177	130	131	142
Percentage out of total child applicants	3.24%	2.42%	2.44%	1.94%	1.25%
Unaccompanied children detained	35	52	17	10	12
Percentage out of total unaccompanied child applicants	10.70%	10.72%	4.91%	1.25%	0.44%

Source: Terre des Hommes, *Illegal detention of migrant children in Switzerland: a status report*, June 2016.

The cantonal practice of detention of children varies, and the available data is incomplete. Some cantons claim that they generally do not detain children, others do, and again others do not provide data. More information on the practice in the different cantons can be found in the Terre des Hommes report of June 2016.[442]

In cases of families, the authorities mostly detain only the father, while the mother and children can stay in the reception centre. However, in some (rare) cases it can also happen that a single parent (or both parents) are detained, while the children are placed in foster care or a home. If a mother of a baby is detained, the baby is usually placed in detention with her. These practices are very problematic from the point of view of the right to family life and the best interests of the child. The Swiss Refugee Council's view is that children and families should in general not be detained.

439 UN Committee Against Torture, *Observations finales concernant le septième rapport périodique de la Suisse*, Advanced unedited version, 13 August 2015, available at: http://bit.ly/1LuTgEQ, no. 17.
440 Federal Administrative Court, decision D-2484/2016 of 27 April 2016, D-1626/2016 of 22 March 2016.
441 Federal Court, Decision 2C_1052/2016, 2C_1053/2016, 26 April 2017.
442 Terre des Hommes, *Illegal detention of migrant children in Switzerland: a status report*, June 2016 available at: http://bit.ly/29JTuKl, 24ff.

The Federal Court ruled in favour of an Afghan family in a judgment from April 2017 regarding the detention of the parents of three children and the separation of the family. The authorities simulated a transport of a five-person family from the asylum centre to an apartment, but instead they brought the family with packed suitcases to the airport in order to return them to Norway where they had been issued a negative asylum decision. The family refused to board the plane because they feared to be deported from Norway to Afghanistan. After they refused to enter the plane, the family was separated. The authorities of the Canton of Zug arrested the parents for three weeks and placed the children somewhere else in order to force them to leave the country. The Court recognised the human misery in which the complainants found themselves, in particular due to the lack of the possibility of making contact with each other and with their children, during their detention, and stated that the experienced treatment does almost reach a breach of Article 3 ECHR. Furthermore, the Court considered the imprisonment of the complainant with her four-month-old baby in the Zurich airport prison, separated from her three older children was therefore not an ultima ratio and disproportionate. Therefore the Court found a violation of Article 8 ECHR.[443]

This is not an isolated case. In many cases, detention and the ordering of coercive measures are disproportionate.

4. Duration of detention

Indicators: Duration of Detention	
1. What is the maximum detention period set in the law (incl. extensions):	18 months
2. In practice, how long in average are asylum seekers detained?[444]	25 days

4.1. Maximum duration set by law

Altogether, detention can be ordered for a maximum of 6 months and it can be extended for a further period of up to 12 months where the person does not cooperate with the authorities.[445] Therefore the maximum period for detention under Articles 75 and 76 FNA is 18 months as foreseen in the Return Directive.

For children between 15 and 18, the maximum period of detention is 6 months and may be extended by up to 6 months, thereby totalling 12 months.[446]

For detention in the Dublin procedure, there are specific rules regarding duration:[447]

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

(a) Seven weeks while preparing the decision on responsibility for the asylum application; this includes submitting the request to take charge to the other Dublin State, waiting for the response or tacit acceptance, and drafting and giving notice of the decision;
(b) Five weeks during a remonstration procedure
(c) Six weeks to ensure enforcement from notice being given of the removal or expulsion decision or the date on which the suspensive effect of any appeal against a first instance decision on removal or expulsion ceases to apply and the transfer of the person concerned to the competent Dublin State.

443 Federal Court, Decision 2C_1052/2016, 2C_1053/2016, 26 April 2017.
444 SEM, Statistics 2014-2016 provided by email, 18 January 2017. Average for the period 2014-2016.
445 Article 79 FNA.
446 *Ibid*.
447 Article 76a(3)-(5) FNA.

In addition, the law foresees the possibility to detain the person if he or she refuses to board the means of transport being used to effect the transfer to the competent Dublin State, or if he or she prevents the transfer in any other way through his or her personal conduct. In that case, he or she can be detained for another 6 weeks. The period of detention may be extended with the consent of a judicial authority if the person concerned remains unprepared to modify their conduct. The maximum duration of this period of detention is three months.

Some of these provisions, as well as the maximum duration of detention in the Dublin procedure, exceed those foreseen in Article 28 of the Dublin III Regulation. The detention served under the Dublin regime will be deducted from the total maximum detention period of 18 months.

4.2. Duration of detention in practice

In practice, persons are detained for 25 days on average. However, the average duration varies according to the type of detention:[448]

Average duration of detention (days) per type of detention: 2014-2016	
Preparatory detention	26
Detention pending deportation	24
Detention in the Dublin procedure	22
Detention pending deportation in order to organise travel papers	26
Coercive detention, if detention pending deportation is no longer possible and the person refuses to cooperate	154
Total average	**25**

Source: SEM, Information provided by email, 18 January 2017 and 9 February 2018.

In 2017, the average duration of preparatory detention dropped to 24 days, detention pending deportation to 21 days and coercive detention to 127 days.[449] Information on the duration of Dublin detention is not available.

