



# Input by civil society organisations to the Asylum Report 2023

Dear Colleagues,

The production of the *Asylum Report 2023* is currently underway. The annual [Asylum Report series](#) presents a comprehensive overview of developments in the field of asylum at the regional and national levels.

The report includes information and perspectives from various stakeholders, including experts from EU+ countries, civil society organisations, UNHCR and researchers. To this end, we invite you, our partners from civil society, academia and research institutions, to share with us your reporting on developments in asylum law, policies or practices in 2022 (and early 2023) by topic as presented in the online survey.

Please note that the Asylum Report does not seek to describe national systems in detail but rather to present key developments of the past year, including improvements and challenges which remain. Your input can cover practices of a specific EU+ country or the EU as a whole. You can complete all or only some of the sections.

All submissions are publicly accessible. For transparency, 2022 contributions will be published on the EUAA webpage. For reference, contributions to the 2022 Asylum Report by civil society organisations can be accessed [here](#), under 'Acknowledgements'. All contributions should be appropriately referenced. You may include links to supporting material, such as analytical studies, articles, reports, websites, press releases or position papers. If your organisation does not produce any publications, please make reference to other published materials, such as joint statements issued with other organisations. Some sources of information may be in a language other than English. In this case, please cite the original language and, if possible, provide one to two sentences describing the key messages in English.

The content of the Asylum Report is subject to terms of reference and volume limitations. Contributions from civil society organisations feed into EUAA's work in multiple ways and inform reports and analyses beyond the Asylum Report.

Your input matters to us and will be much appreciated!

\*Please submit your contribution to the Asylum Report 2023 by **Friday, 3 February 2023**.\*





## Instructions

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Before completing the survey, please review the list of topics and types of information that should be included in your submission.

For each response, only include the following type of information:

- ✓ New developments and improvements in 2022 and new or remaining challenges; and
- ✓ Changes in policies or practices, transposition of legislation or institutional changes during 2022.

Please ensure that your responses remain within the scope of each section. Do not include information that goes beyond the thematic focus of each section or is not related to recent developments.

## Contributions by topic

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- 1. Access to territory and access to the asylum procedure (including first arrival to territory and registration, arrival at the border, application of the *non-refoulement* principle, the right to first response (shelter, food, medical treatment) and issues regarding border guards**

Swiss border patrol continues to return asylum seekers to neighboring countries without giving them the opportunity to ask for asylum. Whereas in 2021 we were particularly concerned about the southern Swiss border to Italy, in 2022 **the northern Swiss border to Germany and Austria was a prominent topic**. In November 2022, the Swiss government was accused of letting thousands of migrants travel “illegally” through Switzerland. Many migrants who enter Switzerland in St. Gallen do not apply for asylum, but want to continue their journey to neighboring countries such as Germany or France. The German Federal Office for Migration considers this practice a violation of the Dublin Agreement ([SRF News, 2022](#)). This comes after 2021, when newspaper articles revealed that Swiss authorities offered asylum seekers train tickets to reach other countries, instead of offering them the opportunity to ask for asylum in Switzerland ([AsyLex Input on Asylum Report, 2022](#)).

Nevertheless, what concerns the Swiss border to Italy, **AsyLex has brought border guards to court for an illegal push-back** of one of our clients in 2021. The court proceedings are still ongoing.

In addition, a new national law was passed by parliament where **short-term detention** is now allowed **without judicial review**. More precisely, according to the new Art. 73 para. 1 lit. c AIG, people may be detained at the border for up to three days without judicial review and even without a written order ([Parliament, 2022](#)).





