

Country Report: Switzerland



2019
Update



Acknowledgements & Methodology

The 2019 update of this report was written by Adriana Romer, Guillaume Bégert, Lucia Della Torre and Laura Rezzonico, legal unit of the Swiss Refugee Council, and was edited by ECRE.

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

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

The information in this report is up-to-date as of 31 December 2019, unless otherwise stated.

The Asylum Information Database (AIDA)

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



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Table of Contents

Glossary & List of Abbreviations	6
Statistics	7
Overview of the legal framework	9
Overview of the main changes since the previous report update.....	10
Asylum Procedure	14
A. General	14
1. Flow chart.....	14
2. Types of procedures	15
3. List of authorities that intervene in each stage of the procedure	15
4. Number of staff and nature of the first instance authority	16
5. Short overview of the asylum procedure.....	16
B. Access to the procedure and registration.....	19
1. Access to the territory and push backs	19
2. Registration of the asylum application	20
C. Procedures	22
1. Regular procedure	22
2. Dublin	32
3. Admissibility procedure	44
4. Border procedure (border and transit zones).....	47
D. Guarantees for vulnerable groups	49
1. Identification	49
2. Special procedural guarantees	52
3. Use of medical reports	57
4. Legal representation of unaccompanied children	58
E. Subsequent applications	59
F. The safe country concepts	61
1. Safe country of origin	61
2. Safe third country	61
G. Information for asylum seekers and access to NGOs and UNHCR.....	62
1. Provision of information on the procedure	62

2. Access to NGOs and UNHCR.....	63
H. Differential treatment of specific nationalities in the procedure	64
Reception Conditions.....	68
A. Access and forms of reception conditions	68
1. Criteria and restrictions to access reception conditions.....	68
2. Forms and levels of material reception conditions.....	70
3. Reduction or withdrawal of reception conditions.....	72
4. Freedom of movement.....	74
B. Housing.....	77
1. Types of accommodation	77
2. Conditions in reception facilities.....	80
C. Employment and education	82
1. Access to the labour market.....	82
2. Access to education	83
D. Health care.....	84
E. Special reception needs of vulnerable groups	85
F. Information for asylum seekers and access to reception centres	88
1. Provision of information on reception.....	88
2. Access to reception centres by third parties	88
G. Differential treatment of specific nationalities in reception	89
Detention of Asylum Seekers	90
A. General	90
B. Legal framework of detention	93
1. Grounds for detention	93
2. Alternatives to detention.....	97
3. Detention of vulnerable applicants.....	98
4. Duration of detention.....	100
C. Detention conditions	103
1. Place of detention	103
2. Conditions in detention facilities.....	105
3. Access to detention facilities	108

D. Procedural safeguards	109
1. Judicial review of the detention order	109
2. Legal assistance for review of detention.....	110
E. Differential treatment of specific nationalities in detention	111
Content of International Protection	112
A. Status and residence	112
1. Residence permit	112
2. Civil registration.....	113
3. Long-term residence	113
4. Naturalisation	115
5. Cessation and review of protection status	115
6. Withdrawal of protection status	117
B. Family reunification	119
1. Criteria and conditions	119
2. Status and rights of family members.....	120
C. Movement and mobility	120
1. Freedom of movement	120
2. Travel documents.....	121
D. Housing	122
E. Employment and education	122
1. Access to the labour market.....	122
2. Access to education	123
F. Social welfare	123
G. Health care.....	124

Glossary & List of Abbreviations

AsylA	Asylum Act
AFIS	Automated Fingerprint Identification System
AOZ	Asyl-Organisation Zurich, running the “testphase” reception centre in Zurich
AS	Official Journal of Swiss law (Amtliche Sammlung)
CoE	Council of Europe
DRMP	Dublin Returnees Monitoring Project
Elisa-Asile	Organisation providing legal aid to asylum seekers at Geneva airport
Eurodac	European fingerprint database
FDJP	Federal Department of Justice and Police Département fédéral de justice et police (DFJP) Eidgenössisches Justiz- und Polizeidepartment (EJPD)
FOM	Federal Office for Migration (now SEM)
FNIA	Foreign Nationals and Integration Act
GRETA	Council of Europe’s Group of Experts on Action against Trafficking in Human Beings
KSM	Coordination Unit against the Trafficking and Smuggling of Migrants Koordinationsstelle gegen Menschenhandel und Menschen schmuggel
NCPT	National Commission for the Prevention of Torture
OSAR	Swiss Refugee Council Organisation suisse d’aide aux réfugiés
SCSA	Swiss Conference for Social Assistance
SEM	State Secretariat for Migration Secrétariat d’état aux migrations
TAF	Federal Administrative Court Tribunal administratif fédéral
TRACKS	Project on Identification of Trafficked Asylum Seekers’ Special Needs

Statistics

Overview of statistical practice

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

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

Applications and granting of protection status at first instance: 2019

	Applicants in 2019	Pending at end 2019	Asylum	Temporary admission	Rejection	Asylum rate	Temp. Adm. rate	Rejection rate
Total	14,269	8,377	5,551	5,021	3,949	38%	35%	27%

Breakdown by countries of origin of the total numbers

Eritrea	2,899	527	2,797	714	567	67%	17%	14%
Afghanistan	1,397	994	374	1,374	83	20%	73%	4%
Turkey	1,287	1,598	633	45	164	71%	5%	18%
Syria	1,100	901	654	1,243	183	30%	58%	9%
Algeria	826	118	3	3	203	1%	1%	44%
Sri Lanka	721	749	307	85	548	31%	9%	56%
Georgia	601	114	0	15	301	0%	4%	72%
Iraq	550	447	105	289	144	18%	49%	24%
Iran	539	719	112	86	323	20%	15%	57%
Somalia	427	207	170	382	74	26%	58%	11%

Source: SEM, Asylum Statistics 2019, available at: <https://bit.ly/2HwScSx>.

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

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

Gender/age breakdown of the total number of applicants: 2019

	Number	Percentage
Total number of applicants	14,269	100%
Men	9,013	63%
Women	5,256	37%
Children	5,934	42%
Unaccompanied children	441	3%

Source: SEM, Information provided on 12 February 2020.

Comparison between first instance and appeal decision rates:

In the period from 1 March 2019 to 29 February 2020, the Federal Administrative Court revoked 15% of the negative decisions issued by the determining authority under the new procedure and subject to appeal for additional investigative measures, whereas this rate was 6.5% for decisions under the former system. The Court points out that the majority of these cases concerned failures to establish the facts relating to the grounds for asylum but also the investigation of medical problems. Concerning decisions on the merits, 6% of all appeals lodged during the same period under the new procedure were partially or totally admitted by the Court.³

³ TAF, Asile: *le TAF respecte globalement les nouveaux délais*, 23 March 2020, available (in French) at: <https://bit.ly/3dPZZK4>.

Overview of the legal framework

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

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

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

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

Overview of the main changes since the previous report update

The report was last updated in **March 2019**.

Covid 19 related measures

Please note that this report has largely been written prior to the outbreak of COVID-19 in Switzerland. Subsequently measures have been taken to limit access to the asylum procedure for newly arrived asylum seekers. These measures do not figure in this AIDA report. This box presents some of the main measures. For the latest update please consult the website of the swiss administration available at: <https://bit.ly/2Ro48LJ>.

On 1 of April 2020, after a period of about two weeks during which the interviews had been suspended, the Swiss government has taken several measures of an urgent and provisional nature, which are available in French [here](#). These additional measures concern asylum procedures, enforcement of removals and accommodation. The new rules are provisionally limited to three months, respectively four months for accommodation:

- ❖ **Access to territory:** The Federal Council has decided to extend the entry bans and border controls to all Schengen states as well, with the exception of the Principality of Liechtenstein. Only Swiss citizens and persons with a valid residence permit or work permit in Switzerland are allowed to enter Switzerland from abroad.
- ❖ **Continuation of asylum procedures:** The authorities have made adjustments to the organisation of the rooms and the number of persons attending the interviews in order to comply with the guidelines established by the Federal Office of Public Health. If legal representatives cannot attend an interview due to the health situation, it nevertheless has valid legal effect and notification of a negative decision can be made directly to the applicant. Under the accelerated procedure, the time limit for appeal has been extended from 7 to 30 days.
- ❖ **Opening of emergency accommodation:** In order to relieve congestion in other federal accommodation facilities and increase the number of places available, the Federal Asylum Centre in Muttensz (canton of Basel) has been temporarily reopened.
- ❖ **Extension of departure and return time limits:** Due to entry restrictions in many countries and the sharp reduction in air traffic, the time limits for voluntary departures of rejected asylum seekers can now be extended to 30 days. In the event of an extraordinary situation such as the current one in Switzerland, these already extended deadlines could be extended even further if necessary.

Asylum procedure

- ❖ **Access to the territory:** Despite the significant decrease in the number of arrivals at the Italo-Swiss borders in general, OSAR was informed in September 2019 of people being pushed back at the border between Como and Chiasso, including minors. This is in violation of the United Nations Convention on the Rights of the Child according to which the best interest of the child should take precedence over any other consideration and should always receive careful assessment.⁴

⁴ See chapter "9.6.3 Pushbacks at the border", in: Swiss Refugee Council OSAR, *Reception conditions in Italy – Updated report on the situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, in Italy*, January 2020, available at: <https://bit.ly/2SARryi>.

- ❖ **New asylum system:** The Swiss asylum system and its legal framework have been extensively restructured following the substantial modifications that entered into force in March 2019.⁵ The overall aim of the new system is to significantly speed up the asylum procedure, including by bringing together the main actors of the procedure “under the same roof”. Asylum procedures are carried out in federal centres located in six defined regions in Switzerland. The reform sets up several procedures (accelerated, extended, Dublin) strictly limited in time, thus shortening processing times and deadlines for appeals.
- ❖ **Access to information and to legal assistance:** The new asylum procedure of March 2019 introduced the right for asylum seekers to receive free counselling and legal representation at first instance, regardless of the applicable procedure (accelerated, extended, Dublin).⁶ This aims to ensure a fair asylum procedure given that the latter has been significantly shortened. The State Secretariat for Migration (SEM) has contracted several organisations responsible both for the provision of legal assistance and information throughout the asylum procedure.
- ❖ **Individual guarantees under Dublin procedures:** In 2019 and early 2020, the Federal Administrative Court issued several landmark decisions on the necessity to obtain individual guarantees for the purpose of Dublin transfers to Italy, Bulgaria and Croatia. While the Court ruled that the Swiss authorities must obtain additional individual guarantees from the Italian authorities so as to ensure adequate access to medical care and accommodation for seriously ill asylum seekers and families in Italy;⁷ it considered that there are no systematic flaws in the Bulgarian asylum system which would justify a general suspension of transfers to the Bulgaria.⁸ As regards Dublin transfers to Croatia, the Court underlined that the current situation in the country, in particular the practice of push-backs at the border, must be taken into consideration by the Swiss authorities.⁹
- ❖ **Use of medical reports:** The use of medical reports during the asylum procedure has been raised as one of the main concern resulting from the entry into force of the new asylum procedure in 2019. The shortened deadlines put the asylum authorities under significant pressure and risk to undermine an adequate examination of medical needs and related evidence. This was confirmed by the recent case law of the Federal Administrative Court which highlighted several shortcomings in this regard.¹⁰

Reception conditions

- ❖ **Departure centres:** The enforcement of the new asylum procedure has resulted in the creation of new types of federal asylum centres in addition to the six federal centres where asylum applications can be lodged. These so-called “departure centres” accommodate asylum seekers who are falling – or are likely to fall – under the Dublin procedure, as well as those subject to a negative decision within the accelerated procedure. They are located in remote areas and difficult to access with public transportation, which hinders the possibility of visits and limits the freedom of movement.
- ❖ **Specific centres for uncooperative asylum seekers:** The new legislation of March 2019 introduced a legal basis for the creation of specific centres for uncooperative asylum seekers. i.e. those who endanger public security and order or who seriously disrupt the normal operation of the federal asylum centres may be accommodated there.¹¹ However, the only supervised centre which

⁵ SEM, *Asylum procedures* available at: <https://bit.ly/33NaCcb>.

⁶ Article 102f AsylA.

⁷ Federal Administrative Court, Decision E-962/2019, 17 December 2019.

⁸ Federal Administrative Court, Decision F-7195/2018, 11 February 2020.

⁹ Federal Administrative Court, Decision E-3078/2019, 12 July 2019.

¹⁰ See for instance: OSAR, *L'accélération ne doit pas prêter l'équité et la qualité*, 4 February 2020, available (in French) at: <https://bit.ly/2SJPiAv>; Vivre Ensemble, *Procédures accélérées et accès aux soins. L'équation impossible? | Prise en considération de l'état de santé: des procédures bâclées*, June 2019, available (in French) at: <https://bit.ly/32djGq4>.

¹¹ Article 24a AsylA states that asylum seekers

was operating in Les Verrières, Canton of Neuchâtel, was temporarily closed on 1 September 2019,¹² while the plans to establish a second centre is on hold due to the low numbers of applicants.

- ❖ **Vulnerable applicants in reception:** While the reception system did not face any shortages given the decrease in the number of applicants, it still falls short of providing adequate reception to vulnerable groups. This includes a lack of identification mechanism, affecting in particular victims of sexual violence and single women, while unaccompanied children continue to be accommodated with adults. The Government itself published a report in October 2019 highlighting issues relating to the lack of training of reception staff as well as the lack of adequate support to asylum seekers.¹³
- ❖ **Access to the labour market:** Since 1 March 2019, asylum seekers staying in a federal processing centre are no longer allowed to engage in a gainful employment.¹⁴ Asylum seekers who are entitled to pursue gainful employment in accordance with the immigration provisions (who are mainly persons already living in Switzerland with a residence permit and who submit a subsequent asylum application) or who participate in charitable occupational programmes are not subject to this restriction, however.¹⁵

Detention of asylum seekers

- ❖ **Detention orders:** Since the entry into force of the new asylum procedure on 1 March 2019, the State Secretariat for Migration (SEM) is no longer competent for detention orders. This falls under the exclusive competence of cantons.¹⁶ Subsequently, appeals against detention orders must first be challenged at cantonal level before being brought in front of the Federal Administrative Court. One exception applies to detention orders at airports which still falls under the responsibility of the SEM, as the latter is responsible for granting entry or not to Swiss territory.
- ❖ **Legal assistance in detention:** Following the reform of the asylum system in March 2019, the Federal Administrative Court clarified in a judgment of November 2019 that a person who lodges an asylum application in detention should be granted access to free legal advice and representation.¹⁷ Detained asylum seekers have thus systematically access to legal assistance.

Content of international protection

- ❖ **Restrictions on freedom of movement and travels:** On 1 April 2020, various amendments to laws and regulations in the field of migration have come into force. This date was set by the Federal Council at its meeting on 19 February 2020. Among the changes made by the Parliament to the Foreign Nationals and Integration Act (FNIA) is the fact that the SEM may prohibit recognised refugees from travelling to a third country, in particular to neighboring countries of their country of origin, in order to enforce the ban on travelling home.¹⁸
- ❖ **Cessation and review:** The SEM continued to review the temporary admission of Eritrean nationals, which has been heavily criticised by NGOs,¹⁹ including the Swiss Refugee Council.²⁰ Until October 2019, the SEM found that the temporary admission was no longer valid in 82 cases

¹² Information on it is available at: <https://bit.ly/2VdzR5b>.

¹³ Swiss Confederation, *Rapport sur la situation des femmes et des filles relevant du domaine de l'asile*, October 2019, available in French at: <https://bit.ly/2w01y6Z>.

¹⁴ Article 43(1) AsylA, as amended on 25 September 2018, BBI 2015 7181 and AS 2018 2855.

¹⁵ Article 43(4) AsylA, as amended on 25 September 2018, BBI 2015 7181 and AS 2018 2855.

¹⁶ Article 80(1) and 80 (1bis) Foreign Nationals and Integration Act (FNIA).

¹⁷ Federal Administrative Court, Decision D-5705/2019, 25 November 2019.

¹⁸ Further information is available (in French) at: <https://bit.ly/2VaWTcX>.

¹⁹ See in particular ODAE, *Rapport thématique – Durcissements à l'encontre des Érythréen·ne·s : une communauté sous pression*, 29 November 2018, available (in French) at: <https://bit.ly/2SCdBAW>.

²⁰ Swiss Refugee Council, 'La Confédération mise sur l'intimidation plutôt que sur des solutions', 3 September 2018, available (in French) at: <https://bit.ly/2TJGCbr>.

(2.7%).²¹ Most of the appeals submitted against these decisions have been rejected by the Federal Administrative Court, others are still pending.

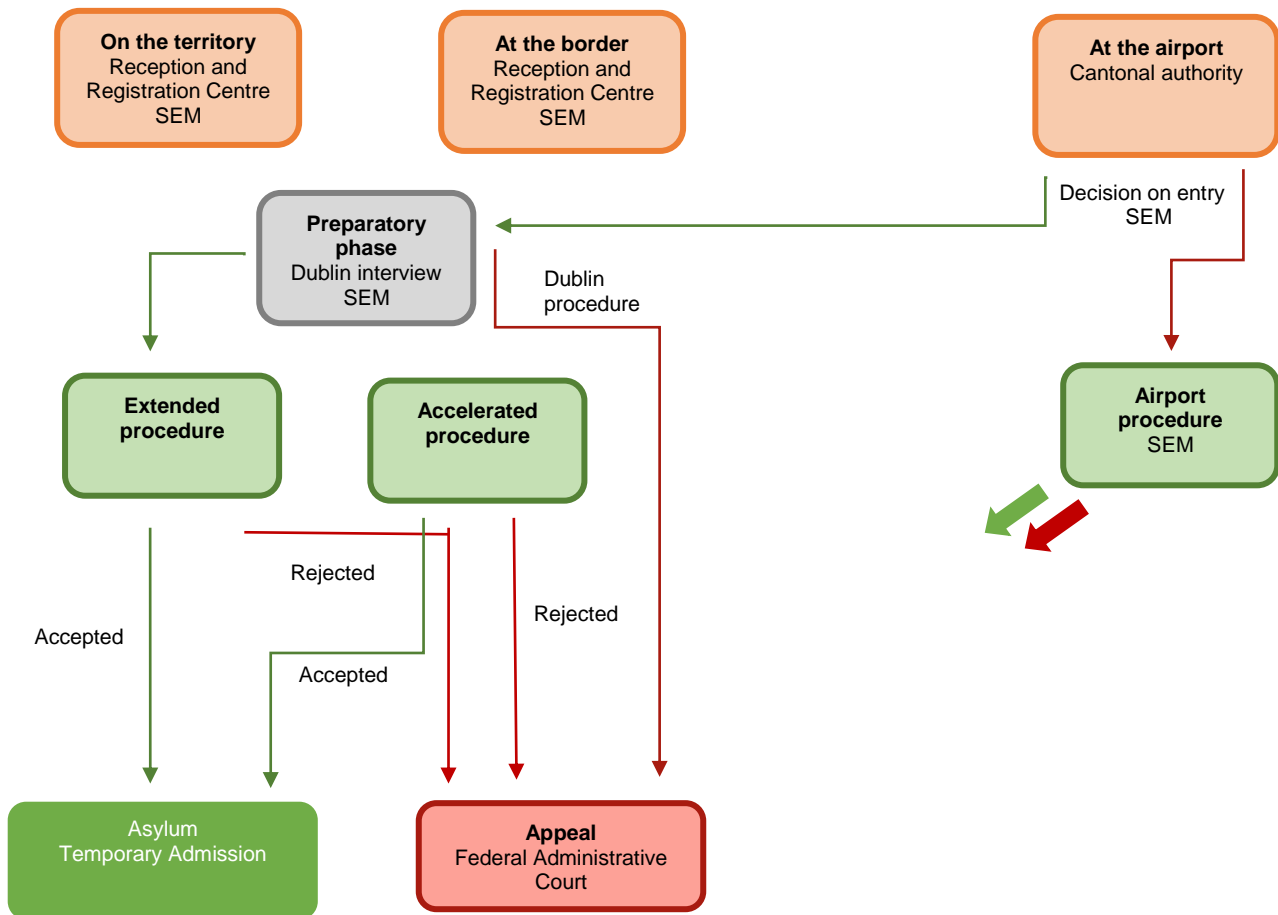
- ❖ **Access to the labour market:** Since January 2019, temporarily admitted persons may work anywhere in Switzerland if the salary and employment conditions applicable to the location, profession and sector are satisfied. The employer must report the start or end of employment to the cantonal authority responsible for the place of work in advance. The report must include a declaration, stating that the employer is aware of the salary and employment conditions customary for the location, profession and sector, and that he or she will abide with them.

²¹ Département fédéral de justice et police (DFJP), *Situation des requérants d'asile érythréens en Suisse: pratique en matière d'asile et de renvoi, levée des admissions provisoires, retour et principe de l'aide d'urgence, Rapport du Département fédéral de justice et de police (DFJP) en réponse à la lettre du Haut-Commissariat des droits de l'homme (HCDH) du 19 juin 2019*, 30 novembre 2019, available at: <https://bit.ly/38RFAS4>.

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: ²² | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ²³ | <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: ²⁴ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

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

In March 2019, the accelerated asylum procedure came into force in Switzerland. All asylum applications submitted since 1 March 2019 are processed according to this procedure.²⁵ The majority of the procedures will be decided within 140 days and will be decentralised to six asylum regions. In the new procedures, asylum seekers also receive free counselling and legal representation.

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

²² For applications likely to be well-founded or made by vulnerable applicants.

²³ Accelerating the processing of specific caseloads as part of the regular procedure.

²⁴ Labelled as "accelerated procedure" in national law.

²⁵ All asylum applications submitted by 28 February 2019 will be processed in the asylum procedure valid until 28 February 2019.

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

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the determining authority?
State Secretariat for Migration (Asylum Department)	622	Federal Department of Justice and Police	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Source: SEM, 12 February 2020.

The State Secretariat for Migration (SEM) is responsible for examining applications for international protection and competent to take decisions at first instance. It falls under the responsibility of the Federal Department of Justice and Police. The guidelines and circulars of the SEM relating to the asylum procedure are publicly accessible and can be consulted online.²⁶

Besides asylum, the SEM covers also other areas in the field of migration such as immigration or integration. This means that the 622 officials working for the SEM as of February 2020 are not all caseworkers examining applications for international protection, as they may be responsible for a variety of other tasks. However, the authority dealing with asylum is a specialised section within the SEM.

5. Short overview of the asylum procedure

Preliminary remarks – Process of restructuring of the Swiss asylum system: Swiss Asylum Law has undergone a series of changes in the last few years and substantial modifications have entered into force in March 2019.²⁷ The Asylum Act and the Federal Act on Foreign Nationals and Integration as well as different relevant ordinances have been revised entirely or partially.

Fundamentally, the restructuring of the asylum system aims to significantly speed up the progress of asylum procedures. To this end, the reform brings together all the main actors of the procedure “under the same roof”. Asylum procedures are carried out in federal centres located in six defined regions in Switzerland. The reform sets up several procedures (accelerated, extended, Dublin) strictly limited in time. The processing times for asylum applications and the time taken to appeal have been significantly shortened. In order to ensure fair procedures according to the rule of law, asylum seekers whose application is examined within the accelerated procedure are entitled to free counselling, as well as free legal representation from the very beginning of the procedure (see [Regular procedure](#))

Before the entry into force of the new asylum system throughout the country in March 2019, SEM implemented a test phase in the federal asylum centre of **Zurich** (with a centre without processing facilities in Embrach) between 2014 and March 2019. Thereafter, a second test phase was conducted in **Boudry** (with a centre without processing facilities in Chevrolles) from April 2018 to February 2019, in order to set up the appropriate processes and test the new accelerated procedure.

Application for asylum: A person can apply for asylum in a federal asylum centre with processing facilities, at a Swiss border or during the border control at an international airport in Switzerland.²⁸ The Swiss asylum procedure is organised as a single procedure.

²⁶ SEM, *Guidelines and circulars*, available in French at: <https://bit.ly/2lRH7nn>.

²⁷ SEM, *Asylum procedures* available at: <https://bit.ly/33NaCcb>.

²⁸ Article 19 AsylA.

In most cases, asylum applications are lodged in one of the six asylum centres with processing facilities that are run by the SEM. If this is not the case, the concerned asylum applicants are directed to one of those centres within 72 hours of filing the application for asylum. The proceeding is different if an application is filed at the international airports of Zurich and Geneva (see below).

Preparatory phase: The preparatory phase (*“phase préparatoire”*) starts after the lodging of the application and lasts a maximum of 10 days in the case of a Dublin procedure and a maximum of 21 days for other procedures. The purpose of the preparatory phase is to carry out the preliminary clarifications necessary to complete the procedure, in particular to determine the State competent to examine the asylum application under the Dublin Regulation, conduct the age assessment – if the minority is doubted, collect and record the personal data of the asylum seeker, examine the evidence and establish the medical situation.²⁹

During the preparatory phase, a first interview is held mainly to determine whether Switzerland is competent to examine the merits of the asylum application (**Dublin interview**).³⁰ The interview is conducted in the presence of the applicant’s legal representative and is usually translated over the phone by an interpreter. It collects information on the identity, the origin and the living conditions of the applicant and covers the essential information about the journey to Switzerland. The applicant is granted the right to be heard regarding possible reasons against a transfer to a Dublin member state³¹ but the grounds for the asylum application are not discussed.

Cancellation and inadmissibility decision: On this basis, the SEM decides whether an application should be examined and whether it should be examined in substance. If the application cannot be considered as an asylum claim according to the Asylum Act or if the application is not sufficiently justifiable and/or the asylum seeker withdraws his or her application, the latter is cancelled without a formal decision.³² Similarly, the application of asylum seekers will be cancelled without a formal decisions if they fail to cooperate without valid reason or if they fail to make themselves available to the authorities for more than 20 days - or more than 5 days if the asylum-seeker is accommodated in a federal centre. In such circumstances, the persons concerned cannot lodge a new application within 3 years, unless this restriction would amount to a violation of the Refugee Convention.³³

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 III Regulation another State is responsible for conducting the asylum and removal procedures.³⁴

Dublin procedure: If the preliminary investigations indicate that another Member State might be responsible for processing the asylum application according to the Dublin III Regulation, a request for taking charge or taking back is submitted to the relevant State. Under the Asylum Act, a Dublin procedure formally begins with the submission of the request to take charge or take back and lasts until the transfer to the competent Dublin State or the decision of SEM to examine the application on the merits in a national procedure.³⁵ 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

²⁹ Article 26 AsyIA.

³⁰ Article 26 AsyIA.

³¹ Article 36(1) AsyIA.

³² Article 25a AsyIA.

³³ Article 8-bis AsyIA. This reservation indicates that the prohibition to file an asylum application within 3 years cannot be applied if it would constitute a violation of the Convention, in particular of the right to seek protection.

³⁴ Article 31a AsyIA.

³⁵ Article 26b AsyIA.

according to the Dublin Regulation. In all the other cases where a decision to dismiss the application without examining the substance of the case has been taken, the SEM examines if the transfer of the applicant to the receiving State is lawful, reasonable and possible.³⁶

Accelerated procedure: Unless a Dublin procedure is initiated, the accelerated procedure itself starts as soon as the preparatory phase is completed.³⁷ It lasts a maximum of eight working days,³⁸ and includes mainly the following stages:³⁹

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

After the second interview, the SEM carries out a substantive examination of the application. It starts by examining whether the applicant can prove or credibly demonstrate that he or she fits the legal criteria of a refugee. As laid down in law, a person able to demonstrate that he or she meets these criteria is granted asylum in Switzerland.⁴⁰ If this is the case, a positive asylum decision is issued.

If the SEM considers however that an applicant is not eligible for the refugee status or that there are reasons for his or her exclusion from asylum,⁴¹ it will issue a negative asylum decision. In this case, the SEM has to examine whether the removal of the applicant is lawful, reasonable and possible.⁴² If the removal is either unlawful, unreasonable or impossible, the applicant will be admitted temporarily to Switzerland (F permit). A temporary admission constitutes a substitute measure for a removal that cannot be executed. It can be granted either to persons with refugee status that are excluded from asylum or to foreigners (without refugee status). The scope of the temporary admission as foreseen in national law exceeds the scope of the subsidiary protection foreseen by the recast Qualification Directive, as it covers both persons whose removal would constitute a breach of international law, as well as persons who cannot be removed for humanitarian reasons (for example medical reasons).

Extended procedure: If it appears from the interview on the grounds for asylum that a decision cannot be taken under an accelerated procedure, the application is processed further in an extended procedure and the asylum seeker is allocated to a canton. The channelling into an extended procedure occurs in particular when a procedure cannot be concluded within eight working days because additional investigative measures are necessary.⁴³ In addition to a possible additional interview, other investigative measures can relate to the identity and origin of the person, the alleged medical problems, the documents submitted or the credibility of the allegations.

The decision to proceed with the extended procedure is an “incidental decision” (*“Zwischenverfügungen”* in German or *“décision incidente ou préparatoire”* in French), which means a purely procedural decision that cannot be appealed before the final decision is issued so as to avoid lengthy procedures.

³⁶ Article 44 AsylA; Article 83 FNIA.

³⁷ Article 26c AsylA.

³⁸ Article 37 (2) AsylA.

³⁹ Article 20c AO1.

⁴⁰ Article 49 AsylA.

⁴¹ Asylum is not granted if a person with refugee status is unworthy of it due to serious misconduct or if he or she has violated or endangered Switzerland's internal or external security (Article 53 AsylA). Further, asylum is not granted if the grounds for asylum are only due to the flight from the applicant's native country or country of origin or if they are only due to the applicant's conduct after his or her departure, so-called subjective post-flight grounds (Article 54 AsylA).

⁴² Article 44 AsylA; Article 83 FNIA.

⁴³ Article 26d AsylA.

Appeal: If an applicant has not been granted asylum, the individual can submit an appeal against the decision of the SEM to the Federal Administrative Court.⁴⁴ The latter is the first and last court of appeal in asylum matters in Switzerland. An applicant has thus only one possibility to appeal against a negative decision in the asylum procedure (except for extraordinary proceedings such as application for reconsideration or revision and proceedings under international instances). An appeal can be made against inadmissibility and negative in-merit decisions.

With the entry into force of the new Asylum Act in March 2019, time limits for appeals have been significantly shortened and depend on the type of the contested decision and proceedings in which the decision was issued. The time limit is five working days in the case of an inadmissibility decision, a decision in the airport procedure, or if the applicant comes from a so-called safe country of 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. In an accelerated procedure, the time limit for appeal is five days in case of incidental decision and seven working days for in-merit decisions. In an extended procedure, the deadline for appeal is 10 days for incidental decisions and 30 days for in-merit decisions.⁴⁵

Removal: The cantonal authorities are in charge of the execution of the removal of an applicant, regardless of whether the measure concerns a Dublin transfer or a removal to a country of origin.⁴⁶

Airport procedure: If the asylum application is filed at the border in the transit area of an international airport, special rules apply.⁴⁷ As a first step, the SEM has to decide whether entry into the territory should be allowed. In case entry is provisionally refused to an applicant, the whole asylum procedure is generally carried out in the transit area of the airport. The SEM must then issue the asylum decision within a maximum of 20 days after the asylum application has been lodged. If that time limit is not met, the SEM allocates the applicant to one of the six federal asylum centres with processing facilities where he will undergo the regular procedure. The time for lodging an appeal against a negative asylum decision within the airport procedure is five working days.⁴⁸

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

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

During the summer of 2016, there have been reports of persons refused entry and prevented from asking for asylum by the Swiss border guards at the Italian border in **Chiasso**. Among these, there were also several unaccompanied children. Some of them were stranded in a park near the station of the Italian town of **Como** before the Italian authorities opened a camp.⁴⁹ This temporary camp is closed since 30 October 2018.⁵⁰

⁴⁴ Article 105 AsyIA.

⁴⁵ Article 108 AsyIA.

⁴⁶ Article 46 AsyIA; Article 21(2) Test Phases Ordinance.

⁴⁷ Articles 22 and 23 AsyIA.

⁴⁸ Article 108(4) AsyIA.

⁴⁹ See various press releases of the Swiss Refugee Council, as well as news articles on the topic, available at: <http://bit.ly/2j09q10>.

⁵⁰ Corriere di Como, 'Gli ultimi migranti hanno lasciato il campo di via Regina. Il centro è stato chiuso', 30 October 2018, available (in Italian) at: <https://bit.ly/2toRboy>.

Throughout 2018 and 2019, less persons tried to cross the southern border compared to 2016, as illustrated by the number of removals from Switzerland. The vast majority of removals were still recorded at the southern border:

Removals from Switzerland: 2016-2019				
Location	2016	2017	2018	2019
Removals from the southern border	25,025	16,425	7,215	4,528
Total number removals	26,267	17,526	8,187	5,575

Source: Federal Customs Administration, Migration Statistics, 2016, 2017, 2018; 2019.

Despite the much calmer situation in 2019 and the significant decrease in the number of arrivals at the Italo-Swiss borders in general, OSAR was informed in September 2019 of people being pushed back at the border between **Como** and **Chiasso**. In these cases, Italian authorities receive minors (but also adults) who have been sent back on the basis of the Italo-Swiss readmission agreement, without proper identification. This is in violation of the UN Convention on the Rights of the Child according to which the best interest of the child should take precedence over any other consideration and should always receive careful assessment.⁵¹

The situation in the transit zones at the airport also merits particular consideration. Since 2014, admission conditions in the transit for asylum seekers in possession of fake documents are more restrictive. They are admitted after an arrest order not exceeding 24 hours and brought before the Public Prosecutor, who issues an accusation ruling for forgery of a document with a fine,⁵² which may constitute in some cases a violation of Article 31 of the Geneva Refugee Convention.⁵³

2. Registration of the asylum application

Indicators: Registration

- Are specific time limits laid down in law for making an application? ☐ Yes ☒ No
❖ If so, what is the time limit for lodging an application?
- Are specific time limits laid down in law for lodging an application? ☐ Yes ☒ No
❖ If so, what is the time limit for lodging an application?
- Are registration and lodging distinct stages in the law or in practice? ☐ Yes ☒ No
❖ Is the authority with which the application is lodged also the authority responsible for its examination ?

According to Swiss law, an asylum application can be lodged at a federal asylum centre, an open border crossing or a border control point at an international airport in Switzerland. An application can be lodged only at the Swiss border or on Swiss territory,⁵⁴ since the Swiss Parliament has decided to abolish the possibility to lodge asylum applications at Swiss representations abroad from 29 September 2012 onwards.⁵⁵ 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.⁵⁶

⁵¹ Compare chapter "9.6.3 Pushbacks at the border", in: Swiss Refugee Council OSAR, Reception conditions in Italy – Updated report on the situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, in Italy, January 2020, available at: <https://bit.ly/2SARryi>.

⁵² Pursuant to Article 251 Criminal Code: Information provided by Elisa-Asile, 21 January 2019.

⁵³ Information provided by Elisa-Asile, 21 January 2019.

⁵⁴ Article 19 AsyIA.

⁵⁵ Parliament, *Objets parlementaires*, 10.052 *Loi sur l'asile: Modification*, available (in French, German and Italian) at: <http://bit.ly/1R3t815>.

⁵⁶ Article 18 AsyIA.