In addition, the use and duration of detention varies considerably among the cantons. In 2015, the UN Committee against Torture stated in its recommendations that Switzerland must apply detention only as a measure of last resort, especially regarding unaccompanied children, and for a period as short as possible.[450]

448 SEM, Statistics 2014-2016, provided by e-mail of 18 January 2017.
449 SEM, Information provided by email, 9 February 2018.
450 UN Committee Against Torture, *Observations finales concernant le septième rapport périodique de la Suisse*, Advanced unedited version, 13 August 2015, available at: http://bit.ly/1LuTgEQ, no. 17.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention		
1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)?	☒ Yes	☐ No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?	☒ Yes	☐ No

According to Article 81(2) FNA, suitable locations must be used for administrative detention. Detention together with persons in pre-trial or criminal detention must be avoided if possible and may only be practiced as a temporary measure to deal with shortages in the area of administrative detention. In 2016, the Federal Council proposed new wording, in order to align the provision with the EU Return Directive. The new provision states that administrative detention must be conducted in facilities which are only used for this purpose. However, there is still an exception clause which says that if this is not possible due to a lack of resources, persons in administrative detention must at least be separated from those in criminal detention. This new provision has not come into effect yet.

1.1. Specialised facilities, prisons and pre-trial facilities

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 specifically. This centre is located in the canton of Geneva ("**Frambois**") and resulted from an inter-cantonal cooperation ("*Concordat*") of three cantons (Geneva, Vaud and Neuchâtel).[451]

There are 20 facilities in total, including separate sections within prisons where asylum seekers can be held, totalling a capacity of 415 places.

1.2. Airport transit zones

The SEM shall provide persons who lodged an asylum application at the airport with a place of stay and appropriate accommodation.[452] Maximum stay in the transit zone is 60 days.[453] The accommodation centre in the transit zone of Geneva has a capacity of 30 places, in Zurich of 60 places.

1.3. Remote locations

As detailed in Freedom of Movement, accommodation in remote locations of federal reception and processing centres may constitute *de facto* detention in some cases. See also Types of Accommodation.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities		
1. Do detainees have access to health care in practice?	☒ Yes	☐ No
❖ If yes, is it limited to emergency health care?	☐ Yes	☒ No

Article 81(3) FNA states that detention conditions must take into account the needs of vulnerable persons, unaccompanied children and families with children, and that detention conditions must be in

451 See the website on the inter-cantonal cooperation of the Heads of the police and justice Departments of the "Latin cantons" that also contains a description of the detention centre: La Conférence latine des Chefs des Départements de justice et police (CLDJP), available at: 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.

452 Article 22(3) AsylA. See Border Procedure.

453 Article 22(5) AsylA.

line with Articles 16(3) and 17 of the Return Directive. Federal law does not provide any more detailed preconditions for detention conditions, as detention is normally (with the rare exception of detention ordered directly at one of the 6 federal initial reception centres) ordered at the cantonal level and lies in these cases fully within the competence of the respective cantons.

2.1. Conditions in specialised facilities, prisons and pre-trial facilities

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.[454] In some facilities there is medical personnel present, for example in the prison **Bässlergut** in Basel.

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

As some punctual examples, the following remarks made by the National Commission for the Prevention of Torture (NCPT) after its visits to several prisons can be mentioned.

The Commission criticized the administrative detention of foreign nationals in the cantonal prison of **Schaffhausen**. According to the Commission, the different detention regimes cannot be sufficiently taken into account because of the old, unsuitable infrastructure.

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

Regarding administrative detention in the prison at the **Airport Zurich-Kloten**, the Commission noted some improvements in 2016, but criticised the fact that suicidal persons are held in arrest cells, and that there is no suicide prevention concept. It also called for a more suitable detention regime for unaccompanied minors.[455] Generally, the Commission denounces the detention regime for persons in administrative detention in the visited centres for being far too strict. Because there is only one specialised institution in Switzerland ("**Frambois**" in the Canton of Geneva), persons in administrative detention are mostly placed in pre-trial detention facilities, where they are submitted to the same detention regime as other detainees, such as pre-trial detainees. Therefore, the Commission recommends separate wards in which a more flexible detention regime is possible, in accordance with the jurisprudence of the Swiss Federal Court.[456] The applicable cantonal laws differ very much.[457]

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454 See the reports issued by the Swiss national CAT Committee, the National Commission for the Prevention of Torture (NCPT), issued during the visits to several detention centres since 2010. The reports always also contain a section on access to health care, available at: http://bit.ly/1RpILjn.

455 NCPT, *Report to the Government of the Canton of Zurich regarding a follow-up visit of 14 April 2016 to the administrative detention section of the airport prison Zurich*, 8 November 2016, available in German at: http://bit.ly/2jNv6dQ.

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

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

In February 2017, the NCPT made an unexpected visit in the specialised administrative detention of "**Frambois**" in order to assess the conditions of administrative detention. In short, the NCPT considers that the majority of the recommendations made during its visit in 2012 have been implemented. In general, the NCPT welcomes the detention regime prevailing in the institution, which in its view reflects the non-criminal nature of administrative detention. Nevertheless, the Commission has taken note with concern of the difficulties encountered by the institution when dealing with people with mental disorders or addictions. It considers that further improvements are needed in the formulation of the grounds for sanctions. Finally, it encourages the institution to relax its policy on the prohibition of laptops and access to the Internet.[458]

In 2015, the UN Committee against Torture stated in its recommendations that Switzerland must continue its efforts to create specialised structures for administrative detention in all cantons, with a regime that is adapted to its purpose.[459]

2.2. Conditions in airport transit zones

Conditions in the transit zones 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 60m^2). There is no occupation programme in the transit areas, neither for adults, nor for children.

