

# Country Report: Switzerland



2016  
Update



## Acknowledgements & Methodology

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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 2016.

## 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 20 countries. This includes 17 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, 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](http://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.



This report is part of the Asylum Information Database (AIDA) funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative of the Network of European Foundations.



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## Glossary & List of Abbreviations

<b>48-hour procedure</b>	Procedure established in August 2012 to treat asylum requests from safe European countries within 48 hours if no further examination is required
<b>Testphase</b>	Pilot accelerated procedure introduced in Zurich in January 2014
<b>AFIS</b>	Automated Fingerprint Identification System
<b>AOZ</b>	Asyl-Organisation Zurich, running the “testphase” reception centre in Zurich
<b>AS</b>	Official Journal of Swiss law (Amtliche Sammlung)
<b>CoE</b>	Council of Europe
<b>EJPD</b>	Federal Department of Justice and Police   Eidgenössisches Justiz- und Polizeidepartment
<b>ELISA</b>	Organisation providing legal aid to asylum seekers at Geneva airport
<b>Eurodac</b>	European fingerprint database
<b>FOM</b>	Federal Office for Migration (now SEM)
<b>FNA</b>	Foreign Nationals Act
<b>KSM</b>	Coordination Unit against the Trafficking and Smuggling of Migrants   Koordinationsstelle gegen Menschenhandel und Menschenschmuggel
<b>NCPT</b>	National Commission for the Prevention of Torture
<b>OSAR</b>	Swiss Refugee Council   Organisation suisse d’aide aux réfugiés
<b>SEM</b>	State Secretariat for Migration   Secrétariat d’état aux migrations
<b>TAF</b>	Federal Administrative Court   Tribunal administratif fédéral
<b>TRACKS</b>	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.<sup>1</sup>

### Applications and granting of protection status at first instance: 2016

	Applicants in 2016	Pending applications in 2016	Asylum	Temporary admission	Rejection	Asylum rate	Temp. Adm. rate	Rejection rate
<b>Total</b>	27,207	27,711	5,985	6,850	4,181	35.2%	40.2%	24.6%

Breakdown by countries of origin of the total numbers

Eritrea	5,178	6,710	3,187	2,565	719	49.2%	39.6%	11.2%
Afghanistan	3,229	7,479	215	1,180	166	13.8%	75.6%	10.6%
Syria	2,144	3,778	1,054	1,278	89	43.5%	52.8%	3.7%
Somalia	1,581	1,185	136	454	108	19.5%	65%	15.5%
Sri Lanka	1,373	1,485	610	102	289	60.9%	10.2%	28.9%
Iraq	1,312	1,907	115	240	243	19.2%	40.2%	40.6%
Nigeria	1,106	110	3	6	115	2.4%	4.8%	92.8%
Gambia	1,054	46	0	4	54	0%	6.9%	93.1%
Ethiopia	1,036	733	83	138	168	21.3%	35.5%	43.2%
Guinea	900	192	0	10	70	0%	12.5%	87.5%

Source: SEM, Asylum statistics 2016: <http://bit.ly/2kcYH05>.

<sup>1</sup> SEM, *Statistiques en matière d'asile*, available at: <http://bit.ly/2j05MnE>.

**Gender/age breakdown of the total number of applicants: 2016**

	Number	Percentage
<b>Total number of applicants</b>	27,207	-
Men	19,223	70.6%
Women	7,984	29.4%
Children	9,178	33.7%
Unaccompanied children	1,996	7.3%

Source: SEM, Asylum statistics 2016: <http://bit.ly/2kcYH05>; SEM statistics provided by email, 18 January 2017.

**Comparison between first instance and appeal decision rates: 2016**

Decisions at Federal Administrative Court (TAF) level are not available for 2016.



## 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	<a href="http://bit.ly/1GpuAld">http://bit.ly/1GpuAld</a> (FR) <a href="http://bit.ly/1FjUQQe">http://bit.ly/1FjUQQe</a> (EN)
Federal Act on Foreign Nationals	Loi fédérale sur les étrangers	FNA	<a href="http://bit.ly/1Bfa0LT">http://bit.ly/1Bfa0LT</a> (FR) <a href="http://bit.ly/1Bfa26s">http://bit.ly/1Bfa26s</a> (EN)
Federal Act on Administrative Procedure	Loi fédérale sur la procédure administrative	APA	<a href="http://bit.ly/1lhNNtx">http://bit.ly/1lhNNtx</a> (FR) <a href="http://bit.ly/1BQdG52">http://bit.ly/1BQdG52</a> (EN)
Federal Constitution of the Swiss Confederation	Constitution fédérale de la confédération suisse	Constitution	<a href="http://bit.ly/1dHqBgj">http://bit.ly/1dHqBgj</a> (FR) <a href="http://bit.ly/1HNtIPO">http://bit.ly/1HNtIPO</a> (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	<a href="http://bit.ly/1ejpzYG">http://bit.ly/1ejpzYG</a> (FR)
Asylum Ordinance No. 2 on Financial Matters	Ordonnance 2 sur l'asile relative au financement	AO2	<a href="http://bit.ly/1FjVey4">http://bit.ly/1FjVey4</a> (FR)
Asylum Ordinance No. 3 on the processing of personal data	Ordonnance 3 sur l'asile relative au traitement de données personnelles	AO3	<a href="http://bit.ly/1GJx1ql">http://bit.ly/1GJx1ql</a> (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	<a href="http://bit.ly/1BjwYB5">http://bit.ly/1BjwYB5</a> (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	<a href="http://bit.ly/1IGDU6">http://bit.ly/1IGDU6</a> (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	<a href="http://bit.ly/1GJzYaB">http://bit.ly/1GJzYaB</a> (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		<a href="http://bit.ly/1MYJoQv">http://bit.ly/1MYJoQv</a> (FR)
Directive III on the Field of Asylum	Directive III sur le domaine de l'asile		<a href="http://bit.ly/1TpuYgF">http://bit.ly/1TpuYgF</a> (FR)

## Overview of the main changes since the previous report update

The report was last updated in **October 2015**.

### *Asylum procedure*

- The planned reform of the Asylum Act which mainly aims at accelerating the procedure was accepted by the Swiss people in a referendum on 5 June 2016.<sup>2</sup>
- On 1 October 2016, changes in the Federal Act on Foreign Nationals and in the Criminal Code came into force. Those implement the so-called expulsion initiative that was launched by the right-wing SVP party and adopted by the people in a referendum on 28 November 2010. 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.<sup>3</sup>

### *Reception conditions*

- In May 2016, the SEM opened a new federal reception and processing centre in Berne. There are now six such centres.

### *Detention of asylum seekers*

- In May 2016, the Federal Court laid down some ground rules for detention in Dublin cases, mainly confirming that there needs to be an individual assessment of the risk of absconding. It is not sufficient to establish that the person had previously asked for asylum in another Dublin State.

### *Content of international protection*

- On 12 October 2016, the Federal Council adopted a report with suggestions on how to reform the status of temporary admission.<sup>4</sup> The outcome remains open, no changes are in force yet.
- In December 2016, the Swiss parliament confirmed some changes to the Federal Act on Foreign Nationals, which is re-named in Federal Act on Foreign Nationals and Integration. An important change is the abolition of the special charge of 10% of the salary which had to be paid by asylum seekers and temporarily admitted persons who work, and the facilitation of access to the labour market for temporarily admitted persons: instead of a having to apply for a work permit, the employer only has to inform the authorities of the employment. The changes are not yet in force.

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<sup>2</sup> Federal Council, Referendum on Asylum Act of 5 June 2016, available in German at: <http://bit.ly/2j034yE>.

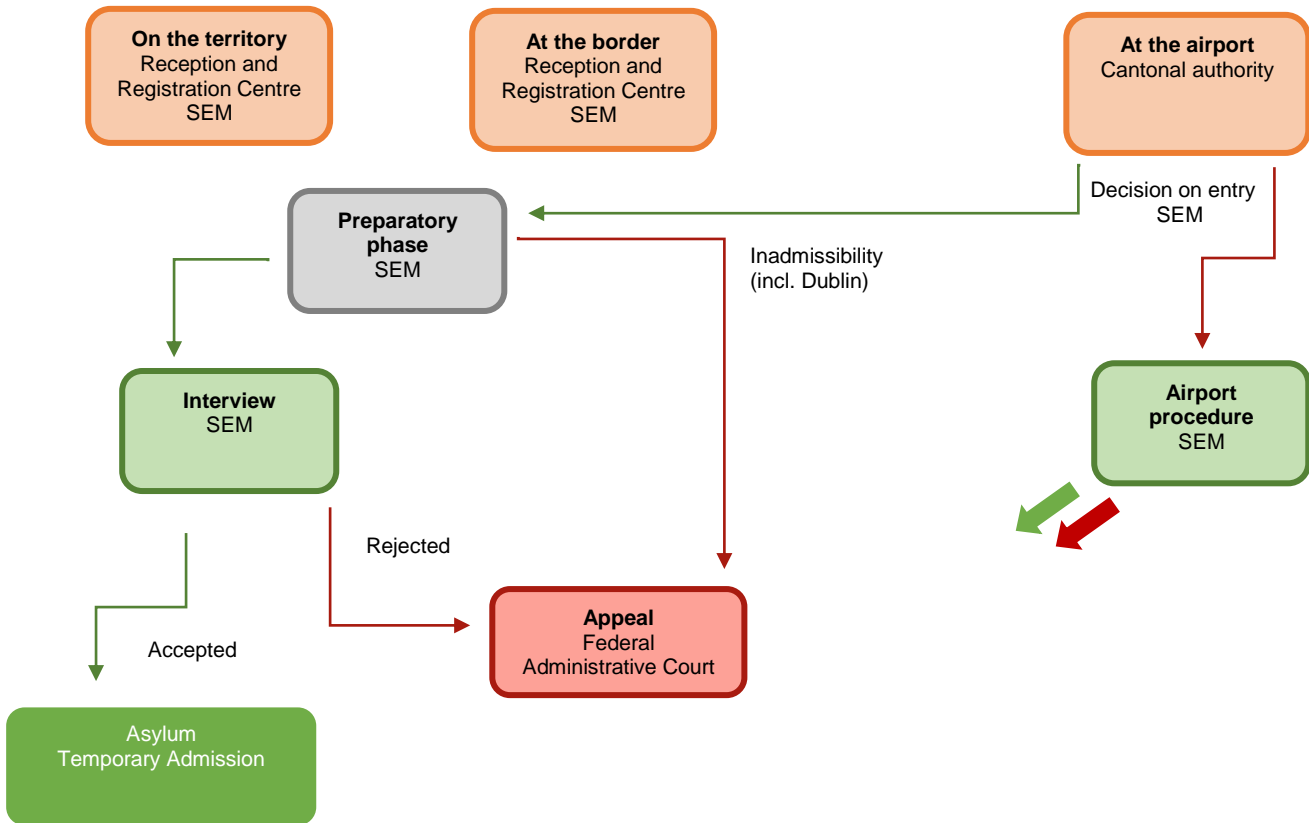
<sup>3</sup> Federal Council, *Neues Ausschaffungsrecht tritt am 1. Oktober 2016 in Kraft (New Rules on Expulsion come into force on 1 October 2016)*, 4 March 2016, available in German at: <http://bit.ly/2kmXnuV>.

<sup>4</sup> 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.

# Asylum Procedure

## A. General

### 1. Flow chart



## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

- |  |   |  |
|--|---|--|
| ❖ Regular procedure:                             | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Prioritised examination: <sup>5</sup>          | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Fast-track processing: <sup>6</sup>            | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Dublin procedure:                              | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Admissibility procedure:                       | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Border procedure:                              | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Accelerated procedure: <sup>7</sup>            | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Other: Pilot accelerated procedure (Testphase) | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |

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

Swiss asylum law provides the possibility to grant temporary protection (*“protection provisoire”*, “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.<sup>8</sup> 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, this will be discussed in the context of the planned reform of temporary admission (similar to subsidiary protection).<sup>9</sup>

## 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

<sup>5</sup> For applications likely to be well-founded or made by vulnerable applicants.

<sup>6</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>7</sup> Labelled as “accelerated procedure” in national law.

<sup>8</sup> Articles 66-79a AsyIA.

<sup>9</sup> Federal Council, *Vorläufige Aufnahme und Schutzbedürftigkeit: Analyse und Handlungsoptionen (Temporary Admission and Protection Needs: Analysis and Options for Action)*, 12 October 2016, 55.

#### 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)	cc. 980 (cc. 500 on asylum)	Federal Department of Justice and Police	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Source: SEM, Information provided by email, 18 January 2017 (numbers as of 31 December 2016).

#### 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.<sup>10</sup> 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.<sup>11</sup> In view of the proposed new asylum system, an accelerated asylum procedure has been tested since January 2014.<sup>12</sup> Further, several adaptations in national law implementing the Dublin III Regulation came into force on 1 July 2015, mainly regarding detention in the Dublin procedure.<sup>13</sup>

On 1 October 2016, changes to the Federal Act on Foreign Nationals and to the Criminal Code came into force. Those implement the so-called expulsion initiative that was launched by the right-wing SVP party and adopted by the people in a referendum on 28 November 2010. 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.<sup>14</sup> In case of refugees or persons facing treatment according to Article 3 ECHR, the *non-refoulement* principle will still be respected. There is no practical experience with the implementation of these provisions yet.

**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.<sup>15</sup> 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.<sup>16</sup> The proceeding is different if an application is filed at an international airport or if an application is treated within the pilot phase

<sup>10</sup> 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>.

<sup>11</sup> Federal Council, Referendum on Asylum Act of 5 June 2016, available at: <http://bit.ly/2j034yE>.

<sup>12</sup> Test Phases Ordinance.

<sup>13</sup> Bundesbeschluss zur Weiterentwicklung des Dublin/Eurodac-Besitzstandes (Federal decree on the development of the Dublin/Eurodac rules), AS 2015 1841, available in German at: <http://bit.ly/1LtcRFj>.

<sup>14</sup> Federal Council, *Neues Ausschaffungsrecht tritt am 1. Oktober 2016 in Kraft* (New Rules on Expulsion come into force on 1 October 2016), 4 March 2016, available in German at: <http://bit.ly/2kmXnuV>.

<sup>15</sup> Article 19 AsylA.

<sup>16</sup> Article 21 AsylA.

testing an accelerated procedure (see further down). The stay at the reception and processing centres is limited to a maximum of 90 days (but can be extended).<sup>17</sup> 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.<sup>18</sup>

**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.<sup>19</sup> As a first step, the asylum seeker benefits from a preliminary advisory meeting about the asylum procedure.<sup>20</sup> 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 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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> 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).<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup>

**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,

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<sup>17</sup> Article 16(2) OA1.

<sup>18</sup> Article 27 AsylA.

<sup>19</sup> Article 26 AsylA.

<sup>20</sup> Article 25a AsylA.

<sup>21</sup> Article 26 AsylA.

<sup>22</sup> Article 26(2) AsylA.

<sup>23</sup> Article 36(1) AsylA.

<sup>24</sup> Article 25a AsylA.

<sup>25</sup> Article 8bis AsylA.

<sup>26</sup> Article 31a AsylA.

<sup>27</sup> Article 44 AsylA; Article 83 FNA.

where he or she has the possibility to describe his or her reasons for flight and, if available, present pieces of evidence.<sup>28</sup>

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.<sup>29</sup> 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,<sup>30</sup> it will issue a negative asylum decision. In this case, the SEM has to examine in a second step whether the removal of the applicant is lawful, reasonable and possible.<sup>31</sup> 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.<sup>32</sup>

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.<sup>33</sup>

**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.<sup>34</sup> 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.<sup>35</sup>

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<sup>28</sup> Article 29 AsyIA.