In general, foreign nationals without a valid permit of stay in Switzerland lodge an asylum application in one of the six federal asylum 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 federal asylum centre. The competent authority establishes his or her personal data, informs the closest federal asylum centre and issues a transit permit. The person has to present him or herself at that centre during the following working day.⁵⁷

Persons with a valid cantonal residence permit who want to apply for asylum have to file the application in one of the federal asylum centres.⁵⁸

Swiss law provides for exceptions to this rule for children under 14 years of age joining their parents in Switzerland, as well as for persons in prison (administrative detention or execution of a sentence). Children under 14 years do not have to lodge an application in a 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 lodged and allows the applicant to remain in Switzerland until the end of the asylum procedure), after having confiscated the travel and identity papers. The cantonal authority then informs the SEM about the asylum application.⁵⁹

If a person is in prison, it is also the cantonal authority (from the canton that has ordered the detention or the execution of a sentence) that accepts the asylum application. The cantonal authority establishes the personal data of the concerned person, takes pictures, confiscates the travel and identity papers and takes the fingerprints if necessary. The cantonal authority then informs the SEM about the asylum application. In case the applicant is released, he or she is issued an N permit by the cantonal authority.⁶⁰ In the context of the re-structure of the asylum system in March 2019, it was not clear whether detained asylum seekers would have access to legal assistance. The SEM assumed that this was not the case, since the persons concerned do not reside in a federal asylum centre. However, the Federal Administrative Court ruled in a recent judgment of November 2019 that the fact that the person concerned had lodged her asylum application while in detention does not dispense the competent authority of its duty to duly investigate the application in accordance with the law in force, in particular to ensure the right to free legal advice and representation.⁶¹

If an application is lodged at a border control point at an international airport, the competent cantonal authority establishes the personal data of the concerned person and takes a picture, as well as 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 be channelled through the airport procedure (see section on [Border Procedure](#)),⁶² which also provides access to free counselling and legal representation.⁶³

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 lodged soon after the entry, authorities may demand a reasonable justification for the delay.

⁵⁷ Articles 19 and 21 AsylA; Article 8(1)-(2) AO1.

⁵⁸ 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.

⁵⁹ Article 8(4) AO1; Directive III Field of Asylum, *Das Asylverfahren*, para 1.1.1.3.

⁶⁰ Article 8(3) AO1; Directive III Field of Asylum, *Das Asylverfahren*, para 1.1.1.4.

⁶¹ Federal Administrative Court, Decision D-5705/2019, 25 November 2019.

⁶² Article 22ff AsylA.

⁶³ Article 22(3bis) AsylA.

By virtue of the Dublin Association Agreement that came into force on 1 March 2008,⁶⁴ 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.⁶⁵

According to the Asylum Act, asylum seekers are obliged to cooperate in the establishment of the facts during the asylum procedure (duty to cooperate).⁶⁶ Asylum applicants who fail to cooperate without valid reason or who fail to make themselves available to the authorities for more than 20 days lose their right to have the asylum procedure continued. This rule also applies to persons who fail to make themselves available to the asylum authorities for more than five days in a federal centre without a valid reason. The applications are cancelled without a formal decision and the persons concerned cannot file a new application within three years – except if this would amount to a violation of the Refugee Convention being reserved.⁶⁷ This provision seems to be problematic with regard to access to the asylum procedure, as well as to the right to an effective remedy.⁶⁸ There is not much experience in practice and the explanation in the manual of the SEM is not conducive.⁶⁹ So far, the Federal Administrative Court has not clarified whether there is a right to an appeal against the decision to cancel the application in these cases.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: 10 working days
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
3. Backlog of pending cases at first instance as of 31 December 2019: 8,377

Preparatory phase: The preparatory phase (*“phase préparatoire”*) starts with the lodging of the application and lasts a maximum of 10 days in the case of a Dublin procedure and a maximum of 21 days for other procedures. The purpose of the preparatory phase is to carry out the preliminary clarifications necessary to complete the procedure, in particular to determine the State competent to examine the asylum application under the Dublin III Regulation, conduct the age assessment – if the minority is doubted, collect and record the personal data of the asylum seekers, examine the evidences and establish the medical situation.⁷⁰ During the preparatory phase, a first interview is held mainly to

⁶⁴ 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.

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

⁶⁶ Article 8(1)-(3) AsylA.

⁶⁷ Article 8(3-bis) AsylA.

⁶⁸ Seraina Nufer, *Die Abschreibung von Asylgesuchen nach dem neuen Art. 8 Abs. 3bis AsylG*, ASYL 2/14, 3ff.

⁶⁹ SEM, Manuel Asile et retour, E5 - Radiation du rôle, 2.5 Procédure en application de l'art. 8, al. 3bis, LAsi, available (in French) at: <http://bit.ly/2l2jDnG>.

⁷⁰ Article 26 AsylA.

determine whether Switzerland is competent to examine the merits of the asylum application (see [Personal interview](#)).⁷¹

Cancellation and inadmissibility decision: On this basis, the SEM decides whether an application should be examined and whether it should be examined on the merits. 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.⁷² Similarly, the application is cancelled without a formal decision if asylum applicants fail to cooperate without valid reason or if they fail to make themselves available to the authorities for more than 20 days or more than 5 days if the asylum seeker is accommodated in a federal centre. The persons concerned are further now allowed to lodge a new application within 3 years, unless this restriction would amount to a violation of the Refugee Convention.⁷³ However, according to information provided by the organisations providing legal assistance in the federal centres, applicants who return to the centres after their asylum application has been cancelled without a formal decision are, in principle, reintegrated into the ongoing procedure.

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.⁷⁴

Dublin procedure: If the preliminary investigations indicate that another Member State might be responsible for processing the asylum application according to the Dublin III Regulation, a request for taking charge or taking back is submitted to the relevant State. Under the Asylum Act, a Dublin procedure formally begins with the submission of the request to take charge or take back and lasts until the transfer to the competent Dublin State or the decision of SEM to examine the application on the merits in a national procedure.⁷⁵ In case of a Dublin procedure, the SEM has to examine whether grounds exist to make use of the sovereignty clause. If such grounds exist, Switzerland takes over the responsibility for examining the application even if another Member State would be responsible according to the Dublin Regulation. In all the other cases where a decision to dismiss the application without examining the substance of the case has been taken, the SEM examines if the transfer of the applicant to the receiving State is lawful, reasonable and possible (see section [Dublin: General](#)).⁷⁶

Accelerated procedure: Unless a Dublin procedure is initiated, the accelerated procedure itself starts as soon as the preparatory phase is completed.⁷⁷ It lasts a maximum of eight working days⁷⁸ and includes mainly the following stages:⁷⁹

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

⁷¹ Article 26 AsylA.

⁷² Article 25a AsylA.

⁷³ Article 8-bis AsylA.

⁷⁴ Article 31a AsylA.

⁷⁵ Article 26b AsylA

⁷⁶ Article 44 AsylA; Article 83 FNIA.

⁷⁷ Article 26c AsylA

⁷⁸ Article 37 (2) AsylA

⁷⁹ Article 20c AO1

After the second interview, the SEM carries out a substantive examination of the application. It starts by examining whether the applicant can prove or credibly demonstrate that he or she fits the legal criteria of a refugee. As laid down in law, a person able to demonstrate that he or she meets these criteria is granted asylum in Switzerland.⁸⁰ 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,⁸¹ it will issue a negative asylum decision. In this case, the SEM has to examine whether the removal of the applicant is lawful, reasonable and possible.⁸² 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 who are excluded from asylum or to foreigners (without refugee status). The scope of the temporary admission as foreseen in national law exceeds the scope of the subsidiary protection foreseen by the recast Qualification Directive, as it covers both persons whose removal would constitute a breach of international law, as well as persons who cannot be removed for humanitarian reasons (for example medical reasons).

Extended procedure: If it appears from the interview on the grounds for asylum that a decision cannot be taken under an accelerated procedure, the application is channelled into an extended procedure and the asylum seeker is allocated to a canton. The switch to an extended procedure occurs in particular when a procedure cannot be concluded within eight working days because additional investigative measures prove necessary⁸³ or if the maximum length of stay of 140 days in a federal centre is reached.⁸⁴ In addition to a possible additional interview, other investigative measures with regard to the identity and origin of the person, the alleged medical problems, the documents submitted or the credibility of the allegations may be taken.

The decision to proceed with the extended procedure is an “incidental decision” (“*Zwischenverfügungen*” in German or “*décision incidente ou préparatoire*” in French), which means a purely procedural decision that cannot be appealed before the final decision is issued so as to avoid lengthy procedures.

Length of procedure: 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 3 working days of the moment when the concerned Dublin state has accepted the transfer request. In an accelerated procedure, the decision should be notified within 8 days following the end of the preparatory phase whereas this period is extended to 2 months under the extended procedure.⁸⁵ However, the procedural deadlines set in Swiss law are not binding but rather give a general temporal scope. 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 federal centre or a canton.⁸⁶

Under the former asylum system, the length of the asylum procedure at first instance varied significantly from what was foreseen by law. In 2019, the average duration was 340.5 days,⁸⁷ compared to 465.7 days in 2018,⁸⁸ and an average of 339.8 days in 2017.⁸⁹

⁸⁰ Article 49 AsylA.

⁸¹ Asylum is not granted if a person with refugee status is unworthy of it due to serious misconduct or if he or she has violated or endangered Switzerland's internal or external security (Article 53 AsylA). Further, asylum is not granted if the grounds for asylum are only due to the flight from the applicant's native country or country of origin or if they are only due to the applicant's conduct after his or her departure, so-called subjective post-flight grounds (Article 54 AsylA).

⁸² Article 44 AsylA; Article 83 FNIA.

⁸³ Article 26d AsylA

⁸⁴ Article 24(4) AsylA.

⁸⁵ Article 37 AsylA.

⁸⁶ Article 23(2) AsylA.

⁸⁷ Information provided by the SEM, 12 February 2020.

Following a first assessment of the new procedure covering the period from March to December 2019, SEM indicated that Dublin procedures last on average 35 days, while national procedures last on average 50 days in the accelerated procedure and 100 days in the extended procedure, before a decision is issued.⁹⁰ In contrast to the very positive initial assessment made by the SEM, several organisations, including OSAR, stressed the need to ensure that the speeding up of procedures should not be to the detriment of the quality of the examination of asylum applications and the decision-making process.⁹¹

8,377 applications were pending at first instance on 31 December 2019.

1.2. Prioritised examination and fast-track processing

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

Under the Asylum Act, asylum applications lodged by unaccompanied minor are examined as a matter of priority.⁹² In addition, SEM defines an asylum processing strategy in which it determines an order of priority.⁹³ In March 2019, SEM communicated its new strategy for processing asylum applications that takes several elements into account, namely (i) the situation in the country of origin, (ii) the credibility of the asylum request and (iii) the asylum seeker's personal behaviour.⁹⁴ Applications that can be processed under the Dublin procedure or under an accelerated procedure are given priority treatment,⁹⁵ as well as those lodged by nationals origination from countries with a low rate of recognition. The list of countries considered as having a low chance of success is available online and was last updated in October 2019.⁹⁶

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 in both accelerated and extended procedures.

⁸⁸ Information provided by the SEM, 21 January 2019.

⁸⁹ Information provided by the SEM, 12 January 2018.

⁹⁰ SEM, *Procédures d'asile accélérées: premier bilan*, 6 February 2020, available (in French) at: <https://bit.ly/37K00Ly>.

⁹¹ OSAR, *L'accélération ne doit pas préteriter l'équité et la qualité*, 4 February 2020, available (in French) at: <https://bit.ly/2u9Vu9t>.

⁹² Article 18 (2bis) AsylA.

⁹³ Article 37b AsylA.

⁹⁴ SEM, *Demandes d'asile priorité aux procédures Dublin et aux procédures accélérées*, 9 May 2019, available (in French) at: <https://bit.ly/2u0JQ22>.

⁹⁵ SEM, *Strategy for processing asylum requests: Fast-tracking of unjustified applications*, 17 July 2019, available at: <https://bit.ly/2uQOaS2>.

⁹⁶ The list of countries with a low recognition rate is available at: <https://bit.ly/2Tm0ZOt>.

During the preparatory phase, the applicant undergoes a short preliminary interview that is mainly held to determine whether Switzerland is competent to examine the merits of the asylum application. This is the so-called Dublin interview (see section on [Dublin: Personal interview](#)).

In case the SEM intends to take an inadmissibility decision (see section on [Admissibility Procedure](#)), the applicant is granted the right to be heard in writing. 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.⁹⁷ In those cases, there is no second interview.

Interview on the grounds for asylum: In all the other cases, the accelerated procedure begins and the applicant undergoes a second interview (so-called interview on the grounds for asylum).⁹⁸ On this occasion, the applicant has the possibility to describe his or her reasons for fleeing and, if available, to submit evidence. In addition to the person in charge of conducting the interview and the person who draws up the minutes, asylum seekers are accompanied by their legal representative and, if necessary, a translator. The applicant may also be accompanied by a person of his or her choice and an interpreter.⁹⁹ The following are the main elements discussed during the asylum interview:

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

Under the accelerated procedure, SEM may subsequently decide to carry out a complementary asylum interview or to assign the applicant to the extended procedure if additional investigative measures are necessary. Interviews conducted by SEM under the extended procedure satisfy the same conditions and requirements as those carried out under the accelerated procedure. In principle, the applicant is invited to a hearing, at which he is accompanied by his legal representative. The hearing takes place in the federal asylum centre where the first stages of the person's asylum procedure were carried out.

According to article 17(2) AsylA in relation to article 6 AO1, if there are concrete indications of gender-related persecution or if the situation in the State of origin allows the inference that such persecution exists, the asylum seeker shall be heard by a person of the same sex. This rule also applies to the other participants of the interview such as the interviewer, the interpreter and the legal representative and represents a right for the asylum seeker. Non-compliance with this provision constitutes a violation of the right to be heard. The applicant is, however, free to renounce this right. In this case, a formal right to be heard must be granted.

In practice, the official in charge of the case may on his or her own initiative decide to conduct an interview with persons of the same sex as the applicant, or the legal representative may so request. It may happen that this obligation is not complied with in practice, which implies the intervention of the legal representative, who should then require the cancellation of the interview and its conduct in an appropriate composition

⁹⁷ Article 36 AsylA.

⁹⁸ Article 29 AsylA.

⁹⁹ Article 29 AsylA.

Interpretation

According to Swiss asylum law, the presence of an interpreter during the personal interviews is not an absolute requirement, as an interpreter should be called in “if necessary”.¹⁰⁰ Normally, an interpreter nevertheless participates in the interviews. According to the SEM, the interview always takes place with an interpreter, unless the knowledge of an official Swiss language by the applicant is considered sufficient.¹⁰¹ However, in certain cases, it has been observed that applicants – especially Nigerian applicants – are interviewed in English. This is problematic when the interviewed person, contrary to the assumption of the SEM, does not sufficiently master that language. The SEM issued a code of conduct applicable for its interpreters.¹⁰²

Even if, in general, an interpreter is present during the interviews, some problems have been identified with regard to simultaneous translation. Internal, unpublished surveys on procedural problems conducted by the representatives of charitable organisations attending interviews regarding the grounds for asylum (coordinated by the Swiss Refugee Council) regularly highlight difficulties relating to simultaneous translation, such as partially incorrect translations, difficulties of comprehension taking into account the cultural context and the corresponding references. In this respect, the systematic presence, in principle, of a legal representative during the interview should reinforce the right of asylum seekers to be able to express themselves in a language of which they have a sufficient command.

The representatives of charitable organisations also point out that several interpreters are not impartial, sometimes even have close ties to the regime in the country of origin, or that they are not professional (imprecise, no literal translation but a summary, lacking linguistic competence).¹⁰³ 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 or Syrian or Dari.

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

Transcript

Neither audio nor video recording of the personal interview is required under Swiss legislation. The recording of interviews with asylum seekers is a long-standing demand of the charitable organizations, which has so far not been implemented by the federal authorities.¹⁰⁴

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).¹⁰⁵ Before signing the minutes, the applicant has the possibility to make further comments or corrections to the minutes.

Video conferencing has only very rarely been used for the interviews. In the test procedure in **Zurich** of 2018, which corresponded to the new accelerated asylum procedure, the SEM tested interpretation via Skype for Business, in order to reduce costs. Due to technical problems and lack of data protection regulation, the SEM renounced, until further notice, to use video conferencing.

¹⁰⁰ Article 29(1-bis) AsylA.

¹⁰¹ SEM, *Handbuch Asyl und Rückkehr. Anhörung zu den Asylgründen*, available (in German) at: <http://bit.ly/1Fk7AXb>, 8; Asylum Appeals Commission, Decision EMARK 1999/2 of 27 October 1998, para 5.

¹⁰² SEM, *Kompetenzprofil Dolmetschende BFM*, 2011.

¹⁰³ On the issue of interpretation see in particular: OSAR, *L’interprétariat dans le domaine de l’asile n’est pas une question mineure*, 5 July 2017, available (in French) at: <https://bit.ly/2HQXGI2> and Le Temps des réfugiés, *Asile: les superpouvoirs des interprètes*; 16 May 2019, available (in French) at: <https://bit.ly/2wllt9l>.

¹⁰⁴ Le Temps des réfugiés, *Plusieurs Etats européens procèdent déjà à l’enregistrement audio des auditions d’asile. Pourquoi pas la Suisse?*, 4 October 2019, available (in French) at: <https://bit.ly/3c6jFbG>.

¹⁰⁵ Article 29(3) AsylA.

1.4. Appeal

Indicators: Regular Procedure: Appeal

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

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative	
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Some grounds	<input type="checkbox"/> No
- ❖ If yes, is it
- ❖ If yes, is it suspensive
2. Average processing time for the appeal body to make a decision: Not available

Swiss law provides for an appeal mechanism in the regular asylum procedure. The sole competent authority for examining an appeal against inadmissibility and in-merit decisions of the SEM is the Federal Administrative Court (*Tribunal administratif fédéral*, TAF).¹⁰⁶ A further appeal to the Federal Supreme Court is not possible (except if it concerns an extradition request or detention in Dublin cases).¹⁰⁷ The Federal Administrative Court 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 Federal Administrative Court can be made on two different grounds: the violation of federal law, including the abuse and exceeding of discretionary powers; and incorrect and incomplete determination of the legally relevant circumstances.¹⁰⁸

It is important to note in this respect that the Federal Administrative Court cannot fully verify asylum decisions of the SEM anymore, since the examination for appropriateness has been abolished in the Asylum Act as of 1 February 2014.¹⁰⁹ 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.¹¹⁰ Even if the Court can still verify the appropriateness of the enforcement of removal (as this part of the decision falls under the Foreign Nationals Act, as opposed to the decision on asylum, which falls under the Asylum Act and is therefore subject to the limitation of the Court's competence), it is questionable whether the legal remedy in asylum law is effective. The limitation of the Court's competence in asylum decisions seems problematic and unjustified in view of the 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.¹¹¹ 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 Switzerland should apply the sovereignty clause for humanitarian reasons or not (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 should be conducted in one of the 4 official languages,¹¹² 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

¹⁰⁶ Article 105 AsylA. Most judgments of the Federal Administrative Court are available at: <http://bit.ly/1NgE8vb>.

¹⁰⁷ Article 83(c)-(d) Federal Supreme Court Act.

¹⁰⁸ Article 106 AsylA.

¹⁰⁹ Article 106(1) AsylA. Appropriateness of a decision means situations in which the determining authority has a certain margin of appreciation in which it can manoeuvre. Within this margin of appreciation, there can be decisions that are "inappropriate" but not illegal because they still fall within the margin of appreciation and they respect the purpose of the legal provision, but the discretionary power was used in an inappropriate way.

¹¹⁰ For a more detailed analysis of the discretionary power of the determining authority and the competence of the Federal Administrative Court, see Federal Administrative Court, Decision E-641/2014, 13 March 2015.

¹¹¹ 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)*, ASYL 2/13, 11ff.

¹¹² Article 33a APA.

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.¹¹³

In addition, it must be clear that it is an appeal and what the intention of the appeal is. If an appeal does not meet the criteria, but the appeal has been properly filed, the Court should grant an appellant a suitable additional period to complete the appeal.¹¹⁴

The time limit for lodging an appeal against negative decisions on the merits is 7 opening days if the decision was issued under the accelerated procedure and 30 days under the extended procedure. The Court normally has to take decisions on appeals against decisions of the SEM within 20 days in case of accelerated procedure and within 30 days under the extended one.¹¹⁵ In reality, the average processing time for the Court to take a decision is longer. Between 2015 and 2017, the average duration of an appeal procedure before the Federal Administrative Court was 159 days.¹¹⁶ More recent statistics on average processing times at second instance are not available.

In general, an appeal has automatic suspensive effect in Switzerland.¹¹⁷ Appeals in Dublin cases are an exception: suspensive effect is not automatic but can be granted upon request.

Different obstacles in appeals have been identified. One important obstacle is the fact that the Court may demand an advance payment (presumed costs of the appeal proceedings), 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.¹¹⁸ 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).¹¹⁹ In October 2017, the Federal Court instructed the Federal Administrative Court to cease demanding an advance payment for unaccompanied asylum-seeking children in appeal procedures. According to the Court, the present practice of Federal Administrative Court consisting in requiring an advance payment in such situations constitutes a measure that disproportionately restricts access to justice for unaccompanied asylum-seeking children.¹²⁰

Another obstacle results from the limitation of the competence of the Federal Administrative Court. Within the appeal procedure, the Court has the possibility to order a hearing if the facts are not elucidated in a sufficient manner.¹²¹ In practice, it has hardly ever made use of this possibility.

¹¹³ Swiss Refugee Council, *Fiches d'information sur la procédure d'asile*, available (in several languages) at: <http://bit.ly/1QPhrAg>.

¹¹⁴ Article 33a and 52 APA.

¹¹⁵ Article 109 AsylA.

¹¹⁶ Information provided by the Federal Administrative Court, 22 February 2019.

¹¹⁷ Article 55(1) APA.

¹¹⁸ Article 63(4) APA.

¹¹⁹ For example ECtHR, *MA v Switzerland*, Application No 52589/13, Judgment of 18 November 2014. In this case, the Federal Administrative Court delivered an interim decision in which it declined the applicant's request for legal aid, reasoning that his application lacked any prospects of success. In its preliminary assessment of the case, The Court noted that the applicant was deprived of additional opportunities to prove the authenticity of the second summons and the Iranian conviction before the national authorities because the Federal Administrative Court ignored the applicant's suggestion of having the credibility of the documents further assessed. It did not follow up on the applicant's proposal to submit the copies to the Migration Board for further comments, but instead decided directly on the basis of the applicant's file and his appeal.

¹²⁰ Federal Court, Decision 12T_2016, 16 October 2017.

¹²¹ 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

The new asylum procedure of March 2019 introduced the right for asylum seekers to receive free counselling and legal representation at first instance, regardless of the applicable procedure (accelerated, extended, Dublin).¹²² This accompanying measure, which aims to ensure a fair asylum procedure, was introduced in order to compensate the overall aim to speed-up the decision-making process. In order to ensure this legal protection, SEM contracts one or more service providers from recognised charitable organisations to carry out these tasks in the centres of the Confederation and at the airports of **Geneva** and **Zurich**. These organisations were selected through a public call for tenders and all of them have solid experience in providing legal support and representation to applicants. It currently comprises 4 organisations which are present in the 6 federal centres, namely:

Organisations providing legal assistance at first instance	
Federal centre	Name of organisation
Altstätten	HEKS-Rechtsschutz
Bern	Rechtsschutz für Asylsuchende
Basel	HEKS-Rechtsschutz
Boudry	Protection juridique Caritas Suisse
Chiasso	SOS-Ticino Protezione giuridica
Zurich	Rechtsschutz für Asylsuchende

Source: Swiss Refugee Council, available at: <https://bit.ly/2Xflxu2>.

Although mandated by the migration authorities, independence and confidentiality in the work of legal representation is guaranteed.¹²³

Each asylum seeker is assigned a legal representative from the start of the preparatory phase and for the rest of the asylum procedure, unless the asylum seeker expressly declines this. The legal representative assigned should inform the asylum seeker as quickly as possible about the asylum seeker's chances in the asylum procedure. The so-called legal protection in the federal asylum centres, consisting in principle of an advice office and legal representation, mainly carries out the following tasks:¹²⁴

- Informing and advising asylum seekers;
- Informing asylum seekers about their chances of success in the asylum procedure;
- Ensuring the preparation – and participating to – the interview
- Representing the interests of unaccompanied minor asylum seekers as a person of trust in federal centers and at the airport;
- Drafting an opinion on the negative decision in the accelerated procedure;

¹²² Article 102f AsylA.

¹²³ SEM, *Asile : attribution des mandats pour le conseil et la représentation juridique dans les centres fédéraux*, 17 October 2018, available (in French) at: <https://bit.ly/3936CpN>.

¹²⁴ Article 52 OA1 and seq.

- Communicating the end of the representation mandate to the asylum seeker when the representative is not willing to lodge an appeal because it would be doomed to failure (so-called ‘merits test’);¹²⁵
- Ensuring legal representation during the appeal procedure, in particular by preparing and writing an appeal;
- Informing the asylum seeker of the other possibilities for legal advice and representation for lodging an appeal;

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

The legal representation lasts, under the accelerated and the Dublin procedure, until a legally binding decision is taken, or until an incidental decision on the allocation to the extended procedure is issued by the SEM. It also extends to a possible appeal procedure in front of the Federal Administrative Court. It ends, when the assigned legal representative informs the asylum seeker that he or she does not wish to submit an appeal because it would have no prospect of success (so called “merits-test”). This should take place as quickly as possible after notification of the decision to reject asylum.¹²⁶

The extended procedure (allocation to a canton)

Following the allocation to a canton, asylum seekers may contact a legal advice agency or the legal representative allocated free of charge at steps of the procedure at first instance relevant to the decision, in particular if an additional interview is held on the grounds for asylum.¹²⁷ Following a public call for tenders, the SEM appointed several organisations¹²⁸ active in the cantons to provide legal protection after the award to a canton.¹²⁹

The system of legal representation in the extended procedure implemented by the authorities covers solely the decisive steps of the asylum procedure. Hence, several activities traditionally carried out by the legal advice offices active in the cantons do not fall within the scope of application under the new Asylum Act and the related ordinances, for instance family reunification procedures, contacts and approaches to health professionals or questions relating to accommodation.¹³⁰

¹²⁵ Depending on the organisation in charge of legal assistance, several steps may have been taken to provide a framework for this sensitive assessment. For example, the principle of double-checking each negative decision received: a manager or more experienced legal officer will systematically evaluate the decision and discuss it with the legal officer in charge of the case. In addition, internal recommendations or guidelines relating to the practice of the authorities make it possible to guide and give clear information to the lawyers in charge of making this merits test.

¹²⁶ Article 102h AsylA.

¹²⁷ Article 102I AsylA.

¹²⁸ An updated list of all organisations providing legal representation for asylum seekers in the different regions of Switzerland is available on the website of the Swiss Refugee Council at: <https://bit.ly/2RhFaxs>.

¹²⁹ SEM, *Loi sur l'asile révisée : le SEM désigne les bureaux de conseil juridique habilités*, 26 February 2019, available (in French) at: <https://bit.ly/2TdD2qO>.

¹³⁰ OSAR, *Conseil et représentation juridique*, available (in French) at: <https://bit.ly/2I4sPYx>.

2. Dublin

2.1. General

Dublin statistics: 2019

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	4,848	1,724	Total	5,230	1,164
Italy	1,432	610	France	1,929	175
Germany	1,082	464	Germany	1,332	393
France	647	231	Belgium	492	84

Source: SEM, Asylum Statistics 2019.

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

Application of the Dublin criteria

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

Outgoing Dublin requests by criterion: 2017-2019			
Dublin III Regulation criterion	2017	2018	2019
Family provisions: Articles 8-11	76	43	28
Documentation and entry: Articles 12-15	2,870	1,823	1,130
Dependency and humanitarian clause: Articles 16 and 17(2)	50	55	16
"Take back": Article 18(1)(b)	4,202	3,703	2,781
"Take back": Article 18(1)(c)	53	30	32
"Take back": Article 18(1)(d)	1,116	1,155	861
"Take back": Article 20(5)	3	1	0
Total outgoing requests	8,370	6,810	4,848

Source: SEM, Information provided on 12 February 2020.

The Federal Administrative Court clarified in 2015 that the presence of a family member or sibling in a pending asylum procedure in Switzerland qualifies as "legally present" for the purposes of Article 8(1) of the Dublin III Regulation.¹³¹ 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.¹³²

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:

¹³¹ Federal Administrative Court, Decision D-5785/2015, 10 March 2016.

¹³² Federal Administrative Court, Decision E-6513/2014, 3 December 2015.

Concept of “spouses”: In one case, the SEM was of the opinion that the applicant could not derive anything in his favour from the spouse living in Switzerland, since a stable relationship was required under the notion of spouses under Article 2(g) of the Dublin Regulation. In this context, Article 8 ECHR must be observed. In order to determine the nature of the actual relationship, various factors should be taken into account according to the SEM, in particular common housing, financial interdependence, the bonding of partners and the stability and duration of the relationship. The SEM concluded that the relationship between the spouses did not fall under the scope of Article 8 ECHR.

The Federal Administrative Court disagreed and stated that:

- ❖ Asylum seekers can rely directly on Article 9 of the Dublin Regulation;
- ❖ Article 2(g) of the Regulation, which defines family members, does not impose any further requirements for (formal) spouses; a stable relationship is only required for unmarried couples;
- ❖ Article 9 of the Regulation requires that the family member residing in Switzerland is entitled to stay in Switzerland in his or her capacity as a beneficiary of international protection. In addition to refugee status, international protection includes other protection status, granted due to a serious threat to life and limb resulting from arbitrary violence in the context of armed conflict in the country of origin. This shall also include the Swiss status of ‘temporary admission’, granted to an asylum seeker because of a precarious security situation in the country of origin.¹³³

Best interests of the child: According to a doctor's report and information from the reception centre's management, a female applicant was not capable of providing adequate care such as nourishment for her children. The applicant's family (her father and her two siblings, all resident in Switzerland) had taken care of the applicant and especially her children since their arrival in Switzerland. The management of the reception centre stated that the loss of the family support could endanger the welfare of the applicant and her children. Nevertheless, the Federal Administrative Court confirmed the decision of the SEM to transfer the woman and her children to Italy.¹³⁴

A family with three children, whose asylum application was rejected in France and a request of reconsideration was pending before a French court, had already been returned to France by Switzerland in January 2017. They lodged a new application in Switzerland in August 2017. Both children and parents were in a worrying medical condition. According to doctors, the Dublin transfer to France of January 2017 had caused severe psychological damage to the children. Another return would lead to a massive violation of the well-being of the children with damaging consequences. In the case of the two sons, emergency treatment had been initiated which could only lead to success if a long-term, fear-free, stable and child-friendly environment was ensured. Otherwise, a further deterioration of the condition with threatening suicidal tendencies was to be expected. The Federal Administrative Court referred to the *Tarakhel*¹³⁵ judgment of the European Court of Human Rights and instructed the SEM to declare itself responsible for the material examination of the asylum application of the complainants under the national procedure.¹³⁶

Siblings: Five adult siblings left Syria together and entered Switzerland via Greece and Croatia. Switzerland considered itself responsible for three siblings, and initiated a Dublin procedure for one man and one woman, despite their identical starting position. The Federal Administrative Court considers equality in terms of law in the sense of Article 8 of the Federal Constitution as violated.¹³⁷

The dependent persons and discretionary clauses

In addition to the cases in which Switzerland must apply the sovereignty clause because the transfer to the responsible Dublin State would violate one of its international obligations, Article 29a(3) AO1

¹³³ Federal Administrative Court, Decision BVGE 2017/VI/1, 10 February 2017.

¹³⁴ Federal Administrative Court, Decision F-905/2017, 12 July 2017.

¹³⁵ European Court of Human Rights, *Tarakhel vs. Switzerland*, No. 29217/12.

¹³⁶ Federal Administrative Court, Decision D-5698/2017, 6 March 2018.

¹³⁷ Federal Administrative Court, Decision E-2246/2016, 4 October 2017.

provides the possibility to apply the sovereignty clause on humanitarian grounds. According to case-law, the sovereignty clause is not self-executing, which means that applicants can only rely on the clause in connection with another provision of national law.¹³⁸ 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 the application of the sovereignty clause. The Federal Administrative Court's competence to examine the SEM's decision regarding humanitarian reasons is very limited, which leads to less jurisprudence and transparency on the issue. However, the Court sent some cases back to the SEM, because it had failed to consider whether or not to apply a discretionary clause (see section on [Dublin: Appeal](#)).

In the case of a woman whose parents were recognised as refugees in Switzerland and who herself was in a very bad state of health, the Federal Administrative Court recognised a mutual dependency between the daughter and her parents to such an extent that non-application of Article 16 of the Dublin Regulation could not be justified; the SEM was ordered to proceed with the material assessment of the applicant's asylum claim under the national procedure.¹³⁹

The sovereignty clause is used only in exceptional cases and is usually based on Article 29a(3) AO1. According to Swiss case-law,¹⁴⁰ the interpretation of humanitarian reasons should be similar to the interpretation of the humanitarian clause of the Dublin Regulation.¹⁴¹ Therefore, a sharp distinction cannot be made between the grounds mostly accepted by Swiss authorities to use the sovereignty clause and grounds mostly accepted to use the humanitarian clause. In most cases in which Switzerland decides to examine an application even if another state is responsible, the cases concern EU Member States with problematic conditions. Another category are particularly vulnerable persons, for example families (especially single mothers with children) or persons with severe medical problems that run a high risk of not receiving the essential care because of the deficiencies of the reception conditions or of the asylum system in the responsible Member State.¹⁴² However, the threshold for the application of the humanitarian clause is high. A high risk of detention in case of a transfer back to the responsible state has also been stated as a reason (for further information see section on [Dublin: Appeal](#)).

In the case of an Eritrean asylum seeker who had a child with an Eritrean national residing in Switzerland who was granted temporary admission ("F refugee permit") the SEM simply asked the Italian authorities for guarantees regarding the availability of care for the mother and her baby. In the Court's view, the SEM was wrong not to consider the father-child relationship at all and not to consider the proportionality between the removal order and the child's best interests sufficiently. The case was referred to the SEM, which will have to rule on the application of the sovereignty clause in relation to Article 8 ECHR.¹⁴³

Several complaints regarding victims of human trafficking were decided by the Federal Administrative Court. The case of a woman from Ethiopia, who was a victim of human trafficking in Kuwait and whose asylum application was rejected by the SEM because of the responsibility of France. The Court stated that the complainant had not presented a concrete and serious risk that would lead to the conclusion that the French authorities would refuse to take her in and consider her application for international protection.¹⁴⁴ Nor did the court see any concrete evidence that the woman could become a victim of re-trafficking in France. The public prosecutor's office did not take on the criminal complaint filed in Switzerland. The court stated that it would be welcome if the SEM received assurances from the French

¹³⁸ Federal Administrative Court, Decision E-5644/2009, 31 August 2010.

¹³⁹ Federal Administrative Court, Decision D-3566/2018, 28 June 2018.

¹⁴⁰ Federal Administrative Court, Decision E-7221/2009, 10 May 2011.