Regarding the **non-refoulement principle**, we are concerned that asylum seekers who were previously registered in Dublin countries, such as Croatia, Romania or Bulgaria, are sent back without an adequate assessment of the human rights situation in these countries by the Swiss authorities. Switzerland issues non-entry decisions by merely relying on formal legal obligations of these countries (such as the European Convention on Human Rights, the European Charter of Fundamental Rights, the EU Reception Conditions Directive, etc.), which are in reality not (sufficiently) fulfilled, instead of truly conducting an individual assessment on the potential risks the rejected asylum seekers would face upon return to these countries (**Appendix 1, AsyLex Submission on “Safe Third Countries”, 2022**). We want to highlight that it is unclear which conditions Dublin returnees await in these countries. Detailed reports in this context are lacking, yet, issues of push-backs and chain-refoulement are notorious. Almost all of our clients who passed through these countries experienced severe human rights violations. Reception conditions in the respective Dublin states are often very precarious. These experiences are also described in numerous media reports ([WOZ Croatia, 2022](#); [LighthouseReport, 2023](#)). For example, in **Bulgaria** refugees have been systemically and arbitrarily detained in secret cage-like facilities before being illegally deported across borders ([LighthouseReport, 2022](#)). In **Croatia**, several reports by NGOs mention the brutalities and human rights violations faced by refugees including extremely violent pushbacks and torture, attacks by a special police force and ineffective investigations of claims of illegal actions ([Centre for Peace Studies & PRO ASYL, 2022](#)). Lastly, asylum seekers who are returned to **Romania** are particularly at risk of becoming victims of torture and inhuman treatment including illegal pushbacks and ill-treatment at the border, such as beatings, food denial and thefts by the border police (see e.g. [klikAktiv, 2023](#)). Therefore, the **Swiss Refugee Council called for a general deportation hold to Croatia and Bulgaria** ([Swiss Refugee Council, 2022](#)). Nevertheless, in Switzerland, the chances of success to appeal regarding such non-entry decisions remain extremely low (see our comments on question No. 4).

In light of these insufficient assessments along with the well-documented pushback practices at the EU’s external borders and the miserable reception conditions that have led to countless refugees being subjected to repeated ill-treatment and diverse human rights violations upon return, AsyLex has filed various complaints before the UN human rights treaty bodies (Committee against Torture (“CAT”), Committee on the Rights of the Child (“CRC”) and Committee on the Elimination of Discrimination against Women (“CEDAW”)) to prevent such removals. In 2022, in 13 out of 16 cases **interim measures** were granted, preventing the deportation of said asylum seekers, and in two of these cases the asylum seekers received a temporary protection status shortly afterwards (“F permit”). Consequently, this also implies that Switzerland has not sufficiently implemented the respective human rights treaties and does, therefore, not sufficiently protect alleged victims of mistreatment or sexual and gender-based violence (SGBV) (**Appendix 2: AsyLex Submission to the Special Rapporteur on torture, 2022**). In all of these cases where interim measures were granted, Switzerland would have expelled people despite a severe risk of human rights violations.





## 2. Access to information and legal assistance (including counselling and representation)

We appreciate the **general right to legal representation** in the Swiss asylum procedure. Nevertheless, as outlined in last year's report ([AsyLex Input on Asylum Report, 2022](#)), we are highly concerned about the practical implementation. The remuneration model of state-appointed legal representation is based on a **lump sum payment per asylum seeker represented**, regardless of the amount of work a case entails and whether the legal representation at their own discretion chooses to write an appeal on the asylum seeker's behalf. Thus, uncountable asylum seekers are left without representation in moments when representation is needed the most ([AsyLex Input on Asylum Report, 2022](#)).

Between 1 May 2020 and 25 November 2022, only 53% of all appeals were filed by the state-paid legal representation. 10% were filed by representatives who took over the mandate after the state-paid legal representation terminated it, and 37% filed appeals without legal representation. The context of **French-speaking Switzerland, where most appeals are filed** against non-appeal decisions or substantively negative decisions, shows that appeals are worthwhile. Of the 412 appeals filed, 277 were dismissed. However, 19 were successful, 51 were remanded to the lower instance, and 65 were formally decided. In addition, both asylum seekers represented by the state-paid legal representation and those who had to take over the mandate after the former ended, have a 3% chance of a positive decision (**Appendix 3, Federal Administrative Court ("FAC") Statistics, 2022**).

Especially in the context of **Dublin decisions on returns to Croatia, Romania or Bulgaria, the termination of the mandate by the state-paid legal representation before filing an appeal against the decision is particularly repulsive**. AsyLex has seen an increase in such cases in recent months and has therefore had to take on countless mandates from clients who need legal representation to file an appeal after receiving a non-entry decision. Specifically in light of the very short appeal deadlines (5 working days to appeal non-entry decisions), the asylum seeker is very often unable to find someone who can take on their mandate within this short delay.