<sup>29</sup> Article 49 AsyIA.

<sup>30</sup> 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 AsyIA). Further, asylum is not granted if the grounds for asylum are only due to the flight from the applicant's native country or country of origin or if they are only due to the applicant's conduct after his or her departure, so-called subjective post-flight grounds (Article 54 AsyIA).

<sup>31</sup> Article 44 AsyIA; Article 83 FNA.

<sup>32</sup> 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.

<sup>33</sup> SEM, *48-hour procedure extended to Kosovo and Georgia*, Press release of 26 March 2013, available at: <http://bit.ly/1GpBzRB>.

<sup>34</sup> Article 105 AsyIA.

<sup>35</sup> Article 108 AsyIA.



**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.<sup>36</sup>

**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.<sup>37</sup> As a first step, the SEM has to decide whether entry into the territory should be allowed or not. In case entry is provisionally refused to an applicant, the whole asylum procedure is generally carried out in the transit area of the airport. The SEM then has to issue the asylum decision within a maximum of 20 days after the asylum application. If that time limit is not met, the SEM allocates the applicant to a canton where he will be treated in the regular procedure. The time for lodging an appeal against a negative asylum decision within the airport procedure is 5 working days.<sup>38</sup>

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.<sup>39</sup> The accelerated test procedure ends with an asylum decision of the first instance or with a transfer to the so-called “extended procedure” if the decision of the first instance cannot be notified within the federal centre. In the first case, an appeal to the Federal Administrative Court can be lodged within 10 days of the notification of the decision (5 working days in case of inadmissibility decisions or safe country of origin decisions).<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup>

## 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

Since the summer of 2016, there have been reports of persons who were refused entry at the southern Swiss border with Italy. These persons tried to enter Switzerland by train or on foot at the border in **Chiasso**, coming from northern Italy. They were rejected by the Swiss border guards, and were subsequently stranded in the Italian town of Como, in a park near the train station. In September 2016, the Red Cross opened a shelter for these people. Different NGOs started to support the persons, with a special focus on unaccompanied minors, who were also among those stranded in Como. Some of the persons have relatives in Switzerland. Also, it has been criticised that the Swiss border guards operate with racial profiling, as they have reportedly picked out all black passengers from the train. There has been broad media coverage of the situation.

<sup>36</sup> Article 46 AsylA; Article 21(2) Test Phases Ordinance.

<sup>37</sup> Articles 22 and 23 AsylA.

<sup>38</sup> Article 108 AsylA.

<sup>39</sup> Articles 16-18 Test Phases Ordinance.

<sup>40</sup> Article 38 Test Phases Ordinance.

<sup>41</sup> Article 19 Test Phases Ordinance.

<sup>42</sup> Articles 23 and 18 Test Phases Ordinance.



The situation is not transparent. It has proven difficult to document concrete cases, as it was not always clear whether or not the persons actually wanted to apply for asylum in Switzerland. Some of them also explicitly wanted to travel on to Germany, which is why they were rejected by the Swiss border guards. However, there are strong indications that at least some persons who wanted to seek protection in Switzerland were prevented from doing so. The Swiss Refugee Council has visited Chiasso and Como on several occasions, and is in discussion with the Swiss authorities in this regard. The Swiss Refugee Council stresses 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 State Secretariat for Migration (and not the border guard) to examine whether or not there is a well-founded claim for asylum or not.<sup>43</sup>

## 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,<sup>44</sup> since the Swiss parliament has decided to abolish the possibility to file asylum applications at Swiss representations abroad from 29 September 2012 onwards.<sup>45</sup> 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.<sup>46</sup>

In general, foreign nationals without a valid permit of stay in Switzerland file an asylum application in one of the 5 reception and processing centres run by the SEM. If a person requests asylum at the border or following detention for illegal entry in the vicinity of the border or within Switzerland, the competent authorities shall normally assign him or her to a reception and processing centre. The competent authority establishes his or her personal data, informs the closest reception and processing centre and issues a transit permit. The person has to present him or herself at that reception and processing centre during the following working day.<sup>47</sup>

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.<sup>48</sup>

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.<sup>49</sup>

<sup>43</sup> See various press releases of the Swiss Refugee Council, as well as news articles on the topic, at: <http://bit.ly/2j09q10>.

<sup>44</sup> Article 19 AsylA.

<sup>45</sup> Curia vista, *Objets parlementaires* (Information on parliamentary decisions), 10.052 *Loi sur l'asile. Modification* (Amendment of the Asylum Act), available in French, German and Italian at: <http://bit.ly/1R3t815>.

<sup>46</sup> Article 18 AsylA.

<sup>47</sup> Articles 19 and 21 AsylA; Article 8(1)-(2) AO1.

<sup>48</sup> 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.

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

If a person is in prison, it is also the cantonal authority (from the canton that has ordered the detention or the execution of a sentence) that accepts the asylum application. The cantonal authority establishes the personal data of the concerned person, takes pictures, confiscates the travel and identity papers and takes the fingerprints if necessary. The cantonal authority then informs the SEM about the asylum application. In case the applicant is released, he is issued an N permit by the cantonal authority.<sup>50</sup>

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](#)).<sup>51</sup>

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,<sup>52</sup> 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.<sup>53</sup>

According to the Asylum Act, asylum seekers are obliged to cooperate in the establishment of the facts during the asylum procedure (duty to cooperate).<sup>54</sup> Since 1 February 2014, asylum applicants who fail to cooperate without valid reason or who fail to make themselves available to the authorities for more than 20 days lose their right to have the asylum procedure continued. The applications of the latter are cancelled without a formal decision being taken and the persons concerned cannot file a new application within 3 years (compliance with the Refugee Convention being reserved).<sup>55</sup> This provision seems to be problematic with regard to access to the asylum procedure, as well as to the right to an effective remedy.<sup>56</sup> 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.

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

<sup>51</sup> Article 22ff AsylA.

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

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

<sup>54</sup> Article 8(1)-(3) AsylA.

<sup>55</sup> Article 8(3bis) AsylA.

<sup>56</sup> Seraina Nufer, *Die Abschreibung von Asylgesuchen nach dem neuen Art. 8 Abs. 3bis AsylG (The cancellation of asylum applications according to the new Article 8 para. 3bis AsylA)*, ASYL 2/14, 3ff.

## 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 days   |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases as of 31 December 2016: <sup>57</sup>  | 27,711  |

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.<sup>58</sup> 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.<sup>59</sup>

In practice, the length of the asylum procedure diverges significantly from what is foreseen by law. In 2016, the average duration was 249.4 days,<sup>60</sup> down from 278 days in 2015.<sup>61</sup>

On 31 December 2016, 27,711 applications were pending at first instance, 22,353 of which had been pending for more than 6 months.<sup>62</sup>

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

#### 1.2. Prioritised examination and fast-track processing

In August 2012, a so-called “48-hour procedure” was set in place, which has the purpose to treat asylum requests from safe European countries within 48 hours if no further examination is required. At the time, asylum claims from Bosnia-Herzegovina, the Former Yugoslav Republic of Macedonia (FYROM) and Serbia were included in those procedures.<sup>63</sup> In March 2013, the 48-hour procedure was

<sup>57</sup> SEM, *Asylum statistics 2016*: <http://bit.ly/2kcYH05>. The figure includes first and second instance cases.

<sup>58</sup> Article 37 AsylA.

<sup>59</sup> Article 23(2) AsylA.

<sup>60</sup> Cases that were decided in 2016: SEM, information provided by email, 18 January 2017.

<sup>61</sup> SEM, *Migrationsbericht 2015 (Migration Report 2015)*, August 2016, available in German at: <http://bit.ly/2jXS8Bk>, 24.

<sup>62</sup> SEM, Information provided by email, 18 January 2017.

<sup>63</sup> SEM, ‘Special measures for asylum seekers from safe European countries’, 21 August 2012, available at: <http://bit.ly/1ldjPeq>.

extended to asylum claims from Kosovo and Georgia.<sup>64</sup> In October 2014, the 48-hour procedure was also applied for asylum requests by persons from Hungary.<sup>65</sup>

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

In addition, on 1 April 2013, the SEM started a fast-track procedure for countries of origin with a very low recognition rate such as Nigeria, Gambia, Morocco and Algeria. These cases cannot be treated in the 48-hour procedure, as the organisation of return to non-visa-waiver-countries is more complicated. In these cases, the SEM plans to take a decision within 20 days. The asylum seekers are not transferred to the cantons, but the procedures are normally concluded while they are still in the federal reception and processing centres.<sup>66</sup>

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.<sup>67</sup>

In 2016, 4,555 cases were treated in the fast-track procedure, and 1,630 in the 48-hour procedure. Out of these cases, 19 were granted asylum in the fast-track procedure, and 15 in the 48-hour procedure. 33 persons were granted temporary protection in the fast-track procedure, 155 in the 48-hour procedure.<sup>68</sup>

### 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.<sup>69</sup> 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.<sup>70</sup> An interpreter can be present during the preliminary interview if necessary.<sup>71</sup> The minutes of the interview are generally written down. In case the

<sup>64</sup> SEM, ‘48-hour procedure extended to Kosovo and Georgia’, 26 March 2013, available at: <http://bit.ly/1GpBzRB>.

<sup>65</sup> 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>.

<sup>66</sup> 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>.

<sup>67</sup> SEM, ‘Asylum: situation still under pressure in 2016’ 28 January 2016, available in French at: <http://bit.ly/2kn8O5O>.

<sup>68</sup> SEM, Statistics provided by email, 18 January 2017.

<sup>69</sup> Article 19(2) AsylA.

<sup>70</sup> Article 26(2) AsylA.

<sup>71</sup> Article 19(2) AO1.

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.<sup>72</sup> 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.<sup>73</sup> Also, a representative of an authorised charitable organization (coordinated by the Swiss Refugee Council) is present in the interview. This person participates as an independent observer in order to clarify facts, suggest further clarification or raise objections to the minutes, but he or she has no party rights.<sup>74</sup>

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).<sup>75</sup> 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 has been testing interpretation via Skype for Business, in order to reduce costs.

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".<sup>76</sup> 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.<sup>77</sup> However, in certain cases, it has been observed that applicants – especially Nigerian applicants – are interviewed in English. This is problematic if the interviewed person, contrary to the assumption of the SEM, does not sufficiently master that language. The SEM has a code of conduct applicable for its interpreters.<sup>78</sup>

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

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<sup>72</sup> Article 36 AsylA.

<sup>73</sup> Article 29 AsylA.

<sup>74</sup> Article 30 AsylA.

<sup>75</sup> Article 29(3) AsylA.

<sup>76</sup> Article 29(1bis) AsylA.

<sup>77</sup> 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.

<sup>78</sup> SEM, *Kompetenzprofil Dolmetschende BFM* (Federal Office for Migration, competence profile for interpreters), 2011.

(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.<sup>79</sup> 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. The other mentioned problems regarding interpretation have persisted during 2016.

#### 1.4. Appeal

##### Indicators: Regular Procedure: Appeal

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

❖ If yes, is it	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it suspensive	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Average processing time for the appeal body to make a decision:<sup>80</sup>  
 35 procedures within 20 days, 9 procedures within 436 days

Swiss law provides for an appeal mechanism in the regular asylum procedure. The first and last competent authority for examining an appeal against inadmissibility and substantive decisions of the SEM is the Federal Administrative Court (TAF).<sup>81</sup> A further appeal to the Federal Supreme Court is not possible (except if it concerns an extradition request or detention in Dublin cases).<sup>82</sup> 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.<sup>83</sup> It is important to note in this respect that the TAF cannot fully verify asylum decisions of the SEM anymore, since the examination for appropriateness has been abolished in the new Asylum Act as of 1 February 2014.<sup>84</sup> Appropriateness of a decision means situations in which the first instance authority has a certain margin of appreciation in which it can manoeuvre. Within this margin of appreciation, there can be decisions that are "inappropriate" but not illegal because they still fall within the margin of appreciation and they respect the purpose of the legal provision, but the discretionary power was used in an inappropriate way. Previously, the Court could examine whether or not a decision made by the SEM was appropriate. But since February 2014, the Court can examine the SEM's decisions on asylum only regarding the violation of federal law, including the abuse and exceeding as well as undercutting (but not the inappropriate use) of discretionary powers or incorrect and incomplete determination of the legally relevant circumstances.<sup>85</sup> 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

<sup>79</sup> *Ibid.*

<sup>80</sup> Federal Administrative Court, Data provided by email, 17 August 2016 and 25 September 2016. Data as of 19 August 2016.

<sup>81</sup> Article 105 AsyIA. Most judgments of the Federal Administrative Court can be found here: <http://bit.ly/1NgE8vb>.

<sup>82</sup> Article 83(c)-(d) Federal Supreme Court Act (*Loi sur le Tribunal fédéral*).

<sup>83</sup> Article 106 AsyIA.

<sup>84</sup> Article 106(1) AsyIA.

<sup>85</sup> 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.



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.<sup>86</sup> 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,<sup>87</sup> which are German, French, Italian and Romansh. Writing an appeal can be an obstacle for an asylum seeker who does not speak any of these languages. In practice, the Court sometimes translates appeals or treats them even though they are written in English. The court can also set a new time limit to translate the appeal, but there is no legal basis for this procedure; it depends on the goodwill of the responsible judge. As a service to persons who want to write an appeal themselves, the Swiss Refugee Council offers a template for an appeal with explanations in different languages on its website.<sup>88</sup>

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.<sup>89</sup>

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.<sup>90</sup> 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.<sup>91</sup>

In general, an appeal has automatic suspensive effect in Switzerland.<sup>92</sup> 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.<sup>93</sup> 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).<sup>94</sup> Another obstacle is set by the limitation of the competence of the TAF since 1 February 2014.

Within the appeal procedure, the Court has the possibility to order a hearing if the facts are not elucidated in a sufficient manner.<sup>95</sup> In practice, it has hardly ever made use of this possibility.

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<sup>86</sup> 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.

<sup>87</sup> Article 33a APA.

<sup>88</sup> 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>.

<sup>89</sup> Article 33a and 52 APA.

<sup>90</sup> Article 109 AsylA.

<sup>91</sup> Federal Administrative Court, Data provided by email, 17 August 2016 and 25 September 2016.

<sup>92</sup> Article 55(1) APA.

<sup>93</sup> Article 63(4) APA.

<sup>94</sup> For example ECtHR, *MA v Switzerland*, Application No 52589/13, Judgment of 18 November 2014.

<sup>95</sup> 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,<sup>96</sup> 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.<sup>97</sup>

The right to free administration of justice is specifically regulated in asylum law since February 2014. Contrary to the general provision in the Federal Act on Administrative Procedure, the legal representation is generally presumed to be necessary in the asylum procedure. It is therefore no longer a precondition to establish the necessity of legal representation, except for appeals within a Dublin procedure, a revision procedure or a re-examination procedure. A legal representative has to hold a university degree in law.<sup>98</sup> Even if the necessity test has become obsolete, the merit of an appeal is still tested. The described legal basis regulates the access to free legal assistance within the regular and the airport procedure.