¹⁴¹ Articles 16 and 17(2) Dublin III Regulation.

¹⁴² For example: In Decision D-5221/2016, 31 October 2018 and Decision D-5407/2018, 31 October 2018 the Federal Administrative Court the cases were referred back to the SEM in order to do a proper examination of a possible use of the sovereignty clause. The cases concerned families with a Dublin decision to Bulgaria, where they had been ill-treated and detained by the authorities.

¹⁴³ Federal Administrative Court, Decision E-4936/2017, 19 February 2018.

¹⁴⁴ Federal Administrative Court, Decision D-1372/2018, 29 November 2018.

authorities regarding access to the protection system for victims of human trafficking, as this could help to reduce understandable fears of the applicant from being transferred. In another case - also Dublin-France - the Federal Administrative Court upheld the complaint of a woman from Cameroon who was forced into prostitution in France. The Court found that the SEM had underestimated its discretion and, by using the inexact and empty phrase "in consideration of the file and the circumstances you have invoked, there are no grounds justifying the application of the sovereignty clause of Switzerland", it completely disregarded the fact that there were concrete indications that the vulnerability of potential victims of human trafficking in France could not always be adequately taken into account.¹⁴⁵

In 2019, the SEM applied the sovereignty clause in 859 cases, compared to 875 cases in 2018,¹⁴⁶ and 845 cases in 2017.

These numbers show that, like the family criteria, the humanitarian clause and the sovereignty clause are only rarely applied by Switzerland.¹⁴⁷ Despite continuous joint efforts by a large number of Swiss NGOs, united under the "Dublin Appell" coalition, the application of the humanitarian clause or the sovereignty clause to cases of vulnerable asylum seekers remains extremely restrictive.¹⁴⁸

2.2. Procedure

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility?¹⁴⁹

❖ Answer to negative Dublin decision	10.54 days
❖ Negative Dublin decision to transfer	353.13 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.¹⁵⁰ The Federal Council has the possibility to provide exceptions for children under the age of 14.¹⁵¹ In practice, all applicants over 14 years of age are systematically fingerprinted and checked in Eurodac after the registration of their application in Switzerland. This applies to all asylum procedures carried out in Switzerland, regardless of where an application is filed. The Dublin procedure is systematically applied in all cases where the data check or other indications suggest that another Dublin Member State is responsible for examining an asylum application.¹⁵²

The Federal Administrative Court ruled that if a person fails to cooperate with fingerprinting, this can be considered as a severe violation of the duty to cooperate according to the Asylum Act. This is also the case if the asylum seeker wilfully destroys the skin of his or her fingertips. However, the SEM must clarify with an expert whether or not the modification of the fingertips was wilful or due to external influences.¹⁵³ Article 8(3-bis) of the Asylum Act states that persons who fail to cooperate without valid reason lose their right to have the proceedings continued. Their applications are cancelled without a formal decision being taken and no new application may be filed within three years; the foregoing is subject to compliance with the Refugee Convention of 28 July 1951. So far, such cases have not been reported in practice.

¹⁴⁵ Federal Administrative Court, Decision D-1874/2019, 29 April 2019.

¹⁴⁶ According to information provided by the SEM on 14 February 2019, out of these cases, 629 cases concerned Greece, 101 Hungary, 80 Italy and 65 other Dublin States.

¹⁴⁷ In November 2017, the Swiss Refugee Council and a broad coalition of NGOs submitted to the Federal Council the "Dublin call" (*Appel de Dublin*). This call urges the authorities to handle the asylum applications lodged by vulnerable persons. For further information, see the website of the coalition available (in French) at: <http://bit.ly/2pFSRKW>.

¹⁴⁸ More information available (in German) at: <https://bit.ly/2UhWFQq>.

¹⁴⁹ Average duration in 2018: Information provided by the SEM, 21 January 2019.

¹⁵⁰ Article 102a-bis AsyIA.

¹⁵¹ Article 99 AsyIA.

¹⁵² Article 21(2) AsyIA.

¹⁵³ Federal Administrative Court, Decision BVGE 2011/27, 30 September 2011.

If another Dublin State is presumed responsible for the examination of the asylum application, the applicant concerned is granted the right to be heard.¹⁵⁴ This hearing can take place either orally or in writing¹⁵⁵ 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 solely 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.”¹⁵⁶ The right to be heard cannot effectively be exercised as long as the intended outcome of the Dublin procedure is not clear. According to the *MM* standard, the applicant should be able to provide his or her views in the light of an intended concrete decision: “The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely.”¹⁵⁷

In principle, the applicant is entitled to access to the files relevant for the decision-making.¹⁵⁸ Access can only be refused if this would be contrary to essential public interest, essential private interests or interests of non-completed official investigations.¹⁵⁹ In general, access to the files is not granted automatically, but only upon explicit request. However, in case of an inadmissibility decision (and all Dublin transfer decisions are inadmissibility decisions), copies of the files are annexed to the decision if enforcement of the removal has been ordered.¹⁶⁰ The files should include information about the evidence on which the take back request was made and the reply of the concerned Member State. In case of Dublin transfer decisions, the SEM can notify the decision directly to applicants even if they are represented by a legal representative. The latter must be informed immediately about the notification.¹⁶¹

Individualised guarantees

In a first national leading case judgment regarding the *Tarakhel* judgment,¹⁶² 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.¹⁶³ After this judgment, there have been several cases in which

¹⁵⁴ Article 36(1) AsylA.

¹⁵⁵ Article 29(2) Constitution.

¹⁵⁶ CJEU, Case C-277/11 *MM*, Judgment of 22 November 2012, para 95.

¹⁵⁷ *Ibid*, para 87.

¹⁵⁸ Article 26 APA.

¹⁵⁹ Article 27 APA.

¹⁶⁰ Article 17(5) AsylA.

¹⁶¹ Article 12a(2) AsylA.

¹⁶² The Court found a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights if the Swiss authorities were to send an Afghan couple and their six children back to Italy under the Dublin Regulation without having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together.

¹⁶³ Federal Administrative Court, Decision BVGE 2015/4, E-6629/2014, 12 March 2015.

the Court sent the matter back to the determining authority because of insufficient guarantees.¹⁶⁴ However, in one case the Court stated that the Italian authorities had provided a sufficient guarantee by providing a list of the Protection System for Asylum Seekers and Refugees (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.¹⁶⁵

In cases of pregnant women, the Court states that no *Tarakhel* guarantees must be obtained.¹⁶⁶ It also pointed out that the unborn child cannot rely on the Convention on the Rights of the Child.¹⁶⁷ *Tarakhel* is only applied in the case of families in the Dublin procedure, not for other categories of persons.¹⁶⁸ There have been only two exceptions: in two exceptional cases the Court asked for individual guarantees regarding reception conditions and access to medical treatment regarding mentally ill persons (not families) and regarding **Hungary** and **Slovenia** (not Italy).¹⁶⁹ Therefore in some special cases it is possible that Switzerland requests a Member State to provide detailed information about a possible medical treatment or an ongoing treatment, especially for persons who are suffering from tuberculosis. However, these are not deemed as guarantees within the meaning of the *Tarakhel* judgment.¹⁷⁰ Furthermore, in Dublin cases regarding Greece – as of 2019 only applying to persons with a Greek visa – guarantees according to the Recommendation of the European Commission of 8 December 2016 are collected by the SEM and this is considered sufficient by the Court.¹⁷¹

Whereas 36 families and single parents with children were transferred to Italy under the Dublin Regulation in 2017,¹⁷² the number was 35 families and single-parent families in 2018 and only three families in 2019.¹⁷³ The families, as all persons in a Dublin procedure, are not granted the right to be heard regarding the guarantees before the first instance decision.¹⁷⁴ The only moment they can make a statement regarding the guarantees is therefore if they appeal against the transfer decision.

So far it is not transparent how the individual guarantees for families will actually be implemented after a transfer. In order to document the proceedings in individual cases, in 2016 the Swiss Refugee Council and the Danish Refugee Council started a joint monitoring project (Dublin Returnees Monitoring Project, DRMP),¹⁷⁵ to follow up on what happens to individual families and vulnerable persons after their transfer to Italy. The first report focused on families and single parents and showed that the treatment the monitored families received upon arrival in Italy varied greatly.¹⁷⁶ In some cases, the transferred families could only be accommodated after a certain period of time and after the intervention of third parties. There seemed to be arbitrary or at least unpredictable practice as to which kind of assistance the

¹⁶⁴ For example, Federal Administrative Court, Decision E-936/2015, 21 April 2015 regarding a Nigerian woman who claimed to have been forced into prostitution in Italy, and who had asked for asylum in Switzerland with her two children; Decision E-3564/2014, 16 March 2015 regarding a single mother with her child; or Decision E-3078/2019, 12 July 2019 against a transfer to Croatia, summary is available at: <https://bit.ly/3aGk3ga>.

¹⁶⁵ Federal Administrative Court, Decision D-4394/2015, 27 July 2015.

¹⁶⁶ Federal Administrative Court, Decisions E-406/2015, 2 April 2015 and D-4978/2016, 6 September 2016.

¹⁶⁷ Federal Administrative Court, Decision E-406/2015, 2 April 2015.

¹⁶⁸ Confirmed by the Federal Administrative Court, leading case Decision D-2177/2015, 11 December 2017: Sri Lankan applicant with medical problems. However, in the individual case the Court ordered that the sovereignty clause must be applied due to the length of the procedure.

¹⁶⁹ Federal Administrative Court, Decision D-2677/2015, 25 August 2015 regarding **Slovenia** and a mentally ill person who needs special trauma treatment. *Tarakhel* was not directly mentioned in the decision, but the Court states the need for guarantees. Regarding **Hungary** and a traumatised man: Federal Administrative Court, Decision D-6089/2014, 10 November 2014.

¹⁷⁰ Information provided by the SEM, 3 August 2017.

¹⁷¹ Federal Administrative Court, Decision F-3440/2018, 12 September 2018.

¹⁷² Information provided by the SEM, 18 January 2018.

¹⁷³ Information provided by the SEM, 12 February 2020..

¹⁷⁴ Information provided by the SEM, 9 September 2015.

¹⁷⁵ Further information to be found on the website of the Swiss Refugee Council: <https://bit.ly/323tHWy>.

¹⁷⁶ 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>; the second report from the Danish Refugee Council and the Swiss Refugee Council, *Mutual trust is still not enough. The situation of persons with special reception needs transferred to Italy under the Dublin III Regulation*, was published on 12 December 2018, available at: <https://bit.ly/2QMvonZ>.

returned families would get from the Italian authorities. Furthermore, the quality of the accommodation provided varied 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 that families returned to Italy will be accommodated in line with the preconditions set out in *Tarakhel*.

The DRMP demonstrated that reception conditions in Italy deteriorated further in 2018. In the third quarter of 2018, two cases of families transferred under the Dublin Regulation from other Member States were already placed in the first reception centre of **Mineo**, which has a reputation for its worrying living conditions. Following the latest amendments in asylum legislation in Italy, asylum seekers are also legally no longer entitled to live in SPRAR centres.¹⁷⁷ On 8 January 2019, another circular letter was sent from the Italian Dublin Unit to all Member States – replacing the circulars issued since 8 June 2015 – stating that families will no longer be placed in SPRAR centres but in first reception centres and emergency reception centres.

The Federal Administrative Court ruled in a reference judgment that the guarantees provided by the Italian authorities in January 2019 were not specific enough, as families requiring transfer from Switzerland to Italy no longer have access to the second-line reception centres under the new legislation.¹⁷⁸ The Italian authorities are required to submit even more specific guarantees concerning reception conditions in each individual case. The Swiss asylum authorities are now obliged to obtain individual assurances guaranteeing the requisite medical care and accommodation for seriously ill asylum seekers who will be reliant on seamless medical care from the moment they arrive in Italy.¹⁷⁹

The DRMP will continue to document the situation of Dublin returnees in Italy without participation of the Danish Refugee Council at least until the end of 2020, focusing on the effects of the legislative changes for persons returned to Italy under the Dublin Regulation.

On 11 February 2020, the Federal Administrative Court has made a reference judgement on the question of systemic deficiencies in **Bulgaria**.¹⁸⁰ Although the Court itself explained in a very detailed manner the problems in the Bulgarian asylum system, it concluded that there are no systemic flaws in the asylum procedure and reception conditions in Bulgaria which would justify a complete suspension of transfers to that country. A case-by-case examination will be required to determine whether or not the transfer to that country of a particular asylum seeker should be suspended. The court also mentioned the possibility to request individual guarantees from the Bulgarian authorities.

Transfers

According to the SEM, in 2019 it took on average 10.54 days to take a Dublin decision after the receipt of a positive answer from the requested Member State.¹⁸¹ According to the same source, on average another 335.13 days passed between the Dublin transfer decision and the actual transfer. One reason for this long delay could be the prolongation of the transfer deadline in case of a suspension of the execution because of an appeal. The transfer could then be further delayed if the Federal Administrative Court sent the case back to the SEM for additional clarifications and a new decision, which in turn can be appealed again.

According to the Foreign Nationals and Integration Act, an applicant may already be detained during the preparation of the decision on residence status. Applicants within a Dublin procedure may be detained on specific grounds. The Federal Administrative Court as well as the Federal Court have defined some important basic rules for detention in Dublin cases (see section on [Grounds for Detention: Dublin](#)

¹⁷⁷ Italian Law 132/1, 4 December 2018, converting Decree-Law 113/2018 into law.

¹⁷⁸ Federal Administrative Court, Decision E-962/2019, 17 December 2019.

¹⁷⁹ Federal Administrative Court Media release *Stricter criteria for Dublin transfers to Italy*, 17 January 2020, available at: <https://bit.ly/2SY3vbG>.

¹⁸⁰ Federal Administrative Court, Decision F-7195/2018, 11 February 2020.

¹⁸¹ Information provided by the SEM, 21 January 2019.

Procedure). The use of detention differs between cantons. In 2019, a total of 1,124 persons were placed in detention for the purpose of the Dublin III Regulation.¹⁸²

As the Dublin III Regulation is directly applied in Switzerland, voluntary transfers should in principle be possible.¹⁸³ There were 33 voluntary transfers to Dublin States in 2016, and a total of 17 in 2017 in **Zurich**.¹⁸⁴ For both test centres, this figure reached 65 in 2018.¹⁸⁵ In 2019, no voluntary Dublin returns took place. 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 five days must be granted, allowing the applicant concerned to leave Switzerland or to make an appeal and to ask for suspensive effect.¹⁸⁶ This case law has since been codified in the Asylum Act.¹⁸⁷ As a result, there are at least ten working days between the date of the opening of the Dublin decision and the enforcement of the removal. In a decision to strike out the application from the list of cases, the ECtHR considered the access to an effective remedy in Dublin cases in Switzerland sufficient.¹⁸⁸ This decision was problematic because the ECtHR based it on a wrong interpretation of Swiss law: it cited the provision in the Asylum Act that relates to non-Dublin-cases, in which the asylum seeker can stay on Swiss territory until the end of the proceedings. On the contrary, in Dublin cases this is precisely not the case, as there is no automatic suspensive effect.

The ratio of outgoing Dublin transfers reached 36% in 2019 (1,724 transfers and 4,848 requests), compared to 25.8% in 2018.¹⁸⁹ Only a bit more than one third of requests made by Switzerland result in actual transfers.

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?
❖ If so, are interpreters available in practice, for interviews?
2. Are interviews conducted through video conferencing?

☒ Yes ☐ No
☒ Yes ☐ No

☐ 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 undergoes a short preliminary interview (see section on **Personal interview**) focusing mainly on the identity, the journey to Switzerland and summarily on the reasons for seeking asylum.¹⁹⁰ The interview is conducted in the presence of the applicant's legal representative and is usually translated over the phone by an interpreter if necessary.¹⁹¹ The interview is recorded in writing in the form of a summary indicating the duration of the interview and is retranslated before being signed by the applicant and his/her legal representative.

¹⁸² Information provided by the SEM, 21 January 2019.

¹⁸³ Article 29 Dublin III Regulation.

¹⁸⁴ Information provided by the SEM, 14 February 2019.

¹⁸⁵ Information provided by the SEM, 22 February 2019.

¹⁸⁶ Federal Administrative Court, Decision E-5841/2009, 2 February 2010.

¹⁸⁷ Article 107a AsyIA.

¹⁸⁸ ECtHR, *M.G. and E.T. v. Switzerland*, Application No 26456/14, Decision of 17 November 2016.

¹⁸⁹ SEM, *Asylum Statistics 2018; Asylum Statistics 2019*.

¹⁹⁰ Article 26(3) AsyIA.

¹⁹¹ Article 19(2) AO1.

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,¹⁹² and he or she does not get a second interview regarding the grounds for asylum. The omission of the second interview in cases of Dublin and other inadmissibility decisions constitutes the fundamental difference between the personal interview within the Dublin procedure and the personal interviews within the regular asylum procedure (accelerated and expanded) 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?

❖ If yes, is it

❖ If yes, is it suspensive

☒ Yes

☒ Judicial

☐ Yes

☐ No

☐ Administrative

☒ No

In case of a Dublin transfer decision (inadmissibility decision), an appeal can be submitted – as in all the other cases – to the Federal Administrative Court. The time limit to lodge an appeal against a Dublin transfer decision is five working days.¹⁹³

Contrary to other asylum appeals, appeals against Dublin transfer decisions (inadmissibility decisions) do not have automatic suspensive effect. However, as mentioned in [Dublin: Procedure](#), transfers cannot be enforced immediately after the notification of the decision. A delay of five working days must be granted.¹⁹⁴ This allows the concerned applicant to make an appeal and to request that the execution of the appealed decision be suspended. The Court has to decide on the suspensive effect within another five working days.¹⁹⁵

In the appeal procedure (applies also to the Dublin procedure), the Federal Administrative Court has the possibility to order a hearing if the facts are not clear enough.¹⁹⁶ In practice, it hardly ever uses 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, Hungary, Italy, Croatia or Bulgaria** (see [Dublin: Suspension of Transfers](#)).

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

The Court stated that it is a question of “appropriateness,” where the SEM has a margin of appreciation, whether there are humanitarian reasons for applying the sovereignty clause. As long as SEM decides within this margin, the Court cannot examine whether the decision was appropriate. For example, in one case an Afghan mother and her minor son travelled to Switzerland via Bulgaria. The older son/brother lives in Switzerland with subsidiary protection. Because the brother with protection status in Switzerland was already an adult, the SEM decided to send the mother and younger brother back to Bulgaria,

¹⁹² Article 36 AsylA.

¹⁹³ Article 108(3) AsylA.

¹⁹⁴ Article 107a(2) AsylA; Federal Administrative Court, Decision E-5841/2009, 2 February 2010.

¹⁹⁵ Article 107a AsylA.

¹⁹⁶ Article 14 APA.

despite the fact that the applicants claimed that the younger brother needed the support of his older brother. The Court confirmed this decision: it admitted that the criteria according to which the SEM had examined the humanitarian reasons were strict, however, they were objective and clear. Therefore, the Court could not examine the decision by the SEM.¹⁹⁷

Nevertheless, the Federal Administrative Court confirmed in a leading case decision of 21 December 2017 that the asylum seeker can rely on the correct application of the Dublin responsibility criteria, as an individual right, in line with the CJEU jurisprudence in *Ghezelbash* and *Mengesteab*.¹⁹⁸

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?¹⁹⁹

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

- ❖ Does free legal assistance cover
- | | | |
|---|---|-----------------------------|
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| <input type="checkbox"/> Representation in courts | | |
| <input type="checkbox"/> Legal advice | | |

Free legal assistance is ensured at first instance since the entry into force of the new asylum procedure in March 2019.²⁰⁰ Therefore, in the Dublin procedure just as in the regular procedure, state-funded free legal assistance is guaranteed to all applicants. With the introduction of the new asylum procedure, access to legal assistance should have theoretically been facilitated for persons who ask for asylum in detention but the practice is not yet clearly defined. For further information, see the general chapter on [Legal assistance](#) in the regular procedure.

The relatively short time limit of five working days for lodging an appeal against a Dublin transfer decision constitutes an obstacle to appealing in cases where the free legal assistance decides not to appeal as it considers that lodging an appeal would be doomed to fail. In those cases, applicants could theoretically approach a non-state-funded entity for legal advice to ask for support. However, this is problematic with regard to the remote locations of federal centres as they are far away from independent legal advisory offices that are usually situated in urban areas.

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?

- ❖ If yes, to which country or countries?
- | | |
|------------------------------|--|
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
|------------------------------|--|

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

Greece: In November 2017, the SEM announced a reinstatement of Dublin procedures for cases in which the person was in possession of a Greek visa. This does not apply to vulnerable persons. This

¹⁹⁷ Federal Administrative Court, Decision D-3794/2014, 17 April 2015.

¹⁹⁸ Federal Administrative Court, Decision E-1998/2016, 21 December 2017.

¹⁹⁹ With the new Swiss asylum procedure starting 1 March 2019, the free legal assistance will be provided at first instance for every asylum seeker.

²⁰⁰ Article 102f AsylA.

means that in most of the cases Switzerland still relinquishes transfers to Greece and applies the sovereignty clause.

On the other hand, if the person already has a protection status in Greece (and therefore does not fall under the Dublin Regulation, but under the safe third country clause), the Swiss authorities are generally of the opinion that the person can be transferred there. This has also been the case with vulnerable persons.²⁰¹ For example, the Federal Administrative Court even confirmed the transfer of a psychologically fragile mother with four daughters (one of which was suicidal) who fled Greece because of the violent husband/father.²⁰² Only in a 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 should be upheld.²⁰³ According to SEM statistics, 3 persons were transferred to Greece under Dublin and 21 persons were transferred under the readmission agreement in 2019. In 2018, 26 persons were transferred to Greece under the readmission agreement.²⁰⁴

Hungary: In May 2017 the Federal Administrative Court issued a reference judgment in which it summarised the latest developments in the Hungarian asylum system and the effects on Dublin returnees.²⁰⁵ The Court highlighted the responsibility of the SEM to gather all elements necessary for the assessment and that it was not the responsibility of the appeal authority to carry out complex supplementary investigations. Otherwise, the Federal Administrative Court would overstep its jurisdiction with a decision on the merits of the matter and deprive the party concerned of the legal right of appeal. Therefore, the Court annulled the contested decision and referred it back to the SEM for a full determination of the facts and a new decision. In March 2017, 199 appeals regarding a Dublin transfer to Hungary were pending at the Federal Administrative Court, and it is very likely that all of them were referred back to the SEM for further examination. Many of the cases concern persons who are waiting for about two years only for the examination of responsibility under Dublin, which is not in line with the objective of rapid determination of the Member State responsible under the Dublin III Regulation.

According to SEM statistics, there was no transfer to Hungary under Dublin in 2019, similarly to 2018.²⁰⁶

Italy:²⁰⁷ 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. Also following the change of government in Italy and the introduction of the latest asylum reform,²⁰⁸ the Federal Administrative Court first did not see a ground for a change of its constant jurisprudence,²⁰⁹ but there were an increasing number of judgements in the second half of 2019 which sent the case back to the SEM in order to clarify the situation. The cases mainly concerned families or persons with health issues. The Federal Administrative Court saw at least doubts in adequate reception conditions and access to health care in Italy. Regarding families and seriously ill persons, the Federal Administrative Court ruled in a reference judgment that the guarantees provided by the Italian authorities in January 2019 were not specific enough, as families requiring transfer from Switzerland to Italy no longer have access to the

²⁰¹ Despite worrying documentations of the situation after the return of persons with status in Greece, e.g. Refugee Support Aegean and Pro Asyl, *Case study: Returned recognized refugees face a dead-end in Greece*, 4 January 2019, available at: <https://bit.ly/2QrdIKw>.

²⁰² Federal Administrative Court, Decision D-206/2016, 10 February 2016.

²⁰³ Federal Administrative Court, Decisions E-6347/2014, 20 November 2014 and E-1192/2014, 17 March 2014.

²⁰⁴ SEM, *Asylum Statistics 2018; Asylum Statistics 2019*.

²⁰⁵ Federal Administrative Court, Decision D-7853/2015, 31 May 2017.

²⁰⁶ SEM, *Asylum Statistics 2018; Asylum Statistics 2019*.

²⁰⁷ Regarding reception conditions in Italy for Dublin Returnees and persons with international protection status please see: Swiss Refugee Council OSAR, *Reception conditions in Italy – Updated report on the situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, in Italy*, January 2020, available at: <https://bit.ly/2SARyi>.

²⁰⁸ Regarding the effect on the asylum reform on the guarantees under the *Tarakhel* judgement, see chapter [Procedures](#).

²⁰⁹ Federal Administrative Court, Decision E-6313/2018, 29 November 2018.

second-line reception centres under the new legislation.²¹⁰ The Italian authorities are required to furnish even more specific guarantees concerning reception conditions in each individual case. The Swiss asylum authorities are now obliged to obtain individual assurances guaranteeing the requisite medical care and accommodation for seriously ill asylum seekers who will be reliant on seamless medical care from the moment they arrive in Italy.

The Swiss Refugee Council will continue to document transfers to Italy in 2020 within the framework of the Dublin Returnee Monitoring Project (DRMP).²¹¹

Bulgaria: Transfers are generally carried out, even in the case of families and vulnerable persons.²¹² In a decision from September 2017,²¹³ the Court implied doubts about the procedure leading up to the rejection of the applicant's claim in Bulgaria. After an earlier asylum application was rejected by Germany, the applicant was deported by Germany to his country of origin Morocco in 2013 and tortured there for three and a half months. Subsequently he applied for asylum in Bulgaria, where he received another negative decision. Before his removal to Morocco, he moved on to Switzerland, where he applied for asylum. Neither the SEM nor the Court had access to the negative decision from the Bulgarian authorities, when assessing his asylum application under the Dublin procedure. The Court stated:

"It is therefore not possible to ascertain whether and to what extent the Bulgarian authorities have examined the complainant's allegations of torture, which are an important indication of a concrete and serious danger of renewed torture, and to what extent they have reached this conclusion. The contrary assertion of the lower instance must be qualified as a mere guesswork prior to this situation. The Federal Administrative Court considers the complainant's allegations that he has been tortured in his home country to be credible in the current file situation and regards it as an important indication that he is likely to face the concrete and serious danger of renewed torture on his return to Morocco. It cannot therefore be ruled out that, in the case of a transfer of the complainant to Bulgaria, Switzerland may be in danger of breaching the principle of non-refoulement, which is why it is advisable that Switzerland starts the national asylum procedure. A transfer to Bulgaria is not permitted."²¹⁴

In 2018, the Court stated it cannot ignore the number of observer reports denouncing the persistence of serious problems in Bulgaria and that requests from nationals of certain nationalities are "almost systematically" considered unfounded (e.g. nationals of Algeria, Bangladesh, Pakistan, Sri Lanka, Turkey and Ukraine with a 0% acceptance rate). Afghan nationals are subject to a similar approach with an acceptance rate of 1.5% and there are doubts as to whether the claimant has been heard on his or her asylum grounds and travel itinerary.²¹⁵ In another judgement the Federal Administrative Court stated that although there were no structural deficiencies, the reception conditions in Bulgaria (and in particular the livelihood, access to the health system, excessive use of force, detention and refusal) were poor and that the transfer of vulnerable asylum seekers could be problematic (and therefore a reason for applying the sovereignty clause).²¹⁶ In 2019, the outcome of the judgements regarding Bulgaria were mixed, but only one transfer was carried out.

On 11 February 2020 the Court has made a reference judgement on the question of systemic deficiencies in Bulgaria.²¹⁷ Although the Court itself explained in a very detailed manner the problems in the Bulgarian asylum system, it concluded that there were no systemic flaws in the asylum procedure

²¹⁰ Federal Administrative Court, Decision E-962/2019, 17 December 2019.

²¹¹ Further information to be found on the website of the Swiss Refugee Council, available at: <https://bit.ly/323tHWy>.

²¹² For example in the case of a man who claimed to have been detained and mistreated in Bulgaria, with diabetes and psychological problems: Federal Administrative Court, Decision E-521/2016, 13 June 2016.

²¹³ Federal Administrative Court, Decision E-305/2017, 5 September 2017.

²¹⁴ *Ibid*, para E.2.

²¹⁵ Federal Administrative Court, Decision E-3356/2018, 6 May 2018.

²¹⁶ Federal Administrative Court, Decision D-6725/2015, 4 June 2018.

²¹⁷ Federal Administrative Court, Decision F-7195/2018, 11 February 2020.

and reception conditions in Bulgaria which would justify a complete suspension of transfers to that country. A case-by-case examination will be required to determine whether or not the transfer to that country of a particular asylum seeker should be suspended. The court also mentioned the possibility to request individual guarantees from the Bulgarian authorities.

Malta: According to its own manual,²¹⁸ the SEM does not transfer vulnerable asylum seekers to Malta if they are facing detention. Two persons have been transferred to Malta under Dublin in 2019.²¹⁹

Croatia: In a reference judgment of July 2019, the Federal Administrative Court commented on the problem of push-Backs of asylum seekers to the Croatian-Bosnian border and stated that the SEM is obliged to examine the existence of systemic deficiencies and to take the general situation in Croatia as well as the individual claims of the applicant into account.²²⁰ Following this, the outcome of the judgements were mixed, some have been sent back to the SEM for further clarifications regarding health care for single men, some others regarding families with health issues were rejected. 14 persons have been transferred to Croatia under Dublin in 2019.²²¹

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”.²²² Within this time, the SEM records the asylum seekers’ personal details and normally takes their fingerprints and photographs. It may collect additional biometric data, prepare reports on a person’s age, verify evidence and travel and identity documents and make enquiries specific to origin and identity. At this time, the asylum seekers will normally be interviewed by the SEM about their identity and their itinerary, and summarily about the reasons for leaving their country. On the basis of the gathered information, the SEM reaches the decision on admissibility, which aims to determine whether the decision should be examined on the merits or deemed inadmissible.

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

An application is inadmissible where the asylum seeker:

- (a) Can return to a **Safe Third Country** in which 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.²²³

²¹⁸ Manuel Asile et retour, C3 Procédure Dublin, available (in French) at: <https://bit.ly/37ApcEc>.

²¹⁹ SEM, *Asylum Statistics 2019*.

²²⁰ Federal Administrative Court, Decision E-3078/2019, 12 July 2019.

²²¹ SEM, *Asylum Statistics 2019*.

²²² Article 26 AsyIA.

²²³ Article 36(2) AsyIA.

The grounds relating to countries not listed as “safe third countries” in the Swiss list (see [Safe Third Country](#)) do not apply if there are indications that there is no effective protection against *refoulement* in the individual case.²²⁴

Decisions to dismiss an application must normally be made within three working days of the application being filed or after the Dublin state concerned has agreed to the transfer request.²²⁵ In practice, these time limits are rarely respected.

The SEM delivered the following inadmissibility decisions in 2017, 2018 and 2019:

Inadmissibility decisions: 2017-2018-2019			
Ground for inadmissibility	2017	2018	2019
Safe third country: Article 31a(1)(a)	184	255	303
Responsibility of another Dublin State: Article 31a(1)(b)	5,838	4,185	2,720
Country where the applicant has previously resided: Article 31a(1)(c)	10	2	3
Country where the applicant has family or persons with close links: Article 31a(1)(e)	1	2	8
Application made exclusively for economic or medical reasons: Article 31a(3)	120	258	221
Subsequent application: Article 111c(1)	28	21	27
Total	6,211	4,723	3,282

Source: SEM, 18 January 2018; 21 January 2019; 12 February 2020.

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

☒ Same as regular procedure

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

Every asylum seeker will be granted a first personal interview (which is in fact **Dublin Interview**) with questions about his or her identity, and the itinerary. No personal interview is conducted with children under 12 years of age.²²⁶

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

The first 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 or subsequently in writing.

²²⁴ Article 31a(2) AsyIA.

²²⁵ Article 37 AsyIA.

²²⁶ Information provided by the SEM, 12 January 2018.

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

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

❖ If yes, is it

❖ If yes, is it suspensive

☒ Yes

☒ Judicial

☐ Yes

☐ No

☐ Administrative

☐ Some grounds ☒ No

An appeal against a decision to dismiss an application must be filed before the Federal Administrative Court within 5 working days instead of 7 working days in the accelerated procedure and of 30 days in the extended procedure.²²⁷

The relatively short time limit of five working days for lodging an appeal against a Dublin transfer decision constitutes an obstacle to lodging an appeal in cases where the free legal assistance denies to appeal as the chances of success are not seen as likely. In those cases, applicants could theoretically approach a non-state-funded office for legal advice to ask for support. This seems especially problematic with regard to the remote locations of federal centres as they are far away from independent legal advisory offices that are usually situated in urban areas.

In general, an appeal has automatic suspensive effect in Switzerland.²²⁸ Appeals against inadmissibility decisions also have automatic suspensive effect, except for Dublin decisions (see section on [Dublin: Appeal](#)).

In principle, the court should decide upon appeals against inadmissibility decisions within five working days,²²⁹ which is not observed in practice. There is hardly ever a personal hearing taking place in front of the court. OSAR is not aware that such a personal hearing took place in 2019.

However, contrary to appeals in the regular procedure, the scope for the Court's assessment is limited to the question of whether the SEM acted within the law when it decided to dismiss the application.²³⁰

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

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

²²⁷ Article 108 AsyIA.

²²⁸ Article 55(1) APA.

²²⁹ Article 109 AsyIA.

²³⁰ Federal Administrative Court, Decision E-6490/2011, 9 February 2012, para. 2.2., see also chapter 2.4 on appeals.

4. Border procedure (border and transit zones)

4.1. General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
2. Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☒ No
3. Is there a maximum time limit for a first instance decision laid down in the law? ☒ Yes ☐ No
❖ If yes, what is the maximum time limit? 20 days²³¹

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 federal asylum centre, where they enter the same procedure as any other asylum seeker.²³² 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) should 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.²³³ If a person requests asylum at another airport in Switzerland, the person will be transferred to a federal asylum centre and will enter the regular procedure.

In **Zurich** and **Geneva**, during the time of the airport procedure, asylum seekers are placed at the airport (see [Detention of Asylum Seekers](#)). Asylum seekers may be held at the airport or exceptionally at another location for a maximum of 60 days.²³⁴

The SEM examines if Switzerland is responsible to carry out the procedure according to the Dublin Regulation. The SEM authorises entry into the territory if Switzerland is responsible according to the Dublin III Regulation, and if the asylum seeker appears to be at risk under any of the grounds stated in the refugee definition at Article 3(1) AsylA or under threat of inhumane treatment in the country from which he or she has directly arrived; or if the asylum seeker establishes that the country from which he or she has directly arrived would force him or her to return to a country in which he or she appears to be at risk, in violation of the *non-refoulement* principle. If it cannot immediately be verified if the mentioned conditions are fulfilled, the entry into the territory is temporarily denied.²³⁵ The asylum seeker is then held in a facility within the transit zone of the airport, which in practice functions like detention.²³⁶

The airport procedure can result in a decision to enter the country (in which case the applicant is channelled into the regular procedure), 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 or a federal asylum centre.²³⁷

²³¹ Article 23 AsylA.

²³² Article 21(1) AsylA.

²³³ Article 22 AsylA and Article 12 AO1.

²³⁴ Article 22(5) AsylA.

²³⁵ Article 22(1-bis), (1-ter) and (2) AsylA.