Moreover, in the context of refugees fleeing to Switzerland from the Russian war in **Ukraine**, who can apply for a so-called "S permit", it is still unclear whether the state-paid legal representation is mandated to appeal against a negative decision on the granting of such an S permit. Prevailing information on S permits only informs about the rights associated with S permits, but does not consider what happens if an S permit is denied (see e.g. [Kanton Zürich, 2023](#)). Therefore, the **state-paid legal representation very often does not take on these mandates, and NGOs, such as AsyLex, must step in on short notice** to file appeals.

Finally, the State Secretariat for Migration (SEM) issued a ban on deportations to **Afghanistan** shortly before the Taliban came to power in August 2021. They informed that rejected asylum





seekers from Afghanistan could file a reconsideration request by presenting the changed circumstances ([SEM on Afghanistan, 2022](#)), through which they would be granted provisional admission – a so-called “F permit”. However, this is not done *ex officio*. Moreover, the filing of such a reconsideration request is not part of the mandate of the state-paid legal representation. Rather, Afghans are dependent on other legal representatives to inform them of this possibility and to file the reconsideration request.

### **3. Provision of interpretation services (e.g. introduction of innovative methods for interpretation, increase/decrease in the number of languages available, change in qualifications required for interpreters)**

Even though we acknowledge that most translators are qualified and trustworthy, we see significant deficiencies on a regular basis. Similar to last year, we therefore highly recommend that **asylum interviews are to be audio recorded**, in order to be able to double-check statements and to have evidence (on both sides) for any statements made ([AsyLex Input on Asylum Report, 2022](#)).

Since audio recordings are common in other fields, such as criminal proceedings, and they also reduce the work required to re-translate a word protocol after each hearing, we do not see any major obstacles for their introduction in asylum proceedings ([AsyLex Input on Asylum Report, 2022](#)).

### **4. Dublin procedures (including the organisational framework, practical developments, suspension of transfers to selected countries, detention in the framework of Dublin procedures)**

We are still highly concerned about the **lack of consideration** given by the Swiss authorities and the Swiss courts to each single case during the Dublin procedure, in particular, where vulnerable asylum seekers are concerned. Dublin procedures are executed at an **extremely fast pace** which hardly allows the identification of highly vulnerable asylum seekers, especially when serious mental health issues are concerned.

As explained above, the asylum systems are flawed in many European countries, therefore, asylum seekers often face inhumane living conditions, risk of torture as well as police and/or sexual violence. These issues were very often insufficiently assessed by the State Secretariat for Migration (SEM). Thus, AsyLex had to appeal to the Federal Administrative Court (FAC) several times in 2022. Despite the precarious reception conditions in the respective Dublin states, as well as the demanded general deportation hold to Croatia and Bulgaria by the Swiss Refugee Council ([Swiss Refugee Council, 2022](#)) due to the high risk of human rights violations in these countries, the chances of success when appealing non-entry decisions are extremely low. Despite this strict application of the Dublin III Regulation, we were successful in a few





cases, consequently forcing the Swiss authorities to conduct the asylum procedure in Switzerland.

- **Decision [F-5395/2021](#) of 25 January, 2022:** This case concerned an Afghan asylum seeker who received a **non-entry decision**, since arguably **Bulgaria** was responsible for his asylum procedure under the Dublin III Regulation. This despite the fact that **his asylum claim was rejected in Bulgaria** and, therefore, he would be subject to detention under precarious conditions in Bulgaria. Furthermore, he had already **attempted suicide** in the Dublin deportation center in Switzerland. AsyLex filed a complaint before the FAC on behalf of the client. The FAC found that the SEM had insufficiently assessed the medical situation of the complainant as well as his access to medical care and adequate accommodation in Bulgaria. Thus, the case was referred back to the lower instance, which then decided to conduct the asylum procedure of our client in Switzerland.
- **Decision [F-3214/2022](#) of September 1, 2022:** AsyLex appealed to the FAC in another ordered return under the Dublin III Regulation. This time on behalf of an Iranian asylum seeker who was ordered to return back to **Italy**. There, however, he had fallen victim to **rape**. In addition this client suffered from severe **depression and PTSD** and he was at risk of committing **suicide**. In the context of the rape, the FAC ruled that the complainant had omitted to describe the incident in sufficient details. Concerning the risk of suicide and the client's mental condition in general, the FAC stated that Italy would have the necessary infrastructure and suicidal tendencies were not considered an obstacle to execution. However, with respect to the extremely volatile health situation of the complainant and the corresponding assessment by the SEM that short-term deterioration in the health condition of the complainant could occur in the course of the transfer, the FAC found the transfer to be inadmissible. This was due to a doctor's report, according to which the complainant needed seamless medical treatment. Consequently, the FAC ruled that the SEM must obtain guarantees and conduct further clarification on how the very vulnerable complainant can be transferred to Italy under exclusion of any danger. In the event of an absence of such guarantees, the SEM would be ordered to refrain from returning the complainant under the application of the sovereignty clause. Since the SEM was unable to obtain the required guarantees, the case was referred back to the lower instance, which then entered into the asylum request with its decision of September 22, 2022.
- **Decision [F-4019/2022](#) of November 1, 2022 (Appendix 4):** A married Iraqi couple was ordered to **return to Lithuania under the Dublin III Regulation**, even though the wife was severely psychologically impaired due to, among other things, **rape in Lithuania**. The SEM did not sufficiently address the violations suffered and the resulting risks with respect to a renewed expulsion. Therefore, AsyLex filed a reconsideration request on their behalf, in which the wife's pregnancy was submitted to the authority for attention