In the past, restrictive practices regarding free legal assistance have been observed in Switzerland, during the first instance procedure as well as during the appeal procedure.<sup>99</sup> 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,<sup>100</sup> in the appeal procedure the dismissal has in general been justified with the lack of merit of an appeal. The merit test is carried out on the basis of the file only (no hearing).<sup>101</sup> 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

<sup>96</sup> Articles 8(1) and 29(1) and (3) Constitution.

<sup>97</sup> Article 65(1)-(2) APA.

<sup>98</sup> Article 110a AsyIA.

<sup>99</sup> ECRE, *Survey on legal aid for asylum seekers in Europe*, 2010, available at: <http://bit.ly/1IGRz2I>, 33.

<sup>100</sup> Asylum Appeals Commission, Decision EMARK 2001/11 of 10 July 2001.

<sup>101</sup> ECRE, *Survey on legal aid for asylum seekers in Europe*, 2010.



near the reception and processing centres and on the other hand, there are cantonal legal advisory offices that take over the legal assistance after the transfer of applicants to a canton. These offices are mostly projects of NGOs and they are for the most part funded by donations.<sup>102</sup> 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.<sup>103</sup> 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,<sup>104</sup> called "*Erlass 2– Neustrukturierung des Asylbereichs*".<sup>105</sup> It is a restructuring of the asylum system modelled according to the pilot project for an accelerated procedure in the test centre. Once the new system will enter into force, there will be state-funded legal assistance for every asylum seeker provided by the law in the future. This would apply both to the regular and admissibility procedure. The amendment is not expected to enter into force before 2019 – this depends on how long the process of adapting the ordinances and other implementing decrees will take.

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<sup>102</sup> 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>.

<sup>103</sup> 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.

<sup>104</sup> Federal Council, Referendum on Asylum Act of 5 June 2016.

<sup>105</sup> 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: 2016

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
<b>Total</b>	15,203	3,750	<b>Total</b>	4,115	469
Italy	7,092	1,523	Germany	2,040	131
Germany	3,012	1,313	France	714	36
Croatia	919	89	Austria	315	62

Source: SEM, Annual Asylum Statistics 2016.

The Dublin III Regulation is applied directly since 1 January 2014 according to a decision of the Federal Council of 18 December 2013. In order to implement the provisions concerning legal protection and detention, the Swiss law had to be adapted. The changes came into force on 1 July 2015.<sup>106</sup>

#### Application of the Dublin criteria

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

Outgoing Dublin requests by criterion: 2016	
Dublin III Regulation criterion	Requests made in 2016
Family provisions: Articles 8-11	95
Documentation and entry: Articles 12-15	6,173
Dependency and humanitarian clause: Articles 16 and 17(2)	119
"Take back": Article 18(1)(b)	7,481
"Take back": Article 18(1)(c)	37
"Take back": Article 18(1)(d)	1,278
"Take back": Article 20(5)	20
<b>Total outgoing requests</b>	<b>15,203</b>

Source: SEM, information provided by email, 18 January 2017

In 3,331 cases, the SEM applied the sovereignty clause.<sup>107</sup>

These numbers show that the family criteria, the humanitarian clause and the sovereignty clause are only rarely applied by Switzerland. 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:

<sup>106</sup> SEM, Press release of 12 June 2015, available in German at: <http://bit.ly/1JOCrgN>.

<sup>107</sup> SEM, Information provided by email, 18 January 2017. 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>.

- An unaccompanied minor asked for asylum in Switzerland in 2015. In 2016, his parents and his siblings asked for asylum in Switzerland. The SEM issued them a Dublin decision with planned transfer to Slovenia for the whole family. The Federal Administrative Court cancelled this decision and sent it back to the SEM. The Court stated that the SEM had not provided sufficient reasoning for this. According to Article 10 of the Dublin III Regulation, Switzerland would probably be responsible for the whole family.<sup>108</sup> In another case, the minor daughter of the applicant already had asylum in Switzerland by the time the applicant applied for asylum. The Court ruled that according to Article 9 Dublin III Regulation, Switzerland was responsible for the applicant. It was not relevant that the applicant did not yet have a close relationship with his daughter before his asylum application.<sup>109</sup>
- In a Dublin case to Italy, the Court stated that the SEM failed to take into account adequately that the applicant had given birth to a child in Switzerland, and that the child's father was a recognised refugee in Switzerland. The SEM had not provided reasoning why the child should not be included in the refugee status of the father, and the consequences for the mother. It sent the case back to the SEM.<sup>110</sup>

Furthermore, the Federal Administrative Court clarified 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.<sup>111</sup> 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.<sup>112</sup>

### The discretionary clauses

In addition to the cases in which Switzerland must apply the sovereignty clause because the transfer to the responsible Dublin State would violate one of its international obligations, Article 29a(3) AO1 provides the possibility to apply the sovereignty clause on humanitarian grounds. Case-law has held that the sovereignty clause is not self-executing, which means that applicants can rely on the clause only in connection with another provision of national law.<sup>113</sup> 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) OA1. According to Swiss case-law,<sup>114</sup> the interpretation of humanitarian reasons in the sense of Article 3(2) of the Dublin III Regulation should be similar to the interpretation of the humanitarian clause of the Dublin Regulation.<sup>115</sup> Therefore, a sharp distinction cannot be made between the grounds mostly accepted by Swiss authorities to use the sovereignty clause and grounds mostly accepted to use the humanitarian clause. In most cases in which Switzerland decides to examine an application even if another state is responsible, the applicants concerned are particularly vulnerable persons, for example families (especially single mothers with children) or persons with psychological problems that cannot be taken charge of because of the deficiencies of the reception conditions or of the asylum system in the responsible Member State. A high risk of detention in case of a transfer back to the responsible state is

<sup>108</sup> Federal Administrative Court, Decision D-3920/2016 of 21 September 2016.

<sup>109</sup> Federal Administrative Court, Decision E-1597/2016 of 24 May 2016.

<sup>110</sup> Federal Administrative Court, Decision E-5845/2015 of 28 June 2016.

<sup>111</sup> Federal Administrative Court, Decision D-5785/2015 of 10 March 2016.

<sup>112</sup> Federal Administrative Court, Decision E-6513/2014 of 3 December 2015.

<sup>113</sup> Federal Administrative Court, Decision E-5644/2009 of 31 August 2010.

<sup>114</sup> Federal Administrative Court, Decision E-7221/2009 of 10 May 2011.

<sup>115</sup> Articles 16 and 17(2) Dublin III Regulation.

also a reason that is put forward relatively often (for further information see section on [Dublin: Appeal](#)). In 2016, the SEM applied the sovereignty clause in 3,331 cases (the reasons for this are not recorded statistically).<sup>116</sup>

## 2.2. Procedure

### Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility?<sup>117</sup>
  - ❖ Answer to negative Dublin decision 8.2 days
  - ❖ Negative Dublin decision to transfer 174.3 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.<sup>118</sup> The Federal Council has the possibility to provide exceptions to taking the fingerprints for children under the age of 14.<sup>119</sup> 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.<sup>120</sup>

The Federal Administrative Court stated that if a person fails to cooperate to be fingerprinted, this is a severe violation of the duty to cooperate according to the Asylum Act. This is also the case if the asylum seeker wilfully destroys the skin 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.<sup>121</sup>

If another Dublin State is presumed responsible for processing the asylum application, the applicant concerned is granted the right to be heard.<sup>122</sup> This can be carried out either orally or in written form,<sup>123</sup> 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.”<sup>124</sup> The right to be heard cannot effectively be exercised as long as the intended outcome of the Dublin procedure is not clear. According to the *MM* standard, the applicant should be able to provide his/her views in the light of an intended concrete decision:

<sup>116</sup> SEM, Information provided by email, 18 January 2017.

<sup>117</sup> Average duration in 2016: SEM, Information provided by email, 18 January 2017.

<sup>118</sup> Article 102a<sup>bis</sup> AsyIA.

<sup>119</sup> Article 99 AsyIA.

<sup>120</sup> Articles 20, 22 and 26 AsyIA; Article 16 Test Phases Ordinance.

<sup>121</sup> Federal Administrative Court, Decision BVGE 2011/27 of 30 September 2011.

<sup>122</sup> Article 36(1) AsyIA.

<sup>123</sup> Article 29(2) Constitution.

<sup>124</sup> CJEU, Case C-277/11 *MM*, Judgment of 22 November 2012, para 95.

“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.”<sup>125</sup>

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

### 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 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.<sup>130</sup> After this judgment, there have been several cases which the Court sent the matter back to the first instance authority because of insufficient guarantees.<sup>131</sup> 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.<sup>132</sup> In December 2015, the Court found that the list of SPRAR projects was six months old and therefore outdated.<sup>133</sup> 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.<sup>134</sup> In November 2016, the Court found that the list was no longer sufficient as a guarantee, as it was outdated (nine months old).<sup>135</sup>

In cases of pregnant women, the Court states that no *Tarakhel* guarantees must be obtained.<sup>136</sup> It also pointed out that the unborn child cannot rely on the Convention on the Rights of the Child.<sup>137</sup> *Tarakhel* is only applied in the case of families in the Dublin procedure, not for other categories of persons. There have been only two exceptions: In two exceptional cases the Court asked for individual guarantees

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<sup>125</sup> *Ibid*, para 87.

<sup>126</sup> Article 26 APA.

<sup>127</sup> Article 27 APA.

<sup>128</sup> Article 17(5) AsylA.

<sup>129</sup> Article 13 AsylA.

<sup>130</sup> Federal Administrative Court, Decision BVGE 2015/4, E-6629/2014 of 12 March 2015.

<sup>131</sup> For example, Federal Administrative Court, Decision E-936/2015 of 21 April 2015 regarding a Nigerian woman who claimed to have been forced into prostitution in Italy, and who had asked for asylum in Switzerland with her two children; Decision E-3564/2014 of 16 March 2015 regarding a single mother with her child.

<sup>132</sup> Federal Administrative Court, Decision D-4394/2015 of 27 July 2015.

<sup>133</sup> Federal Administrative Court, Decision E-6261/2015 of 9 December 2015.

<sup>134</sup> Federal Administrative Court, Decision D-6358/2015 of 7 April 2016.

<sup>135</sup> Federal Administrative Court, Decision E-4969/2016 of 21 November 2016.

<sup>136</sup> Federal Administrative Court, Decisions E-406/2015 of 2 April 2015 and D-4978/2016 of 6 September 2016.

<sup>137</sup> Federal Administrative Court, Decision E-406/2015 of 2 April 2015.

regarding reception conditions and access to medical treatment regarding mentally ill persons (not families) and regarding **Hungary** and **Slovenia** (not Italy).<sup>138</sup>

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.<sup>139</sup> So the only moment they can make a statement regarding the guarantees is in the appeal. In 2016, 41 families and single parents with children (117 persons in total) were transferred to Italy under Dublin.<sup>140</sup>

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 and the Danish Refugee Council have 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*.<sup>141</sup>

## Transfers

According to the SEM, in 2016 it took on average 174.3 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 8.2 days.<sup>142</sup> 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 significantly improved in 2016 (3,750 transfers and 15,203 requests i.e. 24.6%) compared to 2015 (2,461 transfers and 17,377 requests i.e. 14.1%).<sup>143</sup> However, it still indicates that less 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.<sup>144</sup> Nevertheless, in practice, voluntary transfers are tested only within the accelerated procedure in the test centre in **Zurich**. So far this seems successful: In 2015, there were 28 voluntary

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<sup>138</sup> Federal Administrative Court, Decision D-2677/2015 of 25 August 2015 regarding **Slovenia** and a mentally ill person who needs special trauma treatment. *Tarakhel* was not directly mentioned in the decision, but the Court states the need for guarantees. Regarding **Hungary** and a traumatised man: Federal Administrative Court, Decision D-6089/2014 of 10 November 2014.

<sup>139</sup> SEM, Dublin Office, Email of 9 September 2015.

<sup>140</sup> SEM, Information provided by email, 20 January 2017.

<sup>141</sup> 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>.

<sup>142</sup> SEM, Information provided by email, 18 January 2017.

<sup>143</sup> SEM, *Asylum Statistics 2016; Asylum Statistics 2015*.

<sup>144</sup> Article 29 Dublin III Regulation.



transfers to Dublin member states, and in 2016, a total 33.<sup>145</sup> 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.<sup>146</sup> This case-law has since been codified in the Asylum Act.<sup>147</sup> 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.<sup>148</sup> This statement is problematic because the ECtHR bases it on 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,<sup>149</sup> 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.<sup>150</sup>

<sup>145</sup> Information provided by OSAR's project coordinator for the test procedure, 23 December 2016.

<sup>146</sup> Federal Administrative Court, Decision BVGE 2010/1 (E-5841/2009) of 2 February 2010.

<sup>147</sup> Article 107a AsyIA.

<sup>148</sup> ECtHR, *M.G. and E.T. v. Switzerland*, Application No 26456/14, Decision of 17 November 2016.

<sup>149</sup> Article 36 AsyIA.

<sup>150</sup> Article 108(2) AsyIA.

Contrary to other asylum appeals, appeals against Dublin transfer decisions (inadmissibility decisions) do not have automatic suspensive effect. However, as mentioned under the section on [Dublin: Procedure](#), transfers cannot be enforced immediately after the notification of the decision. A time limit of 5 working days must be granted.<sup>151</sup> 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.<sup>152</sup>

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.<sup>153</sup> In practice, it has hardly ever made use of this possibility.

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

However, the competence of the Court was severely limited in January 2014. Since then, the Court can only examine errors of law, not whether or not the decision of the first instance authority was “appropriate” (see section on [Regular Procedure: Appeal](#)). This limitation is very relevant in the Dublin procedure. Many Dublin cases do not fall under the compulsory criteria of the Dublin III Regulation or under Articles 3 or 8 ECHR. Therefore, especially in cases regarding family ties which fall outside those strict definitions, the notion of humanitarian reasons for which Switzerland can apply the sovereignty clause becomes crucial. The Court stated that whether or not there are humanitarian reasons for applying the sovereignty clause is a question of “appropriateness”, where the SEM has a margin of appreciation. As long as it decides within this margin, the Court cannot examine whether or not the decision was appropriate. For example, in one case an Afghan mother and her minor son travelled to Switzerland via Bulgaria. The older son/brother lives in Switzerland with subsidiary protection. Because he is already an adult, the SEM decided to send the mother and younger brother back to Bulgaria, despite the fact that the applicants claimed that the boy needed the support of his older brother. The Court confirmed this decision: it admitted that the criteria according to which the SEM had examined the humanitarian reasons were strict, however, they were objective and clear. Therefore, the Court could not examine the decision by the SEM.<sup>154</sup>

## 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?
 

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

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

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

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

The right to free administration of justice is enshrined in the Federal Constitution and the Asylum Act.<sup>155</sup> Nevertheless, restrictive practices regarding free legal advice have been observed in Switzerland in the

<sup>151</sup> Article 107a(2) AsylA; Federal Administrative Court, Decision E-5841/2009 of 2 February 2010.

<sup>152</sup> Article 107a AsylA.

<sup>153</sup> Article 14 APA.

<sup>154</sup> Federal Administrative Court, Decision D-3794/2014 of 17 April 2015.

<sup>155</sup> Articles 8(1) and 29(1) Constitution; Article 110a AsylA.



past, during the first instance procedure as well as during the appeal procedure.<sup>156</sup> 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 regard to the remote federal accommodation centres (“*Aussenstellen*”).<sup>157</sup> 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.<sup>158</sup>

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. However, in a few cases, the Dublin transfer can be suspended temporarily, e.g. if a woman is pregnant.