A project of construction of a new reception area at the airport of Geneva is strongly criticised by UNHCR and the independent organisation for defence of asylum seekers present at the airport (ELISA). Mostly contested are the complete isolation of asylum seekers (considered as detention by UNHCR) and the difficulties of access for third persons, especially legal representatives.[460] However, legal remedies against the planned construction have been turned down by the Federal Administrative Court.[461]

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

❖ Lawyers:	☒ Yes	☐ Limited	☐ No
❖ NGOs:	☐ Yes	☒ Limited	☐ No
❖ UNHCR:	☒ Yes	☐ Limited	☐ No
❖ Family members:	☐ Yes	☒ Limited	☐ No

Lawyers and UNHCR have access to detention centres. Family members have access during visiting hours. Access is dependent on the rules that apply in the detention centre ("*Hausordnung*") and may vary significantly.[462] Regarding the access of NGOs, according to the experience of Amnesty International, a personal authorisation must be obtained in advance in order to visit the facilities.

For example, in the case of the prison in **Airport Zurich-Kloten**, the NCPT noted that visits were only possible on week days, and encouraged the authorities to examine the possibility of visiting hours also on weekends.[463]

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458 NCPT, *Visite de suivi dans l'établissement concordataire de Fambrois*, 13 February 2017, available in French at: http://bit.ly/2DAeuDt.

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

460 For more information, see Vivre ensemble, 'Rejet du recours contre un lieu de détention pour requérants d'asile', 15 December 2014, available in French at: http://bit.ly/1SJDDsX.

461 Federal Administrative Court, Decision A-6364/2015 of 9 September 2016.

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

463 NCPT, *Report to the Government of the Canton of Zurich regarding a follow-up visit of 14 April 2016 to the administrative detention section of the airport prison Zurich*, 8 November 2016, no 25.

As regards **transit zones**, third parties are usually not allowed to visit. Church representatives can access housing on presentation of their accreditation as long they announce their arrival and departure with the staff running the accommodation centre in the transit zone. Contact with a legal representative is possible provided that an appointment was made and this must be communicated to the responsible staff. The organisation ELISA which currently provides legal assistance to asylum seekers in the airport of Geneva fears that the new construction project of a reception centre within the airport (with no access to the public transit zone) will make the contact with asylum seekers more difficult. This view is shared by UNHCR.[464]

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention		
1. Is there an automatic review of the lawfulness of detention?	☒ Yes	☐ No
❖ Dublin detention	☐ Yes	☒ No
2. If yes, at what interval is the detention order reviewed?	96 hours	

Review of administrative detention (except Dublin detention, as seen below) is regulated in Article 80 FNA. Article 80(2) FNA provides that the legality and appropriateness of detention must be reviewed at the latest within 96 hours by a judicial authority on the basis of an oral hearing.

According to Article 80(3) FNA, the judicial authority may dispense with an oral hearing if deportation is anticipated within 8 days of the detention order and the person concerned has expressed his or her consent in writing. If deportation cannot be carried out by this deadline, an oral hearing must be scheduled at the latest 12 days after the detention order.

According to Article 80(4) FNA, when reviewing the decision to issue, extend or revoke a detention order, the judicial authority shall also take account of the detainee's family circumstances and the circumstances behind the enforcement of detention. In no event may a detention order in preparation for departure or detention pending deportation be issued in respect of children or young people who have not yet attained the age of 15.

The detainee may submit a request for release from detention 1 month after the detention review. The judicial authority must issue a decision on the request on the basis of an oral hearing within 8 working days. A further request for release in the case of preparatory detention may be submitted after 1 month or in the case of detention pending removal after 2 months.[465]

The detention order shall be revoked if: the reason for detention ceases to apply or the removal or expulsion order proves to be unenforceable for legal or practical reasons; a request for release from detention is granted; or the detainee becomes subject to a custodial sentence or measure.[466]

Review of Dublin detention is regulated in Article 80a FNA. In case of detention of persons in a Dublin procedure, the legality and the appropriateness of detention shall be revised by a judicial authority in a written procedure at the request of the detainee (not automatically, no oral hearing). This review may be requested at any time. According to a ruling of the Federal Court of 2 May 2016, the review should in principle be conducted within 96 hours after the request.[467] 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

464 On that subject, see Vivre ensemble, 'TAF, Aéroport de Genève: Le recours contre la construction du nouveau centre d'hébergement est irrecevable', 11 December 2014, available in French at: http://bit.ly/1Bgbj8F.
465 Article 80(5) FNA.
466 Article 80(6) FNA.
467 Federal Court, Decision 2C_207/2016 of 2 May 2016.

uncooperative asylum seekers, jurisdiction and the procedure for the detention review are governed by the Asylum Act.

Again, cantonal practice is very diverse with regard to judicial review. National legislation provides for important safeguards, but compliance with these safeguards is not guaranteed in all cantons. Unfortunately, it is not possible to provide an overview of all cantonal practices.

The Swiss Refugee Council has observed that in cases of Dublin detention, the requirements by Swiss law as well as Article 28 of the Dublin III Regulation have not always been met, at least until the Federal Court and Federal Administrative Courts set down some ground rules (see Grounds for Detention: Dublin Procedure). The Swiss Refugee Council also suspects that detainees in the Dublin procedure are insufficiently informed that they must themselves ask in written form for a review of the detention. To help remedy this, the Swiss Refugee Council has drafted a basic form in three languages with which to ask for a review of the Dublin detention.[468] Another challenge, however, remains the distribution of this leaflet to the relevant persons.