as a **high-risk pregnancy**. In its decision, the FAC stated that **the fitness to travel must be assessed at the time of the decision**, or at least at a sufficiently determinable point in time, and not, as claimed by SEM, shortly before the departure to Lithuania. This determination of fitness to travel shortly before departure is the responsibility of the cantonal migration office. According to the FAC, however, this decision cannot be delegated by the SEM to the cantonal enforcement authority. Thus, the case was referred back to the lower instance for a more detailed assessment. A decision by the SEM is still pending.

Another problem with the speedy Dublin procedure is that the **Dublin interviews contain only summary transcripts**, which are by no means sufficient and do not record all the information mentioned. Even when asylum applicants mention experienced human rights violations in the respective Dublin countries, interviewers fail to ask further questions about these statements. This leads to a loss of relevant information and is a violation of the SEM's duty to investigate. Furthermore, interviewing methods such as video/audio recordings are not used, even when children are involved. The Swiss Refugee Council, UNICEF, the International Institute for the Rights of the Child (IIRC) and the International Social Service Switzerland (ISSI) recommend **the introduction of interviewing methods using video and audio recordings**, in order to avoid having to interview a child more than once, as well as **the introduction of alternative interviewing methods**, such as drawings or role-playing. To AsyLex's knowledge never or only very rarely such alternative interviewing methods are applied. In addition, the **SEM's staff still lacks the necessary training and skills to conduct a child-sensitive hearing**. The SEM is mandated by regulation to have child-sensitive training, and yet, the application of this training is not or very limited observable in practice: In most cases involving families, the **best interest of the child is equated with that of the parents**. Thus, the right of children to be heard is regularly violated (**Appendix 5: AsyLex Submission on Child Rights, 2022**).

Moreover, our legal representatives are regularly confronted with cases of clients facing a real risk of severe human rights violations upon return. Yet, not only the SEM but also the FAC frequently fail to assess these cases in needed detail. In this context, we are highly concerned about the strict application of the "Safe Third Country Concept"<sup>1</sup> by the SEM and the FAC (**Appendix 1: AsyLex Submission on "Safe Third Countries", 2022**). In particular with regard to the **Dublin member states**, the SEM and FAC insist on the narrative that these countries are bound by international obligations (such as the European Convention on Human Rights, the European Charter of Fundamental Rights, the EU Reception Conditions Directive, etc.) and that, therefore, the return of the applicant – regardless of their medical, mental health and family condition – is lawful. However, in our view, in these constellations, the SEM and FAC fail

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<sup>1</sup> For the definition as a safe third country, the Swiss authorities have to consider the political stability, compliance with human rights, the assessment of other EU/EFTA member states and UNHCR as well as other country specific criteria (Article 2 para. 1 Asylum Ordinance 1 [AsyIO 1]). Based on a bi-annual assessment, the list of safe third countries is defined and amended in the ASyIO 1, Annex 2 (available [here](#)). This list currently contains about 45 countries, namely the member states of EU/EFTA as well as further countries such as Albania, North Macedonia, Bosnia and Herzegovina, Senegal, Georgia, Ghana, India, Kosovo, Moldova, Mongolia or Montenegro.





to **assess the individual situation** of the person at hand.