**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,<sup>159</sup> 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<sup>160</sup> and of 17 October 2011.<sup>161</sup> 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).<sup>162</sup> In 2014, the Court confirmed that this practice is still valid.<sup>163</sup> This means that in most of the cases Switzerland 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

<sup>156</sup> ECRE, *Survey on legal aid for asylum seekers in Europe*, 2010, 33.

<sup>157</sup> Article 26(3) AsylA, Ordinance of the DFJP on the management of federal reception centres in the field of asylum.

<sup>158</sup> OSAR, ‘Etat des lieux du centre fédéral de Bremgarten «Obere Allmend»’, 2014, 8.

<sup>159</sup> SEM, *Manuel Asile et retour, Procédure Dublin (Manual asylum and return, Dublin procedure)*, 14.

<sup>160</sup> Federal Administrative Court, Decision BVGE 2011/35 (D-2076/2010) of 16 August 2011.

<sup>161</sup> Federal Administrative Court, Decision E-5604/2011 of 17 October 2011.

<sup>162</sup> Federal Administrative Court, Decision BVGE 2011/35 (D-2076/2010) of 16 August 2011 and Decision BVGE 2011/36 (E-5604/2011) of 17 October 2011.

<sup>163</sup> Federal Administrative Court, Decision E-6955/2013 of 27 January 2014.

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.<sup>164</sup> 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.<sup>165</sup> According to SEM statistics, 17 persons were transferred to Greece under the readmission agreement in 2016.<sup>166</sup>

**Malta:** According to Swiss case law, the general presumption that Malta respects the basic rights that the concerned persons are entitled to within the Common European Asylum System in an appropriate manner cannot be maintained. This is due to inherent deficiencies of the asylum procedure or of reception conditions. Therefore, it is necessary to examine in individual cases whether an applicant risks a violation of his or her basic rights in case of a transfer to Malta because he or she belongs to a category with particular vulnerabilities.<sup>167</sup> Therefore, the transfer is generally suspended if this is suspected to be the case.

**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.<sup>168</sup> 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 issues Dublin transfer decisions, and if the person does not manage to file an appeal to the Court in time, it is possible that they are transferred to Hungary. On the other hand, if the person files an appeal, the transfer will be suspended for the time being. OSAR has criticised this situation, as it leads to unequal treatment and arbitrary situations. According to the statistics, in 2016, 65 persons were transferred to Hungary under Dublin.<sup>169</sup> Before the Court's decision to suspend all transfers for the moment, the sovereignty clause was applied particularly in cases of vulnerable persons and/or if applicants risk detention after return to Hungary.<sup>170</sup>

**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.<sup>171</sup> A total 89 persons were returned to Croatia in 2016.<sup>172</sup>

**Bulgaria:** Transfers are generally carried out, even in the case of families and vulnerable persons.<sup>173</sup>

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<sup>164</sup> Federal Administrative Court, Decision D-206/2016 of 10 February 2016.

<sup>165</sup> Federal Administrative Court, Decisions E-6347/2014 of 20 November 2014 and E-1192/2014 of 17 March 2014.

<sup>166</sup> SEM, *Asylum Statistics 2016*.

<sup>167</sup> Federal Administrative Court, Decision BVGE 2012/27 (D-7126/2013) of 5 February 2014.

<sup>168</sup> See *Neue Zürcher Zeitung*, *Marschhalt bei Dublin-Fällen (Halt with Dublin cases)*, 26 February 2016, available in German at: <http://bit.ly/21mLQpE>.

<sup>169</sup> SEM, *Asylum Statistics 2016*.

<sup>170</sup> SEM, *Manuel asile et retour, Procédure Dublin*, 14; see for example Federal Administrative Court, Decision E-2093/2012 of 9 October 2013.

<sup>171</sup> Federal Administrative Court, Decision D-1611/2016 of 22 March 2016.

<sup>172</sup> SEM, *Asylum Statistics 2016*.

<sup>173</sup> 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 of 13 June 2016.

## 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”.<sup>174</sup> 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.<sup>175</sup>

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.<sup>176</sup>

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.<sup>177</sup> 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,<sup>178</sup> 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.

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<sup>174</sup> Article 26 AsylA.

<sup>175</sup> Article 36(2) AsylA.

<sup>176</sup> Article 31a(2) AsylA.

<sup>177</sup> Article 37 AsylA.

<sup>178</sup> Federal Administrative Court, Decision D-1643/2014 of 14 April 2014.

### 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.

If the SEM decides to dismiss an application according to Article 31a(1) AsyIA, there will be no second interview, but the asylum seeker is granted the right to be heard. There the person concerned can give a statement in response to the intention of the SEM to dismiss the application. This regards notably all the reasons for an inadmissibility decision described in the general part of this section, except if the application for asylum is made exclusively for economic or medical reasons. In this case, a second interview will take place according to Article 29 AsyIA.

The first summary interview is the same as in the regular procedure (see section on [Regular Procedure: Personal Interview](#)). The right to be heard regarding the inadmissibility decision is usually granted at the end of the first interview. So the people who are present are the same as in the regular first interview (employee of the SEM who leads the interview, interpreter, sometimes a transcript writer).<sup>179</sup> If the person requesting asylum is an unaccompanied minor, OSAR 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.<sup>180</sup> 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

<sup>179</sup> 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.

<sup>180</sup> Article 17(3) AsyIA.

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.<sup>181</sup> 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,<sup>182</sup> 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.<sup>183</sup>

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

### 3.4. Legal assistance

#### Indicators: Admissibility Procedure: Legal Assistance

☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance 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 border procedures laid down in the law? ☒ Yes ☐ No  
❖ If yes, what is the maximum time-limit? 20 days

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

<sup>181</sup> Article 55(1) APA.

<sup>182</sup> Article 109 AsylA.

<sup>183</sup> Federal Administrative Court, Decision BVGE 2012/4 (E-6490/2011) of 9 February 2012, para. 2.2.

procedure as any other asylum seeker.<sup>184</sup> However, since the summer of 2016 this has not always been guaranteed in practice at the southern Swiss border with Italy (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.<sup>185</sup> If a person requests asylum at another airport in Switzerland, the person will be transferred to a reception and processing centre and will enter the regular procedure.

In Zurich and Geneva, accommodation will be provided during the time of the airport procedure. Asylum seekers may be held at the airport or exceptionally at another location for a maximum of 60 days.<sup>186</sup>

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) AsyIA 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.<sup>187</sup> The asylum seeker is then accommodated in a special accommodation facility within the transit zone of the airport.<sup>188</sup>

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.<sup>189</sup> In a great majority of cases, the time limit is respected in practice; people are sent to the responsible canton automatically after 20 days.

## 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?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are questions limited to nationality, identity, travel route?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Are interviews conducted through video conferencing? ☐ 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](#)).

<sup>184</sup> Article 21(1) AsyIA.

<sup>185</sup> Article 22 AsyIA and Article 12 AO1.

<sup>186</sup> Article 22(5) AsyIA.

<sup>187</sup> Article 22(1bis), (1ter) and (2) AsyIA.

<sup>188</sup> 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.

<sup>189</sup> Article 23(2) AsyIA.



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](#)).

### 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?

❖ If yes, is it

❖ If yes, is it suspensive

○ Dublin cases

☒ Yes

☒ Judicial

☒ Yes

☐ Yes

☐ No

☐ Administrative

☐ No

☒ No

Against a decision taken during the airport procedure an appeal can be made within 5 working days.<sup>190</sup> 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](#)).

<sup>190</sup> Article 108(2) AsyIA and Article 23(1) AsyIA.

## 5. Accelerated procedure

### 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<sup>191</sup> entered into force. The asylum seekers who enter this special procedure are chosen at random when they make their application at a federal reception and processing centre. Those who are chosen are then transferred to the test centre in **Zurich**.

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

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

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

Until now there is only one centre that applies the test procedure, namely the test centre in Zurich. This procedure may be extended to another test centre in the French-speaking part of Switzerland in the coming years. In addition, the whole Swiss asylum system will be restructured similarly as in the test centre in Zurich. The Swiss parliament approved the new asylum law on 25 September 2015,<sup>192</sup> and the people approved it in a referendum on 5 June 2016.<sup>193</sup> The amendment is not expected to enter into force before 2019.

An evaluation of the test phase 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.<sup>194</sup>

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

Dublin procedures have a time limit of 5 working days for an appeal; the Dublin procedure is described in the section on [Dublin](#). The same time frame for appeals is applied for all inadmissibility decisions.<sup>195</sup> Those decisions also have to be made within 5 working days of the application being filed or after the

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<sup>191</sup> Test Phases Ordinance.

<sup>192</sup> Draft of the new Asylum Act, text adopted by the parliament, 24 September 2015, available in German at: <http://bit.ly/1LbCYKw>.

<sup>193</sup> Federal Council, Referendum on Asylum Act of 5 June 2016.

<sup>194</sup> SEM, ‘Test phase aiming at acceleration of asylum procedures: objectives reached’, 14 March 2016, available in French at: <http://bit.ly/2jUW98T>.

<sup>195</sup> Article 108 AsyIA.



Dublin Member State concerned has agreed to the transfer request,<sup>196</sup> 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.<sup>197</sup> In those cases, the time limit for an appeal is also 5 working days.<sup>198</sup>

## 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?
 

<ul style="list-style-type: none"> <li>❖ If yes, is it</li> <li>❖ If yes, is it suspensive               <ul style="list-style-type: none"> <li>○ Dublin cases</li> </ul> </li> </ul>	<table border="0"> <tr> <td><input checked="" type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> <tr> <td><input checked="" type="checkbox"/> Judicial</td> <td><input type="checkbox"/> Administrative</td> </tr> <tr> <td><input checked="" type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> <tr> <td><input type="checkbox"/> Yes</td> <td><input checked="" type="checkbox"/> No</td> </tr> </table>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No								
<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative								
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No								
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No								

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

<sup>196</sup> Article 37 AsylA.

<sup>197</sup> Article 40 AsylA.

<sup>198</sup> Article 108 AsylA.

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.<sup>199</sup> 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.<sup>200</sup>

A legislative amendment is foreseen, which was adopted by the parliament on 25 September 2015, called “*Erlass 2– Neustrukturierung des Asylbereichs*”.<sup>201</sup> The people approved it in a referendum on 5 June 2016.<sup>202</sup> It is a restructuring of the asylum system modelled according to the pilot project for an accelerated procedure in the test centre. Once the new system will enter into force, there will be state-funded legal assistance for every asylum seeker provided by the law in the future. This will apply both to the regular and admissibility procedure. The amendment is not expected to enter into force before 2019.

<sup>199</sup> Article 23-28 Test Phases Ordinance.

<sup>200</sup> SEM, ‘Test phase aiming at acceleration of asylum procedures: objectives reached’, 14 March 2016, available in French at: <http://bit.ly/2jUW98T>.

<sup>201</sup> Draft of the new Asylum Act, text adopted by the parliament, 24 September 2015, available in German at: <http://bit.ly/1LbCYKw>.

<sup>202</sup> Federal Council, Referendum on Asylum Act of 5 June 2016.

## 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

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,<sup>203</sup> to respond to European requirements.<sup>204</sup>

There is no screening for potential vulnerabilities. According to the law,<sup>205</sup> 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 Swiss national action plan against trafficking. 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.<sup>206</sup> 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. OSAR is taking part in the transnational TRACKS project which aims at identifying the special needs of victims of human trafficking in the asylum procedure.<sup>207</sup>

### Age assessment

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.<sup>208</sup> 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.<sup>209</sup> The law

<sup>203</sup> Article 35 and 36 of the Ordinance on Admission, Period of Stay and Employment.

<sup>204</sup> Article 10 Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16 May 2005.

<sup>205</sup> Article 26bis AsyIA.

<sup>206</sup> Federal Administrative Court, Decision D-6806/2013 of 18 July 2016.

<sup>207</sup> Identification of Trafficked Asylum Seekers' Special Needs. See description at: <http://bit.ly/2j9Or6Q>.

<sup>208</sup> Article 7 AO1.

<sup>209</sup> Federal Administrative Court, Decision E-1552/2013 of 2 April 2013, para 4.2.

does not specify who can trigger an age assessment, but in practice, it is the SEM. The asylum seeker carries the burden of proof.<sup>210</sup> In practice, an x-ray of the hand is taken in case of doubt about the minority of the person. In the test procedure in Zurich, a combination of the following methods is used: skeletal age (x-ray of the hand, possibly CT scan of the sternum-clavicular joint), dental age plus physiognomy (sexual maturity and physical constitution). The Federal Administrative Court has stated that the x-ray of the hand by itself is not very reliable, as there is a standard deviation of two and a half to three years.<sup>211</sup> 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.<sup>212</sup> 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.<sup>213</sup>

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.

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?

❖ If for certain categories, specify which: ☐ Yes ☒ For certain categories ☐ No  
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 who can be asked for advice or asked to get involved in difficult cases (for example regarding unaccompanied minors, gender-specific violence or victims of trafficking).

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

If there are indications or if the situation in the country of origin is indicating gender-specific violence and 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.<sup>214</sup> 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.<sup>215</sup> 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.<sup>216</sup> In practice, this way of proceeding is normally respected and an applicant can demand such measures. Certain more

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

<sup>211</sup> Asylum Recourse Commission, JICRA 2000 Nr. 19.

<sup>212</sup> Federal Administrative Court, Decision A-1987/2016 of 6 September 2016, 8.4.2.

<sup>213</sup> Federal Administrative Court, Decision D-859/2016 of 7 April 2016, 6.3.

<sup>214</sup> Article 6 AO1.

<sup>215</sup> SEM, *Manual on asylum and return, Article C6, Befragung zur Person* (Interview on personal data), available in German at: <http://bit.ly/1RvsMQW>.

<sup>216</sup> 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.

general provisions specifically address the needs of women in the asylum procedure.<sup>217</sup> 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.<sup>218</sup>

### 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,<sup>219</sup> asylum seekers must state any serious health problems of relevance to the asylum and removal procedures of which they were aware when filing the application for asylum. This is in practice very problematic because traumatised people 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.<sup>220</sup> 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.

<sup>217</sup> Article 17(2) AsylA.

<sup>218</sup> Article 5 AO1.

<sup>219</sup> Article 26bis AsylA.

<sup>220</sup> Federal Administrative Court, Decision D-5129/2014 of 7 January 2015.

#### 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.<sup>221</sup> 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.<sup>222</sup> 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.<sup>223</sup> 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.<sup>224</sup> 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.<sup>225</sup> Since July 2015, the duty of the person of confidence starts with the first interview.<sup>226</sup>

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.<sup>227</sup> Since July 2015, the Asylum Ordinance 1 specifies that the duty of the representative starts with the first interview.<sup>228</sup> 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.<sup>229</sup> In other cases, the first interview is not considered as a decisive procedural step.<sup>230</sup> 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

<sup>221</sup> Asylum Appeals Commission (predecessor of the Federal Administrative Court), decision EMARK 1996/4 of 9 March 1995.

<sup>222</sup> Article 7(5) AO1.

<sup>223</sup> Federal Administrative Court, Decision E-1928/2014 of 24 July 2014.

<sup>224</sup> Article 17 AsylA; Article 7 AO1.

<sup>225</sup> SEM, *Manuel Asile et retour. Requérants d'asile mineurs non accompagnés* (Manual on asylum and return, Unaccompanied minor asylum seekers), 14-15.

<sup>226</sup> Article 7(2bis) AO1.

<sup>227</sup> Article 17(3) AsylA.