²³⁶ 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.

²³⁷ Article 23(2) AsylA.

In 2019, 219 requests of entry were lodged, out of which 93 in the airport of **Geneva** and 126 in **Zurich**. The main countries of origin were Iraq, Turkey, Venezuela, Colombia and Afghanistan. The SEM issued 157 authorisations to enter Switzerland and rejected 62.²³⁸

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

 - ❖ If so, are questions limited to nationality, identity, travel route?
 - ❖ If so, are interpreters available in practice, for interviews?
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

In the airport procedure, a first interview will take place in every case. The free legal representative will attend this interview. In **Zurich**, the airport police conduct the interview, while in **Geneva** it is the SEM. After having carried out the first interview, the SEM carries out an analysis of the file at the end of which, several scenarios may arise:

- Transfer for unaccompanied minors under the age of 14 to the federal centre in the region concerned.
- Immediate introduction of a Dublin procedure.
- Continuation of the procedure at the airport and holding of an 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 in the same modalities as in the regular procedure. (see section on Regular Procedure: Personal Interview).
- Authorisation to enter Switzerland with or without an interview on the grounds and assignment to the federal centre of the region or to a canton.

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?

<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"/> Some grounds <input type="checkbox"/> No

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

Against a decision taken during the airport procedure an appeal can be made for both decision on the merit and decision to dismiss an application within 5 working days.²³⁹ The Federal Administrative Court is the competent appeal authority, similarly to 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](#)).

Usually, the Court is more lenient regarding appeals that are submitted in another language because the airport procedure does not provide the same options to translate documents as the regular procedure.

²³⁸ Information provided the SEM, 12 February 2020.

²³⁹ Article 108(3) AsylA and Article 23(1) AsylA.

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

There is no difference considering legal assistance in the regular procedure and the airport procedure (see section on [Regular Procedure: Legal Assistance](#)).

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

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

The law does not specifically provide for the screening of vulnerabilities and there is no standard procedure in practice to assess and identify them. Furthermore, since 1 March 2019, all but very complex asylum claims should be assessed and decided within 140 days. The fast-paced new procedure puts the administrative authorities and the legal representatives under increased pressure, which, coupled with the lack of standard identification tools, may result in overlooking potential vulnerabilities.

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

1.1. Screening of vulnerability: Victims of human trafficking

The obligation to identify victims of human trafficking has been introduced in the Swiss legislation,²⁴⁰ to respond to European requirements.²⁴¹ Since the beginning of 2014, the SEM has intended to improve the protection of victims of human trafficking. Despite the fact that trafficking in human beings encompasses different forms of exploitation, most of the efforts until today have been focussed on the trafficking for the purpose of sexual exploitation. In its second report on Switzerland, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) has strongly encouraged Swiss authorities to step up efforts to detect and prevent trafficking for the purpose of labour exploitation and trafficking in children.²⁴²

²⁴⁰ Art. 35 and 36 of the Ordinance on Admission, Period of Stay and Employment

²⁴¹ Art. 10 Council of Europe Convention on action against Trafficking in Human beings, Warsaw, 16 May 2005

²⁴² GRETA, Report, available at: <https://bit.ly/2Q0rxIX>, § 85 and 95-96.

A 2016 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.²⁴³ The decision states that if, during the screening or the asylum interview, there appear to be indications that the person is a victim of trafficking then: (a) the necessary further investigations must be carried out *ex officio*; (b) protective measures must be taken in favour of the victim; and (c) expulsion must be waived if the imminent risk of recruitment to prostitution or of retaliation is made credible. However, the same decision does not explicitly state that a failure to fulfil this obligation represents a violation of Article 10 of the Council of Europe Convention.

Despite this, it remains very 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.

In its recent report on Switzerland, GRETA found that the SEM does not conduct formal identification of victims of trafficking and limits itself to detecting possible victims based on their allegations, referring them to the criminal investigation authorities, to specialised counselling centres established in the framework of the Federal Law on Assistance to Victims of Crimes (LAVI) and to other specialised organisations.²⁴⁴ Furthermore, GRETA highlighted cases in which victims of trafficking were not identified in the asylum process and received a negative decision regarding their asylum application. They remained in Switzerland as irregular migrants and subsequently came to the attention of outreach work organisations after having experienced further exploitation in Switzerland. GRETA expressed concern as regards the lack of early identification mechanism, because it reduces the possibilities for victims of trafficking to benefit from timely support in the asylum process, both with regard to procedures and reception conditions.²⁴⁵

A working group coordinated by the Coordination Unit against the Trafficking and Smuggling of Migrants (*Koordinationsstelle gegen Menschenhandel und Menschen schmuggel*, KSMM), supports the implementation of action no. 19 of the National Action Plan against trafficking (NAP).²⁴⁶ The so called Working Group on Asylum and Human Trafficking was established already under the 2012-2014 NAP, and it is working under the lead of the SEM. It is made up of SEM officials and representatives of the main NGOs active in the asylum field. Its task is to optimise identification processes regarding human trafficking victims, provide victim assistance during the asylum (including Dublin) procedure, outline these processes in an open publication (e.g. handbook, brochure, etc.), and determine what further action is needed. The current SEM internal guidelines on how to proceed in cases of asylum seeking victims of trafficking (which are not publicly available) are expected to be revised in the course of the implementation of action no. 19 of the NAP. According to the current guidelines, if the interviewer of the SEM suspects a possible victim, they inform a person within the SEM who is responsible for the topic of human trafficking. This way, on the one hand, the Federal Criminal Police can be informed, and on the other hand, the hearing will be conducted by a person of the same sex as the applicant.²⁴⁷

The Swiss Refugee Council is part of the above mentioned working group in the context of the NAP and previously took part in the transnational TRACKS project, which aims at identifying the special needs of victims of human trafficking in the asylum procedure.²⁴⁸

²⁴³ Federal Administrative Court, Decision D-6806/2013, 18 July 2016

²⁴⁴ According to statistics provided by the SEM, 84 presumed victims of trafficking were detected among asylum seekers in 2014, 32 in 2015, 73 in 2016, and 100 in 2017. In the Dublin procedure, 19 presumed victims were detected in 2014, 17 in 2015, 34 in 2016 and 41 in 2017.

²⁴⁵ GRETA, Report, October 2019, available at: <https://bit.ly/2InYsww>, §128-130.

²⁴⁶ Swiss Coordination Unit against the Trafficking in Person and Smuggling of Migrants (KSMM), National Action Plan to Fight Human Trafficking 2017-2020, available at: <https://bit.ly/2ImwVeP>.

²⁴⁷ For more information, please refer to the Alternative Report on the Implementation of the Council of Europe Convention on Action against trafficking in human beings in Switzerland, June 2018, available at: <https://bit.ly/2RhRG00>.

²⁴⁸ Identification of Trafficked Asylum Seekers' Special Needs, available at: <http://bit.ly/2j9Or6Q>.

1.2. Age assessment of unaccompanied children

The UN Convention on the Rights of the Child (CRC) is in force in Switzerland since 1997. The Committee on the Rights of the Child has issued multiple statements on age assessment and the way it should be implemented by State parties,²⁴⁹ but the Swiss practice seems to fall short of the international standards at different levels.²⁵⁰

For instance, even though, in principle, minority should always be presumed, in practice not all applicants claiming to be under the age of 18 are treated as children and granted the child-specific protections throughout the assessment process, including the right to not be accommodated with adults. Furthermore, although the person is not explicitly forced to consent the age assessment process, if he or she refuses to participate, the SEM may claim that the asylum seeker has not complied with the duty to cooperate²⁵¹ and could therefore be qualified as an adult, or even lose his or her right to have the proceeding continued. Also, there is no effective remedy to challenge the decision on age assessment. The asylum seekers only have the chance to challenge it when they lodge an appeal against the asylum decision itself. Finally, Swiss authorities only rely on forensic examinations to assess the asylum seeker's age. In 2019, 168 age assessments were conducted, the number of persons who were not registered as minor after the age assessment is not available.

The Federal Administrative Court had already ruled in the past that age assessments could be ordered when the proof of the identity (e.g. date of birth) of the asylum seeker was not sufficient,²⁵² and the previous legislation already foresaw the use of scientific methods to assess the age. The law now provides for a combination of methods to be used.²⁵³

In August 2018, the Federal Administrative Court reviewed the practice of age determination and stated that: (a) the X-ray of the wrist bones is to be done beforehand because, if such analysis shows a significant probability of a minor age, one dispenses examinations of the teeth and the clavicle, which imply a greater exposure to radiation; (b) if the X-ray of the wrist does not come to a conclusive result, then the X-ray of the collarbone and teeth must be carried out; (c) physical examination is carried out only in specific circumstances i.e. if there is specific medical history or discrepancies in the age determination that cannot be explained otherwise.²⁵⁴

Therefore, according to the Federal Administrative Court, there is strong evidence of full age when both the hand and the sternum-clavicular joint X-rays provide a minimum age which is above 18, or when the age ranges provided by the two analyses overlap and they are both above 18. On the contrary, evidence of full age is weak if, despite a possible medical explanation, the age ranges provided by the two exams do not overlap (still placing the probable age above 18). Finally, evidence is very weak if the minimum age is below 18, the two analyses do not overlap and there is no possible explanation for the discrepancy. With this decision, the Federal Administrative Court implicitly confirmed that all the four examinations mentioned above can be carried out, that the approach used is exclusively medical, and that no other methods such as interviews with psychologists or cultural mediators should be applied. In addition, there is no mention of the presence of a paediatrician during the screening process. This

²⁴⁹ CRC, General Comment No.4 (2017), available at: <https://bit.ly/2VV7Klg>, §II.4; SCEP, Statement of Good Practice (2009), available at: <https://bit.ly/2TB3M6b>, §D5.1; CRC, General Comment No. 12 (2009), available at: <https://bit.ly/3aCJ0sm>, §22; CRC, General Comment No. 6 (2005), available at: <https://bit.ly/2VWg9Lx>, §21 and section V.b.

²⁵⁰ The Swiss Refugee council has developed guidelines with the aim of supporting legal representatives dealing with age assessment, available at: <https://bit.ly/2TyfKxk>.

²⁵¹ Article 8 AsylA.

²⁵² Federal Administrative Court, Decision E-1552/2013, 2 April 2013, available at: <https://bit.ly/2v4MKDN>, para 4.2.

²⁵³ Article 7 AO1 provides for a combination of methods, which include skeletal age (e.g. X-ray of the hand, possibly CT scan of the sternum-clavicular joint) as well as dental age and physiognomy (e.g. sexual maturity and physical constitution).

²⁵⁴ Federal Administrative Court, Decision E-891/2017, 8 August 2018.

practice seems quite detached from the best practices showcased in other European countries and recommended in multiple international and regional reports, and deserves close monitoring.²⁵⁵

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 children; gender-based claimants; victims of trafficking

There is no specific unit to carry out the procedures for vulnerable persons, but there are experts for specific topics within the SEM (“thematic specialists”) who can be asked for advice or support in difficult cases (for example regarding unaccompanied minors, gender-specific violence or victims of trafficking). These collaborators also treat asylum applications themselves and they are responsible for the development of practice trends and decision-making on their topic. One out of three collaborators per unit is specialised on unaccompanied minors.²⁵⁶

In addition, all caseworkers are trained in interviewing children and adolescents by internal and external trainers.²⁵⁷

1.1. Adequate support during the interview and credibility assessment

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

The UN Human Rights Committee stated in its recommendations on the fourth periodic report of Switzerland,²⁵⁸ that it regretted that expert evaluations drawn up pursuant to the Istanbul Protocol were not fully recognised and taken into account by the Swiss authorities in implementing the principle of *non-refoulement*.²⁵⁹ According to the same recommendations, Switzerland should ensure that all personnel concerned receive systematic and practical training on the Istanbul Protocol and apply it.

Despite this, national NGOs report of numerous cases in which in which the SEM has failed to carry out further investigations and, in particular, to have expert reports drawn up in accordance with the standards of the Istanbul Protocol if asylum seekers assert - in the hearings or via medical reports - that they are victims of torture or inhuman/degrading treatment.²⁶⁰ Even when asylum seekers nevertheless

²⁵⁵ The Federal Administrative Court does sometimes step in to correct the SEM's practice, when the latter is too strict or detached from international guidelines. See for instance: Federal Administrative Court, Decisions D-4824/2019, 27 September 2019, available at: <https://bit.ly/39MzWuN>; E-7333/2018, 4 March 2019, available at: <https://bit.ly/2lt79FT>; E-4959/2018, 4 February 2019 (Dublin case), available at: <https://bit.ly/2xoq963>; D-1589/2019, 15 May 2019, available at: <https://bit.ly/39DKouH>; E-2999/2018, 14 February 2018, available at: <https://bit.ly/3390Hx9>.

²⁵⁶ Information provided by the SEM, 3 August 2017.

²⁵⁷ *Ibid.*

²⁵⁸ UN Human Rights Committee, Concluding observations on the fourth periodic report of Switzerland, 22 August 2017, available at: <https://bit.ly/2Q0ZdQb>.

²⁵⁹ The UN General Assembly adopted the Manual on Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, known as the Istanbul Protocol, almost 20 years ago, available at: <https://bit.ly/39Cyl0P>. The Istanbul Protocol contains internationally recognised standards and procedures on how to recognise and document symptoms of torture, so that the documentation may be used as evidence in Court. Although non-binding as such, it does have a *quasi-binding* legal nature, because every State signatory to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment must adhere to the standards set out there, if it wants to fulfil the obligation to carefully and effectively examine evidence of torture. As a result, the Istanbul Protocol has established itself internationally as the instrument for documenting torture and inhumane treatment.

²⁶⁰ An NGO ‘working group’ is dedicated to the implementation of the Istanbul Protocol into the Swiss practice, information available at: <https://bit.ly/2TNahBH>.

succeed in producing such reports in individual cases, the Swiss authorities often fail to take them into account adequately, especially when it comes to the (physical/psychological) consequences of the ill-treatment endured. This in turn can have a very meaningful impact on the asylum claim, as it makes it very hard for the asylum seekers to make their claims credible.

In its most recent report, the National Commission for the prevention of Torture considered that, in all the asylum and migration centres that it visited, there was no standard protocol in practice to facilitate access to assistance and support for victims of torture.²⁶¹ A round table with representatives of the SEM and of national NGOs dealing with the topic took place in September 2019, but it is unclear which further steps the Government will take to better implement the provisions of the Protocol (see also section on [Use of medical reports](#)).

In September 2018 the UN Committee against Torture ruled that the expulsion of a torture survivor from Switzerland to Italy under the Dublin Regulation would violate the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. In particular, the Committee reproached the Swiss authorities for not undertaking an individual assessment of the personal and real risk that the complainant would face in Italy as an asylum seeker and victim of torture, and for simply relying on the assumption that he was not particularly vulnerable and would thus be able to obtain adequate medical treatment in Italy.²⁶²

LGBTQI*

The SEM held a course on LGBTI asylum claims at the beginning of 2017 to inform the interviewers on the specificities of an LGBTI case (late disclosure, credibility, etc.). It does not appear that other courses were carried out subsequently. Despite the very detailed information and guidelines provided in the SEM Handbook (see section on [Victims of gender-based violence](#)),²⁶³ the conduct of the hearings continues to pose many problems. For instance, the asylum seeker is not always granted the right to be interviewed by people of a gender of his/her choice. Also, late disclosure is often weighted against the applicant, despite abundant evidence that trauma or fear can prevent LGBTQI* asylum seekers to disclose their past experiences in a timely manner.²⁶⁴ Together with NGOs active on the field, the Swiss Refugee Council has developed guidelines with the aim of supporting legal representatives dealing with LGBTQI cases.²⁶⁵

Victims of gender-based violence

According to the Asylum Act, motives for seeking asylum specific to women must be taken into account.²⁶⁶ Furthermore, when spouses, registered partners or a family apply for asylum, each person seeking asylum has the right, as far as he or she is capable of discernment, to have their own reasons for asylum examined.²⁶⁷

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 by a person of same gender according to the law.²⁶⁸ The SEM Handbook specifies that men who are victims of gender-specific violence and persecution

²⁶¹ National Commission for the prevention of torture, NCPT, Report regarding federal centres for asylum, 2017-2018, available at: <https://bit.ly/331LIKQ>, §84.

²⁶² UN Committee against Torture, CAT/C/64/D/742/2016, 3 September 2018, available at: <https://bit.ly/2Gy8FXA>, §8.6.

²⁶³ SEM Handbook on asylum and return, available at: <https://bit.ly/2wCi2SZ>, D2.

²⁶⁴ Federal Administrative Court, Decision E-4306/2018, 21 September 2018, available at: <https://bit.ly/2VXp3IP>; E-4422/2017, 2 April 2019, available at: <https://bit.ly/3cLvrsK>; E-3422/2018, 27 June 2018, <https://bit.ly/2xoO19F>; E-1490/2015, 13 March 2018, available at: <https://bit.ly/2xoO19F>.

²⁶⁵ OSAR Guidelines are available at: <https://bit.ly/2VZhqlc>. Also, OSAR developed a detailed report on the decision-making and jurisprudence related to LGBTQI* asylum seekers.

²⁶⁶ Article 3, para 2 AsylA.

²⁶⁷ Article 5 AO1.

²⁶⁸ Article 6 AO1.

should also be able to choose the gender of the interviewing official, but that in this case the provision will be applied with some “pragmatism”.²⁶⁹ The rule also applies to the interpreter and the person taking notes. Despite this rather clear legal framework, the SEM does not always comply with these obligations.²⁷⁰

When it comes to the assessment of credibility, settled case law accepts that a traumatized woman may try to protect herself from difficult memories by frequently using “stereotypes” or in some cases by changing the subject of phrases.²⁷¹ Yet, the SEM is often very strict in assessing credibility, especially of late and somewhat inconsistent narratives, even when they come from highly traumatized women²⁷².

Victims/possible victims of human trafficking

The guarantees that are in place for victims of gender-based violence (see section C above) can also be applied to potential victim of human trafficking (PVOT) or victim of human trafficking (VOT). Nevertheless, no specific provision is in place to ensure that.

In a judgement on the credibility assessment of victims of trafficking in the asylum procedure and the positive obligations of the authorities to identify victims of trafficking, the Federal Administrative Court noted that untrue statements in earlier proceedings constitute a typical testimony of victims of human trafficking, and therefore should not automatically lead to the assumption that the subsequent human trafficking allegations were unreliable.²⁷³

Minors/unaccompanied minors

Regarding the personal interview of children, especially unaccompanied children, Swiss law provides for the interviewer to take into account the special nature of being a child.²⁷⁴ Also according to case law specific guarantees should be in place.²⁷⁵ Namely, the atmosphere should be welcoming and benevolent, the adults in the room must have an open and empathetic attitude, each of the participants should introduce themselves to the child and the aims and objectives of the interview should be clarified in a child friendly manner. The Court also provided some details on how the interview should take place: the pace should be slower than the one followed in an interview with an adult, breaks should be granted every 30 minutes, ‘open’ questions should be preferred, at least at the beginning, conversation topic should be changes only after announcing it to the minor, the listeners ‘attitude should remain neutral.

The practice unfortunately does not always live up to these standards. In one decision, the Federal Administrative Court took specific issue with the way the SEM conducted the interview, and quashed the SEM decision as in the opinion of the Court the SEM did not take sufficient account of the child’s particular vulnerability during the hearing. Thus, the hearing was conducted in the same way as that of an adult asylum seeker: introductory questions to create a trusting atmosphere were completely absent, the pace of questioning and the type of questions posed were not appropriate, the role and function of the officers present not clearly explained. The Court found that the child’s right to be heard had been breached, and that the administrative authorities should re-assess the case.²⁷⁶

²⁶⁹ SEM Handbook on asylum and return, available at: <https://bit.ly/2TRQv7Y>, D2, p. 18.

²⁷⁰ Federal Administrative Court, Decision D-7431/2018, 22 January 2019, available at: <https://bit.ly/3aCQSDo>; E-1805/2017, 26 September 2019, available at: <https://bit.ly/38uay1G>; D-2849/2017, 18 October 2019, available at: <https://bit.ly/2PXGyom>. In all these judgments, the FAC sent the case back to the SEM for a new assessment.

²⁷¹ Commission suisse de recours en matière d'asile (CRA), 16/1996, available at: <https://bit.ly/2TNPj5K>.

²⁷² Federal Administrative Court, Decisions E-3953/2016, 22 August 2019, available at: <https://bit.ly/2xqOaJT>; D-6998/2017, 8 July 2019, available at: <https://bit.ly/2lxFBIt>; E-6865/2017, 17 April 2019, available at: <https://bit.ly/2v62HJY>. In all these cases the SEM decisions were quashed by the Federal Administrative Court.

²⁷³ Federal Administrative Court, Decision D-6806/2013, 18 July 2016, available at: <https://bit.ly/38ACZuL>.

²⁷⁴ Article 7(5) AO1.

²⁷⁵ Federal Administrative Court, Decision E-1928/2014, 24 July 2014, available at: <https://bit.ly/2PXidze>.

²⁷⁶ Federal Administrative Court, Decision E-7447/2015, 5 November 2018, available at: <https://bit.ly/337u2Z0>.

In other cases, the administrative authorities fail to consider that the minor's age could have an impact on the internal consistency of his/her accounts, and apply the same credibility standards in place for adults. This is also in contrast with international guidelines on child-friendly justice and on the child's right to be heard.²⁷⁷

1.2. Decision-making process

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

The practice is not always correct when it comes to victims of FGM (or at risk thereof): sometimes the SEM refuses asylum on the basis that FGM is a one-off act that cannot be repeated on the same girl or woman and that asylum law cannot make up for wrongful acts committed in the past. This is in sharp contrast with the UNHCR guidance on FGM.²⁷⁸ The Federal Administrative Court takes a more careful approach. In one judgement,²⁷⁹ for instance, the Federal Administrative Court accepted that FGM is a form of persecution specific to women. In examining the risk of future harm, the judges did not consider the risk of re-infibulation, but rather the general risk that the applicant will be subjected to other forms of persecution as a single, displaced woman with children. Moreover, the trauma caused by FGM is mentioned as a cause of the applicant's fragility and subsequent vulnerability.

LGBTQI*

When it comes to decision-making, the SEM and Federal Administrative Court do not consider criminalization of "non-compliant" sexual identity/gender orientation in the country of origin as sufficient ground for an asylum request.²⁸⁰ Furthermore, both bodies attach a lot of weight to the "discretion requirement", often claiming that the asylum seeker could avoid persecution by concealing their sexual orientation upon return to the country of origin. This is though in contrast with recent jurisprudence from the CJEU.²⁸¹

Victims of gender-based violence

Although SEM specifically recognises in its Handbook that domestic violence, forced marriage and sexual violence are forms of gender-based persecution that may be relevant to an asylum application, there are very few concrete cases where applications based on this type of violence have actually been accepted. The biggest problem is always the credibility of the applicants, but both the SEM and the FAC

²⁷⁷ Federal Administrative Court, Decisions D-6508/2019, 18 December 2019, available at: <https://bit.ly/38zH8z9>; E-573/2016, 12 December 2018, available at: <https://bit.ly/2TE2Yxn>; E-6636/2017, 21 June 2018, available at: <https://bit.ly/2TBnnTK>; D-1520/2017, 5 April 2017, available at: <https://bit.ly/38ytuwwk>.

²⁷⁸ UNHCR, *Guidance Note on Refugee Claims relating to Female Genital Mutilation*, May 2009 <https://bit.ly/2TOHpcd>.

²⁷⁹ Federal Administrative Court, Decision E-6456/2015, 29 June 2018.

²⁸⁰ Federal Administrative Court, Decision D-2314/2018, on Congo, para. 5.2.2; E-2497/2016, on Azerbaïdjan, available at: <https://bit.ly/2Q0UBcW>, para. 5.3.1; D-4923/2009, on Algeria, available at: <https://bit.ly/2TEIS7n>, para. 4.2.3; D-7041/2013, on Morocco, available at: <https://bit.ly/3cJ9E4D>, para. 5.2; E-7217/2014, on Tunisia, para. 5.2.4; D-891/2013 on Iran, available at: <https://bit.ly/3aDNtLq>, para. 5.2. and 5.3; E-4373/2013, on Pakistan, available at: <https://bit.ly/2PYaG39>, para. 4.3.3; E-3952/2017, on Afghanistan, available at: <https://bit.ly/2lvGWGq>, para. 3.3. Very recent on the specific situation of bisexual persons in Morocco, D-5585/2017, available at: <https://bit.ly/2VYOAKS>. For a different approach, on Iraq, see D-6539/2018, available at: <https://bit.ly/2Q0NOzN>, para. 7.5.

²⁸¹ The CJEU case in point is *X, Y and Z v. Minister voor Immigratie en Asiel* (consid. 70 et 71). The SEM in its Handbook states officially that the discretion requirement is no longer applied in LGBTQI cases, but practice is not always correct. When it comes to the jurisprudence of the Federal Administrative Court, recent examples are the following: E-1842/2019, available at: <https://bit.ly/2lxSCZC>; E-3952/2017, available at: <https://bit.ly/3cJJjU8>; E-1490/2015, available at: <https://bit.ly/2PZAWdk>; D-7342/2017, available at: <https://bit.ly/3cKSBz6>; D-6635/2017, available at: <https://bit.ly/2lx5Q8P>; D-5961/2017, available at: <https://bit.ly/2lz5KO4>; D-6447/2017, available at: <https://bit.ly/2Q0eaCh>.

also have great difficulty in recognizing that women victims of these types of violence could also qualify as members of a particular social group.²⁸²

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) entered into force in Switzerland in April 2018. A group of NGOs, the [Network Istanbul Convention](#), has been created to monitor the implementation of the Convention in the Swiss practice.

Victims/possible victims of human trafficking

Contrary to practice in other European countries, the SEM and the Federal Administrative Court deny that victims of trafficking can be considered as 'members of a defined social group.'²⁸³

While decisions and judgments on the merits are rare, there are more cases concerning victims of trafficking in the Dublin procedure, with, in some cases at least, positive decisions. In one case the Federal Administrative Court considered the case of a Nigerian mother-of-two, PVOT, whom the SEM wanted to transfer to Italy under the Dublin procedure.²⁸⁴ While denying the existence of structural deficiencies in the Italian reception and accommodation system, the Federal Administrative Court found that, after the entry into force of the Salvini Law (L132/2018), the SEM should conduct additional inquiries on the real possibility for the Italian authorities to take charge of the applicant and her children. Hence, the Court referred the case to the SEM for further instruction.

In another case, concerning France, the Court reminded the administrative authorities that in possible cases of trafficking they need to initiate investigations *ex officio* without the need for the victim to report it.²⁸⁵ Furthermore, the Court found that the general presumption of safety in human trafficking cases is not justified in the case of France, given that there are concrete indications that the vulnerability of potential victims of human trafficking in France cannot always be adequately taken into account".

1.3. Exemption from special procedures

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

The number of applicants exempted from the airport procedure was 50 in 2018.²⁸⁶

²⁸² Federal Administrative Court, E-2883/2019, 28 June 2019, available at: <https://bit.ly/39F9tW0> and D-3064/2019, 11 July 2019, available at: <https://bit.ly/339uqWL>. See also, more positive, D-3501/2019, 21 August 2019, available at: <https://bit.ly/39G6bC0> and E-2461-2462/2019, 12 November 2019, available at: <https://bit.ly/2xgnuLw>.

²⁸³ Federal Administrative Court, D-2759/2018, 2 July 2018, available at: <https://bit.ly/3cJdf2D>; D-2341/2019, 22 October 2019, available at: <https://bit.ly/2vaYaGi>; D-2759/2018, 2 July 2018, available at: <https://bit.ly/39G6zjW>.

²⁸⁴ Federal Administrative Court, D-3471/2019, 23 July 2019, available at: <https://bit.ly/2v6NSqx>.

²⁸⁵ Federal Administrative Court, D-3292/2019, 1 October 2019, available at: <https://bit.ly/2TUFy5w>.

²⁸⁶ Information provided by the SEM.

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, 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.²⁸⁷ In practice, this is very problematic as traumatised people are often not aware of their trauma, it is symptomatic that a trauma can show up only after some time, which speaks for the credibility of the disease.²⁸⁸ Medical problems that are claimed at a later stage or established by another medical specialist may be taken into account in the asylum and removal procedures if they are proven. The provision of *prima facie* evidence suffices by way of exception if there are excusable grounds for the delay or proof cannot be provided in the case in question for medical reasons. That should be the case for all psychological diseases which can hardly be proven.

Under the new asylum procedure in force throughout Switzerland since March 2019, medical care and the establishment of medical facts in the examination of asylum applications, appear to be one of the main issues induced by the acceleration of procedures. It crystallizes the tension between, on the one hand, the new procedural deadlines provided for in the Asylum Act and the processes put in place in federal structures and, on the other hand, an examination of asylum applications based on adequate medical care enabling the medical professionals to make clear and detailed medical diagnoses.

In this respect, the recent case law of the Federal Administrative Court highlights several shortcomings concerning medical care and measures of instruction taken by the authority of first instance on the medical aspects before issuing a decision on removal or transfer to another Dublin State. The Federal Administrative Court particularly points out to the following points: decisions issued in the absence of a medical diagnosis, the difficulty for asylum-seekers in accessing a doctor, the transfers from one federal centre to another during the procedure which result in the interruption of medical follow-up or treatment, the lack of adequate translation during interviews with doctors or medical staff of the centres and finally the difficulty for legal representatives to obtain information or medical reports.²⁸⁹

Thus, the health concept implemented by the SEM in French-speaking Switzerland prohibits direct contacts between legal representation and health professionals, both inside and outside the federal centres. Thus, only email contacts are allowed between the infirmary of the centres and the legal representatives and the latter do not have the possibility to directly contact the health professionals located outside the centres. In one important judgment last year, the Federal Administrative Court

²⁸⁷ Article 26-bis AsyIA.

²⁸⁸ On the obligation of the SEM to always assess the applicant's medical situation when there are concrete signs that he or she may suffer from serious diseases such as PTSD that, even though the applicant does not specifically mention any kind of health issues, see e.g. Federal Administrative Court, Decision D-6057/2017, 15 May 2018, para 5.4.

²⁸⁹ See for instance: OSAR, *L'accélération ne doit pas prêter l'équité et la qualité*, 4 February 2020, available (in French) at: <https://bit.ly/2SJPIAv>; Vivre Ensemble, *Procédures accélérées et accès aux soins. L'équation impossible? | Prise en considération de l'état de santé: des procédures bâclées*, June 2019, available (in French) at: <https://bit.ly/32djGq4>.

stated that the unjustified transmission of medical information represents a violation of the right to a lawful hearing.²⁹⁰ From the perspective of organisations such as the Swiss Refugee Council, direct and effective communication between medical staff and legal representation is necessary to ensure adequate care and a complete establishment of the relevant facts, especially in the context of an accelerated procedure

In principle, 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 detailed medical report to be used in the asylum procedure are rarely requested by the authorities. In the majority of federal centres the SEM has concluded partnerships with doctors or medical centres to which asylum seekers are redirected in case of need. In the eventuality that an asylum seeker consults a doctor who is not included in the SEM concept, the costs incurred are not covered by the basic health insurance. In light of the current breaches as reflected in the recent TAF's case law as described above, there is in some cases a real difficulty in asserting health problems in time in the first instance procedure.

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

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

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?

☒ Yes

☐ No

In Switzerland, unaccompanied children are entitled to asylum if they are deemed capable of judgment. The assessment of this capability depends on the maturity and the development of the child in question.²⁹¹ Usually, a person is considered as able to make a judgment at the age of 14. The Federal Administrative Court has stressed the importance of the right of the child to properly take part in all the decisions that concern him/her and clarified in a detailed manner how this should be put into practice during the personal interview.²⁹²

A representative, a so-called person of trust, is immediately to be appointed for each unaccompanied asylum-seeking child. The latter assists the unaccompanied child during the asylum procedure.²⁹³ The Asylum Ordinance 1 specifies that the duty of the representative starts with the first interview.²⁹⁴ 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.

Until today, the duties of the legal representative are not precisely defined by law and are therefore not always clear in practice.²⁹⁵ 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

²⁹⁰ For a more detailed description of the medical concept see in particular: Federal Administrative Court, Decision D-1954/2019, 13 May 2019, available at: <https://bit.ly/2wE1vxU>; E-3262/2019, 4 July 2019, available at: <https://bit.ly/2TONtkZ>.

²⁹¹ Asylum Appeals Commission, Decision EMARK 1996/4, 9 March 1995.

²⁹² Federal Administrative Court, Decision E-1928/2014, 24 July 2014, available at: <https://bit.ly/3axJq3g/>.

²⁹³ Article 17(3) AsyIA.

²⁹⁴ Article 7(2-bis) AO1.

²⁹⁵ Asylum Appeals Commission, Decision EMARK 2006/14 of 16 March 2006.

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.²⁹⁶ The idea is that the person of trust should support the asylum seeker in the asylum procedure, as well as in other legal/administrative tasks related to the asylum claim and to the minor's situation in Switzerland (accommodation in the centre, attendance to school, health issues etc). In practice, as long as the minor stays in the federal asylum centre (maximum 140 days), the representative mostly accompanies him/her to the asylum interview or hearing. The child and the representative often only meet shortly before the interview and, in some cases, persons of trust cannot have direct access to the federal reception centres where minors are held. Often the translator of the SEM is asked for help with the explanation of the representative's role. Under these circumstances there is hardly any time to build trust.

The child may then be transferred to a Canton, if s/he is moved to the so-called extended procedure and his/her asylum application is accepted or temporary admission granted. In these cases, the legal duties of the person of trust are passed on to other representatives, mostly social workers that operate within the different cantons. The discrepancies and different quality level of the care and support provided by the different cantonal offices has been highlighted in a report by the Conference of the Cantonal Directors of Social affairs committees.²⁹⁷ The division of responsibilities between the persons of trust working in the Federal centres and the cantonal representatives is another sensitive issue. 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.

In 2019, 441 applications were lodged by unaccompanied children, compared to 401 in 2018.

E. Subsequent applications

Indicators: Subsequent Applications		
1. Does the law provide for a specific procedure for subsequent applications?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Is a removal order suspended during the examination of a first subsequent application?		
❖ At first instance	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ At the appeal stage	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
3. Is a removal order suspended during the examination of a second, third, subsequent application?		
❖ At first instance	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ At the appeal stage	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

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

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

The subsequent application should not be confused with a request for re-examination. An application is to be treated as a subsequent asylum application if there are significant reasons which have an impact

²⁹⁶ Article 7(3) AO1.

²⁹⁷ Recommandations de la Conférence des directrices et directeurs cantonaux des affaires sociales (CDAS), 20 May 2016, available at: <https://go.aws/39BQxHD>.

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.²⁹⁸

Unlike in the regular procedure, during the examination time of the application, the asylum seeker is not allowed to stay in the asylum 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.²⁹⁹ However, if the SEM has applied this provision incorrectly, there is the right to an effective remedy for denial of justice.³⁰⁰

The legal advisory offices in the cantons can be asked for help in the procedure of a subsequent application. Their legal assistance will depend on their capacities and their estimation of the prospects of success.