Therefore, in 2022, AsyLex filed various complaints before the UN human rights treaty bodies (Committee against Torture (“CAT”), Committee on the Rights of the Child (“CRC”) and Committee on the Elimination of Discrimination against Women (“CEDAW”)) to prevent such returns. **Interim measures were granted in 8 out of 9 Dublin cases**, implying that Switzerland has not sufficiently implemented its obligations under these human rights conventions and does, therefore, not sufficiently protect alleged victims of mistreatment or sexual and gender-based violence, as mentioned above (**Appendix 2: AsyLex Submission to the Special Rapporteur on torture, 2022**).

In addition, asylum seekers who have received a non-entry decision from Switzerland and are to be sent back to another state under the Dublin system are regularly detained in **Dublin detention**. Cantons such as Fribourg and Lucerne almost systematically detain rejected asylum seekers approximately several days or even weeks before the scheduled flight, making it impossible for them to voluntarily return to the respective countries. Furthermore, requesting a review of the lawfulness of such a detention is almost never possible while the client is still in Switzerland due to the subsequent deportation. Moreover, in Dublin detention, people are denied any possibility of psychological treatment. In the case of **suicide attempts**, the person concerned is regularly placed in **solitary confinement**, although this clearly violates basic human rights, as several courts have confirmed in the past (**Appendix 2: AsyLex Submission to the Special Rapporteur on torture, 2022**). A **major success** that AsyLex was able to achieve in this context in 2022 concerns a case before the Swiss Federal Supreme Court. In this case we challenged Switzerland's practice of holding Dublin detainees for longer than the maximum period of 6 weeks provided for in the Dublin III Regulation. The Supreme Court ruled in our favor and **confirmed the maximum duration of 6 weeks in the context of Dublin detention** ([Supreme Court decision 2C\\_610/2021, 2022](#)).

An issue of further concern in this context, is the frequent **extension of the return deadlines** (article 29 (2) Dublin III Regulation). On several occasions AsyLex witnessed that Switzerland **extended the transfer period from 6 to 18 months**, although the clients did not go into hiding and were in constant contact with the migration authorities. Yet, already a shorter absence in the camp (e.g. a few hours or a night) or the non-appearance of rejected asylum seekers at the airport for the deportation flight is considered as absconding, which is clearly not in line with European law and the case law of the Court of Justice of the European Union in this regard.

##### **5. Special procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)**

Regarding the **problematic situation at the northern and southern borders of Switzerland**, please consult the comments to question No. 1.





The **extension of appeal deadlines in the accelerated procedure** (for substantive asylum decisions) from 7 working days to 30 days, introduced in the context of the Covid-19 pandemic, has been extended until 30 June 2024 ([SEM, 2022](#)). AsyLex welcomes this decision and recommends that this temporary change be maintained in the long-term to ensure access to justice.

Another welcomed development was the introduction on 11 March 2022 (valid from 12 March 2022) of **protection status S** (“S permit”) for people who have fled to Switzerland from the Russian war in **Ukraine**. This status grants temporary humanitarian admission to groups defined by the Federal Council. The advantage of the S permit is that the asylum reasons do not have to be examined, which leads to a more efficient procedure. In addition, once a person applies for an S permit, they are **covered by health insurance** and can **choose where to live freely** (whether in an asylum center or privately with a family). Asylum seekers from other countries, however, are exclusively subject to housing in asylum centers. Once the S permit is granted, people are assigned to a canton where they receive **social assistance**. Even though the S permit grants only temporary protection, individuals with S permit can be **immediately reunited with their nuclear family members** (wife, husband, or children under 18). This is in contrast to individuals granted temporary protection status (“F permit”), who must wait three years before they can apply for family reunification. In addition, **individuals with an F permit are prohibited from traveling abroad, while those with an S permit can do so without restriction**. Finally, people with an S permit have **immediate access to the Swiss labor market**.