Generally regarding administrative detention, it must be stressed that if the detained person is not represented by a lawyer, it can be difficult for him or her to bring forth the relevant legal arguments. In addition, detention practice depends on the practice of the cantons (which vary considerably), as well as on the judge. The accelerated procedure at the airport and asylum cases decided in administrative detention facilities are faster and might be sometimes lacking a bit of in-depth assessment. The quality of the procedure is far more dependent on the "quality" of the respective adjudicator and of the judge.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention		
1. Does the law provide for access to free legal assistance for the review of detention?	☐ Yes	☒ No
2. Do asylum seekers have effective access to free legal assistance in practice?	☒ Yes	☐ No

Generally, administrative detention of asylum seekers is rarely practiced. Nevertheless, there have been reports on difficulties with access to lawyers, to interpretation, to social services etc. Cantonal practice is also very diverse in this area. Legal assistance is sometimes difficult to organise and is not provided free of charge from the outset. The right to free legal assistance is regulated by cantonal procedural law. As a minimal constitutional guarantee, the Swiss Federal Court has ruled that free legal representation must be granted upon request in the procedure of prolonging detention after 3 months.[469] 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.[470]

E. Differential treatment of specific nationalities in detention

There is no information on specific nationalities being more susceptible to detention or systematically detained, or otherwise treated differently than others.

468 The form can be found in English, French and German at: http://bit.ly/2jNuDrP.
469 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.
470 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.

General remark: The status of subsidiary protection does not exist in Switzerland as the Qualification Directive is not applicable. Regarding the application of Article 9 of the Dublin III Regulation, the term "international protection" includes the temporary admission status in cases in which the status is granted on the ground that the removal is either contrary to international law or not reasonable because of a situation of war or generalised violence (but not a temporary admission based on medical grounds).[471]

A. Status and residence

1. Residence permit

Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
   - ❖ Refugee status: 1 year
   - ❖ Temporary admission: 1 year

Refugees with asylum

Recognised refugees with asylum receive a residence permit called B-permit.[472] This permit is issued for a year and then prolonged by the responsible canton. Recognised refugees with asylum have a right to have this permit issued and prolonged. If there are reasons to withdraw the refugee status, the right to have the permit issued and prolonged is withdrawn. In 2017, asylum status and B-permits were granted to 6,360 persons, including family asylum. On 31 December 2017, there were a total of 31,276 recognised refugees with a B-permit in Switzerland.[473]

Temporary admission

Persons granted temporary admission receive an F-permit.[474] Technically this is not considered a real permit of stay, but rather the confirmation that a deportation order cannot be carried out and that the person is allowed to stay in Switzerland as long as this is the case. The concept of temporary admission is legally designed as a replacement measure for a deportation order that cannot be carried out because of international law obligations, humanitarian reasons or practical obstacles. This means that there is a negative decision, but the execution of this decision is stayed for the duration of the legal or humanitarian obstacles. Consequently, the F-permit has a number of relevant limitations: for example, persons with an F-permit are only allowed to travel outside Switzerland in exceptional cases, under restrictive and limited circumstances. Also, family reunification is only possible after a waiting period of 3 years, and under the condition that the person is financially independent and has a large enough apartment. The F-permit is issued for one year and then prolonged by the responsible canton, unless there are reasons to end the temporary admission.

In 2017, 7,463 persons were granted a temporary admission as a foreigner. On 31 December 2017, there were a total of 31,697 persons with a temporary admission as a foreigner living in Switzerland. Out of these, 9,444 persons have had this status for more than seven years.[475]

There are also persons who have refugee status but receive only temporary admission instead of asylum (in case of exclusion grounds from asylum, as Switzerland makes this distinction between

471 Federal Administrative Court, Decision BVGE 2015/18.
472 Article 60(1) Asylum Act.
473 SEM, *Asylum Statistics 2017*.
474 Article 41(2) and Article 85(1) FNA.
475 SEM, *Asylum Statistics 2017*.

refugee status and asylum). They receive the same F-permit as other foreigners with temporary admission, but in addition they have the right to a refugee travel document, and all the other rights granted by the Refugee Convention. In 2017, 966 persons were granted a temporary admission as a refugee. On 31 December 2017, there were a total of 9,847 persons with a temporary admission as a refugee living in Switzerland. Out of these, 2,161 persons have had this status for more than seven years.[476]

The Swiss Refugee Council has no knowledge of systematic difficulties in the issuance or renewal of those residence permits.

2. Civil registration

Every birth in Switzerland must be recorded as soon as possible by the civil register office at the place of birth. Parents must present the required identity documents. If the procurement of documents is impossible or unreasonable and the personal data are not disputed, a substitute declaration (*Ersatzerklärung*) can be made. Residence in Switzerland is not required for the registration of births or paternity recognition, and is therefore also possible for persons without a residence permit. In practice, problems with registration due to missing documents have been reported, depending on the readiness of the relevant authorities to allow for a substitute declaration.

In principle, persons seeking asylum or rejected asylum seekers may also marry in Switzerland. Nevertheless, lawful residence in Switzerland is necessary. Persons who do not have a residence permit can apply for a short stay permit for the purpose of marriage. In addition to proof of legal residence, identity documents must also be submitted. This may pose a problem for asylum seekers as they endanger their asylum procedures if they contact their home country during the procedure. Furthermore, it is often not possible to obtain documents due to the situation in the home country. In such cases, a replacement declaration can also be requested. In practice, problems with marriage due to missing documents have been reported, depending on the readiness of the relevant authorities to allow for a substitute declaration.

3. Long-term residence

The Long-Term Residence Directive is not applicable in Switzerland.