The number of persons lodging subsequent applications in 2019 was as follows:

Subsequent applicants in Switzerland: 2019	
Main countries of origin	Number of applicants
Afghanistan	113
Sri Lanka	103
Iraq	86
Eritrea	84
Syria	68
Ethiopia	59
Total	1,286

Source: SEM, Asylum Statistics 2019.

²⁹⁸ Martina Caroni et al., *Migrationsrecht*, 3rd edition, Berne 2014, 342 et seq.

²⁹⁹ Federal Administrative Court, Decision E-3979/2014, 3 November 2015.

³⁰⁰ Federal Administrative Court, Decision E-5007/2014, 6 October 2016.

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.³⁰¹ In such a case, SEM usually issues a decision of inadmissibility without further investigations. The time limit for an appeal in these cases is 5 working days.³⁰² The common list of safe countries of origin and safe third countries is published in the Annex 2 of Asylum Ordinance 1 on procedural aspects (AO1),³⁰³ and was last updated in October 2019. It includes:

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

2. Safe third country

The Federal Council is also responsible for the designation of states where there is effective protection against *refoulement*,³⁰⁴ as safe third countries.³⁰⁵ The Federal Council should periodically review these decisions.³⁰⁶

1.1. Safety criteria

The following requirements must be met:³⁰⁷

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

³⁰¹ Article 6a(2)(a) AsylA.

³⁰² Article 108(3) AsylA.

³⁰³ Annex 2 AO1, available (in French) at: <http://bit.ly/2FMt9sO>.

³⁰⁴ As defined in Article 5(1) AsylA.

³⁰⁵ Article 6a(2)(b) AsylA.

³⁰⁶ Article 6a(3) AsylA.

³⁰⁷ Federal Council, Bundesblatt (Federal Gazette) 2002, available (in German) at: <http://bit.ly/2j9UF6l>, 6877ff.

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.³⁰⁸ 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.³⁰⁹

This list includes so far all EU and EFTA member states.³¹⁰

In a case concerning a Kurdish journalist for whom the SEM had issued an inadmissibility decision and an expulsion order to **Brazil**, the Federal Administrative Court recalled that, unlike third countries designated as safe by the Federal Council, the SEM must, when it comes to a return to another third country, examine in each case whether the latter offers sufficient protection against *refoulement*. In the present case, the Court considered that the reasoning put forward by the SEM, which concluded that there was effective protection against any *refoulement* in the country of origin, was insufficient.³¹¹

1.2. Connection criteria

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

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

1. Provision of information on the procedure

Indicators: Information on the Procedure

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

In 2019, the SEM published a video on Youtube with some simplified explications regarding the new procedure in several languages.³¹² As the new system provides free advice and legal representation during the first instance procedure, every asylum seeker assigned to the federal centres, following the lodging of the asylum application, obtains an initial information from the NGO in charge of legal protection. Subsequently, an individual interview is conducted to present the work of the legal protection service, inform about the rights and obligations of the asylum seekers during the procedure and to gather initial information. A leaflet available in the main languages spoken by the applicants is provided and a short film explaining the procedure and questions regarding accommodation, health insurance, allowance and access to the labour market is also broadcasted in the offices of the legal representation. In addition, asylum seekers have the possibility to visit the legal protection offices spontaneously or by appointment during their stay in the test federal centre in order to obtain information or submit any evidence. However, access to legal protection offices is highly dependent on the location of federal centres and legal aid offices.

³⁰⁸ Asylum Appeals Commission, Decisions EMARK 2000/10, 2001/14.

³⁰⁹ Federal Council, Bundesblatt (Federal Gazette) 2002, 6884.

³¹⁰ SEM, 'Bezeichnung aller EU- und EFTA-Staaten als sichere Drittstaaten', 14 December 2007, available (in German) at: <http://bit.ly/1NgJbf5>.

³¹¹ Federal Administrative Court, Decision D-635/2018, 8 February 2018.

³¹² See the English at: <https://bit.ly/2SS2NxO>.

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

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

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

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

In cases where mandated legal representation decides not to appeal a negative decision because it would be doomed to fail (so-called “merits-test”), there is very little possibility to seek assistance from another organisation or private lawyer. 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. As a result, persons located in the countryside face clear disadvantages especially regarding the access to legal advice and therefore also access to some information and support.³¹³

³¹³ For further information on this topic, see Thomas Segessenmann, *Rechtsschutz in den Aussenstellen der Empfangs- und Verfahrenszentren des Bundes*, ASYL 1/15, 14ff.

H. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☒ Yes ☐ No
❖ If yes, specify which: Syria
2. Are applications from specific nationalities considered manifestly unfounded?³¹⁴ ☒ Yes ☐ No
❖ If yes, specify which: Albania, Algeria, Benin, Bosnia-Herzegovina, Burkina Faso, North Macedonia, Gambia, Georgia, Ghana, India, Kosovo, Moldova, Mongolia, Montenegro, Morocco, Nigeria, Senegal, Serbia, EU/EFTA Member States

1. Eritrea

In 2019, Eritrea was the top country of origin with 2,899 applications lodged. The recognition rate (asylum status) was 67% and the temporary admission rate was 17% in 2019. In June 2016, the SEM changed its policy regarding Eritrea. It stated that persons who left Eritrea illegally and had previously never been called to the military service, exempted from military service, or released from military service, will no longer be recognised as refugees.

In January 2017, the Federal Administrative Court also changed its practice and ruled that the illegal exit of Eritrea cannot anymore, in itself, justify the recognition of refugee status and that additional individual elements are required.³¹⁵ Confirming a more restrictive approach regarding Eritrean cases, the Court subsequently found, in August 2017, that the return of Eritrean nationals could not be generally considered as unreasonable. Thus, noting that the situation in Eritrea has improved significantly since 2005, the Court estimated that persons whose asylum request was rejected and who have already done their military service as well as those who “settled” their situation with the Eritrean State and benefit from the status of so-called “diaspora member”, were not under the threat of being convicted or recruited to the national service and that there was no obstacle to the execution of removal under national law.³¹⁶ In a third leading decision, the Federal Administrative Court stated that there was no interdiction of *refoulement* (due to art. 3 and/or 4 ECHR) nor an obstacle to the execution of removal in national law³¹⁷ for persons who have to serve in national service.³¹⁸ Following these recent changes, in spring 2018, the SEM started to re-examine the status of approximately 3,000 Eritreans already granted temporary admission (as foreigners, without refugee status) according to this case law. Until September 2018, they examined 250 cases and found the temporary admission to be no longer valid in 9% of these cases.³¹⁹ As of end of October 2019, SEM found the temporary admission no longer to be valid in 82 cases (2.7%).³²⁰ Most of the appeals submitted against such decisions have been rejected by the Federal Administrative Court, some are still pending. This practice change has been criticised by the Swiss Refugee Council and others, as it does not seem justified by the current country of origin information (COI) or the difficulty to obtain reliable COI.³²¹

³¹⁴ Whether under the “safe country of origin” concept or otherwise.

³¹⁵ Federal Administrative Court, Decision D-7898, 30 January 2017.

³¹⁶ Federal Administrative Court, Decision D-2311/2016, 29 August 2017.

³¹⁷ Federal Administrative Court, Decision D-2311/2016, 29 August 2017.

³¹⁸ Federal Administrative Court, Decision E-5022/2017, 10 July 2018.

³¹⁹ SEM, ‘Fin du projet pilote d’examen des admissions provisoires de ressortissants érythréens’, 3 September 2018, available (in French) at: <https://bit.ly/2HWdeNG>.

³²⁰ Département fédéral de justice et police (DFJP), Situation des requérants d’asile érythréens en Suisse: pratique en matière d’asile et de renvoi, levée des admissions provisoires, retour et principe de l’aide d’urgence, Rapport du Département fédéral de justice et de police (DFJP) en réponse à la lettre du Haut-Commissariat des droits de l’homme (HCDH) du 19 juin 2019, 30 novembre 2019, available at: <https://bit.ly/2SXnTuZ>, p. 4.

³²¹ For further information, see Swiss Refugee Council, ‘Décision du Tribunal administratif concernant le renvoi d’une Érythréenne – Le jugement est incompréhensible’, 31 August 2017, available (in French) at: <http://bit.ly/2FKqT5b>; ‘La Confédération mise sur l’intimidation plutôt que sur des solutions’, 3 September 2018, available (in French) at: <https://bit.ly/2TJGCbr>.

In December 2018, the UN Committee against Torture ruled that the expulsion of an Eritrean national would constitute a violation of Article 3 of the Convention.³²² Following a negative decision taken by the SEM, the Federal Administrative Court had declared the appeal filed doomed to failure, by a single-judge procedure. It had thus required the payment of an advance fee of 600 CHF despite the claimant's proven indigence. The Committee considered that the examination carried out under this procedure was anticipated and summary, whereas the complainant's allegations were plausible, particularly in view of the disastrous human rights situation in Eritrea. It found that the requirement of procedural costs had prevented the applicant from having the possibility to see his appeal examined on the merits by the Federal Administrative Court. It therefore concluded that a removal to Eritrea would constitute a violation of Article 3 and ordered the Swiss authorities to maintain the suspension of the removal to Eritrea and to reassess the claimant's asylum application.³²³

2. Syria

With 1,100 asylum requests in 2019, Syrians were the fourth largest group of asylum seekers in Switzerland. The recognition rate (asylum status) was 30% and the temporary admission rate was 58% in 2018. In February 2015, the Federal Administrative Court issued two leading cases 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.³²⁴ 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.³²⁵ 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.³²⁶ In the case of a woman who joined the Rojava Peshmerga in northern Iraq, the Federal Administrative Court stated that she should be recognised as refugee as the Rojava are perceived as YPG-critical and therefore she would face problems to re-enter Syria as the partial cooperation between YPG and the Syrian Regime could not be excluded.³²⁷

In 2017, The Federal Administrative Court held, at least on two occasions, that the return to Syria was reasonable and lawful.³²⁸ In one of these cases, the Court confirmed the withdrawal of a temporary admission based on the penal case of the person.³²⁹ For 2019, the Federal Council decided to take in 800 particularly vulnerable recognised refugees, mainly victims of the Syrian conflict.³³⁰

3. Afghanistan

The second largest group of asylum seekers in 2019 were persons from Afghanistan. 1,397 persons asked for asylum in that period. 20% were granted asylum, while 73% 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.³³¹ Although the Federal Administrative Court made a new analysis of the situation concerning

³²² UN Committee against Torture, CAT/C/65/D/811/2017, 17 December 2018.

³²³ See also CSDM, 'Une décision de renvoi vers l'Érythrée prise par les autorités suisses viole la Convention contre la torture', 19 December 2018, available (in French) at: <https://bit.ly/2SoBFb6>.

³²⁴ Federal Administrative Court, Decision D-5553/2013, 18 February 2015.

³²⁵ Federal Administrative Court, Decision D-5779/2013, 25 February 2015.

³²⁶ Federal Administrative Court, Decision D-5329/2014, 23 June 2016.

³²⁷ Federal Administrative Court, Decision D-5941/2017, 13 March 2019.

³²⁸ Federal Administrative Court Decision F-177/2017, 7 February 2017.

³²⁹ Federal Administrative Court, Decision D-1105/2017, 31 May 2017.

³³⁰ SEM, 'Le Conseil fédéral propose un plan pour l'accueil de groupes de réfugiés reconnus', 30 November 2018, available (in French) at: <https://bit.ly/2MZX5pi>.

³³¹ Federal Administrative Court, Decisions D-7950/2009, 30 December 2011 (Mazar-i-Sharif), D-2312/2009, 28 October 2011 (Herat), BVGE 2011/7, 16 June 2011 (Afghanistan in general and Kabul).

Mazar-i-Sharif³³² and stated that the situation deteriorated, it still considered the return reasonable under certain conditions in the individual case.

In a principle judgment released on 13 October 2017, the Federal Administrative Court reassessed the security situation in Afghanistan.³³³ Firstly, the Court estimated that the general security situation in Afghanistan had deteriorated but remains better in Kabul. Thus, the Court considered the execution of the expulsion to Kabul to be reasonable under careful consideration of circumstances that are favourable in individual cases (sustainable network of relationships, the possibility of securing the minimum existence level, secure living conditions, good health status). Paragraph 7 includes a general analysis of the situation in Afghanistan based on numerous sources, which concludes that the security situation has deteriorated in all regions since 2011.

The situation of Kabul is considered separately under paragraph 8 of the ruling. The Court finds that the security situation in Kabul is extremely precarious,³³⁴ and has clearly deteriorated in comparison with the BVGE 2011/7 judgment. The situation in Kabul is regarded as fundamentally life-threatening and thus unacceptable.³³⁵ However, this rule may be deviated from if there are particularly favourable factors which would prevent the returning person from being placed in a situation which would threaten his or her existence and on the basis of which, in exceptional cases, it can be assumed that the execution is reasonable. In summary, the Court considers an expulsion to Kabul to be reasonable only if the conditions are particularly favourable – in particular single, healthy men with a sustainable network of relationships, an opportunity to secure the minimum subsistence level and a secure housing situation – to be reasonable.³³⁶ Accordingly, the Court put higher demands in place than in the past with regard to the clarification of a sustainable social/family network. The network must be able to guarantee “in particular economic progress and housing”. According to the Court, it may exceptionally be reasonable for young healthy men with a sustainable social network to be deported to Kabul.

4. Sri Lanka

In 2019, 721 asylum applications were lodged by persons from Sri Lanka. The recognition rate (asylum status) reached 31% of all the decisions rendered on the merits while 9% were given a temporary admission status. 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.³³⁷ In July 2016, the Federal Administrative Court updated its case law related to Sri Lanka by considering that the execution of removal to the northern (apart from the Vanni) and eastern provinces of the country was, in principle and under certain conditions, reasonable.³³⁸ Subsequently, the Court continued restricting its stance through a principle judgment released in October 2017.³³⁹ Thus, the Court argued that, since the end of the conflict in 2009, the security situation has improved significantly in the Vanni. As a result, it considered that a person with a sustainable network of relationships and the possibility of securing the minimum existence level with time should be able “to resettle there without undue difficulty”.³⁴⁰ Regarding vulnerable profiles such as single women with or without children, persons with serious health issues or elderly, the Court concluded that the execution of the removal remained unreasonable. In 2019, the practice remained the same.

³³² Federal Administrative Court, Reference Decision D-4287/2018, 8 February 2019.

³³³ Federal Administrative Court, Decision D-5800/2016, 13 October 2017.

³³⁴ *Ibid*, para E.8.2.3.

³³⁵ *Ibid*, para E.8.4.1.

³³⁶ *Ibid*, para E.8.4.2.

³³⁷ SEM, ‘Anpassung der Asyl- und Wegweisungspraxis für Sri Lanka’, 7 July 2016, available (in German) at: <http://bit.ly/2jV4utf>.

³³⁸ Federal Administrative Court, Decision E-1866/2015, 15 July 2016.

³³⁹ Federal Administrative Court, Decision D-2619/2016, 16 October 2017.

³⁴⁰ The Swiss Refugee Council expressed strong reservations concerning the evaluation made by the Court regarding the security situation in the northern part of Sri Lanka, especially in the Vanni’s region. Indeed, this appreciation is mostly based on a UNHCR’s survey of 113 families who returned voluntarily from India to the northern part of the country. Therefore, it appears that the evaluation made does not rest on a detailed analysis. For further information see: Swiss Refugee Council, ‘Curieux sondages et requérant-e-s d’asile du Sri Lanka’, 14 December 2017, available (in French) at: <http://bit.ly/2AG5w5Z>.

5. Turkey

In 2019, Turkey was the third largest group of asylum seekers in Switzerland. 1,287 asylum applications were lodged by persons from Turkey. The recognition rate (asylum status) reached 71% of all the decisions rendered on the merits while 5% were given a temporary admission status.

In a principle judgment regarding exclusion from asylum released on 25 September 2018,³⁴¹ the Federal Administrative Court excluded a Kurdish refugee from asylum status for supposed proximity to Komalen Ciwan, an organisation considered as affiliated to PKK. The presumption of proximity to that organisation was considered as sufficient by the Federal Administrative Court to suspect that the applicant endangered Switzerland's internal or external security. The decision raises many questions notably concerning freedom of expression as well the standard of proof and the burden of proof in cases of suspected links to terrorist organisations or violent extremism. It calls into question the notion of refugee protection as such insofar as the latter aims precisely to protect persons persecuted for their political opinion.³⁴²

In 2019, the Court stated in several judgements that the situation in Turkey deteriorated with regard to the political and human rights situation, especially in the southeast of the country.³⁴³

6. Other nationalities

Regarding **Iraq**, in December 2015 the Federal Administrative Court stated that there is no situation of generalized violence in the northern Kurdish provinces. Therefore persons can be returned to northern Iraq if they have a sustainable social or family network there.³⁴⁴ Persons from central and southern Iraq usually receive a form of protection. As of 2019, the practice concerning Kurdish provinces remained the same.

In January 2019, Switzerland concluded an agreement with **Ethiopia** on the repatriation of applicants from Ethiopia who have received a negative asylum decision.³⁴⁵ The planned agreement between Switzerland and Ethiopia provides close cooperation with the Ethiopian secret services. The latter would be responsible for identifying the asylum seekers concerned. Switzerland has nearly 300 Ethiopian nationals whose asylum applications were rejected and who are awaiting removal. ³⁴⁶ According to SEM's statistics, no removal took place in 2019.

³⁴¹ Federal Administrative Court, Decision E-2412/2014, 25 September 2018.

³⁴² For further information, see Swiss Refugee Council, 'L'arrêt sur les Kurdes ébranle les fondements du droit d'asile', 5 October 2018, available (in French) at: <https://bit.ly/2y9BULg>.

³⁴³ Example: Federal Administrative Court, Decision E-1625/2017, 24 January 2019.

³⁴⁴ Federal Administrative Court, Decision E-3737/2015, 14 December 2015, confirmed in Decision E-86/2017, 7 November 2018.

³⁴⁵ SEM, 'La Suisse et l'Éthiopie règlent leur collaboration dans le domaine du retour', 16 January 2019, available (in French) at: <https://bit.ly/2SoLndI>.

³⁴⁶ For further information see Swiss Refugee Council, 'Éthiopie: est-il vraiment urgent de renvoyer les demandeurs d'asile déboutés?', 5 December 2018, available (in French) at: <https://bit.ly/2QeCHp1>.

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), regulated under federal legislation.³⁴⁷ Asylum seekers stay in a federal centre for up to 140 days, and are then allocated to a canton (see section on [Freedom of Movement](#)).³⁴⁸

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

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

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

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

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

Material reception conditions primarily consist of accommodation, food, health care and limited financial allowance according to the specific entitlement to social assistance. Assistance benefits are granted only when a person is unable to maintain 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.³⁴⁹ For organisational reasons, accommodation in asylum centres is however available for all asylum seekers, regardless of their financial resources.³⁵⁰ 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.³⁵¹

Regular procedure

Asylum seekers in a regular procedure are entitled to full material reception conditions from the lodging of the application 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.

³⁴⁷ The setup of federal reception and processing centres is foreseen by Article 26 AsylA; the Ordinance of the FDJP on the management of federal reception centres in the field of asylum (the Ordinance of the FDJP) provides operating rules for all federal centres; further internal rules are applied in each centre.

³⁴⁸ Article 24(4) AsylA.

³⁴⁹ Article 81 AsylA.

³⁵⁰ 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.

³⁵¹ Article 85(1) AsylA.

In the federal centres, reception conditions are similar for all asylum seekers regardless of the type of procedure they will go through with the exception of the daily 3 Swiss francs pocket money, to which persons from EU/EFTA countries or countries exempt from the visa requirement are not entitled.³⁵² After cantonal attribution, reception conditions may change significantly. General legal entitlement to reception conditions is governed by national law and should therefore be similar in all cantons, but the implementation of those national provisions is largely dependent on cantonal regulation and varies in practice.

Admissibility procedure (including Dublin)

According to national law, asylum seekers whose application may be dismissed without proceeding to a in-merit examination are entitled to the same reception conditions as persons in a regular procedure, until formal dismissal of their application.³⁵³

Swiss legislation is based on the idea that dismissal of an application will occur within the 140 days of the stay in the federal centre.³⁵⁴ Quickly rejected or dismissed asylum seekers should 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.³⁵⁵ Persons in the Dublin procedure are not allocated to a canton, unless their removal cannot be completed within 140 days. They are transferred to a Federal Reception centre without processing facilities.³⁵⁶

Since the entry into force of the new asylum procedure in March 2019, practice in the different asylum regions does not yet seem to be uniform and clearly defined. For example, there have been several cases of persons who had exceeded the maximum legal stay of 140 days in federal centres but were still residing there. In a number of other cases, asylum-seekers awaiting a decision at first instance or for whom an appeal has been lodged have been allocated to a canton without their legal representative being informed.

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 (see section on [Forms and levels of material reception conditions](#)).³⁵⁷

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.³⁵⁸ If entry into Swiss territory is allowed, the asylum seeker is assigned to a federal centre or a canton and is entitled to regular reception conditions. If entry is refused, the SEM should provide persons with a place of stay and appropriate accommodation until they leave the country.³⁵⁹ 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. After this period, the SEM allocates the person either to a

³⁵² SEM, *Stratégie de traitement du SEM dans le domaine de l'asile*, available (in French) at: <https://bit.ly/2SFqYjb>.

³⁵³ See sections on [Dublin](#) and [Admissibility Procedure](#).

³⁵⁴ See sections on [Dublin](#) and [Admissibility Procedure](#).

³⁵⁵ Article 27(4) AsylA.

³⁵⁶ Information on this is available at: <https://bit.ly/3abc6Px>.

³⁵⁷ See section on [Forms and levels of material reception conditions](#).

³⁵⁸ For details on the airport procedure see section [Border Procedure](#).

³⁵⁹ Article 22(3) AsylA.

canton or a Federal asylum centre.³⁶⁰ Upon issuing a legally binding removal order, asylum seekers may be transferred to an immigration detention.³⁶¹

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 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.³⁶² 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.³⁶³ The level of accommodation conditions depends on the cantonal practice.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers and temporarily admitted persons on average, as of 31 December 2018 (in original currency and in €):
CHF 1,119 / 1,041 €

Social assistance for asylum seekers includes basic needs such as food, clothes, transportation and general living costs, in the form of allowance or non-cash benefits, accommodation, health care and other benefits related to specific needs of the person. National law specifically provides for accommodation in a federal or cantonal centre,³⁶⁴ social benefits in the form of non-cash benefits whenever possible, or vouchers or cash.³⁶⁵ Limited health insurance also ensures access to medical care according to Article 82a AsyIA (see section on [Health Care](#)).

Accommodation

The provision of accommodation facilities is governed by Article 28 AsyIA, 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

³⁶⁰ Article 22(6) AsyIA.

³⁶¹ Article 22(5) AsyIA.

³⁶² The legal basis for the restriction is Article 82(2) AsyIA (in force since 1 February 2014). For the reception conditions under the emergency aid scheme, see [Forms and Levels of Material Reception Conditions](#).

³⁶³ For more information on subsequent applications, see section [Subsequent Applications](#).

³⁶⁴ Article 28 AsyIA.

³⁶⁵ Articles 81 and 82(3) AsyIA. National provisions on social assistance and emergency aid for asylum seekers are in Chapter 5 AsyIA. The AO2 on Financial Matters provides important precisions on the financing of welfare benefits.

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 should 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.³⁶⁶ The provision on social benefits is under the responsibility of the Confederation as long as the person is staying in a federal asylum centre. After allocation to a canton, the canton should provide social assistance or emergency aid on the basis of Article 80 AsylA. Fixing of the amount, granting and limiting welfare benefits are regulated by cantonal law when it falls under cantonal responsibility.³⁶⁷ This results in large differences in treatment among cantons.

Asylum seekers are also entitled to child allowances for children living abroad. These are however withheld during asylum procedures and should be paid only when the asylum seeker is recognised as a refugee or temporarily admitted in accordance with Article 83(3)-(4) FNIA.³⁶⁸

Emergency aid

Persons subject to a legally binding removal decision for which a departure deadline has been fixed are excluded from receiving social assistance.³⁶⁹ In fact, this concerns all persons whose asylum application has been rejected (and the appeals deadline expired) as all negative decisions from the SEM include a departure deadline. This exclusion from social assistance also extends to persons in a subsequent procedure (application for re-examination, revision or subsequent application).³⁷⁰ 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 must entail in order to respect human dignity.³⁷¹ But the concrete fixing and granting of the emergency aid is regulated by cantonal law, which results in large differences in treatment between asylum seekers. In some cantons this task is delegated to municipalities or relief organisations.³⁷² The Confederation compensates cantons for the assistance costs.

³⁶⁶ Article 81 AsylA.

³⁶⁷ Article 3(2) AO2.

³⁶⁸ Article 84 AsylA.

³⁶⁹ Article 82(1) AsylA.

³⁷⁰ Article 82(2) AsylA.

³⁷¹ See Muriel Trummer, Bundesgerichtliche Rechtsprechung zur Auslegung der Nothilfe für abgewiesene Asylsuchende, in: ASYL 4/12, 24ff.

³⁷² 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, available (in French) at: <http://bit.ly/1eGZqTZ>.

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.³⁷³ 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 that the entire amount is granted in the form of non-cash benefits or vouchers (which can only be used in one particular supermarket chain), as 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;
- (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 him- or herself. The exclusion from social assistance has no impact on the entitlement to emergency aid. Even though reception conditions are not ideal, every asylum seeker (even dismissed

³⁷³ For more information on this subject, see Christian Bolliger, Marius Féraud, Büro Vatter AG (Politikforschung & -beratung), *La problématique des requérants d'asile déboutés qui perçoivent l'aide d'urgence sur une longue période*, Bern, 26 May 2010, available (in French) at: <http://bit.ly/1N9NXqE>.

or rejected) should find an accommodation place during their stay in Switzerland and be able to provide for their own (basic) 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.³⁷⁴

An internal rule of procedure within federal centres provides for other kind of disciplinary sanctions: denial of exit permits, elimination of pocket money, ban on entering specific spaces, excluding federal asylum centres or remote locations and transfer to another unit.³⁷⁵

Before any reduction or withdrawal is ordered, an assessment of proportionality is made and the subsistence minimum has to be considered. The basic need is defined as “enforcement legal subsistence minimum” (*betriebsrechtliches Existenzminimum*) and differs in each canton.

Specific centres for uncooperative asylum seekers

The new legislation of March 2019 introduced a legal basis for the creation of specific centres for uncooperative asylum seekers. Article 24a AsylA states that asylum seekers who endanger public security and order or who by their behaviour seriously disrupt the normal operation of the federal asylum centres may be accommodated by the SEM in special centres that are set up and run by the SEM or by cantonal authorities. Although applications cannot be lodged in those centres, procedures are carried out according to the same rules than in the usual federal asylum centres. At the time being, no such centre is operating, the only one ever opened in in **Les Verrières**, Canton of **Neuchâtel** was temporarily closed on 1 September 2019 after nine months with in average two inhabitants.³⁷⁶ Plans for a second specific centre were put on hold because of the low numbers of asylum applications.

According to the law, the decision to send someone to a specific centre is taken either by the federal or the cantonal authorities. In its statement, the SEM indicated that only men would be placed in such centres.³⁷⁷ The decision to place a person in a specific centre must respect the principle of proportionality. This is particularly important as it can only be contested with the appeal against the decision of the SEM regarding the asylum application, which is taken much later in the procedure. Therefore, no separate remedy exists against the decision to be assigned to a specific centre for uncooperative asylum seekers.

Grounds for assignment to a specific centre are defined in Article 15 AO1. According to this provision, a person can be assigned to a specific centre if he or she is in a federal asylum centre and endangers public security and order or who by his or her behaviour seriously disrupts the normal operation of the federal asylum centre. A danger to public security and order is assumed if there are concrete indications that the behaviour of the asylum seeker will with great probability lead to a breach of public security and order.

A serious disruption of the normal operation of the federal asylum centre is assumed in the following two situations:

- First, if the asylum seeker seriously violates the house rules of the centre, especially if they have weapons or drugs, or if they repeatedly disregard a ban to leave the centre.

³⁷⁴ Article 25(1)(e) Ordinance of the FDJP on the management of federal centres and accommodation at airports.

³⁷⁵ SEM, Règlement Intérieur du centre fédéral (CFA) de Boudry géré par le SEM et destiné aux requérants d'asile et aux personnes à protéger, April 2018 (Non-public document).

³⁷⁶ Information on it is available at: <https://bit.ly/2VdzR5b>.

³⁷⁷ SEM, 'Asile: ouverture du centre spécifique de la Confédération aux Verrières', 3 December 2018, available (in French) at: <https://bit.ly/2RwVZlr>.

- 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.

4. Freedom of movement

Indicators: Freedom of Movement

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

4.1. Dispersal across cantons

Asylum seekers who have not received a final decision on their application after 140 days 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: 17,8%, Uri 0.4%).

Article 22 AO1 states that the SEM distributes the asylum seekers as equitably as possible among the cantons, taking into account family members already living in Switzerland, nationalities and cases requiring particular care. In accordance with Article 27(3) AsylA, when allocating an asylum seeker to a canton, the SEM shall take into account the legitimate interests of the cantons and the asylum seekers. However, this provision also states that asylum seekers may only contest the decision on allocation to the Federal Administrative Court if it violates the principle of family unity. In practice, the interests of the asylum seekers are hardly taken into account (except for family unity regarding core family members). This system is problematic, as it fails to seize opportunities that would facilitate integration, such as language or further family ties. For example, the allocation strictly according to the distribution key often leads to French speaking asylum seekers being allocated to a German language canton, which makes integration much more difficult. 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.³⁷⁸

4.2. Restrictions on freedom of movement

Federal asylum centres

As long as asylum seekers stay in a federal centre,³⁷⁹ they are subject to the semi-closed regime of all federal centres (federal asylum 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

³⁷⁸ 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.

³⁷⁹ General rules for the federal centres are set up in the Ordinance of the FDJP on the management of federal reception centres in the field of asylum.

been taken.³⁸⁰ Exit hours are strictly regulated in the ordinance and the general rule allows asylum seekers to go out from 9am to 5pm during the week (from Monday to Friday). SEM may define more extended exit hours in agreement with the commune hosting the federal asylum centre,³⁸¹ which is for instance the case in the centres of **Boudry** and **Chevrolles** where asylum seekers are allowed to return to the asylum centre until 7pm. They are allowed to stay out during the weekend from 9am on Friday until 7pm on Sunday.³⁸²

Asylum seekers are supposed to stay in the centre on days on which they have an appointment regarding their asylum application (with the authorities, the lawyer or the counselling) or regarding their departure. This further applies where they have an appointment with a dentist or doctor, if they are required to participate in maintenance work of the premises, if a transfer to another centre is planned or on days, the enforcement of the removal is foreseen.³⁸³

In case of late arrival or unjustified absence, asylum seekers may be deprived of the possibility to go outside of the centre or to access certain areas of the centre. Their financial allowance or the public transport ticket can also be cut. Another measure can be the exclusion of the centre for a maximum of 24 hours.³⁸⁴ The law also foresees the option to send the person to a special centre, but given that these centres are not currently operating, it is not applied in practice. The disciplinary measures are communicated orally, only the exclusion from the centre for more than eight hours as well as the allocation to a special centre need to be notified in writing. If the exclusion from the centre is ordered for more than 24 hours or more than once, a written decision, (which can be appealed) is necessary. A separate room should be provided to asylum seekers excluded from the centre for more than eight hours or in cases the centre is closed at the time the measure ends.³⁸⁵

Some federal centres have a so called “reflection container”, installed within a short distance from the centre itself. These containers are intended for emergencies (pending the arrival of the police) to receive recalcitrant asylum seekers for them to calm down. During their visits, the delegations of the National Commission for the Prevention of Torture (NCPT) found that the use and purpose of these containers are not defined in any law or directive. It is thus required that those containers are not used for disciplinary reasons.³⁸⁶

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

This has been practiced in certain cantons such as **Zurich** in the case of rejected asylum seekers under the emergency aid regime.³⁸⁷ Another example is a case in the canton of **St. Gallen**, where a young male asylum seeker was considered as a threat to public order and security and therefore he was

³⁸⁰ Article 17 (1) Ordinance of the FDJP.

³⁸¹ Article 17(5) Ordinance of the FDJP.

³⁸² Article 17 (1) Ordinance of the FDJP.

³⁸³ Article 23 Ordinance of the FDJP.

³⁸⁴ Article 25 Ordinance of the FDJP.

³⁸⁵ Article 26 Ordinance of the FDJP.

³⁸⁶ NCPT, Report 2014, 11, para 39.

³⁸⁷ Federal Court, Decision 2C_287/2017, 13 November 2017.

issued a restriction of movement which forbid him to leave the canton. This order was issued without any concrete accusation because Swiss Federal Intelligence Service saw stated a possible risk that the person might be a Kurdish activist.³⁸⁸

Since 1 March 2019, a new paragraph (1bis) was inserted to Article 74 FNIA regarding the special supervised centres: The competent cantonal authority shall require a person who is accommodated in a special centre under Article 24a AsylA3 not to leave the area they were allocated to or not to enter a specific area. As the special centres are not in use and not relevant at the moment, this provision is currently of no relevance.

Appeals may be lodged with a cantonal judicial authority against the ordering of these measures. The appeal has no suspensive effect.³⁸⁹

In a 2017 report to the Commission Federal against Racism, Kiener and Medici concluded in their report that the current regulation of exit hours is too far-reaching in terms of personnel and time (social exchange and employment opportunities are severely restricted; even more so due to the remote location of the centres) and is therefore disproportionate.³⁹⁰ It would on the contrary be possible to use milder means (obligation to notify when leaving and returning or general initial authorisations), in order to monitor the movements of asylum seekers without impinging on their personal freedom. The Federal Court has not yet commented on the proportionality of these regulations.

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

A report published in August 2017 by the Swiss Center of Expertise in Human Rights (SCHR) deals in detail with the question of when certain restrictions on the freedom of movement of asylum seekers associated with accommodation should be classified as detention.³⁹¹ The demarcation between restriction of liberty and deprivation of liberty is gradual and depends on the individual case and various factors. The intensity of the intervention can be regarded as a criterion for differentiation. Like the ECtHR, the Federal Court relies on a combination of temporal and spatial factors. In addition, qualitative criteria are also decisive.

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

The study concludes that the accommodation in the reception and processing centres does not reach the intensity level of a deprivation of liberty if the daily possibility to leave the centre is guaranteed and if there are no further restrictions. So although there is not clear definition, we would rather suggest not to qualify the stay in the ordinary federal asylum centres as de facto detention.

³⁸⁸ Newspaper Article of 6 June 2019, available (in German) at: <https://bit.ly/2PiqIV0>.

³⁸⁹ Article 74(3) FNIA.

³⁹⁰ Regina Kiener and Gabriela Medici, 'Asylsuchende im öffentlichen Raum', Rechtsgutachten im Auftrag der Eidgenössischen Kommission gegen Rassismus EKR, February 2017.

³⁹¹ Swiss Center of Expertise in Human Rights (SCHR), 'Freiheitsentzug und Freiheitsbeschränkung bei ausländischen Staatsangehörigen - Dargestellt am Beispiel der Unterbringung von Asylsuchenden in der Schweiz', written by Künzli Jörg/Frei Nula/Krummen David, 21 August 2017.