<sup>228</sup> Article 7(2bis) AO1.

<sup>229</sup> Asylum Appeals Commission, Decision EMARK 2004/30 of 29 October 2004.

<sup>230</sup> Federal Administrative Court, Decision BVGE 2011/23 (E-8648/2010) of 21 September 2011, paras 5.4.6 and 7.



insufficiently qualified or insufficiently committed to support the children effectively.<sup>231</sup> 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.<sup>232</sup>

As of now, the duties of the representative are not precisely defined by law and are therefore not always clear in practice.<sup>233</sup> Since July 2015, the Asylum Ordinance 1 specifies that the representative must have knowledge of the asylum law and the Dublin procedure. He or she accompanies and supports the minor in the asylum or Dublin procedure. The Ordinance lists a few examples of tasks that the representative must fulfil: advice before and during interviews; support in naming and obtaining elements of proof; support especially in the contact with authorities and medical institutions.<sup>234</sup> The idea of the representative is to support the asylum seeker in the asylum procedure, but also concerning other legal, social or other problems. In practice, as long as the child is staying in the reception and processing centre (maximum 90 days), the representative mostly accompanies the child to the asylum interview or hearing and hands over their address in case of questions. The child and the representative often only meet shortly before the interview. Often the translator of the SEM is asked for help with the explanation of the representative's role. Under these circumstances there is almost no time to build any trust. Normally, the representative will change after a person is transferred to the canton and then stays the same person until the child has reached their 18<sup>th</sup> 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.

## 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.

<sup>231</sup> For an overview of the shortcomings in the support for unaccompanied children in the asylum procedure see: Nora Lischetti, *Unbegleitete Minderjährige im schweizerischen Asylverfahren* (Unaccompanied minors in the Swiss asylum procedure), ASYL 1/12, 3ff.

<sup>232</sup> 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 in German at: <http://bit.ly/2jrmj4JE>.

<sup>233</sup> Asylum Appeals Commission, Decision EMARK 2006/14 of 16 March 2006.

<sup>234</sup> Article 7(3) AO1.



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.<sup>235</sup>

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.<sup>236</sup> However, if the SEM has applied this provision incorrectly, there is the right to an effective remedy for denial of justice.<sup>237</sup>

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.

## F. The safe country concepts

### Indicators: Safe Country Concepts

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

### 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.<sup>238</sup> The list of safe countries of origin is published on the website of the SEM, and was last updated in June 2014.<sup>239</sup> It includes:

- EU and EEA Member States;
- Albania;
- Benin;
- Bosnia-Herzegovina;
- Burkina Faso;
- Ghana;
- India;

<sup>235</sup> Martina Caroni et al., *Migrationsrecht* (Migration law), 3<sup>rd</sup> (vastly revised) edition, Berne 2014, 342 f.

<sup>236</sup> Federal Administrative Court, BVGE 2015/28, E-3979/2014 of 3 November 2015.

<sup>237</sup> Federal Administrative Court, Decision E-5007/2014 of 6 October 2016.

<sup>238</sup> Article 6a(2)(a) AsyIA.

<sup>239</sup> SEM, *Liste des pays sûrs, dits «safe countries»* (List of safe countries of origin), June 2014, available in French at: <http://bit.ly/1LIQb7H>.

- Kosovo;
- FYROM;
- Moldova, excluding Transnistria;
- Mongolia;
- Montenegro;
- Senegal; and
- Serbia.

In cases of safe country of origin, the request will normally be decided without further investigations. Even though the decision will not be dismissed, the time limit for an appeal in these cases is 5 working days.<sup>240</sup>

## 2. Safe third country

The Federal Council is also responsible for the designation of states where there is effective protection against *refoulement*<sup>241</sup> as safe third countries.<sup>242</sup> The Federal Council shall periodically review these decisions.<sup>243</sup> The following requirements must be met:<sup>244</sup>

- ❖ 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.<sup>245</sup> 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.<sup>246</sup>

This list includes so far all EU and EFTA member states.<sup>247</sup>

### 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).

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<sup>240</sup> Article 108(2) AsylA.

<sup>241</sup> As defined in Article 5(1) AsylA.

<sup>242</sup> Article 6a(2)(b) AsylA.

<sup>243</sup> Article 6a(3) AsylA.

<sup>244</sup> Federal Council, Bundesblatt (Federal Gazette) 2002, available in German at: <http://bit.ly/2j9UF6l>, 6877ff.

<sup>245</sup> Asylum Appeals Commission, Decision EMARK 2000/10, 2001/14.

<sup>246</sup> Federal Council, Bundesblatt (Federal Gazette) 2002, 6884.

<sup>247</sup> SEM, Press release of 14 December 2007, available at: <http://bit.ly/1NgJbf5>.

## G. Relocation

### Indicators: Relocation

1. Number of persons effectively relocated since the start of the scheme 368

#### Relocation statistics: 2016

Relocation from Italy			Relocation from Greece		
	Pledges	Relocations		Pledges	Relocations
<b>Total</b>	630	340	<b>Total</b>	400	28

Source: SEM, Information provided by email, 18 January 2017.

Switzerland has pledged 1,030 places under the relocation scheme so far, and 368 persons have been relocated. These are: 332 Eritreans, 34 Syrians, one person from Iraq and one person from Central African Republic. The duration of the procedure is not recorded statistically.

So far one request has 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.<sup>248</sup>

Upon arrival, relocated persons enter the normal asylum procedure and are treated like persons who apply for asylum directly in Switzerland.<sup>249</sup>

## 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.<sup>250</sup>

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

<sup>248</sup> All information in this section: SEM, Information provided by email, 18 January 2017.

<sup>249</sup> SEM, Information provided by email, 5 August 2016.

<sup>250</sup> Article 25a AsylA.

repeated at the beginning of the interview. There are also information leaflets available from the Swiss Refugee Council on the regular and the airport procedure, in 20 different languages.<sup>251</sup> 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 OSAR 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 accommodations. In cases where there is no person on the ground to explain the decision and a possible appeal has to be filed within 5 working days, it can be very difficult for the asylum seeker to get support to understand the decision and also to write an appeal. First of all, the time limit is very short. Secondly, a ticket for transportation to a legal advisory office must be organised and finally, some legal advisory offices are only open one day per week. So the people located in the countryside face clear disadvantages especially regarding the access to legal advice and therefore also access to some information and support.<sup>252</sup>

<sup>251</sup> Swiss Refugee Council, *Fiches d'information sur la procédure d'asile* (Information leaflets on the asylum procedure), available at: <http://bit.ly/1QPhrAg>.

<sup>252</sup> 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?<sup>253</sup> ☒ Yes ☐ No  
❖ If yes, specify which: Albania, Algeria, Benin, Bosnia-Herzegovina, Burkina Faso, FYROM, Gambia, Ghana, India, Kosovo, Moldova, Mongolia, Montenegro, Morocco, Nigeria, Senegal, Serbia, EU/EFTA Member States

In 2016, **Eritrea** was the top country of origin with 5,178 requests. The recognition rate (asylum status) was 49.2% and the temporary admission rate was 39.6% in 2016. 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. This practice change has been criticised by OSAR and others, as it does not seem justified by the current country of origin information (COI) or the difficulty to obtain reliable COI. 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. It remains to be seen how the Federal Administrative Court will react to this practice change. In one case before the SEM's practice change, the Federal Administrative Court ruled that in order to assume that the person has left Eritrea illegally, it is not sufficient that the person belongs to an age group that normally does not receive an exit visa.<sup>254</sup> 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.<sup>255</sup>

The second largest group of asylum seekers in 2016 were persons from **Afghanistan**. 3,229 persons asked for asylum in that period. 13.8% were granted asylum, while 75.6% 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.<sup>256</sup>

In 2016, **Syrians** were the third largest group of asylum seekers. 2,144 requests were made by Syrian applicants. People from Syria (except Palestinians from Syria) at least get status F, which means a temporary admission. In February 2015, the Federal Administrative Court issued two leading case decisions regarding Syria. In a first judgment, it stated that considering the current circumstances in Syria, army deserters and conscientious objectors can risk persecution. The Court also denied an internal flight alternative for the applicant (of Kurdish origin) in the Kurdish-controlled area, due to the instability of the region.<sup>257</sup> In a second judgment, the Court stated that even ordinary participants of demonstrations in Syria against the regime risk persecution if they have been identified by Syrian state security forces.<sup>258</sup> 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.<sup>259</sup> 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

<sup>253</sup> Whether under the "safe country of origin" concept or otherwise.

<sup>254</sup> Federal Administrative Court, Decision D-4787/2013 of 20 November 2014.

<sup>255</sup> Federal Administrative Court, Decision E-129/2015 of 20 January 2015.

<sup>256</sup> Federal Administrative Court, Decisions D-7950/2009 of 30 December 2011 (Mazar-i-Sharif), D-2312/2009 of 28 October 2011 (Herat), BVGE 2011/7 of 16 June 2011 (Afghanistan in general and Kabul).

<sup>257</sup> Federal Administrative Court, Decision D-5553/2013 of 18 February 2015.

<sup>258</sup> Federal Administrative Court, Decision BVGE 2015/3, D-5779/2013 of 25 February 2015.

<sup>259</sup> Federal Administrative Court, Decision D-5329/2014 of 23 June 2016.

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.).<sup>260</sup> On 18 September 2015, the Federal Council decided that Switzerland will participate in the European relocation project for 40,000 persons in need of protection. Under this project, Switzerland will relocate up to 1,500 persons 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.<sup>261</sup> 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 2000 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.<sup>262</sup>

The fourth largest group of asylum seekers in 2016 came from **Sri Lanka**. Since two asylum seekers from Sri Lanka had been arrested at the airport of Colombo in summer 2013 after they had been sent back from Switzerland, the SEM stopped all forced returns to Sri Lanka until May 2014 and reviewed its practice.<sup>263</sup> 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.<sup>264</sup> 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.<sup>265</sup>

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 Iraq if they have a social or family network there.<sup>266</sup> Persons from central and southern Iraq usually receive a form of protection.

Asylum requests from people from **Bosnia-Herzegovina, Macedonia, Kosovo, Georgia** and **Hungary** are normally treated within 48 hours, except if further examinations are required (see section on [Regular Procedure: Fast-Track Processing](#)). Statistics on this topic can be found on the website of SEM.<sup>267</sup>

<sup>260</sup> SEM, *Bundesrat beschliesst zusätzliche Massnahmen für die Opfer des Syrienkonflikts* (Federal Council decides further measures for the victims of the Syria conflict), Press release of 6 March 2015, available in German, French and Italian at: <http://bit.ly/1GH8GQO>.

<sup>261</sup> SEM, *Humanitarian crisis in Syria*, available at: <http://bit.ly/1FQ3Jsl>.

<sup>262</sup> Federal Council, Conflict in Syria: Switzerland continues aid on site and resettles more refugees (Syrienkonflikt: Schweiz setzt Hilfe vor Ort fort und nimmt weitere Flüchtlinge auf), 9 December 2016, available at: <http://bit.ly/2j9UwQK>.

<sup>263</sup> Neue Zürcher Zeitung, *Umstrittene Rückführungen nach Sri Lanka: Lehren aus Fehleinschätzungen im Asylverfahren* (Controversial returns to Sri Lanka: Lessons learnt from misjudgment in the asylum procedure), 26 May 2014, available in German at: <http://bit.ly/1TNcaYO>; NGO information platform humanrights.ch, *Les renvois forcés vers le Sri Lanka ne doivent pas reprendre* (Returns to Sri Lanka must not be taken up again), 4 June 2014, available in French at: <http://bit.ly/1eGVLfT>.

<sup>264</sup> SEM, 'Arrest of two asylum seekers in Sri Lanka: results of review process now available', 26 May 2014, available at: <http://bit.ly/1HfpRL0>.

<sup>265</sup> SEM, 'Anpassung der Asyl- und Wegweisungspraxis für Sri Lanka', 7 July 2016, available in German at: <http://bit.ly/2jV4utf>.

<sup>266</sup> Federal Administrative Court, Decision E-3737/2015 of 14 December 2015.

<sup>267</sup> SEM, *Asylum Statistics 2016*, available at: <http://bit.ly/2kcYH05>.



## 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.<sup>268</sup> 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	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Admissibility procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Border procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Testphase procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Onward appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
  
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?
 

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

Material reception conditions primarily consist of accommodation, food, health care and limited financial allowance according to the specific entitlement to social assistance. Assistance benefits are granted only when a person is unable to maintain 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.<sup>269</sup> For organisational reasons, accommodation in asylum centres is however available for all asylum seekers, regardless of their financial resources.<sup>270</sup> 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.<sup>271</sup>

#### 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.

<sup>268</sup> 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.

<sup>269</sup> Article 81 AsylA.

<sup>270</sup> 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.

<sup>271</sup> 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,<sup>272</sup> or rejected within the 48-hour procedure,<sup>273</sup> 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.<sup>274</sup> 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.<sup>275</sup>

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.<sup>276</sup>

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.<sup>277</sup> 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.<sup>278</sup> Asylum seekers benefit from accommodation, social assistance, health care and education for children under 16.<sup>279</sup> Asylum seekers in the test phase are not entitled to work.<sup>280</sup> Like in

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<sup>272</sup> See sections on [Dublin](#) and [Admissibility Procedure](#).

<sup>273</sup> In case of certain safe countries of origin, see section on [Regular Procedure: Fast-Track Processing](#).

<sup>274</sup> Article 27(4) AsyIA.

<sup>275</sup> Article 16b AO1.

<sup>276</sup> 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>.

<sup>277</sup> See section on [Accelerated Procedure](#).

<sup>278</sup> 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.

<sup>279</sup> 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).

<sup>280</sup> 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.<sup>281</sup> 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.<sup>282</sup> 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.<sup>283</sup>

### **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.<sup>284</sup> 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.<sup>285</sup> 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.<sup>286</sup>

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<sup>281</sup> For details on the airport procedure see section [Border Procedure](#).

<sup>282</sup> Article 22(3) AsylA.

<sup>283</sup> Article 22(5) AsylA.

<sup>284</sup> 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](#).

<sup>285</sup> For more information on subsequent applications, see section on [Subsequent Applications](#).

<sup>286</sup> 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.<sup>287</sup> 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 30 June 2016 (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,<sup>288</sup> social benefits in the form of non-cash benefits whenever possible, or vouchers or cash.<sup>289</sup> 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.<sup>290</sup> The provision on social benefits is under the responsibility of the Confederation as long as the person is

<sup>287</sup> Le Courrier, 'Les critiques pleuvent sur l'EVAM qui se défend' (The critics confront EVAM which defends itself), 6 October 2014.

<sup>288</sup> Article 28 AsylA.

<sup>289</sup> 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.

<sup>290</sup> 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.<sup>291</sup> 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%).<sup>292</sup> 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.<sup>293</sup> 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.<sup>294</sup>

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.<sup>295</sup> 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.<sup>296</sup>

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.<sup>297</sup>

## Emergency aid

Persons subject to a legally binding removal decision for which a departure deadline has been fixed are excluded from receiving social assistance.<sup>298</sup> This exclusion from social assistance also extends to persons in a subsequent procedure (application for re-examination, revision or subsequent application).<sup>299</sup> 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

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<sup>291</sup> Article 3(2) AO2.

<sup>292</sup> 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.

<sup>293</sup> *Ibid*, 6.

<sup>294</sup> *Ibid*, 51ff.

<sup>295</sup> *Ibid*, 27.

<sup>296</sup> Article 82(3) AsylA.