A recognised **refugee with asylum** status receives a residence permit (B permit). After 10 years, or if he or she is especially well integrated, after 5 years, the canton can issue a permanent residence permit (C permit).[477] However, there is no absolute right to receive this permit; it is at the discretion of the canton. These are the same rules that also apply for other foreigners.

A **temporarily admitted** person receives an F permit. After 5 years, the person can apply to the canton for a residence permit (B permit), if he or she is well integrated.[478] However, the practice among the cantons varies and is in general strict. Once the person has a B permit, he or she can again apply for a permanent residence permit (C permit) after 5-10 years similar to the process described above.

Under the revised naturalisation law, which entered into force on 1 January 2018, it is now necessary to have a C permit in order to apply for naturalisation. This is very difficult for protection beneficiaries, especially temporarily admitted persons, as they will first have to go through all the different steps of permits, which takes a very long time.

476 SEM, *Asylum Statistics 2017*.
477 Article 34 FNA.
478 Article 84(5) FNA.

4. Naturalisation

Indicators: Naturalisation	
1. What is the waiting period for obtaining citizenship?	10 years
2. Number of citizenship grants to beneficiaries in 2017:[479]	959

Until the end of 2017, the criteria for naturalisation were the same for persons with refugee status and for persons with temporary admission status. In January 2018, the amended Federal Act on the Acquisition and Loss of Swiss Citizenship entered into force. Since then, it is necessary to have a permanent residence permit and reside in Switzerland for 10 years in order to be able to apply for citizenship.[480] This means that **temporarily admitted** persons must wait at least 5 years more than **refugee status** holder (see Long-Term Residence).

Years spent in Switzerland between the ages of 8 and 18 count as double.

The initial application is examined by the SEM, but both the canton and commune of residence have their own requirements. The SEM examines whether applicants are integrated in the Swiss way of life, are familiar with Swiss customs and traditions, comply with the Swiss rule of law, and do not endanger Switzerland's internal or external security. In particular, this examination is based on cantonal and communal reports. If the requirements provided by federal law are satisfied, applicants are entitled to obtain a federal naturalisation permit from the SEM. Naturalisation proceeds in three stages. The cantons and communities have their own, additional residence requirements which applicants have to satisfy. Swiss citizenship is only acquired by those applicants who, after obtaining the federal naturalisation permit, have also been naturalised by their communities (in some places this decision is taken by a panel, in others by a popular vote of all citizens of the commune) and cantons. There is no legally protected right to being naturalised by a community and a canton. The fee payable also varies according to the place of residence.[481]

In 2017, 723 recognised refugees and 236 temporarily admitted persons were granted citizenship.[482]

5. Cessation and review of protection status

Indicators: Cessation			
1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure?	☒ Yes	☐ No	
2. Does the law provide for an appeal against the first instance decision in the cessation procedure?	☒ Yes	☐ No	
3. Do beneficiaries have access to free legal assistance at first instance in practice?	☐ Yes	☒ With difficulty	☐ No

Refugees with asylum[483]

The automatic cessation of the asylum status is possible if a person has lived abroad for more than one year. If a person is granted asylum in another country or he or she renounces his or her refugee status, the protection status ceases as well. The renouncement leads to the immediate cessation of the status. Refugee status and asylum expire as well if the foreign national acquires Swiss nationality.

479 SEM, Information provided by email, 12 January 2018.
480 More information available in German, French and Italian at: http://bit.ly/2jam9sQ.
481 Overview on the fees for regular naturalisation available at: https://www.ch.ch/en/regular-naturalisation/.
482 SEM, Information provided by email, 12 January 2018.
483 Article 64 Asylum Act.

In 2017, there was a cessation of asylum status in 897 cases.[484]

Temporary admission[485]

According to the law, the SEM shall periodically examine whether the requirements for temporary admission are still met, in practice this does not happen in every case due to practical and capacity reasons. The SEM shall revoke temporary admission and order the enforcement of removal or expulsion if the requirements are no longer met. It also expires in the event of definitive departure, an unauthorised stay abroad of more than two months, or on the granting of a residence permit.

The review is individually conducted. When a conflict ends, it is possible that cessation is examined for all members of the group that were specifically concerned by this conflict, for example at the end of the conflicts in ex-Yugoslavia in the 1990s. Recently this has not been the case, however, as most of the relevant conflicts have been continuing for a long time (Somalia, Afghanistan, Iraq). However, the SEM has announced that it will examine the temporary admissions granted persons from Eritrea and the Western Balkans as one of its priorities in 2018.[486] Even if cessation is considered for a group of persons, it is examined in each case individually.

Apart from the review of the necessity of protection due to the situation in the country or the situation of the person, temporary admission ceases automatically if a person leaves Switzerland permanently, if he or she is abroad for more than two months without a permission to travel, or if he or she receives a residence permit.[487] A person's departure from Switzerland is already considered permanent if the person asks for asylum in another country.[488] This can lead to unclear situations if persons are transferred back to Switzerland from other European states, and then find that their temporary admission has ceased in the meantime.