Remote locations

The location of centres is very remote. A good example is the **Boudry** and **Chevrilles** centres, which are characterised by their isolation. Thus, the Boudry centre is located in a complex that includes the asylum processing centre and a psychiatric hospital. It is several kilometres away from the surrounding village and about 15km from the city of Neuchâtel. The waiting and departure centre of Chevrilles is much more isolated. In order to get there by public transport, it is necessary to take a 20-minute bus ride from the city of Fribourg. Once arrived in the village of Chevrilles, it still takes a 20-minute walk to reach the centre. There are two buses per hour driving to both centres, asylum seekers receive every week a single ticket to go to Neuchâtel or Fribourg and 3 CHF of pocket money per day, with the exception of persons from EU/EFTA countries or countries exempt from the visa requirement who don't receive any pocket money.

It is more difficult to distinguish between deprivation of liberty and restriction of liberty in the case of remote locations, given the lack of possibilities of social contacts with people outside the centre. The location of the centre is decisive for the question of whether restrictions amount to *de facto* deprivation of liberty. Accommodation on a mountain pass, for example, from where the nearest lively town can only be reached by means of transport that asylum seekers cannot afford, is generally to be considered a deprivation of liberty in accordance with the case-law of the ECtHR.³⁹² In individual cases, the characteristics of a specific accommodation can lead to difficulties even in the case of less remote centres. Such is the case if, for example, a person's physical condition makes it more difficult to establish social contacts: this could happen to vulnerable persons such as children, the elderly or physically handicapped persons. Not only social contacts, but also access to legal assistance can be rendered difficult by the location of the centre.

The problem arises in particular with the remote locations of the federal asylum centres, which are usually located in former military facilities outside of larger towns and villages.

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

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

- | | |
|---|---------------|
| 1. Number of federal reception centres: | 6 |
| 2. Total number of places in the federal reception centres: ³⁹³ | 2,862 |
| 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 six federal asylum 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.

³⁹² ECtHR, *Stanev v. Bulgaria*, Application No 36760/06, Judgment of 17 January 2012.

³⁹³ This figure includes the places in the following types of accommodation: the six federal asylum centres, the so-called remote locations centres and the two international airports: Information provided by the SEM, 12 February 2020.

As a general comment on the reception issue, it should be noted that cantonal reception structures were reorganised in 2007, after the FDJP 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. Many cantons subsequently had to increase their reception capacity, and the use of underground bunkers increased. However, as the number of asylum seekers have further decreased in 2019, there is currently no longer a challenge regarding reception capacity.

While the Federal Supreme Court held that reception conditions in a civil protection shelter do not violate the human dignity of persons under emergency aid,³⁹⁴ 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. As asylum claims have notably decreased since 2016, the situation seems to have improved as the average occupancy rate at the end of 2019 was 52% in the six asylum regions.³⁹⁵

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

1.1. Federal asylum centres³⁹⁶

After entering Switzerland, persons in need for protection mostly go to one of the 6 federal centres with processing facilities to lodge an asylum application and thereafter, one of the 10 federal asylum centres without processing facilities.³⁹⁷ Asylum seekers spend the first weeks/months (up to 140 days) in those centres, until they are assigned to a canton).³⁹⁸

The centres with processing facilities are the following:

- ❖ **Altstätten** (Canton of St. Gallen);
- ❖ **Basel** (Canton of Basel);
- ❖ **Boudry** (Canton of Neuchâtel);
- ❖ **Zurich** (Canton of Zurich);
- ❖ **Chiasso** (Canton of Ticino); and
- ❖ **Berne** (Canton of Berne).

The accommodation capacity of all the sixteen federal centres was 2,772 beds. In 2019, the average occupancy rate of the six federal centres with processing facilities was 77.6%.³⁹⁹

The running of the centres and security matters are entrusted to private companies.⁴⁰⁰ The federal asylum 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](#).

³⁹⁴ Federal Court, Decision 8C_912/2012, 22 November 2013. For a comment on that decision, see Swiss Centre of Expertise in Human Rights, 'Héberger un requérant d'asile débouté dans des abris de protection civile est conforme au droit', 12 March 2014, available (in French) at: <http://bit.ly/1CsdPrX>.

³⁹⁵ Information provided by the SEM, 12 February 2020.

³⁹⁶ Legal provisions related to the management of the reception and processing centres are in the Asylum Act, the Ordinance of the FDJP on the management of federal reception centres in the field of asylum and internal regulations of the registration centres. Further information is available on the website of the SEM, at: <http://bit.ly/1dfDc9V>.

³⁹⁷ The person is transferred to the centre without processing facilities in principle, when the main investigative measures requiring the presence of the applicant (mainly hearings) have been carried out or, in the case of a decision, at the expiry of the time limit for appeal.

³⁹⁸ Article 24 (4) AsyIA.

³⁹⁹ Only at Federal level: Calculations based on the information provided by the SEM, 12 February 2020.

⁴⁰⁰ The SEM delegates the task of managing the operation of reception and processing centres to third parties under Article 24b (1) AsyIA. Thus, the ORS Service AG (asylum regions Western Switzerland, French speaking Switzerland and Berne) and AOZ Asyl Organisation Zürich (asylum regions Eastern Switzerland, Ticino and Central Switzerland, Zurich) are responsible for running the centres. Security services at the

1.2. Remote locations

In addition to the 10 federal centres without processing facilities in activity at the end of 2019, there are still a number of cantonal structures, whose condition and organisation can vary considerably from one canton to another. While in February 2016, there were approximately 20 remote locations in different regions, their number was only 12 at the beginning of 2017.⁴⁰¹

Most of the remote locations are located in former military shelters. Federal military buildings and installations may be used without cantonal or communal authorisation to accommodate asylum seekers for a maximum of three years provided the change in use does not require substantial structural measures and there is no significant change in the occupancy of the installation or building.⁴⁰² The National Commission for the Prevention of Torture (NCPT) considers that these military installations are only suitable for short stays of up to three weeks.⁴⁰³ As in the federal asylum centres, the regime is semi-closed.

With the significant drop in asylum applications over the last 3 years, several cantonal structures have been closed. Reception and accommodation conditions nevertheless still seem unsatisfactory.

lodges are provided by the companies Securitas AG (asylum regions French speaking Switzerland, Eastern Switzerland, Zurich, Ticino and Central Switzerland) and Protectas SA (asylum regions Western Switzerland and Zurich). Finally, the mandates of patrols operating in the vicinity of the centres have been awarded to three companies: Securitas AG (asylum regions French speaking Switzerland, Zurich) Protectas SA (asylum regions Western Switzerland and Berne) and Verkehrsüberwachung Schweiz (asylum regions Eastern Switzerland and Ticino and Central Switzerland).

⁴⁰¹ SEM, *Asylum regions and federal asylum centres*, available at: <https://bit.ly/2TbsxWI>.

⁴⁰² Article 24c AsyIA.

⁴⁰³ NCPT, *Report 2014*, 8, para 26.

1.3. Specific centres for uncooperative asylum seekers

The opening of specific centres for uncooperative asylum seekers is foreseen by the Asylum Act under Article 24a and Article 15 OA1. The first specific centre opened its doors in Les Verrières, Canton of **Neuchâtel** but was temporarily closed on 1 September 2019 after nine months with in average two inhabitants.⁴⁰⁴ Plans for a second specific centre were put on hold because of the low numbers of asylum applications. The question of a possible re-opening of the centre will be evaluated in spring 2020, according to the SEM (for more information and a definition of specific centres, see section on [Reduction or Withdrawal of Reception Conditions](#)).

1.4. 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.)

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.⁴⁰⁵

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?⁴⁰⁶ 45 days
3. Are unaccompanied children ever accommodated with adults in practice? ☒ Yes ☐ No

2.1. Conditions in federal reception centres

In the federal asylum centres, asylum seekers are usually housed in single-sex dorms. 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. 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.⁴⁰⁷ 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

⁴⁰⁴ Conseil Federal, Asile: Fermeture temporaire du centre spécifique de la Confédération des Verrières, available (in French) at: <https://bit.ly/2uu87OK>.

⁴⁰⁵ Ibid, 20.

⁴⁰⁶ Information provided by the SEM, 22 February 2019.

⁴⁰⁷ Article 4(1) Ordinance of the FDJP on the management of federal reception centres in the field of asylum.

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.⁴⁰⁸

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.⁴⁰⁹

In a January 2019 report, the NCPT highlighted several shortcomings relating to the conditions of accommodation and care of asylum seekers in federal reception centres.⁴¹⁰ Based on monitoring visits carried out between 2017 and 2018, the report notes the absence of a specific procedure to identify and care for particularly vulnerable persons such as potential victims of torture or human trafficking. In addition, the Commission expressed concern that unaccompanied minors were regularly accommodated in rooms with adults. It also recalled the importance that disciplinary measures taken against asylum seekers should be pronounced in writing and that only SEM officers should be empowered to pronounce them. Finally, according to the Commission, access to adequate psychiatric care remains insufficiently guaranteed.

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.⁴¹¹ Asylum seekers may voluntarily help to serve meals or help in the kitchen. They are not allowed to cook their own food in the federal centres, but specific diets are mostly respected.

There is a chaplaincy service in every federal centre. Protestant and catholic chaplains spiritually accompany asylum seekers. They often play an important social role, as they provide an open ear to asylum seekers' worries, and they sometimes call attention to problems in the centres. Between July 2016 and December 2018 a pilot project with Muslim chaplains was set up in the test centre in **Zurich**.⁴¹² Despite a very positive evaluation of the project,⁴¹³ which highlighted the relevance of offering spiritual support to asylum seekers of the Muslim faith, the project ended in Zurich and was not extended to other centres of the Confederation.

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.⁴¹⁴ The occupational programmes must respond to a local or regional general interest of the town or municipality. They must not compete with the private

⁴⁰⁸ 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 FDJP on the management of federal reception centres in the field of asylum.

⁴⁰⁹ According to Article 4 of the Ordinance of the FDJP, security personnel is allowed to seize travel and identity documents, dangerous objects, assets, electronic devices that may disturb the peace, alcohol, drugs and food. Prohibited weapons and drugs are given to the police immediately.

⁴¹⁰ National Commission for the Prevention of Torture (NCPT), Synthèse du rapport de la Commission nationale de prévention de la torture sur ses visites dans les centres fédéraux pour requérants d'asile en 2017 et 2018, 11 January 2019, available in French at: <https://bit.ly/2BLzGDx>.

⁴¹¹ The SEM delegates the task of managing the operation of reception and processing centres to third parties under Article 24b (1) AsyIA.. Thus, the ORS Service AG (asylum regions Western Switzerland, French speaking Switzerland and Berne) and AOZ Asyl Organisation Zürich (asylum regions Eastern Switzerland, Ticino and Central Switzerland, Zurich) are responsible for running the centres. Security services at the lodges are provided by the companies Securitas AG (asylum regions French speaking Switzerland, Eastern Switzerland, Zurich, Ticino and Central Switzerland) and Protectas SA (asylum regions Western Switzerland and Zurich). Finally, the mandates of patrols operating in the vicinity of the centres have been awarded to three companies: Securitas AG (asylum regions French speaking Switzerland, Zurich) Protectas SA (asylum regions Western Switzerland and Berne) and Verkehrsüberwachung Schweiz (asylum regions Eastern Switzerland and Ticino and Central Switzerland).

⁴¹² SEM, 'Pilotprojekt für muslimische Seelsorge in Bundesasylzentren gestartet', 4 July 2016, available (in German) at: <http://bit.ly/2j0EUDT>.

⁴¹³ SEM, 'Aumônerie musulmane au centre pilote de Zurich: le projet pilote donne de bons résultats', 16 February 2018, available (in French) at: <https://bit.ly/2GkVwSm>.

⁴¹⁴ Article 6a Ordinance of the FDJP.

sector. They include work in protection of nature and the environment or for social and charitable institutions. Examples are cutting trees or hedges, fixing rural pathways, cleaning public spaces. There is no right to participate in occupational programmes. In case of shortage of places in the occupational programmes, places are distributed according to the principle of rotation of the participants. An incentive allowance may be paid to the asylum seeker. This amount is very low and can therefore not be compared to a salary for a regular job. Thus, remuneration is limited to CHF 5 per hour, a maximum of CHF 30 per working day and a maximum of CHF 400 per month. Persons staying in a specific centre for uncooperative asylum seekers receive the incentive allowance in the form of non-cash benefits.

2.2. Conditions in cantonal-level facilities

As explained under the section on [Types of Accommodation](#), reception conditions differ largely from one canton to another. 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. Generally speaking, asylum seekers benefit from less restrictive measures in the cantonal centres compared to the federal centres, as they mostly can go out at their convenience, or cook for themselves for instance.

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

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

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

Since 1 March 2019, asylum seekers staying in a federal processing centre are no longer allowed to engage in a gainful employment.⁴¹⁵ Asylum seekers who are entitled to pursue gainful employment in accordance with the immigration provisions (who are mainly persons already living in Switzerland with a residence permit and who submit a subsequent asylum application) or who participate in charitable occupational programmes, however, are not subject to the ban on employment.⁴¹⁶

⁴¹⁵ Article 43(1) AsylA, as amended on 25 September 2018, BBl 2015 7181 and AS 2018 2855.

⁴¹⁶ Article 43(4) AsylA, as amended on 25 September 2018, BBl 2015 7181 and AS 2018 2855.

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? ⁴¹⁷ | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

2.1. Compulsory education

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

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. As a result, the federal asylum centres in each region should determine with the competent cantonal authority the modalities for schooling. Thus, there are significant differences in the location, maximum age of admission, number of hours of classes per week and their content between the different centres. As a matter of example, children under 16 years of age housed in the **Boudry** centre attend classes inside the centre.

The diversity in terms of educational modalities is also found in the cantonal structures. 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 in principle no access to compulsory education.

2.2. Apprenticeship and studies

Lack of access to further education, in the form of an apprenticeship or studies, is an important problem in the integration process of asylum applicants over 16. Although the legislation allows asylum seekers to enter education programmes, many practical and administrative impediments deter potential employers to hire asylum seekers whose procedure has not been concluded yet. As asylum procedures

⁴¹⁷ Access is very limited in the federal reception and processing centres.

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 or to be accepted in a higher school,⁴¹⁸ they can also be confronted with the problem of financing their studies as they are excluded from the public scholarship programmes. Financing of post-compulsory education for asylum seekers is therefore highly dependent on the goodwill of cantonal and municipal authorities.

Some cantons adopted specific measures to bridge the educational gap that asylum seekers between 16 and 18 face. Such non-compulsory measures are highly dependent on the communal and cantonal 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.⁴¹⁹ 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](#)).

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.⁴²⁰ This means that every asylum seeker has health insurance. The Asylum Act provides specific dispositions that allow cantons to limit the choice of insurers and service providers for asylum seekers. Psychological or psychiatric treatment is covered by health insurance. Health care costs are included in the social assistance and are therefore under cantonal competence from the moment of the assignation to the canton. Since 1 August 2011, rejected and dismissed asylum seekers who have a right to emergency aid are also affiliated to a health insurance.⁴²¹

According to the health concept implemented by SEM,⁴²² all federal asylum centres benefit from a health personnel service, composed mainly of nurses and administrative staff, which is run by private management companies mandated by the Confederation. The medical service is the first point of

⁴¹⁸ 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.

⁴¹⁹ Article 8 Ordinance of the FDJP on the management of federal reception centres in the field of asylum.

⁴²⁰ Federal Act on Health Insurance, Loi fédérale du 18 mars 1994 sur l'assurance-maladie (LAMal), RS 832.10.

⁴²¹ Article 92d Ordinance on Health Insurance of 28 June 1995, RS 832.102, in connection with Article 82a AsylA and Article 105a Federal Act on Health Insurance.

⁴²² OFSP/SEM, Soins médicaux pour les requérants d'asile dans les centres de la Confédération et les centres d'hébergements collectifs cantonaux, 30 October 2017, available (in French) at: <https://bit.ly/2HBGqX4>.

contact for asylum-seekers regarding the various health problems they may encounter. Upon arrival in the centre, asylum seekers must submit to a compulsory medical briefing within 3 days of arrival at the centre. Carried out by means of a computer programme available in the main languages spoken by asylum seekers, the main objective of this information session is the detection, prevention and treatment of transmissible and infectious diseases. The concept of health in federal structures focuses mainly on acute and urgent health problems. At the request of an asylum seeker or if the medical staff deems it necessary, an initial medical consultation within the centre may be scheduled in order to determine whether the asylum seeker should be redirected to a doctor or a specialist but also to make an initial assessment of his or her state of health. This "triage" or gatekeeping process is carried out not only for this first optional consultation but also during the entire stay of the asylum seekers in the federal structures.

Under the new asylum procedure in force throughout Switzerland since March 2019, medical care and the establishment of medical facts in the examination of asylum applications appear to be one of the main issues induced by the acceleration of procedures (see: [Use of medical reports](#)).

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

1. Reception in federal asylum centres

As discussed in the chapter on [Guarantees for vulnerable groups](#) national law does not define the categories of persons who are considered vulnerable. Even though some provisions are in place to support some categories of asylum seekers (victims of gender-based violence and unaccompanied minors) during the asylum interview, the practice related to the conduct of the interview and the credibility assessment is not always consistent. Furthermore, decision making of the SEM and jurisprudence concerning vulnerable groups do not always live up to the standards set by international guidelines and case-law.

As already mentioned, all but very complex asylum cases will be assessed and decided (including the appeal) within 140 days in the so called accelerated procedure. During this time, all asylum seekers (including vulnerable ones) are accommodated in a federal asylum centre with processing facilities or sometimes (mainly if the case is assessed under the Dublin Regulation) in a federal asylum centre without processing facilities.⁴²³ Separate housing facilities exclusively reserved for vulnerable asylum seekers are not provided in the accelerated procedure. However, separate buildings, wings, floors or rooms for families, women, minors or other vulnerable persons do exist – albeit to different extents - within the federal asylum centres. Special solutions (usually foster care) are found for unaccompanied minors under the age of 12.

The SEM is responsible for the accommodation and supervision of asylum seekers as well as security in and around the centres. It entrusts these tasks to third parties, with which it concludes service agreements. Each accommodation has its own internal regulations. The SEM published the call for tenders related to the accommodation and care in the centres in 2019. Mandates run from the beginning of 2020 but, as of late 2019, not much detail has been disclosed on the measures that will be taken to ensure that all asylum seekers – and especially vulnerable ones, will be properly accommodated.

⁴²³ See the SEM webpage for further details, available at: <https://bit.ly/2VXusQ4>

The normative framework is provided by the Order concerning the use of Federal Reception Centres and accommodations inside the airports (*Ordonnance du DFJP relative à l'exploitation des centres de la Confédération et des logements dans les aéroports*).⁴²⁴ Such Order specifies that centres are not open and lists the categories of visitors that are allowed inside the centres (mostly SEM personnel, and legal representatives. These latter, though, only have access to the rooms reserved for interviews and meetings). Civil society's representatives may be granted access upon request to the SEM (Art. 2), which also handles more generally the exchanges between the former and the asylum seekers (Art. 7). Access to health care, schooling and 'occupational programs' should be granted, as well as access to communication tools such as mobile phones and the internet (Art. 8, 9, 10 and 13).

The Order further provides that asylum seekers are to be accommodated in single-sex dormitories, and that families are accommodated in the same dormitory. Furthermore, families should also be accommodated in premises "which allow a common life and which take into account, as much as possible, the need to have a private sphere". As far as vulnerable groups are concerned, the Order contents itself to state that the specific needs of vulnerable persons, including unaccompanied minors, will be taken into account during their accommodation and supervision, and that unaccompanied minors will be accommodated away from adults.

Almost one year after the entry into force of the new procedure, there seems to be wide margins for improvement. For instance, no special accommodation is granted to highly traumatised people, and their access to healthcare and health assistance is limited in practice through different factors (see the chapter on [Guarantees for vulnerable groups](#) and the [Use of medical reports](#)). When it comes to LGBTQI* and female asylum seekers, the solutions envisaged do not always fully account for the great importance of ensuring protected spaces (not only dormitories), separate from male applicants. This specific situation of women and girls was addressed in a political intervention at the Swiss Parliament, further to which a broad investigation was launched to verify whether the accommodation conditions for women inside the federal centres were compliant with the international standards, and especially with the Istanbul Convention. In October 2019 the Government published a report,⁴²⁵ according to which there is scope for improvement in different areas, such as training and awareness raising for staff, information and support for asylum seekers and the identification of victims of sexual violence.

The reception and accommodation of unaccompanied children also raises concern. In January 2019, a report was published on the situation in the two test centres of **Basel** and **Zurich**, with multiple recommendations for improvement addressed to the SEM.⁴²⁶ According to the information provided by SEM officials, some of these recommendations (for instance, the need of having social workers present inside the centres to accompany minors in their day-to-day tasks and challenges, the need to ensure separate rooms for the minors to play or to rest etc) should be implemented from 2020, but as of late 2019, no more specific information on the time schedule and implementation measures have been provided.

Thus, in some centres minors do not have access to dedicated spaces where they can rest or play; that, from the age of 16 onwards they generally no longer have access to schooling, but that, unfortunately, occupational programs are not always up and running; that contact with their persons of trust is not always facilitated. In its report regarding federal asylum centres, the NCPT found that in some cases unaccompanied minors were still accommodated with adults.⁴²⁷ These observations related to federal asylum centres in use before the new Asylum Act entered into force, but caseworkers working now in the centres confirm that this can still happen, especially because of the difficulties in assessing the

⁴²⁴ Ordonnance du DFJP relative à l'exploitation des centres de la Confédération et des logements dans les aéroports, available at: <https://bit.ly/2v6d0xE>

⁴²⁵ Swiss Confederation, *Rapport sur la situation des femmes et des filles relevant du domaine de l'asile*, October 2019, available (in French) at: <https://bit.ly/2w01y6Z>.

⁴²⁶ Zurcher Hochschule fur angewandte Wissenschaften, *Evaluation des UMA-Pilotprojektes*, Januar 2019, available (in German) at: <http://bit.ly/37QD3WV>.

⁴²⁷ Report regarding federal centres for asylum, 2017-2018, §84

asylum seekers' age. In any event, not all centres accommodate unaccompanied minors in separate buildings and therefore in some cases unaccompanied minors are just on a separate floor, which cannot always ensure separation between them and the adults.

2. Reception in cantonal centres

Asylum seekers, including vulnerable ones and unaccompanied minors, are transferred to a canton if their asylum application has been granted, if they have been given a temporary permit or if their asylum procedure is still pending, but the case is complex and needs more time (extended procedure). Minors below 12 are also assigned to cantonal accommodations. In all these cases, asylum seekers are thus assigned to reception facilities, for whose maintenance and regulation the assigned canton will be responsible.

While the SEM used to assign unaccompanied children to cantons in which specific structures were set up, it now includes all cantons in the reception of unaccompanied minors.⁴²⁸ Due to the increase in the number of unaccompanied minors 2014 and 2015, several cantons increased their reception capacities:⁴²⁹ for example the canton of **Argovia** opened a new specialised centre for unaccompanied minors (who had previously been accommodated together with adults) in spring 2015,⁴³⁰ the canton of **Berne** opened additional specialised reception centres for unaccompanied minors in autumn 2014,⁴³¹ January 2016,⁴³² and autumn 2016,⁴³³ as **Schwyz** did so in August 2016.⁴³⁴ **Lucerne** ruled an emergency centre between 2015 and 2017,⁴³⁵ which was subsequently replaced by a specific centre that opened its doors in November 2017 in **Kriens**. 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. The canton of **Geneva** foresees the implementation of a new specific centre in 2019.⁴³⁶

Several organisations provide assistance to traumatised asylum seekers. The Outpatient Clinic for victims of torture and war (*Service ambulatoire pour victimes de la torture et de la guerre*) in **Bern** offers a wide range of therapies that combine social work and different treatments for persons traumatised by extreme violence.⁴³⁷ Similar services are available in **Geneva**, **Zurich**, **St. Gallen** and the Canton of **Vaud**.⁴³⁸ However, the capacities of these institutions are insufficient compared to the needs. According to national law,⁴³⁹ the SEM may financially support the setup of facilities for the treatment of traumatised asylum seekers, in particular the teaching and research in the field of specialised supervision of those asylum seekers.

⁴²⁸ Konferenz der kantonalen Sozialdirektorinnen und Sozialdirektoren (SODK), Empfehlungen der SODK zu unbegleiteten minderjährigen Kindern und Jugendlichen aus dem Asylbereich, 20 May 2016, available at: <http://bit.ly/2jnmj4JE>.

⁴²⁹ For a global and regularly updated view of the reception facilities for unaccompanied children in the cantons, see: Alliance for the Rights of Migrant Children, *Cartographie cantonale des structures de prise en charge pour MNA*, available at: <http://bit.ly/2Fh73hA>.

⁴³⁰ Canton of Argovia, 'Unterkunft für unbegleitete minderjährige Asylsuchende in Aarau', 29 April 2015, available (in German) at: <http://bit.ly/1FQ5k1f>.

⁴³¹ Canton of Berne, 'Zusätzliche Unterkunftsplätze für unbegleitete minderjährige Asylsuchende in Belp', 23 October 2014, available (in German) at: <http://bit.ly/1j9xief>.

⁴³² Canton of Berne, 'Eröffnung eines Ankunftsentrums in Huttwil', 15 December 2015, available (in German) at: <http://bit.ly/2jt3kSJ>.

⁴³³ Canton of Berne, 'Zusätzliche Unterbringungsplätze in Beatenberg', 11 July 2016, available (in German) at: <http://bit.ly/2j0EEF9>.

⁴³⁴ Canton of Schwyz, 'Kanton führt temporäre Wohngruppe für unbegleitete minderjährige Asylsuchende', 30 June 2016, available (in German) at: <http://bit.ly/2jt4PjL>.

⁴³⁵ Canton of Lucerne, 'Neues Zentrum für unbegleitete minderjährige Asylsuchende in Kriens', 28 October 2015, available (in German) at: <http://bit.ly/2jmlVCy>.

⁴³⁶ Le Courrier, 'Nouveau foyer pour MNA à Genève: L'encadrement proposé ne convainc pas encore', 8 June 2017, available in French at: <http://bit.ly/2ETX1Sq>.

⁴³⁷ Swiss Red Cross, *Service ambulatoire pour victimes de la torture et de la guerre*, available (in French) at: <http://bit.ly/1KcqxTR>.

⁴³⁸ For contacts and more information, see the website Support for Torture Victims, available at: <http://bit.ly/1IdLMmq>.

⁴³⁹ Article 44 AO2.

In a report published in 2016 and subsequently updated in 2018, it was highlighted that the reception and accommodation conditions were particularly worrisome for LGBTI asylum seekers.⁴⁴⁰

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

With the entry into force of the new legislation in March 2019, all asylum seekers are provided with information on the asylum procedure but also on reception, accommodation, health insurance, allowances etc. They also watch a short film that presents the main steps of the procedure and the intervening actors. As they also have the opportunity to address questions to the counselling persons, it can be stated that they are better informed and have a better understanding of the asylum process than under the old procedure.

The asylum procedure, as well as the rights and obligations of foreigners according to their status is outlined on the Swiss Refugee Council website, in German and in French, partially also in English.⁴⁴¹

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.⁴⁴²

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 8:00pm, only in rooms provided for this purpose. The SEM can change the visit schedule for organisational reasons. Visitors have to check in with the reception desk on arrival and departure and identify themselves. They are subjected to the same security rules as asylum seekers. The staff in charge of security is therefore empowered to search them and seize dangerous objects and alcoholic beverages for the duration of their visit.⁴⁴³

Federal reception centres are equipped with public telephones, as well as internet.⁴⁴⁴ Telephone cards must be bought by asylum seekers from their own limited budget. It should also be noted that there are usually very few 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.

Legal representation

⁴⁴⁰ Asile LGBT Genève, *Recherche-action sur l'accueil des réfugié.e.s LGBTI à Genève*, January 2019, available (in French) at: <https://bit.ly/32g6ArR>.

⁴⁴¹ Swiss Refugee Council, available (in French) at: <https://bit.ly/2SAaWXR>.

⁴⁴² Article 3 Ordinance of the FDJP.

⁴⁴³ Article 16 Ordinance of the FDJP.

⁴⁴⁴ Article 13 Ordinance of the FDJP.

In theory, legal representatives could enter the federal asylum centre during visiting hours. This access is granted as the legal representation is foreseen by the law. However, in practice, applicants get appointments at the offices of the legal representation, which implies that access to legal representation varies depending on the geographical location of the infrastructure and transport modalities. To the best of our knowledge and with the exception of the federal centre in Zurich, the legal protection has no direct access to the accommodation buildings (see chapter on [Regular procedure](#)).

NGOs

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

G. Differential treatment of specific nationalities in reception

There is no difference in treatment in reception based on nationality. The reception standards are the same as for asylum seekers of other nationalities with the notable exception of the distribution of pocket money. Thus, nationals of **countries exempt from the visa requirement** do not receive the 3 CHF granted by the SEM to asylum seekers housed in the federal centres.⁴⁴⁵

⁴⁴⁵ SEM, *Stratégie de traitement du SEM dans le domaine de l'asile*, March 2019, available (in French) at: <https://bit.ly/37NwrIJ>.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2018:	2,155
2. Number of asylum seekers in detention at the end of 2018:	Not available
3. Number of detention centres:	At least 22
4. Total capacity of detention centres:	352

Immigration detention in Switzerland is applied for the purpose of removal, as no general detention of asylum seekers is foreseen. The administrative detention of asylum seekers *during* the asylum procedure is rarely practiced (this is only possible in the form of Detention in preparation for departure and Temporary detention in some exceptional cases), while the other detention types are possible only *after* a removal decision has been issued. Therefore, most asylum seekers are detained after their procedure has ended with a decision of removal, or transfer according to the Dublin III Regulation.

In Switzerland, the cantons are competent to enforce removals as well as to use coercive measures aiming at facilitating such enforcement. This means that cantonal authorities are responsible for ordering detention, which leads to a significant diversity of detention practices across the country.⁴⁴⁶ Against a cantonal detention order, an appeal can be filed to the cantonal appeal instances. The Federal Supreme Court is responsible for examining appeals against decisions issued by the highest cantonal appeal instance.

The cantons are also in charge of the organisation of detention in terms of capacity and conditions, which results in a high number of facilities used for the purpose of administrative detention and a certain diversity of detention conditions. There are at least 22 detention facilities across Switzerland including separate sections within prisons, with a total capacity of 352 places.⁴⁴⁷ Many of the cantons are actually using normal prisons or other penal detention facilities for the detention of asylum seekers (see section on [Detention conditions](#)).

1. Statistics on detention

According to data provided by SEM in February 2020, detention was ordered against asylum seekers in 2,155 cases (out of a total of 3,604 immigration detention orders including non-asylum seekers). The SEM differentiates between temporary detention under Art. 73 (which cannot exceed 3 days) that concerned 399 detention orders regarding asylum seekers (170 of whom were Dublin cases) and other forms of pre-removal detention that concerned 1,756 orders regarding asylum seekers (994 of which were under the Dublin procedure).⁴⁴⁸ The data should be read with caution for the following three reasons:

- ❖ Immigration detention in Switzerland is applied for the purpose of removal. As a consequence, the available data on pre-removal detention often concerns both asylum seekers and irregular migrants having not applied for asylum. For this report, it has been possible to obtain data on asylum seekers specifically. When the available data concerns immigration detention in general, this will be specified.

⁴⁴⁶ This has been highlighted by the Parliamentary Control of Administration in the cited report. See also Achermann et al, "Administrative Detention of Foreign Nationals in Figures," in a nutshell #12, January 2019, <http://bit.ly/2wDdHik>.

⁴⁴⁷ Swiss Competence Centre for the Execution of Criminal Penalties, *Monitoring des capacités de privation de liberté*, February 2019, 27-34.

⁴⁴⁸ Information provided by the SEM, 12 February 2020.

- ❖ Since the entry into force of the new asylum procedure on 1 March 2019, the SEM cannot order detention anymore, so now only the cantons are competent for ordering detention.⁴⁴⁹

Although the cantons have a legal obligation to report all cases of administrative detention to the SEM since 2008,⁴⁵⁰ the registration of the relevant information and quality of registered information present several deficiencies as reported by a recent study commissioned by the Parliamentary Control of the Administration.⁴⁵¹

- ❖ The definition of detention of asylum seekers in Swiss law is not totally clear. For instance, temporary detention (up to three days) is not always considered detention. However it is considered a form of detention of asylum seekers for the scope of this report.

The Global Detention Project classifies accommodation in the transit zones of **Geneva** and **Zurich** airports as well as the Federal Asylum Centres as detention facilities.⁴⁵² 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 accommodation in the transit zones as detention, given that asylum seekers are locked in and their contacts to the outside world are significantly limited.⁴⁵³

Regarding the federal asylum centres, the assessment depends on the concrete situation. Some commentators qualify 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.⁴⁵⁴ With the introduction of the new asylum procedure, the maximum duration of stay in Federal Asylum Centres has increased to 140 days. Moreover, some of the federal asylum centres without processing facilities (also called “departure centres”) such as **Glaubenberg**, **Giffers/Chevilles**⁴⁵⁵ or **Flumenthal** are located in particularly isolated areas.

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 as being close to a deprivation of liberty.

It is also not clear whether persons in a Dublin procedure, after the order of the transfer to another Member State, are to be counted as asylum seekers according to the *Cimade and GISTI* ruling of the CJEU.⁴⁵⁶ Following the CJEU’s conclusion, for the purpose of this report these persons are considered asylum seekers. Therefore, this chapter includes detention of persons with a Dublin decision.

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

The European Court of Human Rights (ECtHR) set out the relevant key criteria for the assessment of *de facto* detention, these being namely the possibility of movement and the degree of social contact. In *Khlaifia and Others v. Italy*, the ECtHR stated that applicants had been *de facto* deprived of their liberty

⁴⁴⁹ Article 80(1) and 80 (1bis) Foreign Nationals and Integration Act (FNIA).

⁴⁵⁰ Article 15a Decree on execution of removals and expulsion of foreigners, RS 142.281.

⁴⁵¹ Guggisberg, Jürg, Aurélien Abrassart and Severin Bischof. Administrativhaft im Asylbereich: Mandat «Quantitative Datenanalysen». Final report for the attention of the Parliamentary Control of the Administration, 16 October 2017.

⁴⁵² Global Detention Project, Switzerland immigration detention profile, last update 2011, available at: <https://bit.ly/3bocydt>.

⁴⁵³ Prof. Dr. Stefan Trechsel, ‘Die Unterbringung von Asylsuchenden zwischen Freiheitsbeschränkung und Freiheitsentzug’, ASYL 3/14, 3ff. Reference is made to ECtHR, *Amuur v France*, Application No 19776/92, Judgment of 25 June 1996.

⁴⁵⁴ *Ibid.*

⁴⁵⁵ A visit report by an independent observer can be found at: <http://bit.ly/38VCg8A>.