<sup>297</sup> Article 84 AsylA.

<sup>298</sup> Article 82(1) AsylA.

<sup>299</sup> Article 82(2) AsylA.

must entail in order to respect human dignity.<sup>300</sup> 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.<sup>301</sup> 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.<sup>302</sup> 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;

<sup>300</sup> 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.

<sup>301</sup> Contact details of cantonal coordination offices for asylum issues are available at: <http://bit.ly/1LtvLuH>. See also practice in the Canton of Vaud: *Guide d'assistance 2013 : recueil du Règlement du 3 décembre 2008 sur l'assistance et l'aide d'urgence octroyées en application de la loi sur l'aide aux requérants d'asile et à certaines catégories d'étrangers et des directives du Département de l'intérieur en la matière / EVAM Etablissement vaudois d'accueil aux migrants* (Assistance Guide 2013: Overview of Regulation of 3 December 2008 on the assistance and emergency aid granted in application of the law on assistance to asylum seekers and certain categories of foreigners and directives of the Department of the Interior / EVAM), available in French at: <http://bit.ly/1eGZqTZ>.

<sup>302</sup> 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.<sup>303</sup>

An internal directive on disciplinary rules within federal centres provides for other kind of disciplinary sanctions:<sup>304</sup> 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.<sup>305</sup>

### **Specific centres for uncooperative asylum seekers**

The urgent revision of the Asylum Act in September 2012 introduced a legal basis for the creation of specific centres for uncooperative asylum seekers. Article 26(1bis)-(1ter) state that asylum seekers who endanger public security and order or who by their behaviour seriously disrupt the normal operation of the reception and processing centres may be accommodated by the SEM in special centres that are set up and run by the SEM or by cantonal authorities. Although applications cannot be lodged in those centres, procedures are carried out according to the same rules than in the usual reception and processing centres. So far no such specific centres have been set up, so this form of accommodation has not had any practical relevance yet. However, it is planned that the first such centre will be opened in Les Verrières, Canton of **Neuchâtel**.

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.<sup>306</sup> 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.

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<sup>303</sup> Article 13 Ordinance of the DFJP on the on the management of federal reception centres in the field of asylum.

<sup>304</sup> 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.

<sup>305</sup> NCPT, *Report 2014*, 11, para. 37.

<sup>306</sup> 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

#### Distribution 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 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.<sup>307</sup>

### Restrictions on free movement

As long as asylum seekers stay in a federal centre, they are submitted to the semi-closed regime of all federal centres (reception and processing centres and remote locations). Exits are only possible with a written authorisation delivered by the SEM once fingerprints and a photograph of the asylum applicant have been taken.<sup>308</sup> 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.<sup>309</sup> Opening hours are substantially larger at the test centre in Zurich.<sup>310</sup>

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

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

Permission to leave can be refused under certain circumstances.<sup>311</sup> 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.<sup>312</sup>

An internal directive on disciplinary rules within federal centres provides for other kinds of disciplinary sanctions:<sup>313</sup> denial of exit permits, elimination of pocket money, ban on entering specific spaces, exclusion from the assigned centre and transfer to another centre.<sup>314</sup>

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.<sup>315</sup>

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<sup>307</sup> 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.

<sup>308</sup> 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.

<sup>309</sup> 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.

<sup>310</sup> 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.

<sup>311</sup> See Article 12 Ordinance of the DFJP.

<sup>312</sup> Article 12(3)-(4) Ordinance of the DFJP.

<sup>313</sup> 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.

<sup>314</sup> NCPT, *Report 2014*, 11, para 37.

<sup>315</sup> 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.

Moreover, reception conditions at the airport consist of a clear restriction to the freedom of movement, as asylum seekers are not allowed to go out of the transit zone until the SEM formally authorised the entry into Switzerland. In compliance with the jurisprudence of the European Court of Human Rights,<sup>316</sup> a legal remedy against that restriction is available under Article 108(4) AsylA, which states that a review of the legality and the appropriateness of the allocation of a place of stay at the airport may be requested by means of appeal at any time. An appeal may therefore be lodged in front of the Federal Administrative Court.

## B. Housing

### 1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of federal reception centres: <sup>317</sup>	6
2. Total number of places in the federal reception centres: <sup>318</sup>	4,032
3. Total number of places in private accommodation:	Not available
4. Type of accommodation most frequently used in a regular procedure: <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input checked="" type="checkbox"/> Private housing <input type="checkbox"/> Other	
5. Type of accommodation most frequently used in an accelerated procedure: <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other	

While the Confederation is responsible for setting up and running the 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,<sup>319</sup> 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. In 2015, many cantons had to increase their reception capacity. In some cases, additional beds were added in existing centres. Other cantons resorted to alternative solutions, such as the use of civil

<sup>316</sup> ECtHR, *Amuur v France*, Application No. 19776/92, Judgment of 25 June 1996; *Mubilanzila Mayeka and Kanink Mitunga v Belgium*, Application No. 13178/03, Judgment of 12 October 2006.

<sup>317</sup> Both permanent and for first arrivals.

<sup>318</sup> Only at Federal level. SEM, Information provided by e-mail of 18 January 2017.

<sup>319</sup> For a statistical analysis, see *Vivre ensemble*, «*Afflux des demandeurs d’asile*»: un abus de langage! (“Influx of asylum seekers”: an abuse of language!), 19 December 2008, available in French at: <http://bit.ly/1Gyonqt>.

protection shelters, the accommodation of asylum seekers in hotels (**Ticino, Valais**) or private apartments (**Jura**), the temporary use of tents (**Aargau**), and faster allocation of asylum seekers to municipalities (for example **Thurgau**).<sup>320</sup> From October 2015 to January 2016, the number of asylum seekers living in underground bunkers doubled.<sup>321</sup> Also in 2016, it has continued to prove a challenge to cantonal and communal authorities to find new localities for reception centres, as there is often strong (sometimes xenophobic) resistance from the local population.<sup>322</sup>

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,<sup>323</sup> 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.<sup>324</sup>

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

### Federal reception and processing centres<sup>325</sup>

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).

Fixed accommodation capacity of the federal centres are approximately 5,000 beds. Centres are often overcrowded and may have to house more people than their initial capacity. The running of the centres and security matters are entrusted to private companies.<sup>326</sup> The federal reception and processing

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<sup>320</sup> Tagesanzeiger, 'Wie die Kantone die Asylsuchenden unterbringen' (How the cantons accommodate the asylum seekers), 23 July 2015, available at: <http://bit.ly/2j0yZPu>.

<sup>321</sup> Der Bund, 'Schon 7000 Flüchtlinge leben unterirdisch' (Already 7000 refugees live underground), 28 January 2016, available at: <http://bit.ly/2j0HzgV>.

<sup>322</sup> For example, in the village of Muhen in the canton of **Argovia**, locals gathered with torches to protest against a planned reception centre close to the local school: Aargauer Zeitung, 'der Ku-Klux-Klan in Muhen? Der Fackel-Umzug gegen Asylbewerber wird kontrovers diskutiert' (Ku-Klux-Klan in Muhen? The torch parade against asylum seekers is discussed controversially), 1 December 2016, available at: <http://bit.ly/2ja3LQX>.

<sup>323</sup> Federal Supreme Court, decision 8C\_912/2012 of 22 November 2013. For a comment on that decision, see Swiss Centre of Expertise in Human Rights, *Héberger un requérant d'asile débouté dans des abris de protection civile est conforme au droit* (Accommodating an asylum seeker in civil protection shelters is in line with the law), 12 March 2014, available in French at: <http://bit.ly/1CsdPrX>.

<sup>324</sup> See: <http://stopbunkers.wordpress.com/>.

<sup>325</sup> 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>.

<sup>326</sup> The SEM delegates the task of managing the operation of reception and processing centres to third parties (Article 26 para. 2ter). Thus, the ORS Service AG (Basel, Vallorbe, Chiasso) and AOZ Asyl Organisation Zürich (Kreuzlingen, Altstätten) are responsible for coaching services. Security services at the lodges are provided by the companies Securitas AG (Basel, Kreuzlingen, Vallorbe, Chiasso) and Abacon Sicherheit AG (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).

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](#).

At the end of 2016, the occupancy rate of the 6 federal reception and processing centres, with a total capacity of 4,032 places, was 51%<sup>327</sup>

### 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).<sup>328</sup> In February 2016, there were approximately 20 remote locations in different regions. These change with time, as they are only used temporarily.

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.<sup>329</sup> In practice, people stay longer. National law even provides for a maximum stay of 12 months.<sup>330</sup> 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.<sup>331</sup>

### 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 more information and a definition of uncooperative asylum seekers, see section on [Reduction or Withdrawal of Reception Conditions](#)).

### Test centre in Zurich

The SEM opened a test centre in Zurich to test new asylum procedures. Asylum seekers are randomly attributed to the test procedures after lodging an asylum application in one of the regular reception and processing centres.<sup>332</sup> Current reception capacity amounts to 300 beds. At the beginning of 2017, an additional federal reception centre will be opened in Embrach, Canton of Zurich, with a capacity of 120 places. This centre will also be run in the context of the test procedure, and will have the function of a so-called “departure centre”, housing rejected asylum seekers until they leave Switzerland.<sup>333</sup>

### Transit zones in Geneva and Zurich Airports

The SEM shall provide persons who lodged an asylum application at the airport with a place of stay and appropriate accommodation.<sup>334</sup> Maximum stay in the transit zone is 60 days.<sup>335</sup> The accommodation centre in the transit zone of Geneva has a capacity of 30 places, in Zurich of 60 places.

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<sup>327</sup> Only at Federal level. SEM, Information provided by e-mail of 18 January 2017.

<sup>328</sup> Article 26a AsyIA and Article 16a AO1.

<sup>329</sup> NCPT, *Report 2014*, 8, para 26.

<sup>330</sup> Article 16a AO1.

<sup>331</sup> Federal Council, ‘Notfallplanung Asyl: Mögliche Nutzung militärischer Hallen in Brugg’, 6 December 2016, available in German at: <http://bit.ly/2j0zuZH>.

<sup>332</sup> See [Accelerated Procedure](#).

<sup>333</sup> SEM, ‘Bundesasylzentrum Embrach (ZH) eröffnet 2017’, 7 November 2016, available in German at: <http://bit.ly/2jV7sOp>.

<sup>334</sup> Article 22(3) AsyIA, see [Border Procedure](#).

<sup>335</sup> Article 22(5) AsyIA.

## 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).

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.)<sup>336</sup>

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.<sup>337</sup>

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

## At the federal level

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

Asylum seekers share common showers and toilet facilities which are poorly equipped in terms of privacy. The NCPT also observed that some centres have a real lack of sanitary equipment. Sanitary facilities may be very dirty according to the delegations of the NCPT. Ventilation is a common problem, especially in the sanitary facilities, but also within the entire centres.<sup>338</sup>

When reception and processing centres get crowded, the authorities may decide to open special shelters from the civil protection. Those emergency centres are not adapted for longer stay. The air is quite bad in there, while sanitary facilities are mostly insufficient for the amount of persons present in

<sup>336</sup> 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.

<sup>337</sup> *Ibid*, 20.

<sup>338</sup> For a more detailed description of each centre, see NCPT, *Rapport à l'attention de l'Office fédéral des migrations sur la visite de la Commission nationale de prévention de la torture dans les centres d'enregistrement et de procédure de l'Office fédéral des migrations* (Report to the Federal Office for Migration on the visit of the National Commission for the Prevention of Torture (NCPT) to the federal reception and processing centres of the Federal Office for Migration), Bern, 24 July 2012 ('NCPT Report 2012'), available in French at: <http://bit.ly/1HdLQqK>, 10ff.

the centres. As a general remark, federal centres are often reported to be overcrowded, which can lead to a rise of tension among asylum seekers.

Federal centres are not adapted to children and family needs and the situation can be rather tough also for women. No specific measures are taken for those specific persons. Families are even separated in some federal centres because of a lack of adapted structures.<sup>339</sup> 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.<sup>340</sup> There are very few leisure activities for children, and no or only very limited schooling. In practice, authorities strive for the assignment of those persons to a canton adapted to their specific needs, as soon as possible. The general tension that exists within the centres, due to the high psychological pressure asylum seekers are living under, to the coexistence of persons with very different backgrounds, or even due to alcohol or drug issues that may occur in the centres, can make the situation very difficult for children, single women or other vulnerable persons.<sup>341</sup>

In its 2014 report on remote locations, the NCPT considers that despite the short length of stay, the special needs of children and families should be taken into account appropriately. For example, the Commission criticized that in some of the remote locations there was no room for baby care and no play corner with toys for children. Also, the Commission noted that families had no room for privacy. Except for one remote centre, which provided a snack for children in the afternoon as well as warm milk before bedtime, there were no special services for children. There was also a lack of activities offered to children. The Commission recommends improvements on these points.<sup>342</sup>

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.<sup>343</sup>

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.<sup>344</sup> 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**.<sup>345</sup>

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<sup>339</sup> *Ibid*, 10.

<sup>340</sup> Article 4(1) Ordinance of the DFJP on the management of federal reception centres in the field of asylum.

<sup>341</sup> 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.

<sup>342</sup> NCPT, Report 2014, 8, para. 27, 36.

<sup>343</sup> 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).

<sup>344</sup> The SEM delegates the task of managing the operation of reception and processing centres to third parties under Article 26(2ter) AsylA. Thus, the ORS Service AG (Basel, Vallorbe, Chiasso) and 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).

<sup>345</sup> SEM, 'Pilotprojekt für muslimische Seelsorge in Bundesasylzentren gestartet', 4 July 2016, available in German at: <http://bit.ly/2j0EUDT>.



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.<sup>346</sup> The occupational programmes must respond to a local or regional general interest of the town or municipality. They must not compete with the private sector. They include work in protection of nature and the environment or for social and charitable institutions. Examples are cutting trees or hedges, fixing rural pathways, cleaning public spaces. There is no right to participate in occupational programmes. In case of shortage of places in the occupational programmes, places are distributed according to the principle of rotation of the participants. An incentive allowance may be paid to the asylum seeker. This amount is very low and can therefore not be compared to a salary for a regular job. 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.<sup>347</sup>

### Transit zone in the airports

Reception conditions in the transit zone are known to be minimal. Asylum seekers may move freely in the transit area. They are entitled to a daily walk outdoors, even though the walk is restricted in time (one hour a day) and in space (in **Geneva**, it is a square of 60m<sup>2</sup>). 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.<sup>348</sup> However, legal remedies against the planned construction have been turned down by the Federal Administrative Court.<sup>349</sup>

### Test centre in Zurich

As a model example of the proposed amendment for restructuring the whole asylum system, the federal centre in Zurich is known to offer relatively good reception conditions to asylum seekers. Most rooms accommodate two asylum seekers, some accommodate four to six asylum seekers. Some rooms are reserved for families, unaccompanied children and other vulnerable persons. The centre is equipped with internet facilities, sport equipment and the personnel offer German courses to the asylum seekers. Children directly join a class in the centre upon their arrival.<sup>350</sup> See the section on [Access to Education](#) for more information.

### At the cantonal level

As explained under the section on [Types of Accommodation](#), reception conditions differ largely from one canton to another. Individual housing provides comfortable housing conditions, while most asylum seekers stay in collective centres, at least at first arrival in the canton. Cantonal authorities strive to house families in individual accommodations, even though this is not always possible. Only 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.

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<sup>346</sup> Article 6a Ordinance of the DFJP.