As in general any ruling can be subject to an appeal,[489] the cessation of the protection status can also be appealed. The appeal must be filed within 30 days of notification of the ruling.[490] No legal assistance is foreseen in the law for this specific case, but the general ruling regarding legal aid is applicable: If it is necessary in order to safeguard the right of the person concerned, the court can appoint a lawyer to represent the applicant.[491]

In 2017, 3,634 temporary admissions were ceased, and 32 were withdrawn.[492]

6. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the withdrawal decision? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☐ Yes ☒ With difficulty ☐ No

The SEM shall revoke asylum or deprive a person of **refugee status** if the foreign national concerned has fraudulently obtained asylum or refugee status by providing false information or by concealing

484 SEM, *Asylum Statistics 2017*.
485 Article 84 FNA.
486 SEM, Information during an information conference for NGOs, 23 November 2017.
487 Article 84(4) FNA.
488 Article 26a(a) OERE (Ordinance on the Enforcement of the Refusal of Admission to and Deportation of Foreign Nationals).
489 Article 44 Federal Act on Administrative Procedure.
490 Article 50 Federal Act on Administrative Procedure.
491 Article 65(2) Federal Act on Administrative Procedure.
492 SEM, *Asylum Statistics 2017*.

essential facts. The asylum will also be withdrawn if a refugee has violated or represents a threat to Switzerland's internal or external security, or has committed a particularly serious criminal offence. The revocation of asylum or the deprivation of refugee status applies in relation to all federal and cantonal authorities. As a consequence of the withdrawal of the asylum status, the residence permit will also be withdrawn as the purpose for the permit has ceased.

If only the asylum status was withdrawn and not the refugee status, the person concerned could be entitled to a temporary admission as a refugee (see the distinction in Residence Permit).

The grounds for a withdrawal are always examined individually. The revocation of asylum or the deprivation of refugee status does not extend to the spouse or the children of the person concerned.

Before the asylum or temporary admission status is withdrawn, the SEM grants the right to be heard in written form.[493]

As in general any ruling can be subject to an appeal,[494] the cessation of the protection status can also appealed. The appeal must be filed within 30 days of notification of the ruling.[495] No legal assistance is foreseen in the law for this specific case, but the general ruling regarding legal aid is applicable: If it is necessary in order to safeguard the right of the person concerned, the court can appoint a lawyer to represent the applicant.[496]

In 2017, the asylum status was withdrawn in 378 cases. This includes the withdrawal of refugee status in these cases.[497]

For temporary admission, the review described in Cessation is applicable. In 2017, 3,634 temporary admissions were ceased, and 32 were withdrawn.[498]

On 1 October 2016, changes to the Federal Act on Foreign Nationals and in the Criminal Code came into force. Foreigners who commit criminal acts (not only severe criminal acts but also for example social welfare fraud) can more easily be expelled under the new rules.[499] In case of an expulsion order, the asylum status will be withdrawn. Temporary admission shall not be granted or shall expire if an order for expulsion from Switzerland becomes legally enforceable.[500] There is not sufficient information on how this is applied so far.

493 SEM, Information provided by email, 18 January 2017.
494 Article 44 Federal Act on Administrative Procedure.
495 Article 50 Federal Act on Administrative Procedure.
496 Article 65(2) Federal Act on Administrative Procedure.
497 SEM, *Asylum Statistics 2017*.
498 SEM, *Asylum Statistics 2017*.
499 Federal Council, Referendum on Asylum Act of 5 June 2016.
500 Article 83(9) FNA.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?
   - ❖ Recognised refugees ☐ Yes ☒ No
   - ❖ Temporarily admitted persons ☒ Yes ☐ No
   - Waiting period for temporarily admitted persons 3 years
2. Does the law set a maximum time limit for submitting a family reunification application? ☒ Yes ☐ No
   - ❖ If yes, what is the time limit? 5 years; 1 year for children over 12
3. Does the law set a minimum income requirement?
   - ❖ Recognised refugees ☐ Yes ☒ No
   - ❖ Temporarily admitted persons ☒ Yes ☐ No

The differences between the two statuses are quite relevant regarding the question of family reunification.

Refugees with asylum

Spouses or registered partners of refugees and their minor children are entitled to family reunification. They will also be recognised as refugees and granted asylum provided there are no special circumstances that preclude this. If one of those persons is still abroad, their entry must be authorised on request, if the person in Switzerland and the person abroad were separated during the flight. If the family had not been separated during the flight, for example because the family / marriage did not exist at that time, they are not entitled to family asylum.

In case of family asylum, there are no requirements regarding income or health insurance.

In 2017, 4,067 recognised refugees applied for family reunification.[501] During the same year, the SEM approved refugee family reunification cases for 2,138 persons.[502]

Temporary admission

Three years after having received temporary admission, the person can apply to be reunited with their spouse and unmarried children under the age of 18. The requirements are that they all live in the same household, the family has suitable housing (a big enough apartment, already at the time of the application), and the family does not depend on social assistance (income requirement).[503] The application must be filed with the competent cantonal migration authority, which passes it on to the SEM. Certain deadlines apply to the application:[504] After the three-year waiting period is over, the application for family reunification must be submitted within five years, in case of children over 12 years the time limit is twelve months (in case of important family-related reasons, especially the best interest of the child, a later family reunification is possible). If the family / marriage originated after the waiting period of three years, the time limits start at the time the family / marriage was founded.

In 2017, 285 temporarily admitted persons applied for family reunification.[505] The approved cases during the same year by the SEM concerned 61 persons.[506]

501 SEM, Information provided by email, 12 January 2018.
502 SEM, *Asylum Statistics 2017*.
503 Article 85(7) FNA.
504 Article 74(2)-(3) Ordinance on Admission, Stay and Gainful Employment.
505 SEM, Information provided by email, 12 January 2018.

2. Status and rights of family members

In the case of family **asylum**, the beneficiaries themselves are granted the same rights as the sponsor. However, as the refugee status originated in the grounds of the sponsor, the refugee status is of a derivative character, therefore it is not possible for persons with this kind of status to be the sponsor of further family members. The same applies to cases of temporary admission status as a refugee.

However, before the family members are included in the sponsor's status, the SEM usually examines whether they fulfil the refugee definition on their own and are therefore granted their own original refugee status.