⁴⁵⁶ CJEU, Case C-179/11 *Cimade and GISTI v Ministre de l’Intérieur*, Judgment of 27 September 2012.

in the CSPA of Lampedusa and in the ships where they were held involuntarily. The restrictions imposed on the applicants violated Article 5(1) ECHR as detention took place without any formal decision. Articles 5(2) and 5(4) ECHR were also violated as the applicants were not provided with the necessary information on the legal bases nor with an effective right to challenge their detention.⁴⁵⁷

In Switzerland, there are ongoing discussions on the distinction between deprivation and restriction of liberty. The term *de facto detention* has not yet been used in case law. As said before, there are good legal reasons for considering the accommodation in the transit zone during the airport procedure *de facto* detention. Indeed, legally speaking, this form of accommodation can in some cases be qualified as deprivation of liberty.⁴⁵⁸ The same could be said for asylum centres in remote locations, which provide for limited possibilities of access and movement outside the centres. In the past, several authors dealt with the different restrictions imposed on the asylum seekers' freedom of movement and, in particular, with the framing of their accommodation from a legal perspective. This definition effort is particularly relevant following the entry into force of the new legal provisions on 1 March 2019, which entail new forms of accommodation (see section on [Place of detention](#)). As asylum seekers now stay in federal centres for longer periods, the maximum length being fixed at 140 days (Article 24(4) of the Asylum Act), the conditions of their stay and particularly the restrictions on their freedom of movement become all the more relevant for the debate about *de facto* detention.

The enforcement of the new asylum procedure has seen the creation of new types of federal asylum centres next to the six centres where the asylum applications can be submitted. In particular, federal asylum centres without processing facilities (also called "departure centres") are used for the accommodation of asylum seekers whose applications result in or are highly likely to result in a Dublin decision, as well as for those receiving a negative decision within the accelerated procedure. Those centres are often located in particularly isolated areas, as in the case of Glaubenberg, Giffers/Chevilles or Flumenthal. Those areas are poorly served by public transportation, which makes it difficult to receive visitors or leave the area of the centre. The other new type of asylum centres are the "special centres" for "asylum seekers who pose a significant danger to public safety and order or who significantly disrupt the operation and security of federal centres" (Article 24a Asylum Act). A first such centre opened in December 2018 in Les Verrières, Canton of **Neuchâtel**. However, the Federal Council decided to temporarily close it on 1 September 2019, because it had been largely under-occupied.⁴⁵⁹ Transfer to these centres cannot be subject to appeal and persons can remain in these centres during the whole procedure or for the maximum duration of 140 days.

In a legal opinion addressed to the attention of the Federal Commission against Racism, Kiener and Medici had stated that a restrictive exit regime and the remote location of centres are particularly sensitive.⁴⁶⁰ The possibilities of moving from one place to another, establishing social contacts and shaping everyday life are very limited. The Federal Court points out that reduced exit possibilities represent a significant encroachment on personal freedom, especially if the restrictions last longer than a few days.⁴⁶¹ This also applies to indirect interventions such as a time consuming and thus deterrent control procedures at the exit.

In addition, accommodation in a federal asylum centre can involve deprivation of liberty in the form of sanctions. According to Article 25 of the Decree on the operation of federal centres and accommodation at airports, disciplinary measures include the prohibition of exit the centre for one or several days. This topic is further discussed in section [Border procedure \(border and transit zones\)](#).

⁴⁵⁷ ECtHR, *Khlaifia and others v. Italy*, Application No 16483/12, Judgment of the Grand Chamber of 15 December 2016.

⁴⁵⁸ Spescha et al. 2019: Kommentar Migrationsrecht, page 676, citing BGE 123 II 193, c. 3c; BGE 134 I 140, c. 3.2 and decision of the ECHR *Amuur vs. France*, Nr. 1977/92.

⁴⁵⁹ Announcement of SEM on 7 August 2019, available (in French) at: <https://bit.ly/2T4h3mc>

⁴⁶⁰ Kiener Regina und Medici Gabriela, 'Asylsuchende im öffentlichen Raum', Rechtsgutachten im Auftrag der Eidgenössischen Kommission gegen Rassismus EKR, February 2017.

⁴⁶¹ Federal Court, Decision BGE 128 II 156, 9 April 2002, para 2c.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

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

A general remark about the competence for ordering detention orders is necessary before outlining the different types of administrative detention existing under Swiss law. Since the entry into force of the new asylum procedure on 1 March 2019, only the cantons are competent to order detention, except from detention at the airport.⁴⁶² Previously, the SEM could order detention in case the removal decision was issued in a federal reception centre (only in case of Dublin decision and/or if the enforcement of removal was imminent). The new legal provisions in force since March 2019 foresee that, in case of persons staying in federal centres (Article 76(1)(b)(5) FNIA), the canton where the centre is located is responsible for ordering detention. If in accordance with Article 46(1^{bis}) of the Asylum Act a canton other than the canton where the centre is located is responsible for executing removal, that canton is also responsible for ordering detention.⁴⁶³

The holding of persons at the airport is an exception, since the SEM continues to be the authority in charge of deciding whether or not to allow asylum seekers entry into Swiss territory.

1.1. Detention at the airport

When an asylum seeker applies for asylum at the airport of **Geneva** or **Zurich**, the Swiss authorities must decide whether to allow his entry into Switzerland within 20 days.⁴⁶⁴ If entry into Swiss territory is allowed, the asylum seeker is assigned to a canton and is entitled to regular reception conditions. If entry is refused, the SEM should provide persons with a place of stay and appropriate accommodation until they leave the country.⁴⁶⁵ While the airport procedure is ongoing, asylum seekers are confined in the transit zone. Asylum seekers may be held at the airport or exceptionally at another location for a maximum of 60 days in total,⁴⁶⁶ if entry cannot be granted immediately.

The aim of detention at the arrival is to prevent unauthorised entry. According to the Federal Court and to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), it is an uncontested deprivation of liberty, in line with the *Amuur v. France* ruling of the ECtHR.⁴⁶⁷ This type of confinement is based on the assumption that the persons have not yet entered Switzerland.⁴⁶⁸ From the moment in which entry into the country has been established, holding

⁴⁶² Article 80(1) and 80 (1bis) Foreign Nationals and Integration Act (FNIA).

⁴⁶³ Article 80(1), 80(1bis) and 80a(1), in combination with Article 46(1bis) of the Asylum Act.

⁴⁶⁴ For details on the airport procedure, see section [Border Procedure](#).

⁴⁶⁵ Article 22(3) AsyIA.

⁴⁶⁶ Article 22(5) AsyIA.

⁴⁶⁷ Federal Court, Decision BGE 129 I 139, 27 May 1997, para. 4.4; CPT, Rapport au conseil fédéral suisse relative à la visite effectuée en Suisse par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants du 24 septembre au 5 octobre 2007, para 93.

⁴⁶⁸ Federal Council, Message concernant la modification de la loi sur l'asile, de la loi fédérale sur l'assurance-maladie et de la loi fédérale sur l'assurance-vieillesse et survivants du 4 septembre 2002.

in transit is no longer permitted under this legal title.⁴⁶⁹ The Federal Administrative Court, however, goes further and considers it possible to carry out an arrest to prevent illegal entry even within a certain time and space *after* the border has effectively been crossed.⁴⁷⁰ Yet this brings with it a new difficult question of demarcation.

In 2019, 219 asylum applications were lodged at the airport. Five of these cases concerned unaccompanied children. 62 people were refused entry in Switzerland.⁴⁷¹

1.2. Temporary detention

So-called “temporary detention” for identification purposes (as far as the person’s personal cooperation is required) or for the purpose of issuing a decision in connection with his or her residence status may be ordered according to Article 73 FNIA for a maximum of 3 days. Out of 399 persons detained under Article 73 FNIA in 2019, 170 were Dublin cases.⁴⁷²

1.3. Detention in preparation for departure

Detention in preparation for departure may be ordered during the asylum procedure according to Article 75 FNIA to facilitate the conduct of removal proceedings or criminal proceedings. It can be ordered on the following grounds, where persons:⁴⁷³

- (a) refuse to disclose their identity, submit several applications for asylum using various identities or repeatedly fail to comply with a summons without sufficient reason or ignore other instructions issued by the authorities in the asylum procedure;
- (b) leave an area allocated to them in accordance with a restriction order or enter an area they are prohibited from entering;⁴⁷⁴
- (c) enter Swiss territory despite a ban on entry and cannot be immediately removed;
- (d) were removed and submitted an application for asylum following a legally binding revocation of their residence or permanent residence permit or a non-renewal of the permit due to violation of or representing a threat to the public security and order or due to representing a threat to internal or external security;
- (e) submit an application for asylum after an expulsion ordered by the Federal Office for Police to protect internal or external national security;
- (f) stay unlawfully in Switzerland and submit an application for asylum with the obvious intention of avoiding the imminent enforcement of a removal or expulsion order. Such an intention shall be suspected if it were possible and reasonable to file the asylum application earlier and if the application is submitted in close chronological relation to detention, criminal proceedings, the implementation of a penalty or the issue of a removal order;
- (g) seriously threaten other persons or considerably endanger the life and limb of other persons and are therefore being prosecuted or have been convicted; or
- (h) have been convicted of a felony.

In practice, only persons lodging an asylum application in detention facilities or prior to entering Switzerland at **Geneva** or **Zurich** airports are likely to be detained during the whole procedure. Asylum seekers are rarely detained during the asylum procedure, which mostly occurs in cases where they have committed criminal offences. According to the SEM, in 2019, there were 85 persons in detention in preparation for departure, including asylum seekers and foreign nationals outside the asylum sector.⁴⁷⁵

⁴⁶⁹ SKMR, S. 21.

⁴⁷⁰ Federal Administrative Court, Decision D-6502/2010, 16 September 2010.

⁴⁷¹ Information provided by the SEM, 12 February 2020.

⁴⁷² Information provided by the SEM, 12 February 2020.

⁴⁷³ Article 75(1) FNIA.

⁴⁷⁴ Article 74 FNIA.

⁴⁷⁵ Information provided by the SEM, 12 February 2020.

1.4. Detention pending deportation

Detention pending deportation according to Article 76 FNIA is applicable to persons who have received a negative decision as well as a dismissal without entering in the substance of the case (NEM/NEE), for example in case removal to a [Safe third country](#) has been ordered. Until 2015 there was also a specific provision for persons who had received a Dublin transfer decision, but this is not the case anymore since a new article addressing detention under the Dublin procedure has entered in force on 1 July 2015 (see section [Short overview of the asylum procedure](#)).

Once the SEM has issued a decision (expulsion or removal order), cantonal authorities can order a so-called detention pending deportation ("*Ausschaffungshaft*") to ensure the enforcement of the decision. This can occur also before the entry in force of the decision.⁴⁷⁶ A person can also be kept in detention if he or she is already in detention in preparation for departure according to Article 75 FNIA.⁴⁷⁷ In addition, according to Article 76 FNIA, detention pending deportation can be ordered if persons:

- i. refuse to disclose their identity, submit several applications for asylum using various identities or repeatedly fail to comply with a summons without sufficient reason or ignore other instructions issued by the authorities in the asylum procedure;
- ii. leave an area allocated to them in accordance with a restriction order or enter an area they are prohibited from entering;⁴⁷⁸
- iii. enter Swiss territory despite a ban on entry and cannot be immediately removed;
- iv. stay unlawfully in Switzerland and submit an application for asylum with the obvious intention of avoiding the imminent enforcement of a removal or expulsion order. Such an intention shall be suspected if it were possible and reasonable to file the asylum application earlier and if the application is submitted in close chronological relation to detention, criminal proceedings, the implementation of a penalty or the issue of a removal order;
- v. seriously threaten other persons or considerably endanger the life and limb of other persons and are therefore being prosecuted or have been convicted;
- vi. have been convicted of a felony;
- vii. are suspected of seeking to evade deportation, according to serious indications, in particular because they fail to comply with the obligation to cooperate with the authorities;
- viii. based on their previous conduct, it can be concluded that they will refuse to comply with official instructions;
- ix. are issued with a removal decision in a federal centre and enforcement of the removal is imminent.

According to case law of the Federal Court, a risk of absconding can be found to exist where the person has already disappeared once, he/she attempts to hinder the enforcement of removal by giving manifestly inaccurate or contradictory information, or if he/she makes it clear, by his statements or behaviour, that he is unwilling to return to his country of origin.⁴⁷⁹ As expressly provided for in Art. 76(1)(b)(3) FNIA, there must be concrete elements to this effect. The mere fact of not leaving the country within the time limit set for this purpose is not sufficient, taken individually, to admit a ground for detention.⁴⁸⁰

In practice, the assessment of the risk of absconding leaves cantonal authorities a certain room for manoeuvre in ordering this type of detention. Case law has assessed a risk of absconding in cases where a foreign national has already disappeared, hampers the removal proceedings by providing false or contradictory information, or even if he or she states unwillingness to return.⁴⁸¹ Like for all the other

⁴⁷⁶ Federal Court, Decision BGE 140 II 409, c. 2.3.4; 121 II 59, c. 2a, 122 II 148, c. 1.

⁴⁷⁷ Article 76(1)(a) FNIA.

⁴⁷⁸ Article 74 FNIA.

⁴⁷⁹ Federal Court, Decisions 2C_256/2013, c. 4.2; ATF 130 II 56 c. 3.1; 2C_1139/2012, c. 3.2.

⁴⁸⁰ Federal Court, Decision 2C_142/2013, c. 4.2.

⁴⁸¹ Federal Court, Decision 140 II 1, 9 December 2013, c. 5.3).

types of detention, detention must be proportional and deportation must be foreseeable in order to be lawful.⁴⁸²

According to SEM, in 2019, there were 1,648 persons detained pending deportation, including asylum seekers and foreign nationals outside the asylum sector.⁴⁸³

A special provision concerning detention pending deportation exists in the FNIA for cases in which the enforcement delay is due to lack of cooperation in obtaining travel documents.⁴⁸⁴ This specific type of detention, regulated under Art. 77 FNIA, can be used both with regard to asylum seekers and other foreigners, after the deadline for leaving has expired, and cannot exceed 60 days. It is hardly ever used (28 cases have been reported in 2018).

1.5. Detention in the Dublin procedure

According to Article 76a FNIA, a person in the Dublin procedure can be detained if:⁴⁸⁵

- (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.⁴⁸⁶

Article 76a FNIA provides a list of the specific indications that can lead to the assumption that the person intends to evade removal. These are the following:

- (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 these provisions are problematic, especially the manner in which the risk of absconding is defined, as well as the maximum duration of detention (see section on [Duration of detention](#)), which are not in line with Article 28 of the Dublin III Regulation. 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 2016:⁴⁸⁷

⁴⁸² Article 96 FNIA, Article 15(1) of the Return Directive.

⁴⁸³ Information provided by the SEM, 21 January 2019.

⁴⁸⁴ Article 77 FNIA.

⁴⁸⁵ Article 76a FNIA.

⁴⁸⁶ The principles of necessity (absence of a less coercive measure) and proportionality are valid for the other types of detention as well, although they are clearly stated only for detention under the Dublin procedure.

⁴⁸⁷ Federal Court, Decision 2C_207/2016, 2 May 2016.

- 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;
- If requested, the legality of the Dublin detention must in principle be reviewed by a judge within 96 hours from the moment of the written request of the detainee; and
- There must not be high formal requirements for the request to have the legality of the detention reviewed.

The Federal Administrative Court has also lifted detention decisions made by the SEM in Dublin cases on numerous occasions. It stated that the SEM had violated the person's right to be heard by not examining in an individual manner whether there was a high risk of absconding.⁴⁸⁸ It also stated that when examining proportionality, a restriction order on the territory of the reception centre could be an alternative to detention.⁴⁸⁹ Appeals to the Federal Administrative Court are not possible anymore since federal authorities (SEM) are not competent anymore in the ordering of detention after 1 March 2019. Appeals must be done at the cantonal level first, and only then to the Federal Court.

According to SEM, in 2019, there were 1,123 detention orders concerning detention under the Dublin procedure.⁴⁹⁰

1.6. Coercive detention

Coercive detention under Article 78 FNIA can be ordered when a legally enforceable removal or expulsion order cannot be enforced due to the personal conduct of the foreigner. It is aimed to persuade the person to change his or her behaviour in cases where the enforcement of removal is impossible without his or her cooperation.⁴⁹¹ In 2019, there were 37 cases coercive detention (both asylum seekers and irregular migrants awaiting deportation).⁴⁹²

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

Except from Dublin-related detention, Swiss legislation does not explicitly establish that detention can be used when alternatives to detention are not sufficient. However, the FNIA provides for some measures that can be used as alternatives to detention. In particular, Article 64e provides that cantonal authorities can require the foreign national: (a) to report to an authority regularly; (b) to provide appropriate financial security; (c) to hand in travel documents. Those measures can be used with the aim of ensuring the enforcement of removal orders and represent alternatives to detention. Furthermore, the restriction and exclusion orders (Article 74 FNIA), prohibiting respectively to leave an allocated area or to enter a specific area, were explicitly introduced in the law as alternatives to detention.⁴⁹³

⁴⁸⁸ Federal Administrative Court, Decision D-2925/2016, 17 May 2016, E-2850/2016, 13 May 2016, D-2484/2016, 27 April 2016.

⁴⁸⁹ Federal Administrative Court, Decision D-2484/2016, 27 April 2016; D-1626/2016, 22 March 2016.

⁴⁹⁰ Information provided by the SEM, 12 February 2020.

⁴⁹¹ Decision of the Federal Court 133 II 97 of 2 April 2007, c. 2.2).

⁴⁹² Article 78 FNIA.

⁴⁹³ Businger, Martin (2015). *Ausländerrechtliche Haft: Die Haft nach Art. 75 ff. AuG*. Zürich: Schulthess Verlag.

In 2015, the UN Committee against Torture stated in its recommendations that Switzerland must apply alternative measures to detention.⁴⁹⁴ Although some alternative measures exist, they are still too rarely implemented in practice. There also wide divergences between the practices of different cantons. The National Council Control Committee has stated in a 2018 report that the significant differences among cantons in the rate of detention orders signify that the cantons apply differently the principle of proportionality, raising fundamental questions in terms of equality of treatment.⁴⁹⁵

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.⁴⁹⁶ The Federal Court has also highlighted that detention is only admissible as an *ultima ratio* measure and after a thorough examination of other less coercive measures.⁴⁹⁷

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

The law prohibits the detention of children under 15. Detention for minors between 15 and 18 can last a maximum of 12 months (whereas detention of adults can last up to 18 months).

The following numbers of children's detentions were provided by SEM for 2017, 2018 and 2019:

Detention of children: 2017-2018-2019			
	2017	2018	2019
Children subject to administrative detention	21	8	7
Of which, unaccompanied children	4	2	2
Children subject to temporary detention	10	11	19
Of which, unaccompanied children	3	6	9

Source: SEM, 12 February 2020.

According to a report of the National Commission for the Prevention of Torture (NCPT), two cantons (**Geneva** and **Neuchâtel**) formally prohibit the detention of minors (including those of 15 and above) in their cantonal law, while five (Basel-Land, Jura, Obwald, Nidwald, Vaud) do not order administrative detention as a matter of principle. In several other cantons, no detention of minors has been registered in 2017 and 2018. On the other side, ten cantons have communicated having placed minors in administrative detention (**Aargau, Basel-Stadt, Bern, Glarus, St-Gallen, Solothurn, Uri, Valais, Zug, Zurich**). The length of detention was particularly long in **Bern, Valais, Zug** and **Zurich**. The NCPT also highlights that most minors are detained in prisons for the execution of penalties or remand prisons, which are inadequate.⁴⁹⁸

⁴⁹⁴ 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.

⁴⁹⁵ Détention administrative de requérants d'asile : Rapport de la Commission de gestion du Conseil national du 26 juin 2018. Page 7502. See also Achermann et al, "Administrative Detention of Foreign Nationals in Figures". in a nutshell #12, January 2019, available at: <https://bit.ly/2UcAKKI>.

⁴⁹⁶ Federal Administrative Court, decision D-2484/2016 of 27 April 2016, D-1626/2016 of 22 March 2016.

⁴⁹⁷ Federal Court, Decision 2C_1052/2016, 2C_1053/2016, 26 April 2017.

⁴⁹⁸ NCPT, *Rapport au DFJP et à la CCDJP relatif au contrôle des renvois en application du droit des étrangers, d'avril 2018 à mars 2019*, 24 May 2019, 16-18.

Terre des Hommes reports that most cantons avoid detaining whole families, however in case of non-collaboration, some cantons detain the father, while the mother and children stay in the reception centre.⁴⁹⁹ In some (rare) cases it can also happen that a single parent or both parents are detained, while the children are placed in foster care or a home. If a mother of a baby is detained, it occurs that the baby is placed in detention with her. Since the child is not formally detained in those cases, there are no data on this measure.⁵⁰⁰ This occurred especially in the cantons of Bern and Zurich, but Zurich has communicated that it ended this practice on 1 July 2018.⁵⁰¹ This practice is unlawful since the FNIA prohibits the detention of children under the age of 15. Furthermore, it is very problematic from the point of view of the right to family life and the best interests of the child. The Swiss Refugee Council's view is that children and families should never be detained. The position of the Federal Council goes in the same direction.⁵⁰² On 28 September 2018, the Federal Council has responded to recommendation Nr. 4 of the Parliamentary Control of Administration stating that SEM will ask the cantons to avoid detention of children below 15 and study alternatives for the enforcement of families' removals.⁵⁰³ However this cannot be guaranteed since detention is in the competence of cantonal authorities.

The Federal Court ruled in favour of an Afghan family in a judgment from April 2017 regarding the detention of the parents of four children and the separation of the family. The authorities simulated a transport of a five-person family from the asylum centre to an apartment, but instead they brought the family with packed suitcases to the airport in order to return them to Norway where they had been issued a negative asylum decision. The family refused to board the plane because they feared to be deported from Norway to Afghanistan. After they refused to enter the plane, the family was separated. The authorities of the Canton of Zug arrested the parents for three weeks and placed the children somewhere else in order to force them to leave the country. The Court recognised the human misery in which the complainants found themselves, in particular due to the lack of the possibility of making contact with each other and with their children during their detention and stated that the experienced treatment almost reached a threshold of Article 3 ECHR. Furthermore, the Court considered the imprisonment of the complainant with her four-month-old baby in the Zurich airport prison, separated from her three other, older children was therefore not an ultima ratio and disproportionate. Therefore the Court found a violation of Article 8 ECHR.⁵⁰⁴ This is not an isolated case. In many cases, detention and the ordering of coercive measures are disproportionate.

As for what concerns the conditions of detention, Article 81(3) FNIA contains special rules, which require taking into account the specific needs of vulnerable persons, unaccompanied children and families in the detention arrangements. However, it is not clear how exactly this provision is translated into practice, particularly since ordinary prisons are often used for carrying out immigration detention. In particular, minors are not always separated from adults in practice, which led the National Council Control Committee to recommend the creation of places of detention that would be conform to the Convention on the Rights of the Child and to avoid any confinement in other facilities.⁵⁰⁵ Terre des Hommes reports that the conditions in which the detention of minors occurs are unacceptable and put them at risk of abuse, particularly if the separation from adults is not respected.⁵⁰⁶

⁴⁹⁹ Terre des Hommes, *État des lieux sur la détention administrative des mineur.e.s migrant.e.s en Suisse*, November 2018, 77.

⁵⁰⁰ NCPT, *Rapport au DFJP et à la CCDJP relatif au contrôle des renvois en application du droit des étrangers, d'avril 2018 à mars 2019*, 24 May 2019, 19.

⁵⁰¹ Ibid.

⁵⁰² Federal Council, *Détention administrative de requérants d'asile*, 26 June 2018, available (in French) at: <https://bit.ly/2MV0IkZ>.

Available at: <http://bit.ly/2wAQpQu>.

⁵⁰⁴ Federal Court, Decision 2C_1052/2016, 2C_1053/2016, 26 April 2017.

⁵⁰⁵ Recommendation Nr. 5. *Détention administrative de requérants d'asile : Rapport de la Commission de gestion du Conseil national du 26 juin 2018*.

⁵⁰⁶ Terre des Hommes, *État des lieux sur la détention administrative des mineur.e.s migrant.e.s en Suisse*, November 2018, 81.

There are few facilities with places reserved for the administrative detention of women. Since the facilities only house a small number of women and the places are often empty, women can find themselves in a condition of loneliness and de facto isolation.⁵⁰⁷

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? | 25 days ⁵⁰⁸ |

4.1. Maximum duration set by law

Altogether, detention can be ordered for a maximum of 6 months and it can be extended for a further period of up to 12 months where the person does not cooperate with the authorities.⁵⁰⁹ Therefore the maximum period for detention under Articles 75, 76 and 78 FNIA is 18 months as foreseen in the Return Directive. When a person is released and detained again the duration is summed up, unless he or she has left the national territory.

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.⁵¹⁰

Detention under Article 76(1)(a)(5) can last a maximum of 30 days,⁵¹¹ while detention under Article 77 cannot exceed 60 days.⁵¹²

For detention in the Dublin procedure, there are specific rules regarding duration:⁵¹³

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 actually violate the Dublin III Regulation. Indeed the maximum duration of detention under the Dublin procedure exceeds that foreseen in Article 28 of the Dublin III Regulation.

⁵⁰⁷ Karin Meier, Eine Stimme für Menschen in Ausschaffungshaft, Reformiert, 4 March 2019, available (in German) at: <https://bit.ly/39TzUXs>.

⁵⁰⁸ This data concerns both asylum seekers and other migrants but the average should be relatively similar.

⁵⁰⁹ Article 79 FNIA.

⁵¹⁰ *Ibid.*

⁵¹¹ Article 76(2) FNIA.

⁵¹² Article 77(2) FNIA.

⁵¹³ Article 76a(3)-(5) FNIA.

The detention served under the Dublin regime will be deduced from the total maximum detention period of 18 months.

4.2. Duration of detention in practice

In practice, the average duration varies according to the type of detention:

Average duration of detention (days) per type of detention: 2019	
Preparatory detention	26
Detention pending deportation	24
Detention in the Dublin procedure	24
Detention pending deportation in order to organise travel papers	23
Coercive detention, if detention pending deportation is no longer possible and the person refuses to cooperate	142

Source: SEM, 20 February 2020.

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.⁵¹⁴ The report of the Parliamentary Control of Administration refers to significant differences in the ways cantonal authorities interpret the principles of celerity and proportionality.⁵¹⁵

⁵¹⁴ UN Committee Against Torture, *Observations finales concernant le septième rapport périodique de la Suisse*, 13 August 2015, available at: <http://bit.ly/1LuTgEQ>, para 17.

⁵¹⁵ Parliamentary Control of Administration. Page 7547-7549.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

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

According to Article 81(2) FNIA, “detention shall take place in detention facilities intended for the enforcement of preparatory detention, detention pending deportation and coercive detention. If this not possible in exceptional cases, in particular because of insufficient capacity, detained foreign nationals must be accommodated separately from persons in pre-trial detention or who are serving a sentence”. This new formulation was introduced on 1 June 2019 in order to align the provision with the EU Return Directive and sets a clearer framework for immigration detention, which requires specialised facilities. However, the administrative detention of asylum seekers and other foreigners in prisons that are also holding prisoners under the penal code is allowed in exceptional cases and is currently still the most frequent solution adopted by cantons.

1.1. Specialised facilities, prisons and pre-trial facilities

In practice, asylum seekers are regularly detained in prisons or pre-trial detention facilities as there are very few detention centres used exclusively for immigration detention. To this latter category currently **belong** only four facilities: **Frambois** (20 places) and **Favra** (20 places) in the canton of Geneva, **Bazenheid** (12 places) and **Widnau** (8 places) in the canton of St. Gallen. Altogether, they provide only 60 places out of a total 352 (17%). While the detention centre of Frambois, which resulted from an inter-cantonal cooperation (“*Concordat*”) of three cantons (Geneva, Vaud and Neuchâtel)⁵¹⁶, has largely the most liberal detention conditions in Switzerland, Bazenheid and Widnau have been strongly criticized in the past.⁵¹⁷ Since the detention of asylum seekers in Switzerland takes the form of pre-removal detention, there is no specialised facility for asylum seekers only, but asylum seekers are detained together with irregular migrants and foreign nationals without or having lost their residence permit.

All other facilities confine both immigration detainees and convicted or remand prisoners. Most facilities dispose of a separated section (or a separate building) for the holding of persons detained under immigration law. It happens however in some facilities that such sections are used for other forms of detention or that administrative detention is executed in cells that are not specifically foreseen for this form of detention.⁵¹⁸

Given the decentralised nature of immigration detention in Switzerland, it is difficult to provide for a list of the facilities used for this purpose. According to a 2018 report of monitoring in the area of liberty deprivation, there are 22 facilities carrying out immigration detention, including separate sections within prisons, totalling a capacity of 352 places.⁵¹⁹ Based on that report, the facilities dedicating an area or some cells specifically to immigration detention are the following:

- Crêtelongue, centre LMC Granges (VS): 18 places (men)

⁵¹⁶ See the website on the inter-cantonal cooperation of the Heads of the police and justice Departments of the “Latin cantons” that also contains a description of the detention centre: La Conférence latine des Chefs des Départements de justice et police (CLDJP), available at: <https://bit.ly/2JbO8YG>. The legal basis for the detention centre and a description of the centre may be available at: <https://bit.ly/2QzOSLt>.

⁵¹⁷ NCPT, “Bericht an den Regierungsrat des Kantons St.Gallen betreffend den Besuch der Nationalen Kommission zur Verhütung von Folter in den Gefängnissen der Kantonspolizei St.Gallen vom 5. und 6. Oktober 2015”, 17th March 2016, page 9.

⁵¹⁸ Parliamentary Control of Administration, page 7552.

⁵¹⁹ Swiss Competence Centre for the Execution of Criminal Penalties, *Monitorage des capacités de privation de liberté*, February 2019.

- Prison de Delémont (JU): 2 places (men)
- Etablissement concordataire de Favra: 20 places (men)
- Etablissement concordataire de Frambois: 26 places, and 20 according to other sources (men)
- Prison centrale de Fribourg: 4 places (men)
- JVA Wauwilermoos: 15 places (men)
- Strafanstalt Zug: 12 places (men)
- Gefängnis Bässlergut: 30 places (men)
- Untersuchungsgefängnis Basel-Stadt (Waaghof): 3 places (women)
- Gefängnis Stans : 4 places (men)
- Prisons of the Canton Bern (BE): 25 places according to this source, but significantly higher according to the Website of the Cantonal Security Department:
 - Regionalgefängnis Bern: 27 places (22 men, 5 women)
 - Regionalgefängnis Moutier: 28 places (24 men, 4 women)
 - Regionalgefängnis Thun: 12 places (not defined)
- Gefängnisse Biberbrugg: 8 places (men)
- Untersuchungsgefängnisse Solothurn and Olten (2 facilities, SO): 19 places (men)
- Zentral- und Bezirksgefängnisse Aargau (AG): 14 places (not specified)
- JVA Realta (GR): 16 places (men)
- JVA Sennhof (GR): 20 places (men)
- Flughafengefängnis Zürich (ZH): 106 places (86: men; 20: women)
- Ausschaffungsgefängnis Bazenheid (SG): 12 places (men)
- Gefängnis Widnau (SG): 8 places (men)

The number of 22 facilities is probably an underestimation since it only includes facilities that permanently reserve some places for immigration detention, but it can also happen that other facilities house immigration detainees for a few days. Indeed, in the 2019 Catalogue of penitentiary establishments redacted by the Federal Statistical Office, 15 additional facilities are said to be used for the execution of detention under the FNIA:⁵²⁰

- Gefängnis Appenzell (AI)
- Kantonales Gefängnis Appenzell Ausserrhoden (AR)
- Regionalgefängnis Burgdorf (BE)
- Prison de Champ-Dollon (only under articles 73 and 75) (GE)
- Kantonales Gefängnis Glarus (GL)
- Prison de Porrentruy (JU)
- JVA Grosshof (LU)
- Gefängnis Sarnen (OW)
- Regionalgefängnis Altstätten (SG)
- Kantonale Strafanstalt Saxerriet (SG)
- Gefängnis St. Gallen (SG)
- Kantonsgefängnis SSB Schwyz (SZ)
- Carcere Giudiziario "Farera" (TI)
- Prison de la Tuilière (VD)
- Polizeigegefängnis Zürich (ZH)

The cantons estimate a further need of approximately 150 places,⁵²¹ which indicates that they are not planning to reduce the number of detentions. In Geneva, it is planned to close down Frambois and Favra and reassign the prison La Brenaz (168 places) to immigration detention by 2023. In Basel, the prison of Bässlergut, which was planned as an immigration detention centre but confined sentenced

⁵²⁰ Federal Office of Statistics, "Catalogue des établissements pénitentiaires". Last update on January 2019. <https://www.bfs.admin.ch/bfs/fr/home/statistiques/criminalite-droit-penal/execution-penale/etablisements-penitentiaires.assetdetail.8126301.html>

⁵²¹ Swiss Competence Centre for the Execution of Criminal Penalties, *Monitoring des capacités de privation de liberté*, February 2019, page 25.

prisoners as well since 2011, will be used again exclusively for immigration detention, enhancing its capacity. Other plans for the creation of new places of administrative detention have been decided in Valais (20 places in Sion) and St. Gallen (52 places in Altstätten), where some smaller detention facilities or sections will be closed down in future.⁵²²

1.2. Airport transit zones

The SEM should provide persons who lodged an asylum application at the airport with a “place of stay and appropriate accommodation”.⁵²³ Maximum stay in the transit zone is 60 days in total.⁵²⁴ The holding centre situated in the transit zone of Geneva airport has a capacity of 30 places, in Zurich of 60 places.

1.3. Remote locations

As detailed in [Freedom of Movement](#) and [The question of *de facto* detention in Switzerland](#) accommodation in remote locations of federal reception and processing centres may constitute *de facto* detention in some cases. See also [Types of Accommodation](#).

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it limited to emergency health care? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Article 81(3) FNIA states that detention conditions must take into account the needs of vulnerable persons, unaccompanied children and families with children, and that detention conditions must be in line with Articles 16(3) and 17 of the Return Directive and with Article 37 of the Convention on the Rights of the Child. Federal law does not provide any more detailed preconditions for detention conditions, as detention is ordered at the cantonal level and lies within the competence of the respective cantons. However the Federal Court has laid down some requirements for pre-removal detention: contacts with outside as well as with other detainees must be allowed; detainees should have right to unlimited visits without surveillance; detainees’ rights and liberties can be restricted only to ensure the aim of detention and the proper functioning of the facility; and the detention regime must be freer than the regimes in penal forms of incarceration.⁵²⁵

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

Detained asylum seekers have access to health care in practice. As asylum seekers are as a rule detained in detention centres for pre-trial detention and/or criminal detention, the health care provided is generally at an acceptable level although it is limited to primary health care.⁵²⁶ In some facilities there is medical personnel present, for example in the prison **Bässlergut** in Basel. In a recent report on the provision of medical care in custodial institutions (not focused on immigration detention), the NCPT has highlighted important language barriers, which are often overcome with the help of other detainees or detention staff. This is highly problematic, and the NCPT recommends the resort to interpreters.⁵²⁷

Differences between the cantons and between facilities are huge with regard to the conditions of detention, the type of facilities used, as well as the legal bases and practices of ordering and reviewing detention. Unfortunately, it is not possible to provide an overview of the practice in the cantons here.

⁵²² Ibid.

⁵²³ Article 22(3) AsylA. See [Border Procedure](#).

⁵²⁴ Article 22(5) AsylA.