<sup>347</sup> NCPT, *Report 2012; Report 2014*.

<sup>348</sup> For more information, see *Vivre ensemble, Rejet du recours contre un lieu de détention pour requérants d'asile* (Rejection of the appeal against a detention area for asylum seekers), 15 December 2014, available in French at: <http://bit.ly/1SJDDsX>.

<sup>349</sup> Federal Administrative Court, Decision A-6364/2015 of 9 September 2016.

<sup>350</sup> AOZ (organisation running the accommodation centre in Zurich), information given by e-mail, 10 February 2015.



Asylum seekers are however frequently confronted with the remoteness of reception centres, which impedes them to meet with family members, acquaintances or even consult a legal representative if they do not 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.<sup>351</sup> 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.

## 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,<sup>352</sup> 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.<sup>353</sup> 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.<sup>354</sup> 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.<sup>355</sup>

The cantons can limit access to work to certain sectors.<sup>356</sup> For example in the canton of **Zurich**, it is limited to the building industry, hospitals, homes, institutes (nursing and maintenance), food and drink

<sup>351</sup> The canton of Vaud adopted a subsidy to improve the housing conditions for asylum seekers, following several complaints from Eritrean asylum applicants, see in 24 Heures, *Vaud débloque 110,2 millions pour l'accueil des requérants* (Vaud releases 110.2 million for the reception of asylum seekers), 22 December 2014, available in French at: <http://bit.ly/1HdUyIt>. Protest in Geneva against the housing of asylum seekers in bunkers, see: <https://stopbunkers.wordpress.com/>.

<sup>352</sup> Article 43 AsylA.

<sup>353</sup> Article 43(1) AsylA.

<sup>354</sup> Article 52 Ordinance on Admission, Period of Stay and Employment.

<sup>355</sup> Article 43(4) AsylA.

<sup>356</sup> FOM, Directive to the Foreign Nationals Act, Section 4.8.5.5.4, available in French at: <http://bit.ly/1fAG3fh>.

manufacturing, hotels and catering, canteens, laundries, dry cleaners, sewing and mending shops, waste disposal (waste recycling), Engros-Markt Zurich.<sup>357</sup>

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

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

### *Special charge*<sup>358</sup>

The issuance of an authorisation to work by cantons is subject to the payment of the special charge established by national law for the reimbursement of social assistance benefits, departure and enforcement costs as well as the costs of the appeal procedure.<sup>359</sup> The special charge is not calculated according to the individual costs generated, but serves to cover the overall costs generated by all these gainfully employed persons and their dependents. In practice, this special charge represents a substantial revenue shortfall as it amounts to 10% of the monthly income<sup>360</sup> of every gainful activity and is imposed during 10 years up to a global amount of CHF 15,000.-.<sup>361</sup> It is deducted directly from the earned income of the person concerned by the employer and transferred to the Confederation. The special charge is not reimbursed, even if the person is recognised as a refugee. This is problematic in view of the Refugee Convention. In December 2016, the Swiss parliament decided to abolish this special charge, which has been welcomed by the Swiss Refugee Council. However, this change in law is not yet in force.

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](#)).<sup>362</sup>

## **2. Access to education**

### **Indicators: Access to Education**

- |  |   |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice? <sup>363</sup>         | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

<sup>357</sup> Canton of Zurich, Office for Economy and Labour, available at: <http://bit.ly/1fAG7M6>.

<sup>358</sup> Regulation of the special charge is laid down in the AO2, Chapter 2.

<sup>359</sup> Articles 85 and 86 AsylA.

<sup>360</sup> Article 13 AO2.

<sup>361</sup> Article 10(2)(a) AO2.

<sup>362</sup> Article 29a Test Phases Ordinance.

<sup>363</sup> Access is very limited in the federal reception and processing centres.

## Compulsory education for all children under 16

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

The test centre in Zurich is for the moment an isolated case, since it provides an internal school for all asylum seekers from 4 to 16 years of age from the moment of their arrival. The educational programme of the internal school is oriented towards the one of integrative classes of public schools. The classes are accompanied and supervised by the school commission of the district.<sup>364</sup>

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

The schooling of young asylum seekers may raise some difficulties for local schools and teachers, since some of the children stay for a short and undefined period of time. Educational background and language knowledge may also be very variable from one child to another. Such issues are usually sorted out at the municipal level and may therefore be influenced by political or even personal sensitivities on the general issue of migration. Specific problems may also arise for children whose parents' asylum application has been rejected or dismissed but who refuse to leave the country. Children have the right to continue to attend class as long as they are present in Switzerland, even though this is coming more and more under political pressure from the right-wing political parties.

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

## Apprenticeship and studies

Lack of access to further education, in the form of an apprenticeship or studies, is an important problem in the integration process of asylum applicants over 16. Although the legislation allows asylum seekers to enter education programmes, many practical and administrative impediments deter potential employers to hire asylum seekers whose procedure has not been concluded yet. As asylum procedures may last for years, it may happen that young girls and boys stay excluded from the higher education system during one of the most important periods of their life. In addition to the great difficulties that young asylum seekers face in finding an apprenticeship<sup>365</sup> 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.

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<sup>364</sup> AÖZ (organisation running the accommodation centre in Zurich), information given by e-mail, 10 February 2015.

<sup>365</sup> The apprenticeship is the most common form of post-compulsory education in Switzerland. The apprentice learns a profession over 3 to 4 years within a company, while attending theoretical classes 2 days a week. First condition to access the apprenticeship is to get an apprenticeship contract with a company, which proves to be a difficult task even for young Swiss nationals.

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

## D. Health care

### Indicators: Health Care

- |   |   |   |
|---|---|---|
| 1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?               | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No   |
| 2. Do asylum seekers have adequate access to health care in practice?                                     | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Limited <input type="checkbox"/> No |
| 3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Limited <input type="checkbox"/> No |
| 4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No            |

According to national law, access to health care must be guaranteed for asylum seekers during the entire procedure and even 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.<sup>366</sup> Medical care within federal centres are delegated to the company or organisation in charge of general logistics and management of the centres (see section on [Types of Accommodation](#)).

Upon arrival in the centre, asylum seekers must submit to a compulsory medical examination. They must fulfil a medical questionnaire, according to which more specific screenings will be processed (for instance tuberculosis screening in case of relevant symptoms). Paramedical staff may be present in the reception and processing centres in the daytime, but this is not always the case. When asylum seekers address medical issues, the staff (nurses in the best cases or employees of the organisation or company running the centre) first examine the gravity of the medical issue and decide to send the person to the doctor or hospital or not. The triage of cases is usually made by non-medical staff, namely by the company responsible for organisational matters during daytime and by the security company staff during night time. This first triage is problematic, as the staff does not have the requested medical knowledge to decide on medical issues.<sup>367</sup> 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.<sup>368</sup>

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.<sup>369</sup> 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,

<sup>366</sup> Article 5 Ordinance of the DFJP on the management of federal reception centres in the field of asylum.

<sup>367</sup> NCPT, *Report 2012*, 15.

<sup>368</sup> Different views exist relating to this issue. For more information, see the report of the Federal Office for Health, *Die Gesundheitsvorsorgung von Asylsuchenden in den Empfangs- und Verfahrenszentren des Bundes* (Health care of asylum seekers in the federal reception and processing centres), June 2011, 11, paras. 4.2.1 and 4.2.2.

<sup>369</sup> Federal Act on Health Insurance, Loi fédérale du 18 mars 1994 sur l'assurance-maladie (LAMal), RS 832.10.

rejected and dismissed asylum seekers who have a right to emergency aid are also affiliated to a health insurance.<sup>370</sup>

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

### Identification of persons in a situation of vulnerability

The issue of reception conditions for vulnerable persons has become a subject of concern in the last years, but little has been set up concretely to provide solutions. National law does not define the categories of persons who are considered as vulnerable. Only the obligation of identification of victims of human trafficking has recently been introduced in the Swiss legislation,<sup>371</sup> to respond to European requirements.<sup>372</sup> Except for that unique provision, situations of vulnerability often remain undetected unless they appear to be obvious (unaccompanied children, handicapped persons, seriously ill, etc.). Trauma is not regularly examined, due to the limited means available for medical personnel in the federal centres, among other factors.

### Specific structures

Every asylum seeker is housed in a reception and processing centre, regardless of his or her situation of vulnerability. In terms of accommodation conditions, the Ordinance of the DFJP states that special needs of children, families and individuals in need of supervision are taken into account as far as possible in the allocation of beds.<sup>373</sup> 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.<sup>374</sup> 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.

<sup>370</sup> 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.

<sup>371</sup> Article 35 and 36 Ordinance on Admission, Period of Stay and Employment.

<sup>372</sup> Article 10 Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16 May 2005.

<sup>373</sup> Article 4 Ordinance of DFJP.

<sup>374</sup> SEM, Information given by email, 30 January 2015.

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.<sup>375</sup> Due to the increase in the number of unaccompanied minors 2014 and 2015, several cantons increased their reception capacities: 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,<sup>376</sup> the canton of **Berne** opened additional specialised reception centres for unaccompanied minors in autumn 2014,<sup>377</sup> January 2016,<sup>378</sup> and autumn 2016.<sup>379</sup> **Lucerne** opened a new centre in November 2015,<sup>380</sup> and **Schwyz** in August 2016.<sup>381</sup>

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.

### 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.<sup>382</sup> Other similar initiatives are available in Geneva, Lausanne and Zurich, mostly from civil society.<sup>383</sup> However, the capacities of these institutions are insufficient compared to the needs. According to national law,<sup>384</sup> the SEM also financially supports the setup of facilities for the treatment of traumatized asylum seekers, in particular the teaching and research in the field of specialised supervision of those asylum seekers.

<sup>375</sup> 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>.

<sup>376</sup> 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>.

<sup>377</sup> 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>.

<sup>378</sup> Canton of Berne, 'Eröffnung eines Ankunftsentrums in Huttwil', 15 December 2015, available at: <http://bit.ly/2jt3kSJ>.

<sup>379</sup> Canton of Berne, 'Zusätzliche Unterbringungsplätze in Beatenberg', 11 July 2016, available at: <http://bit.ly/2j0EEF9>.

<sup>380</sup> Canton of Lucerne, 'Neues Zentrum für unbegleitete minderjährige Asylsuchende in Kriens', 28 October 2015, available at: <http://bit.ly/2jmlVCy>.

<sup>381</sup> Canton of Schwyz, 'Kanton führt temporäre Wohngruppe für unbegleitete minderjährige Asylsuchende', 30 June 2016, available at: <http://bit.ly/2jt4PJL>.

<sup>382</sup> Swiss Red Cross, *Service ambulatoire pour victimes de la torture et de la guerre* (Outpatient clinic for victims of torture and war), available in French at: <http://bit.ly/1KcqxTR>.

<sup>383</sup> For contacts and more information, see the website Support for Torture Victims: <http://bit.ly/1ldLMmq>.

<sup>384</sup> Article 44 AO2.



## 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.<sup>385</sup> The leaflet also covers information about accommodation, especially the rules in the federal reception and processing centres, social assistance and access to the labour market. The leaflet is available in several languages and should be translated if necessary. The staff of the SEM should ensure that asylum seekers fully understand the information provided during the personal interview. Despite mostly positive feedback from asylum seekers that they have understood the information, it appears that many asylum seekers do not get a full understanding of the useful information in practice.

General information on the asylum procedure is also available on the website of the Swiss Refugee Council in 20 languages.<sup>386</sup> 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.<sup>387</sup>

#### Test Centre in Zurich

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

### 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.<sup>388</sup>

#### 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.<sup>389</sup>

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.<sup>390</sup> Telephone cards must be

<sup>385</sup> The document is not available online.

<sup>386</sup> 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>.

<sup>387</sup> Swiss Refugee Council, *La procédure d'asile en bref* (The asylum procedure in short), available in French at: <http://bit.ly/1HgfpCW>.

<sup>388</sup> Article 2 Ordinance of the DFJP.

<sup>389</sup> Article 10 Ordinance of the DFJP.

<sup>390</sup> Article 7 Ordinance of the DFJP.



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

### *Legal representation*

The SEM has to facilitate contact with legal representatives and is required by law to make available lists of legal advisors and legal representatives with all contact details in every reception centre. The legal advisers and legal representatives can meet with their clients during visiting hours<sup>391</sup> and communicate with them outside visiting hours.<sup>392</sup> 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.

### **Airport procedure**

Third parties are usually not allowed to visit. Church representatives can access housing on presentation of their accreditation as long they announce their arrival and departure with the staff running the accommodation centre in the transit zone. Contact with a legal representative is possible provided that an appointment was made and this must be communicated to the responsible staff. The organisation ELISA which currently provides legal assistance to asylum seekers in the airport of Geneva fears that the new construction project of a reception centre within the airport (with no access to the public transit zone) will make the contact with asylum seekers more difficult. This view is shared by UNHCR.<sup>393</sup>

## **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.

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<sup>391</sup> Article 9(2) Ordinance of the DFJP.

<sup>392</sup> Article 7(3) Ordinance of the DFJP.

<sup>393</sup> On that subject, see Vivre ensemble, *TAF, Aéroport de Genève: Le recours contre la construction du nouveau centre d'hébergement est irrecevable* (Federal Administrative Court, Airport Geneva: The appeal against the building of a new reception centre is inadmissible), 11 December 2014, available in French at: <http://bit.ly/1Bgbj8F>.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2016: <sup>394</sup>	Not available
2. Number of asylum seekers in detention at the end of 2016: <sup>395</sup>	Not available
3. Number of detention centres:	Not available
4. Total capacity of detention centres:	Not available

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%).

It is impossible to provide an overall number of detained asylum seekers or detention centres for asylum seekers in Switzerland in 2016 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.<sup>396</sup>
- (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.<sup>397</sup> 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.<sup>398</sup>

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

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*

<sup>394</sup> Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

<sup>395</sup> Specify if this is an estimation.

<sup>396</sup> See Michael Flynn and Cecilia Cannon, *Global Detention Project, Immigration Detention in Switzerland*, October 2011, available at: <http://bit.ly/1THRbX8>.

<sup>397</sup> 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.

<sup>398</sup> *Ibid.*

ruling of the CJEU.<sup>399</sup> 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.

## 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:<sup>400</sup> ☒ Yes ☐ No
2. Are asylum seekers detained in practice during the Dublin procedure? ☐ Frequently ☒ Rarely<sup>401</sup> ☐ Never
3. Are asylum seekers detained during a regular procedure in practice? ☐ Frequently ☒ Rarely ☐ Never

The accelerated airport procedure is conducted at the **Geneva** and **Zurich** airport while the asylum seekers are staying in an accommodation facility in the transit zone of these airports. Despite the *Amuur* judgment of the ECtHR and the respective jurisprudence of the Swiss Federal Court,<sup>402</sup> the authorities and the respective Federal Administrative Court do not classify the stay in this accommodation facility as detention.<sup>403</sup> The airport procedure is regulated in Article 22-23 AsylA (see sections on [Border Procedure](#), [Criteria and Restrictions to Access Reception Conditions](#) and [Types of Accommodation](#)).

<sup>399</sup> CJEU, Case C-179/11 *Cimade and GISTI v Ministre de l'Intérieur*, Judgment of 27 September 2012.

<sup>400</sup> Accommodation in airport transit zone with very restricted freedom of movement.

<sup>401</sup> Since the new regulations on Dublin detention only entered into force in July 2015, practical experience since then is limited.

<sup>402</sup> See BGE (collection of decisions of the Swiss Federal Court (in German)) 123 II 193, Judgment of 27 May 1997.