In case there are asylum exclusion grounds[507] relating to the family member, this person will only be granted a temporary admission as refugee even though the sponsor was granted asylum.[508]

Family members of a person who has been granted a **temporary admission status** will receive the same status, if the application for family reunification is granted. If the family members arrive independently of the sponsor, they have to make their own asylum application and will receive temporary admission if those conditions are met.

C. Movement and mobility

1. Freedom of movement

In general, after some time (maximum 90 days) in a federal reception centre, the SEM allocates the applicants / beneficiaries to a canton according to a distribution key. This allocation can only be contested if it violates the principle of family unity.[509]

After a status has been granted, **recognised refugees** have the right to choose their place to live within the canton, additionally, they have the right to change the canton, unless reasons exist for the revocation of the residence permit.[510]

Persons with a **temporary admission as foreigners** do also have a right to choose their place to live within the allocated canton, unless they depend on social assistance. In this case, the canton can determine a residence or accommodation. In order to change cantons, an application must be filed at the SEM, which will decide after a consultation of the two cantons concerned. A negative decision can only be challenged if it violates the principle of family unity. The allocation to a canton does not limit the freedom of movement within Switzerland.

Since the cantons are responsible for granting social assistance, the concrete arrangements depend on the canton. If a person depends on social assistance, it is possible that the canton provides for a room in a certain accommodation and therefore 'determines' the place of residence for the person concerned.

Normally, beneficiaries have to move from the first reception centre to the cantonal collective centre and as a next step within the canton to a private accommodation. We are not aware of problems due to beneficiaries having to change their accommodation too often.

506 SEM, Information provided by email, 12 January 2018.
507 Articles 53 and 54 Asylum Act.
508 Federal Administrative Court, BVGE 2015/40.
509 Article 27(3) Asylum Act.
510 According to Article 63 FNA.

We are also not aware of any specific residence for beneficiaries for reasons of public interest or public order.

No legal assistance is foreseen in the law for these specific cases, but the general ruling regarding legal aid is applicable: If it is necessary in order to safeguard the right of the person concerned, the court can appoint a lawyer to represent the applicant.[511]

2. Travel documents

Recognised refugees have a right to receive a travel document in accordance with the Refugee Convention. The travel document for recognised refugees is valid for 5 years.[512]

For **persons with temporary admission** there are important practical obstacles in obtaining travel documents and re-entry permits. They do not have an automatic right to a travel document, and their travel rights are very limited. If they want to travel outside Switzerland, they must first apply to the SEM (via the cantonal authority) for a return visa (permission to re-enter Switzerland). A return visa is only granted in specific circumstances (severe illness or death of family members and close relatives; to deal with important and urgent personal affairs; for cross-border school trips; to participate in sports or cultural events abroad; or for humanitarian reasons). A return visa can be issued for other reasons if the person has already been temporarily admitted for three years.[513]

In addition to the return visa, the person needs a valid travel document. Persons with temporary admission can apply to the SEM (via the cantonal authority) for a travel document if they can show that it is impossible for them to obtain travel documents from their home country, or that it cannot be expected of them to apply for travel documents from the authorities of their home country.[514] The practice regarding this is very strict, it is only seldom recognised that the person cannot obtain travel documents from their home country. They must document very clearly what they have done to obtain travel documents (visits to the embassy etc.). In many cases, the persons do not succeed in proving their lack of documents, as the embassies of their home countries are reluctant to confirm in writing that they will not issue a travel document. This means persons with temporary admission are often unable to travel – for lack of documents, but mainly due to the strict regulation regarding return visas, see above.

If a person with temporary admission is issued a travel document by the SEM, this is called a “passport for a foreign person”.[515] It is valid for 10 months and loses its validity at the end of the conducted journey; the document is only issued for one specific journey.[516]

There are important practical obstacles in obtaining travel documents and re-entry permits for foreigners with temporary admission.

Procedure

The application for a travel document must be made in person at the cantonal migration office.[517] This office will register the application and forward it to the SEM. The SEM issues the travel document. Applications for a re-entry visa must also be made to the cantonal migration authority, and will be forwarded to the SEM for decision.[518]

511 Article 65(2) Federal Act on Administrative Procedure.
512 See Article 13(1)(a) Ordinance on the Issuance of Travel Documents for Foreign Persons of 14 November 2012, SR 143.5 (Verordnung über die Ausstellung von Reisedokumenten für ausländische Personen vom 14. November 2012, RDV, SR 143.5).
513 Article 9 RDV.
514 Articles 4(4) and 10 RDV.
515 Article 4(4) RDV.
516 Article 13(1)(c) RDV.
517 Article 14 RDV.
518 Article 15 RDV.

Both recognised refugees and beneficiaries of temporary admission are not allowed to travel to their home country, otherwise they risk losing their protection status.

In 2017, the SEM issued 13,950 travel documents for recognised refugees; 190 "foreign passports" for persons granted temporary admission and who do not have a passport; 700 return visas for foreigners granted temporary admission and 20 passports for asylum seekers.[519]

D. Housing

Indicators: Housing	
1. For how long are beneficiaries entitled to stay in reception centres?	No limitation
2. Number of beneficiaries staying in reception centres as of 31 December 2017	Not available

There is no maximum time limit to accommodation connected with the status. As long as a person depends on social assistance, housing will be provided by the canton. It is possible that this means a collective centre or a specific allocated housing, but there is no limitation time-wise. The concrete arrangements depend on the canton.