⁵²⁵ ATF 122 II 49 of 2 May 1996, c. 5; 122 I 222 of 12.07.1996, c. 2; 122 II 299 of 16 August 1996.

⁵²⁶ See the reports issued by the Swiss national CAT Committee, the National Commission for the Prevention of Torture (NCPT), issued during the visits to several detention centres since 2010. The reports always also contain a section on access to health care, and are available at: <http://bit.ly/1RplLjn>.

⁵²⁷ NCPT/NKVF, “Gesamtbericht über die schweizweite Überprüfung der Gesundheitsversorgung im Freiheitsentzug durch die Nationale Kommission zur Verhütung von Folter (2018 – 2019)”, 28.

The National Commission for the Prevention of Torture (NCPT) regularly visits carceral facilities used for purposes of criminal justice and/or immigration detention. Its reports are the main source of information on those confinement spaces. The NCPT also makes recommendations to the cantonal authorities and follow-up visits to check if those have been followed, however there is no legal obligation for the Cantons to implement those.

The NCPT affirms that in general, the conditions are too restrictive and resemble too much to those of penal incarceration. Foreigners in administrative detention do not benefit from enough freedom of movement within the facilities.⁵²⁸ In its various reports, the NCPT recommends the Cantons to provide for more freedom of movement, which should be granted as a matter of principle in all detention facilities; detention cells should be open without time limitation and stay closed only during the night. With this respect, the out-of-cell time differs greatly from one facility to another. As a way of example, detainees in Frambois can freely move within the whole facility (including a fenced courtyard) from 8am to 9pm, while in Granges, they spend 19 to 20 hours in their cell. The NCPT also often recommended to study the possibility of free internet access and/or of using mobile phones.

According to NCPT, occupational programmes should be offered to the detainees, while this possibility is only provided in some of the facilities, for example in Frambois, Bässlergut, and the Zurich airport prison. In Bässlergut, detained persons can work in a workshop for 2,5 hours daily, and are paid 6 sfr per day. Many other facilities do not provide for occupational programs.

Concerning the detention facilities of Frambois, Favra and Realta, NCPT suggests disciplinary measures should be better regulated and controlled. Concerning Favra and Realta, information about rights and obligations should be more accessible for the detainees through flyers in the most used languages. Here are summarised some of the findings of NCPT in the last years:

Frambois and Favra: NCPT has found that the regime in these facilities has not the same character of criminal detention, but recommends that the concerned persons have access to a medical screening in the first 24 hours. In Favra, which will be closed in the medium term due to its old structure, the need to grant an access to the exterior facilities and to work on a suicide prevention concept exists.

Bässlergut: During a follow-up visit in 2017, the NCPT has seen improvements, but still suggests to take measures in order to protect the health of the detainees, e.g. protection against passive smoke or prevention of suicidal risk through psychiatric care and accommodation in adequate facilities. Although some improvement could be noted, the facility has still a strong criminal detention facility character.

Realta: NCPT has expressed in 2017 its concerns in relation to the cell opening hours (approx. 7 hours), the shortage of natural light in the cells, the inadequacy of the courtyard for long stays in the facility, the impossibility to have visits during weekend, the impossibility to keep one's own personal clothes and substitution with prison clothes, the shortage of occupation, the absence of a systematic medical screening upon admission.

Granges: In 2018 the NCPT has expressed severe concerns because the national and international standards of detention conditions are not met in this facility. Accommodation of women, especially pregnant women, is not acceptable as there is no department for women and most of the guards are men. In a follow-up visit, the NCPT has noted that despite women and minors had not been detained in the previous months, most of the recommendations had not been followed and strongly criticized the material conditions and the detention regime, recommending to provide for more freedom of movement within the facility.⁵²⁹

⁵²⁸ NCPT, "Rapport d'activités 2017", 6.
⁵²⁹ Report available at: <http://bit.ly/3c4fPQw>.

Regionalgefängnis Bern: In 2019, NCPT has visited the prison and recommended to stop the administrative detention of migrants in that prison, since the material conditions do not allow to provide for a less restrictive detention regime. In its response, authorities of Canton Bern stated that since 2018, a new separated sector in the Regional Prison of Moutier had been arranged for the administrative detention of foreigners, allowing for more freedom of movement (from 9am to 6pm with the exception of the lunchtime; access to the courtyard during 3 hours in the afternoon). It also stated that since September 2019, the Regional Prison of Bern would only be used as entry and transit facility, where stays would be limited to a maximum of four days.⁵³⁰

Regionalgefängnis Moutier: NCPT has visited the facility in June 2019. In administrative detention, the cells are open from 12 to 18 and the courtyard and common spaces are accessible from 14 to 17. Some work occupations are available but these are not sufficient for all people detained. The NCPT judged this regime as too restrictive and recommended limiting the locking of cells to the night time and studying the possibility to allow the use of Internet and mobile phones. It also recommended to ensure access to psychiatric care, develop a concept to deal with suicide attempts, resort to professional interpreters during medical visits and improve detainees' access to information and house rules.⁵³¹

The NCPT has also highlighted that the conditions of detention of minors in general are not adequate as most of them are detained in penitentiaries or remand prisons, which do not guarantee the minimum standards with regard to children's rights. Even in facilities specific to immigration detention, the character is too carceral and the regime too strict.⁵³²

In the framework of the evaluation of the Schengen acquis' application by Switzerland with respect to the return policy, the Council of the European Union has visited a few detention facilities and published the following recommendations:⁵³³

Zurich airport prison: Members of a family should not be systematically separated, and families without children should be accommodated separately and in conditions guaranteeing an adequate intimacy (art. 17(2) of the Return Directive); there should be more indoor living space at the disposal of detainees, who should be locked for the shortest appropriate period of time during the day.

Regional Prison of Thun: The detention regime should allow detainees to spend more time outside their cells; there should be sufficient daylight in cells; an adequate outdoor area should be available; less intrusive methods than strip search should be used during the intake procedures; there should be sufficient and well-trained staff equipped to cater for the needs of illegally staying third-country nationals, including families, women and minors, to guarantee both the security of the premises and daily assistance to detainees.

In 2015, the UN Committee against Torture stated in its recommendations that Switzerland should establish and apply alternatives to detention and use detention only as a last resort and for the shortest time possible. The State should pursue its efforts to provide for specialised structures for administrative detention in all cantons, with a regime that is adapted to its purpose.⁵³⁴

2.2. Conditions in airport transit zones

Conditions in the transit zones are known to be minimal. Asylum seekers may move freely in the transit area. They are entitled to a daily walk outdoors, even though the walk is restricted in time and space.

⁵³⁰ Report available at: <http://bit.ly/2STqNAD>.

⁵³¹ Report available at: <https://bit.ly/2RacOoT>.

⁵³² NCPT, "Rapport au DFJP et à la CCDJP relatif au contrôle des renvois en application du droit des étrangers, d'avril 2018 à mars 2019", 24 May 2019, page 18.

⁵³³ Council of the European Union, "Council Implementing Decision setting out a Recommendation on addressing the deficiencies identified in the 2018 evaluation of Switzerland on the application of the Schengen acquis in the field of return", 14 May 2019, available at: <http://bit.ly/37YiNTb>, paragraphs 16 to 19.

⁵³⁴ Committee Against Torture, *Observations finales concernant le septième rapport périodique de la Suisse*, 13 August 2015, available at: <http://bit.ly/1LuTgEQ>, no. 17.

The holding centre in the transit zone of Geneva has a capacity of 30 places and is located rather far from the terminals. It is accessible with a shuttle bus only and is composed of a men's and a women's dormitories, a communal and a play room, and an outside walking yard with a fence.⁵³⁵ The holding centre in the transit zone of Zurich airport has a capacity for 60 places⁵³⁶ and is composed of three dormitories: for men, women and a families.⁵³⁷ Asylum seekers have access to a terrace, a praying room, and an area with shops and restaurants.⁵³⁸

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.⁵³⁹ Regarding the access of NGOs, according to the experience of Amnesty International, a personal authorisation must be obtained in advance in order to visit the facilities. Usually visitors from NGOs need to know and communicate the name of the person they want to visit.

The visiting hours represent a hurdle for the effective access of family members to detention centres. Many detention facilities allow visits on weekdays only. This is for example the case in the Regional Prison of Bern and the Regional Prison of Moutier according to their Websites.⁵⁴⁰ This was also reported by NCPT for the **Zurich Airport prison**, with the recommendation to cantonal authorities to examine the possibility of visiting hours also on weekends.⁵⁴¹ The Zurich cantonal government has responded in a public statement that this was impossible due to limited resources. The NCPT has also made the same remark and recommendation to the Canton Graubünden regarding Realta in 2017, but it is not clear whether the visiting hours have changed since.

As regards airport **transit zones**, third parties are usually not allowed to visit. Church representatives can access the centre on presentation of their accreditation as long they announce their arrival and departure with the staff running the holding centre in the transit zone.

Since the introduction of the new asylum procedure on 1 March 2019, persons who apply for asylum at the airport and are confined in the transit area systematically get free legal representation like all other asylum seekers (see also Section on [Border procedure \(border and transit zones\)](#)). The organisations mandated for the region Zurich (RBS Bern) and West Switzerland (Caritas Suisse) have access to the transit zones and have a regular presence there.

⁵³⁵ Terre des Hommes, État des lieux sur la détention administrative des mineur.e.s migrant.e.s en Suisse, November 2018, p. 56

⁵³⁶ AOZ, Asylunterkunft Transitzone Zürich-Flughafen, available (in German) at: <http://bit.ly/38Q3IEF>.

⁵³⁷ Le Temps, Des requérants d'asile bloqués, à Zurich, en zone de transit, available (in French) at: <http://bit.ly/2vVS1h7>.

⁵³⁸ Ibid.

⁵³⁹ The visiting rights and the concrete *modus* is also taken up by the NCPT in its reports.

⁵⁴⁰ Sicherheitsdirektion, Besucherinformationen, available (in German) at: <https://bit.ly/2T1ORjP>; Direction de la sécurité, Informations aux visiteurs, available (in French) at: <https://bit.ly/39Pqqgj>.

⁵⁴¹ 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.

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 FNIA. Article 80(2) FNIA provides that the legality and appropriateness of detention must be reviewed at the latest within 96 hours by a judicial authority on the basis of an oral hearing. The same occurs with decisions to extend the detention order.

According to Article 80(3) FNIA, the judicial authority may dispense with an oral hearing if deportation is anticipated within 8 days of the detention order and the person concerned has expressed 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) FNIA, when reviewing the decision to issue, extend or revoke a detention order, the judicial authority shall also take account of the detainee's family circumstances and the conditions under which detention is enforced. In no event may a detention order in preparation for departure or detention pending deportation be issued in respect of children or young people who have not yet attained the age of 15.

The detainee may submit a request for release from detention one month after the detention review. The judicial authority must issue a decision on the request on the basis of an oral hearing within 8 working days. A further request for release in the case of detention in preparation of departure (Art. 75 FNIA) may be submitted after one month or in the case of detention pending deportation (Art. 76 FNIA) after 2 months.⁵⁴²

The detention order shall be revoked if: the reason for detention ceases to apply or the removal or expulsion order proves to be unenforceable for legal or practical reasons; a request for release from detention is granted; or the detainee becomes subject to a custodial sentence or measure.⁵⁴³

Review of Dublin detention is regulated by Article 80a FNIA. It represents an exception since no automatic review is foreseen. In case of detention under a Dublin procedure, the legality and the appropriateness of detention shall be revised by a judicial authority only at the request of the detainee and in a written procedure (both the request and the exam are done in writing). 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.⁵⁴⁴

Detention under the Dublin procedure can no longer be ordered by SEM, which means that all review procedures are now carried out at the cantonal level (before 1 March 2019, the Federal Administrative Court was competent for the judicial review of Dublin detention when ordered by SEM). Again, cantonal practice is very diverse with regard to judicial review. National legislation provides for important safeguards, but compliance with these safeguards is not guaranteed in all cantons. Each canton organises its system of judicial review, and the practice of cantonal Courts is very diverse. It is not possible to provide an overview of all cantonal practices here.

⁵⁴² Article 80(5) FNIA.

⁵⁴³ Article 80(6) FNIA.

⁵⁴⁴ Federal Court, Decision 2C_207/2016, 2 May 2016.

The Swiss Refugee Council has observed that in cases of Dublin detention, the requirements by Swiss law as well as Article 28 of the Dublin III Regulation have not always been met, at least until the Federal Court and Federal Administrative Courts set down some ground rules (see [Grounds for Detention: Dublin Procedure](#)). The Swiss Refugee Council also suspects that detainees in the Dublin procedure are insufficiently informed that they must themselves ask in written form for a review of the detention. To help remedy this, the Swiss Refugee Council has drafted a basic form in four languages with which to ask for a review of the Dublin detention order.⁵⁴⁵ Another challenge, however, remains the distribution of this leaflet to the relevant persons.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

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

Detained persons have the right to communicate with their legal representative (Article 81(1) FNIA). With the new asylum procedure in force since March 2019, asylum seekers are systematically assigned a legal representative. However in cases where the legal representative has resigned the mandate of representation – which occurs when he/she does not make appeal against the Dublin or the asylum decision – he/she would consequently not be formally informed if one of his/her former clients has been detained. It would be up to the detained person to contact him/her.

Judicial review of detention takes place automatically except for detention under the Dublin procedure. Usually detainees are not legally represented during this procedure, but this depends on the cantonal legal bases and practice. Indeed the right to free legal assistance is regulated by cantonal procedural law. As a minimal constitutional guarantee, the Swiss Federal Court has ruled that free legal representation must be granted upon request in the procedure of prolonging detention after 3 months.⁵⁴⁶ 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.⁵⁴⁷

Some detention facilities provide access to legal support services. For example, in the prison of **Bässlergut** a legal advisor from the NGO HEKS/EPER is present every week and accessible for detainees who request a meeting.⁵⁴⁸ However in many other detention facilities access to legal support is very difficult, and the local NGOs providing legal support in asylum cases often do not have the resources to provide free legal assistance to detained persons.

Access to legal advice and representation for persons who apply for asylum at the airport and are consequently confined in the transit zone is guaranteed by Article 22(3bis) of the Asylum Act.

On the other hand, access to legal advice and representation for those persons applying for asylum in detention facilities (be they detained under immigration or criminal law) is not explicitly mentioned in the law, which has led to some cases where such legal representation had not been provided. However recent case law of the Federal Administrative Court has clarified that asylum seekers in that situation

⁵⁴⁵ The form can be found in English, French and German, available at: <http://bit.ly/2T9jhke>.

⁵⁴⁶ Federal Court, Decision BGE 122 I 49, 27 February 1996, para 2c/cc; Decision 134 I 92, 21 January 2008, para 3.2.3.

⁵⁴⁷ Federal Court, Decision BGE 122 I 275, 13 November 1996, para. 3.b. Free legal representation was granted in Decision 2C_906/2008, 28 April 2009.

⁵⁴⁸ The “Kontaktstelle für Zwangsmassnahmenbetroffene” is active since 2008. More information is available at: <https://bit.ly/2Va0CY7>.

have the right to legal protection in the same way as every other asylum seeker (see also section on [Legal assistance](#)).⁵⁴⁹

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. Analyses carried out on data from 2011 to 2017 show that the nationalities most represented among asylum seekers detained were Nigeria, Tunisia, Algeria, Morocco, Gambia, and Eritrea.⁵⁵⁰ The detention of Algerian and Eritrean nationals with the purpose of removal to their country of origin – many are actually detained in view of a transfer to a Dublin State – deserves a comment. In both cases, removal is technically possible only with the consent and compliance of the person involved, in the form of ‘voluntary return’ or autonomous return (without police escort). The Swiss Refugee Council is aware of the practice in some cantons of detaining persons of these nationalities in the attempt to force them to collaborate with their own deportation. Although coercive detention (Article 78 FNIA) allows detaining people when deportation cannot be enforced due to their own behaviour, this practice is very problematic since administrative detention can be proportional and lawful only when the removal is possible and foreseeable.

⁵⁴⁹ Decisions of the Federal Administrative Court D-5705/2019 of 25 November 2019, available at: <https://bit.ly/39h8oTi>; and E-6958/2019 of 8 January 2020, available at: <https://bit.ly/2QlcwFE>.

⁵⁵⁰ Achermann et al, “Administrative Detention of Foreign Nationals in Figures”. in a nutshell #12, January 2019, <https://bit.ly/39YFBUB>.

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).⁵⁵¹

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.⁵⁵² 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 2019, asylum status and B-permits were granted to 5,551 persons, including family asylum.⁵⁵³ On 31 December 2019, there were a total of 43,379 recognised refugees with a B-permit and 19,041 with a C-permit in Switzerland.⁵⁵⁴

Temporary admission

Persons granted temporary admission receive an F-permit.⁵⁵⁵ 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 2019, 4,701 persons were granted a temporary admission as a foreigner. On 31 December 2019, there were a total of 37,885 persons with a temporary admission as a foreigner living in Switzerland. Out of these, 10,400 persons have had this status for more than seven years.⁵⁵⁶

⁵⁵¹ Federal Administrative Court, Decision BVGE 2015/18.

⁵⁵² Article 60(1) AsyIA.

⁵⁵³ This refers to persons who have been granted asylum on a derivative ground, particularly members of the nuclear family who are not entitled to their own grounds for asylum.

⁵⁵⁴ SEM, Asylum Statistics 2019.

⁵⁵⁵ Article 41(2) and Article 85(1) FNIA.

⁵⁵⁶ SEM, Asylum Statistics 2019.

There are also persons who have a refugee status but receive only temporary admission instead of asylum (in case of exclusion grounds from asylum, as Switzerland makes the distinction between refugee status and asylum). They receive the same F-permit as other foreigners with temporary admission, but in addition they have the right to a refugee travel document, and all the other rights granted by the Refugee Convention. In 2019, 800 persons were granted a temporary admission as a refugee. On 31 December 2019, there were a total of 10,080 persons with a temporary admission as a refugee living in Switzerland. Out of these, 3,636 persons have had this status for more than seven years.⁵⁵⁷

The Swiss Refugee Council is not aware of systematic difficulties in the issuance or renewal of those residence permits with the exception of the situation of Eritrean nationals (see [Differential Treatment of Specific Nationalities in the Procedure](#)).

Temporary protection – a paper tiger

Swiss asylum law provides the possibility to grant temporary protection (*“protection provisoire”*, “S permit”) to persons in need of protection during a period of serious general danger, in particular during a war or civil war as well as in situations of general violence (Articles 66-79a AsylA). This instrument – introduced in the aftermath of the conflicts in the former Yugoslavia – should enable the Swiss authorities to react in an appropriate, quick and pragmatic manner to situations of mass exodus. Until now, this instrument has never been used by the Swiss authorities.

2. Civil registration

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

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

3. Long-term residence

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

A recognised **refugee with asylum** status receives a residence permit (B permit). After 10 years, or if he or she is especially well integrated, after 5 years, the canton can issue a permanent residence permit (C permit).⁵⁵⁸ 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.

⁵⁵⁷ SEM, Asylum Statistics 2019.

⁵⁵⁸ Article 34 FNIA.

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.⁵⁵⁹ However, the practice among the cantons varies and is in general strict. Once the person has a B permit, he or she can again apply for a permanent residence permit (C permit) after 5-10 years similar to the process described above.

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

⁵⁵⁹

Article 84(5) FNIA.

4. Naturalisation

Indicators: Naturalisation

- | | |
|--|----------|
| 1. What is the waiting period for obtaining citizenship? | 10 years |
| 2. Number of citizenship grants to beneficiaries in 2019: ⁵⁶⁰ | 715 |

Until the end of 2017, the criteria for naturalisation were the same for persons with refugee status and for persons with temporary admission status. In January 2018, the amended Federal Act on Swiss Citizenship⁵⁶¹ entered into force. Since then, it is necessary to have a permanent residence permit and reside in Switzerland for 10 years in order to be able to apply for citizenship. This means that **temporarily admitted** persons must wait at least 5 years more than **refugee status** holders (see [Long-Term Residence](#)).

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

The initial application is examined by the SEM, but both the canton and commune of residence have their own requirements. The SEM examines whether applicants are integrated in the Swiss way of life, are familiar with Swiss customs and traditions, comply with the Swiss rule of law, and do not endanger Switzerland's internal or external security. In particular, this examination is based on cantonal and communal reports. If the requirements provided by federal law are satisfied, applicants are entitled to obtain a federal naturalisation permit from the SEM. Naturalisation proceeds in three stages. The cantons and communities have their own, additional residence requirements which applicants have to satisfy. Swiss citizenship is only acquired by those applicants who, after obtaining the federal naturalisation permit, have also been naturalised by their communities (in some places this decision is taken by a panel, in others by a popular vote of all citizens of the commune) and cantons. There is no legally protected right to being naturalised by a community and a canton. The fee payable also varies according to the place of residence.⁵⁶²

In 2019, 715 persons (recognised refugees and temporarily admitted) were granted citizenship.⁵⁶³

5. Cessation and review of protection status

Indicators: Cessation

- | | |
|---|--|
| 1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Does the law provide for an appeal against the first instance decision in the cessation procedure? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Do beneficiaries 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 |

Refugees with asylum⁵⁶⁴

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 2019, there was a cessation of asylum status in 1,640 cases.⁵⁶⁵

⁵⁶⁰ Information provided by the SEM, 12 February 2020.

⁵⁶¹ The Act is available at: <https://bit.ly/2PcBpZi>.

⁵⁶² Overview on the fees for regular naturalisation is available at: <https://bit.ly/2J13AH2>.

⁵⁶³ Information provided by the SEM, 12 February 2020.

⁵⁶⁴ Article 64 AsyIA.

Temporary admission⁵⁶⁶

According to the law, the SEM should periodically examine whether the requirements for temporary admission are still met. In practice this does not happen in every case due to practical and capacity reasons. The SEM should revoke temporary admission and order 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 based on an individual assessment. When a conflict ends, it is possible that cessation is examined for all members of the group who were specifically concerned by this conflict. This happened, for example, at the end of the conflicts in ex-Yugoslavia in the 1990s. Recently this has not been the case, however, as most of the relevant conflicts are long-standing (Somalia, Afghanistan, Iraq). However, the SEM has announced that it will examine the temporary admissions granted persons from Eritrea and the Western Balkans as one of its priorities in 2018.⁵⁶⁷ Even if cessation is considered for a group of persons, it is examined in each case individually.

In 2018, the SEM launched a project to review the temporary admission of 3,400 Eritrean nationals. This project is set in a context of significant hardening of the practice of both the SEM and the Federal Administrative Court with regard to asylum applications submitted by Eritreans. Following an initial review of 250 cases, the SEM concluded that 9% of the provisional admissions examined, which represents 20 cases, could be withdrawn. In 2019, the SEM plans to continue the individual examination of nearly 2,800 cases in the first 6 months of the year.⁵⁶⁸ This approach has been criticised by NGOs,⁵⁶⁹ including the Swiss Refugee Council.⁵⁷⁰ The SEM stated in January 2020 that it was about to finish the examination of temporary admissions of Eritreans. Until end of October 2019, SEM found the temporary admission no longer to be valid in 82 cases (2.7%).⁵⁷¹ Most of the appeals submitted against such decisions have been rejected by the Federal Administrative Court but some are still pending.

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.⁵⁷² A person's departure from Switzerland is already considered permanent if the person asks for asylum in another country.⁵⁷³ 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,⁵⁷⁴ the cessation of the protection status can also be appealed. The appeal must be filed within 30 days of notification of the ruling.⁵⁷⁵ No legal assistance is foreseen in the law for this specific case but the general legal aid scheme is applicable: If it is

⁵⁶⁵ SEM, Asylum Statistics 2019.

⁵⁶⁶ Article 84 FNIA.

⁵⁶⁷ SEM, Information during an information conference for NGOs, 23 November 2017.

⁵⁶⁸ SEM; 'Fin du projet pilote d'examen des admissions provisoires de ressortissants érythréens', 3 September 2018, available (in French) at: <https://bit.ly/2HWdeNG>.

⁵⁶⁹ See in particular ODAE, *Rapport thématique – Durcissements à l'encontre des Érythréen·ne·s : une communauté sous pression*, 29 November 2018, available (in French) at: <https://bit.ly/2SCdBAW>.

⁵⁷⁰ Swiss Refugee Council, 'La Confédération mise sur l'intimidation plutôt que sur des solutions', 3 September 2018, available (in French) at: <https://bit.ly/2TJGcBr>.

⁵⁷¹ Département fédéral de justice et police (DFJP), Situation des requérants d'asile érythréens en Suisse: pratique en matière d'asile et de renvoi, levée des admissions provisoires, retour et principe de l'aide d'urgence, Rapport du Département fédéral de justice et de police (DFJP) en réponse à la lettre du Haut-Commissariat des droits de l'homme (HCDH) du 19 juin 2019, 30 novembre 2019, available at: <https://bit.ly/38RFAS4>.

⁵⁷² Article 84(4) FNIA.

⁵⁷³ Article 26a(a) Ordinance on the Enforcement of the Refusal of Admission to and Deportation of Foreign Nationals (OERE).

⁵⁷⁴ Article 44 Federal Act on Administrative Procedure.

⁵⁷⁵ Article 50 Federal Act on Administrative Procedure.

necessary for safeguarding the right of the person concerned, the court can appoint a lawyer to represent the applicant.⁵⁷⁶

In 2019, 4,105 temporary admissions were ceased, and 57 were withdrawn.⁵⁷⁷

6. Withdrawal of protection status

Indicators: Withdrawal

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

The SEM should 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.⁵⁷⁸

As in general any ruling can be subject to an appeal,⁵⁷⁹ the cessation of the protection status can also be appealed. The appeal must be filed within 30 days of notification of the ruling.⁵⁸⁰ No legal assistance is foreseen in the law for this specific case, but the general rule regarding legal aid is applicable: If it is necessary in order to safeguard the right of the person concerned, the court can appoint a lawyer to represent the applicant.⁵⁸¹

In 2019, the asylum status was withdrawn in 1,955 cases. This includes the withdrawal of refugee status in these cases.⁵⁸²

For temporary admission, the review described in [Cessation](#) is applicable. In 2019, 4,105 temporary admissions were ceased, and 57 were withdrawn.⁵⁸³

On 1 October 2016, changes to the Federal Act on Foreign Nationals and 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.⁵⁸⁴ In case of an expulsion order, the

⁵⁷⁶ Article 65(2) Federal Act on Administrative Procedure.

⁵⁷⁷ SEM, Asylum Statistics 2019.

⁵⁷⁸ Information provided by the SEM, 18 January 2017.

⁵⁷⁹ Article 44 Federal Act on Administrative Procedure.

⁵⁸⁰ Article 50 Federal Act on Administrative Procedure.

⁵⁸¹ Article 65(2) Federal Act on Administrative Procedure.

⁵⁸² SEM, Asylum Statistics 2019.

⁵⁸³ SEM, Asylum Statistics 2019.

⁵⁸⁴ Federal Council, Referendum on Asylum Act of 5 June 2016.

asylum status will be withdrawn. Temporary admission shall not be granted or shall expire if an order for expulsion from Switzerland becomes legally enforceable.⁵⁸⁵ There is not sufficient information on how this is applied so far.

⁵⁸⁵ Article 83(9) FNIA.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

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

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

Refugees with asylum

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

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

In 2019, 1,643 recognised refugees applied for family reunification.⁵⁸⁶ During the same year, the SEM approved refugee family reunification cases for 1,463 persons.⁵⁸⁷

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).⁵⁸⁸ The application must be filed with the competent cantonal migration authority, which passes it on to the SEM. Certain deadlines apply to the application:⁵⁸⁹ After the three-year waiting period is over, the application for family reunification must be submitted within five years, in case of children over 12 years the time limit is twelve months (in case of important family-related reasons, especially the best interest of the child, a later family reunification is possible). If the family / marriage was established after the waiting period of three years, the time limits start at the time the family / marriage was founded.

In 2019, 401 temporarily admitted persons applied for family reunification.⁵⁹⁰ The approved cases during the same year by the SEM concerned 120 persons.⁵⁹¹

⁵⁸⁶ Information provided by the SEM, 12 February 2020.

⁵⁸⁷ Information provided by the SEM, 16 February 2020.

⁵⁸⁸ Article 85(7) FNIA.

⁵⁸⁹ Article 74(2)-(3) Ordinance on Admission, Stay and Gainful Employment.

⁵⁹⁰ Information provided by the SEM, 14 February 2019.

⁵⁹¹ Information provided by the SEM, 12 February 2020.

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 grounds⁵⁹² relating to the family member, this person will only be granted a temporary admission as refugee even though the sponsor was granted asylum.⁵⁹³

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

C. Movement and mobility

1. Freedom of movement

In general, after some time (maximum 140 days) in a federal 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.⁵⁹⁴

After a status has been granted, **recognised refugees** have the right to choose their place of living within the canton. Additionally, they have the right to change the canton, unless reasons exist for the revocation of the residence permit.⁵⁹⁵

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 of beneficiaries related to being obliged to change their accommodation too often.

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

⁵⁹² Articles 53 and 54 AsyIA.

⁵⁹³ Federal Administrative Court, Decision BVGE 2015/40.

⁵⁹⁴ Article 27(3) AsyIA.

⁵⁹⁵ Article 63 FNIA.

No legal assistance is foreseen in the law for these specific cases, but the general rule regarding legal aid is applicable: If it is necessary in order to safeguard the right of the person concerned, the court can appoint a lawyer to represent the applicant.⁵⁹⁶

2. Travel documents

Recognised refugees have a right to receive a travel document in accordance with the Refugee Convention. The travel document for recognised refugees is valid for five years.⁵⁹⁷

On 1 April 2020, various amendments to laws and regulations in the field of migration have come into force. This date was set by the Federal Council at its meeting on 19 February 2020. The changes to the Foreign Nationals and Integration Act (FNIA) include provisions to prohibit recognised refugees from travelling to a third country, in particular to neighbouring countries of their country of origin, in order to enforce the ban on travelling home.⁵⁹⁸

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.⁵⁹⁹

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.⁶⁰⁰ The practice regarding this is very strict, it is only seldom recognised that the person cannot obtain travel documents from their home country. They must document very clearly what they have done to obtain travel documents (visits to the embassy etc.). In many cases, the persons do not succeed in proving their lack of documents, as the embassies of their home countries are reluctant to confirm in writing that they will not issue a travel document. This means persons with temporary admission are often unable to travel – for lack of documents, but mainly due to the strict regulation regarding return visas, see above.

If a person with temporary admission is issued a travel document by the SEM, this is called a “passport for a foreign person”.⁶⁰¹ 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.⁶⁰²

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.⁶⁰³ This office will register the application and forward it to the SEM. The SEM issues the travel document.

⁵⁹⁶ Article 65(2) Federal Act on Administrative Procedure.

⁵⁹⁷ 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).

⁵⁹⁸ Further information is available (in French) at: <https://bit.ly/2VaWTcX>.

⁵⁹⁹ Article 9 RDV.

⁶⁰⁰ Articles 4(4) and 10 RDV.

⁶⁰¹ Article 4(4) RDV.

⁶⁰² Article 13(1)(c) RDV.

Applications for a re-entry visa must also be made to the cantonal migration authority, and will be forwarded to the SEM for decision.⁶⁰⁴

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

In 2019, the SEM issued 15,858 travel documents for recognised refugees; 1,221 “foreign passports” for persons granted temporary admission and who do not have a passport; and 1,041 return visas (1,031 one-time, 10 repeated) for foreigners granted temporary admission.⁶⁰⁵

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 2019: | 2,368 |

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

E. Employment and education

1. Access to the labour market

Foreign nationals, refugees and stateless persons who have been provisionally admitted to Switzerland, refugees who have been granted asylum in Switzerland and stateless persons who are recognised in Switzerland may take up gainful employment as soon as they received such status.

Recognised refugees (with asylum or with a temporary admission status) are entitled to engage in gainful employment and to change jobs or professions without any restrictions.⁶⁰⁶ 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.⁶⁰⁷ On 31 December 2019, 36.3% of refugees with asylum who were able to work were employed.⁶⁰⁸

Since January 2019, **temporarily admitted persons** may work anywhere in Switzerland if the salary and employment conditions customary for the location, profession and sector are satisfied. The employer must report the start or end of employment to the cantonal authority responsible for the place of work in advance. The report must include a declaration, stating that the employer is aware of the salary and employment conditions customary for the location, profession and sector, and that he is committed to observing them.⁶⁰⁹ On 31 December 2019, 44.3% of temporarily admitted persons able to work were employed.⁶¹⁰

⁶⁰³ Article 14 RDV.

⁶⁰⁴ Article 15 RDV.

⁶⁰⁵ Information provided by the SEM, 12 February 2020.

⁶⁰⁶ Article 61 AsylA.

⁶⁰⁷ Article 65 Ordinance on Admission, Stay and Gainful Employment (OASGE).

⁶⁰⁸ SEM, Asylum Statistics 2019.

⁶⁰⁹ Article 85a FNIA.

⁶¹⁰ SEM, Asylum Statistics 2019.

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.⁶¹¹ 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 a 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 need 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 concerning access to education as Swiss nationals, including special education for people with disabilities. According to the Federal Constitution, cantons shall ensure that adequate special needs education is provided to all children and young people with disabilities up to the age of 20. As the system of school education depends on the canton, the implementation differs.

F. Social welfare

Refugees with asylum and temporarily admitted refugees who are unable to maintain themselves from their own resources are entitled to social benefits. They must be granted the same benefits as local recipients of social assistance.⁶¹² The guidelines of the Swiss Conference for Social Assistance (SCSA) apply.⁶¹³

For their part, **temporarily admitted** foreigners should receive the necessary social benefits unless third parties are required to support them.⁶¹⁴ The social benefits should be rendered in kind as non-cash benefits if possible. The benefits lower than the social benefits given to the local population.⁶¹⁵ They can be as much as 40% below the guidelines of the SCSA. On national average, beneficiaries subjected to asylum law (asylum seekers and temporarily admitted persons) received a monthly average of 1,119 CHF of net income to cover their needs as of June 2015. The amount, however, strongly varies from one canton to another and is supposed to cover basic social assistance, accommodation, health care costs as well as specific needs when necessary.

The provision of social benefits is under the responsibility of the Confederation as long as the person is staying in a federal asylum centre. After allocation to a canton, the canton should provide social assistance or emergency aid on the basis of Article 80a AsylA. Cantonal laws fix the amount and grounds for granting and limiting welfare benefits. This results in large differences of treatment among cantons.

Temporarily admitted foreigners are usually free to choose their place of residence within the canton unless they receive social assistance benefits. The cantonal authorities assign a place of residence and accommodation to temporarily admitted persons dependent on social assistance.⁶¹⁶

⁶¹¹ Article 62 Federal Constitution.

⁶¹² Article 3(1) AO2.

⁶¹³ SCSA, *Les normes CSIAS*, available (in French) at: <https://bit.ly/39GyAr6>.

⁶¹⁴ Article 81 AsylA.

⁶¹⁵ Article 82(3) AsylA.

⁶¹⁶ Article 85(5) FNIA.

G. Health care

Every person, including rejected asylum seekers, living in Switzerland must be insured against illness,⁶¹⁷ 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; however, there are limited capacities for adequate treatment in some fields.

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

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

⁶¹⁷ Article 3 Health Insurance Act (HIA).