<sup>403</sup> See the jurisprudence as put forward in Federal Administrative Court, Decision D-6502/2010 of 16 September 2010, which followed the precedent-setting decisions of the former Swiss Asylum Appeal Commission EMARK 1997 Nr. 19 and 1998 Nr. 7. There are other opinions on this issue: Stefan Trechsel, *Die Unterbringung von Asylsuchenden zwischen Freiheitsbeschränkung und Freiheitsentzug*.

## 1.1. Temporary detention

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

## 1.2. Preparatory detention

Preparatory detention during the asylum procedure may be ordered according to Article 75 FNA on the following grounds, where the asylum seeker:<sup>404</sup>

- (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;<sup>405</sup>
- (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.

## 1.3. 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:

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<sup>404</sup> Article 75(1)-(1bis) FNA.

<sup>405</sup> Article 74 FNA.

- (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;<sup>406</sup>
- (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;

#### 1.4. Detention in the Dublin procedure

A new detention regime based on the Dublin III Regulation entered into force on 1 July 2015.<sup>407</sup> According to Article 76a FNA, a person in the Dublin procedure can be detained if:

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

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

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

<sup>406</sup> Article 74 FNA.

<sup>407</sup> Article 76a FNA.

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:<sup>408</sup>

- 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.<sup>409</sup> It also stated that when examining proportionality, a restriction order on the territory of the reception centre could be an alternative to detention.<sup>410</sup>

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.<sup>411</sup> This practice seems to be contrary to the intentions and preconditions of the Dublin III Regulation.

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

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

Alternatives to detention are not (yet) implemented in law and rarely in practice. Individual circumstances are considered in the decision to detain in practice, but with a wide divergence in depth and individualisation in the cantonal practice. In 2015, the UN Committee against Torture stated in its recommendations that Switzerland must apply alternative measures to detention.<sup>412</sup>

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.<sup>413</sup>

<sup>408</sup> Federal Court, Decision 2C\_207/2016 of 2 May 2016.

<sup>409</sup> 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.

<sup>410</sup> Federal Administrative Court, decision D-2484/2016 of 27 April 2016, D-1626/2016 of 22 March 2016.

<sup>411</sup> Information provided by NGOs providing legal advice in Basel and Grisons, September 2015.

<sup>412</sup> 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.

<sup>413</sup> Federal Administrative Court, decision D-2484/2016 of 27 April 2016, D-1626/2016 of 22 March 2016.



### 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.<sup>414</sup>

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. OSAR's view is that children and families should in general not be detained.

### 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?<sup>415</sup> 25 days

<sup>414</sup> Terre des Hommes, *Illegal detention of migrant children in Switzerland: a status report*, June 2016 available at: <http://bit.ly/29JTUKI>, 24ff.

<sup>415</sup> SEM, Statistics 2014-2016 provided by email, 18 January 2017. Average for the period 2014-2016.



## 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.<sup>416</sup> 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.<sup>417</sup>

For detention in the Dublin procedure, there are specific rules regarding duration:<sup>418</sup>

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

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

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

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

## 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:<sup>419</sup>

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
<b>Total average</b>	<b>25</b>

Source: SEM, Information provided by email, 18 January 2017.

<sup>416</sup> Article 79 FNA.

<sup>417</sup> *Ibid.*

<sup>418</sup> Article 76a(3)-(5) FNA.

<sup>419</sup> SEM, Statistics 2014-2016, provided by e-mail of 18 January 2017.

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.<sup>420</sup>

## 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.

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).<sup>421</sup>

### 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 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.

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

<sup>420</sup> 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.

<sup>421</sup> 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>.

generally at an acceptable level.<sup>422</sup> 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.<sup>423</sup> 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.<sup>424</sup> The applicable cantonal laws differ very much.<sup>425</sup>

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.<sup>426</sup>

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<sup>422</sup> 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>.

<sup>423</sup> 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>.

<sup>424</sup> 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.

<sup>425</sup> 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.

<sup>426</sup> 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.

### 3. Access to detention facilities

#### Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

- |                   |   |   |                             |
|-------------------|---|---|-----------------------------|
| ❖ Lawyers:        | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited            | <input type="checkbox"/> No |
| ❖ NGOs:           | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR:          | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited            | <input type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |

Lawyers 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.<sup>427</sup> 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.<sup>428</sup>

## D. Procedural safeguards

### 1. Judicial review of the detention order

#### Indicators: Judicial Review of Detention

- |   |   |  |
|---|---|--|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Dublin detention  | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed?    | 96 hours                                |  |

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

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

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

The detainee may submit a request for release from detention 1 month after the detention review. The judicial authority must issue a decision on the request on the basis of an oral hearing within 8 working days. A further request for release in the case of preparatory detention may be submitted after 1 month or in the case of detention pending removal after 2 months.<sup>429</sup>

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

<sup>427</sup> The visiting rights and the concrete *modus* is also taken up by the NCPT in its reports.

<sup>428</sup> 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.

<sup>429</sup> Article 80(5) FNA.

detention is granted; or the detainee becomes subject to a custodial sentence or measure.<sup>430</sup>

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.<sup>431</sup> In case of detention of persons with a Dublin transfer decision who have received this decision in a federal centre or a specific centre for uncooperative asylum seekers, jurisdiction and the procedure for the detention review are governed by the Asylum Act.

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

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](#)). OSAR 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, OSAR has drafted a basic form in three languages with which to ask for a review of the Dublin detention.<sup>432</sup> 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.<sup>433</sup> 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.<sup>434</sup>

<sup>430</sup> Article 80(6) FNA.

<sup>431</sup> Federal Court, decision 2C\_207/2016 of 2 May 2016.

<sup>432</sup> The form can be found in English, French and German at: <http://bit.ly/2jNuDrP>.

<sup>433</sup> 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.

<sup>434</sup> 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.

## **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.

**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).<sup>435</sup>

### 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.<sup>436</sup> 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 2016, asylum status and B-permits were granted to 5,985 persons, including family asylum. On 31 December 2016, there were a total 25,140 recognised refugees with a B-permit in Switzerland.<sup>437</sup>

#### Temporary admission

Persons granted temporary admission receive an F-permit.<sup>438</sup> 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 2016, 5,634 persons were granted a temporary admission as a foreigner. On 31 December 2016, there were a total of 27,390 persons with a temporary admission as a foreigner living in Switzerland. Out of these, 9,602 persons have had this status for more than seven years.<sup>439</sup>

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 refugee status and asylum). They receive the same F-permit as other foreigners with temporary

<sup>435</sup> Federal Administrative Court, Decision BVGE 2015/18.

<sup>436</sup> Article 60(1) Asylum Act.

<sup>437</sup> SEM, Asylum Statistics 2016.

<sup>438</sup> Article 41(2) and Article 85(1) FNA.

<sup>439</sup> SEM, Asylum Statistics 2016.



admission, but in addition they have the right to a refugee travel document, and all the other rights granted by the Refugee Convention. In 2016, 1,735 persons were granted a temporary admission as a refugee. On 31 December 2016, there were a total of 9,487 persons with a temporary admission as a refugee living in Switzerland. Out of these, 2,014 persons have had this status for more than seven years.<sup>440</sup>

OSAR has no knowledge of systematic difficulties in the issuance or renewal of those residence permits.

## 2. Long-term residence

### Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2016: Insert number

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).<sup>441</sup> 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.<sup>442</sup> 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, coming into effect on 1 January 2018, it will be 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.

## 3. Naturalisation

### Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?<sup>443</sup> 12 years
2. Number of citizenship grants to beneficiaries in 2016:<sup>444</sup>
  - ❖ Recognised refugees 716
  - ❖ Temporarily admitted persons 5

At the moment, the criteria for naturalisation are the same for persons with refugee status and for persons with temporary admission status.<sup>445</sup>

If a person is resident in Switzerland for 12 years he or she may apply for naturalisation.<sup>446</sup> Years spent in Switzerland between the ages of 10 and 20 count as double.

<sup>440</sup> SEM, Asylum Statistics 2016.

<sup>441</sup> Article 34 FNA.

<sup>442</sup> Article 84(5) FNA.

<sup>443</sup> This will be reduced to 10 years, once the revised Naturalisation Act enters into force on 1 January 2018.

<sup>444</sup> SEM, Information provided by email, 18 January 2017.

<sup>445</sup> In January 2018, the amended Federal Act on the Acquisition and Loss of Swiss Citizenship will enter into force. It will then be necessary to have a permanent residence permit in order to be able to apply for citizenship. More information available in German, French and Italian at: <http://bit.ly/2jam9sQ>.

<sup>446</sup> This will change to 10 years with the amended law, entering into force 1 January 2018.

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.<sup>447</sup>

In 2016, 711 recognised refugees and 5 temporarily admitted persons were granted citizenship.<sup>448</sup>

#### 4. 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 regular 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<sup>449</sup>

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.

In 2016, there was a cessation of asylum status in 967 cases.<sup>450</sup>

##### Temporary admission<sup>451</sup>

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). Even if cessation is considered for a group of persons, it is examined in each case individually.

<sup>447</sup> Overview on the fees for regular naturalisation available at: <https://www.ch.ch/en/regular-naturalisation/>.

<sup>448</sup> SEM, Information provided by email, 18 January 2017.

<sup>449</sup> Article 64 Asylum Act.

<sup>450</sup> SEM, Asylum Statistics 2016.

<sup>451</sup> Article 84 FNA.

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.<sup>452</sup> A person's departure from Switzerland is already considered permanent if the person asks for asylum in another country.<sup>453</sup> 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,<sup>454</sup> the cessation of the protection status can also be appealed. The appeal must be filed within 30 days of notification of the ruling.<sup>455</sup> 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.<sup>456</sup>

In 2016, 3,619 temporary admissions were ceased, and 20 were withdrawn.<sup>457</sup>

## 5. Withdrawal of protection status

### Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular 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 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.<sup>458</sup>

As in general any ruling can be subject to an appeal,<sup>459</sup> the cessation of the protection status can also be appealed. The appeal must be filed within 30 days of notification of the ruling.<sup>460</sup> No legal assistance is foreseen in the law for this specific case, but the general ruling regarding legal aid is applicable: If it is

<sup>452</sup> Article 84(4) FNA.

<sup>453</sup> Article 26a(a) OERE (Ordonnance sur l'exécution du renvoi et de l'expulsion d'étrangers, Ordinance on the Enforcement of the Refusal of Admission to and Deportation of Foreign Nationals).

<sup>454</sup> Article 44 Federal Act on Administrative Procedure.

<sup>455</sup> Article 50 Federal Act on Administrative Procedure.

<sup>456</sup> Article 65(2) Federal Act on Administrative Procedure.

<sup>457</sup> SEM, Asylum Statistics 2016.

<sup>458</sup> SEM, Information provided by email, 18 January 2017.

<sup>459</sup> Article 44 Federal Act on Administrative Procedure.

<sup>460</sup> Article 50 Federal Act on Administrative Procedure.

necessary in order to safeguard the right of the person concerned, the court can appoint a lawyer to represent the applicant.<sup>461</sup>

In 2016, the asylum status was withdrawn in 247 cases. This includes the withdrawal of refugee status in these cases.<sup>462</sup>

For temporary admission, the review described in [Cessation](#) is applicable. In 2016, 3,619 temporary admissions were ceased, and 20 were withdrawn.<sup>463</sup>

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.<sup>464</sup> 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.<sup>465</sup>

## 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.

<sup>461</sup> Article 65(2) Federal Act on Administrative Procedure.

<sup>462</sup> SEM, Asylum Statistics 2016.

<sup>463</sup> SEM, Asylum Statistics 2016.

<sup>464</sup> Federal Council, Referendum on Asylum Act of 5 June 2016.

<sup>465</sup> Article 83(9) FNA.

In 2016, 1,667 recognised refugees applied for family reunification.<sup>466</sup> During the same year, the SEM approved refugee family reunification cases for 3,109 persons.<sup>467</sup>

### 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).<sup>468</sup> The application must be filed with the competent cantonal migration authority, which passes it on to the SEM. Certain deadlines apply to the application:<sup>469</sup> After the three years waiting period are 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 2016, 286 temporarily admitted persons applied for family reunification.<sup>470</sup> The approved cases during the same year by the SEM comprised 46 persons.<sup>471</sup>

## 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<sup>472</sup> relating to the family member, this person will only be granted a temporary admission as refugee even though the sponsor was granted asylum.<sup>473</sup>

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.<sup>474</sup>

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<sup>466</sup> SEM, Information provided by email, 18 January 2017.

<sup>467</sup> SEM, Asylum Statistics 2016.

<sup>468</sup> Article 85(7) FNA.

<sup>469</sup> Article 74(2)-(3) Ordinance on Admission, Stay and Gainful Employment.

<sup>470</sup> SEM, Information provided by email, 18 January 2017.

<sup>471</sup> SEM, Information provided by email, 7 February 2017.

<sup>472</sup> Articles 53 and 54 Asylum Act.

<sup>473</sup> Federal Administrative Court, BVGE 2015/40.

<sup>474</sup> Article 27(3) Asylum Act.

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.<sup>475</sup>

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.

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.<sup>476</sup>

## 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.<sup>477</sup>

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.<sup>478</sup>

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.<sup>479</sup> 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

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<sup>475</sup> According to Article 63 FNA.

<sup>476</sup> Article 65(2) Federal Act on Administrative Procedure.

<sup>477</sup> 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).

<sup>478</sup> Article 9 RDV.

<sup>479</sup> Articles 4(4) and 10 RDV.

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”.<sup>480</sup> 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.<sup>481</sup>

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.<sup>482</sup> 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.<sup>483</sup>

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

## 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 2016 | 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.<sup>484</sup> 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.<sup>485</sup> On 31 December 2016, 24% of refugees with asylum who were able to work were employed.<sup>486</sup>

<sup>480</sup> Article 4(4) RDV.

<sup>481</sup> Article 13(1)(c) RDV.

<sup>482</sup> Article 14 RDV.

<sup>483</sup> Article 15 RDV.

<sup>484</sup> Article 61 Asylum Act.

<sup>485</sup> Article 65 Ordinance on Admission, Stay and Gainful Employment (OASGE).

<sup>486</sup> SEM, Asylum Statistics 2016.



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.<sup>487</sup>

A study showed in 2014 the negative influence of the status of temporary admission regarding the access to the labour market.<sup>488</sup> On 31 December 2016, 30.3% of temporarily admitted persons able to work were employed.<sup>489</sup>

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.<sup>490</sup> These two actions show a step in the right direction and will hopefully lead to a better employment rate for temporarily admitted foreigners in Switzerland.

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.

## 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.<sup>491</sup> 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. Health care

Every person, including rejected asylum seekers, living in Switzerland must be insured against illness,<sup>492</sup> 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 do 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.

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<sup>487</sup> Article 85(6) FNA.

<sup>488</sup> SEM, *Studie Erwerbsbeteiligung von anerkannten Flüchtlingen und vorläufig Aufgenommenen auf dem Schweizer Arbeitsmarkt*, April 2014, available in German at: <http://bit.ly/2jayVaM>.

<sup>489</sup> SEM, Asylum Statistics 2016.

<sup>490</sup> OSAR, 'De meilleures chances pour les personnes admises à titre provisoire', 16 December 2016, available in French at: <http://bit.ly/2hEGW8C>.

<sup>491</sup> Article 62 Federal Constitution.

<sup>492</sup> Article 3 Health Insurance Act (HIA).

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.