E. Employment and education

1. Access to the labour market

Recognised refugees are entitled to engage in gainful employment and to change jobs or professions without any restrictions.[520] The requirements are that the employer must submit a corresponding request and comply with the usual local wage and working conditions for the given profession and industry.[521] On 31 December 2017, 26.7% of refugees with asylum who were able to work were employed.[522]

The cantonal authorities may grant **temporarily admitted persons** a work permit irrespective of the labour market and economic situation. However, these persons do not have a guaranteed right to receive this work permit.[523]

A study showed in 2014 the negative influence of the status of temporary admission regarding the access to the labour market.[524] On 31 December 2017, 31.7% of temporarily admitted persons able to work were employed.[525]

In December 2016, the Swiss parliament abolished the special taxes of 10% of the salary (up to CHF 15,000; additional to the regular taxes) that had to be paid by temporarily admitted foreigners. The parliament also abolished the requirement of authorisation for employment.[526] Both of these two measures entered into force on 1 January 2018. They show a step in the right direction and will hopefully lead to a better employment rate for temporarily admitted foreigners in Switzerland.

519 SEM, Information provided by email, 12 January 2018.
520 Article 61 Asylum Act.
521 Article 65 Ordinance on Admission, Stay and Gainful Employment (OASGE).
522 SEM, *Asylum Statistics 2017*.
523 Article 85(6) FNA.
524 SEM, *Studie Erwerbsbeteiligung von anerkannten Flüchtlingen und vorläufig Aufgenommenen auf dem Schweizer Arbeitsmarkt*, April 2014, available in German at: http://bit.ly/2jayVaM.
525 SEM, *Asylum Statistics 2017*.
526 Swiss Refugee Council, 'De meilleures chances pour les personnes admises à titre provisoire', 16 December 2016, available in French at: http://bit.ly/2hEGW8C.

Personal qualifications like diplomas from other countries are not recognised for the most part, which is a big problem in respect of access to the labour market.

The reform of temporary admission has been the subject of ongoing parliamentary discussions, the most current proposal does not suggest an overall reform, but punctual changes such as a new name and facilitated change of canton.[527]

2. Access to education

Basic education is mandatory until the age of 16, and has to be available to all children in Switzerland. The cantons are responsible for the system of school education, and state schools are free of charge.[528] As long as the children are accommodated in a federal reception centre (first phase of the procedure), access to adequate education is not always granted, as it is mostly limited to few hours of language classes. Some centres organise classes themselves. To meet the requirements of the Convention of the Rights of the Child, particularly as regards access to education until the age of 18, law and practice would have to be adjusted. In particular, for teenagers who arrive just at or above the age of 16 years, it can be difficult to find a place of education. Apart from the mentioned points, no obstacles are known to us regarding the access to education until the age of 16.

Recognised refugees have the same rights as Swiss nationals concerning access to apprenticeship. The Federal Constitution states that cantons shall ensure that adequate special needs education is provided to all children and young people with disabilities up to the age of 20. As the system of school education depends on the canton, the implementation differs.

F. Social welfare

Refugees with asylum and temporarily admitted refugees who are unable to maintain themselves from their own resources are entitled to social benefits. They must be granted the same benefits as local recipients of social assistance.[529] The guidelines of the Swiss Conference for Social Assistance (SCSA) apply.[530]

For their part, **temporarily admitted** foreigners shall receive the necessary social benefits unless third parties are required to support them.[531] The social benefits should be rendered in kind as non-cash benefits if possible. They are less than the social benefits given to the local population.[532] They can be as much as 40% below the guidelines of the SCSA. On national average, beneficiaries subjected to asylum law (asylum seekers and temporarily admitted persons) received a monthly average of 1,119.- CHF of net income to cover their needs as of June 2015. 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.

The provision on social benefits is under the responsibility of the Confederation as long as the person is staying in a federal reception and processing centre. After allocation to a canton, the canton shall provide social assistance or emergency aid on the basis of Article 80 AsylA. Fixing of the amount, granting and limiting welfare benefits are regulated by cantonal law when it falls under cantonal responsibility. This results in large differences of treatment among cantons.

527 Parliament, 'Représentation équitable des sexes au Conseil fédéral : la Commission ne veut pas de disposition constitutionnelle', 19 January 2018, available in French at: http://bit.ly/2GigTAn.
528 Article 62 Federal Constitution.
529 Article 3(1) AO2.
530 SCSA, *Les normes CSIAS,* available in French at: http://bit.ly/2FvA1dF.
531 Article 81 AsylA.
532 Article 82(3) AsylA.

Temporarily admitted foreigners are usually free to choose their place of residence within the canton unless they receive social assistance benefits. The cantonal authorities assign a place of residence and accommodation to temporarily admitted persons dependent on social assistance.[533]

G. Health care

Every person, including rejected asylum seekers, living in Switzerland must be insured against illness,[534] and therefore has access to the basic health system.

Cantons may limit the choice of insurers and of physicians and hospitals for asylum seekers and **temporarily admitted persons**.

Apart from this restriction, the basic insurance and the covered treatments to not depend on the status but on the needs. Mental health problems are also covered if a psychiatrist (not psychologist) is involved, the problem here is the limited capacities for adequate treatment in some fields.

Specialised treatment for victims of torture or traumatised beneficiaries or people with mental health problems is available, but the capacity is way too small. There is not only a lack of specialised psychiatrists, but also a lack of interpreters / lack of funding for interpretation for this purpose, especially intercultural interpretation would be needed for specialised treatment of mental health problems.

Language barriers are relevant for any kind of health care, including problems to fill out the paperwork.

533 Article 85(5) FNA.
534 Article 3 Health Insurance Act (HIA).