While AsyLex welcomes the rights granted with the S permit as well as the speedy procedures associated, the obvious differences of the rights of asylum seekers from Ukraine compared to those of asylum seekers from other countries as well as holders of S compared to holders of F permits became apparent. **AsyLex therefore recommends that all other asylum seekers and persons with temporary admission be granted the same rights as those granted to asylum seekers from Ukraine and holders of an S permit.**

Finally, the practice towards **asylum seekers from Afghanistan** changed in 2022. Instead of a 4-hour asylum hearing, only a 2-hour hearing is conducted, after which **the F permit is granted more quickly**. If people still claim grounds for asylum when filling out the asylum application form, they will still be heard on their grounds for asylum (in a 4-hour hearing), but they will have to wait longer for the asylum decision. This change in practice is to be seen in the context of the increased number of asylum seekers who arrived in Switzerland in 2022. AsyLex welcomes the fact that faster F permits are issued, yet stresses the importance of examining each asylum application in detail.

**6. Reception of applicants for international protection (including information on reception capacities – increase/decrease/stable, material reception conditions – housing, food, clothing and financial support, contingency planning in reception,**





**access to the labour market and vocational training, medical care, schooling and education, residence and freedom of movement)**

The war in Ukraine has put the Swiss asylum system under pressure in several aspects.

The **number of asylum seekers and refugees** has **increased** significantly. In 2021, the State Secretariat for Migration (SEM) registered almost 15'000 asylum claims. In comparison, in 2022, approximately 24'500 asylum claims were submitted ([Blick, 2023](#)). In addition to these asylum claims, the Swiss government has also granted 80'000 **S permits to Ukrainian refugees** bringing the number of asylum claims to over 100'000 for 2022.

Due to these numbers, the accommodation and reception facilities were overwhelmed. The asylum centers were full and even operating beyond their capacity, leading to the reintroduction of **civil protection bunkers** as accommodation for asylum seekers. However, for the first time in this context, people who fled the war in the **Ukraine**, were able to be **housed privately**.

Furthermore, allegedly because of the lacking capacities, the **resettlement program for 2022/2023 was paused** by decision of November 30, 2022, leaving refugees stranded in particularly vulnerable conditions in third countries. Nevertheless, the people who received a positive decision until November 30, 2022 will still be resettled to Switzerland until March 2023. What concerns further resettlement assessments, the Federal Council will re-evaluate the situation again in spring 2023. So far, only 641 of the planned 1820 resettlement refugees have been resettled to Switzerland. Another 350 to 400 people who have already been selected for the program can still enter until the end of March 2023. For the remaining 800 or so, it is a matter of waiting. AsyLex urges the new Federal Councillor and Head of the Federal Department of Justice and Police Elisabeth Baume-Schneider, who took office on January 1, 2023, to end the suspension of the resettlement program ([Blick, 2022](#)).

More generally, we witnessed **several other issues** including little support concerning the access to the Swiss labor market for refugees, non-transparent social aid practice (especially with regard to financial support for asylum seekers and provisionally admitted foreigners, including unlawful cuts in social assistance), little to no information to asylum seekers on their rights outside the asylum procedure as well as a lack of sufficient social workers in the asylum field. In scope of all these issues, regional practices differ greatly.

**7. Detention of applicants for international protection (including detention capacity – increase/decrease/stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)**

Asylum seekers who have received a non-entry decision from Switzerland and are to be returned to another state within the Dublin System, are regularly taken into **Dublin detention** before their return, where they are **denied any possibility of psychological treatment**. People





whose asylum request was materially assessed and rejected, and who are now subject to return to their home country or a so-called “safe third country”<sup>2</sup>, are also placed in detention pending deportation. Especially victims of mistreatment or sexual and gender-based violence are regularly denied the possibility of psychological treatment, which, for traumatized persons, amounts to **inhuman treatment** and regularly leads to suicidal attempts. In the latter case, the persons concerned are regularly placed in **solitary confinement**, even though this is clearly in violation of basic human rights, as several courts stated already. Eventually, these persons are returned to countries where they face renewed exposure to mistreatment or sexual and gender-based violence (**Appendix 2, AsyLex Submission to the Special Rapporteur on torture, 2022**).

As seen above under the response to question No. 4 a **major success** that AsyLex was able to achieve was before the Swiss Federal Supreme Court. We challenged Switzerland's practice of detaining Dublin detainees for longer than the maximum period of 6 weeks provided for in the Dublin III Regulation. The Supreme Court ruled in our favor and **confirmed the maximum duration of 6 weeks in the context of Dublin detention** ([Supreme Court decision 2C 610/2021, 2022](#)).

In the context of **solitary confinement**, AsyLex achieved a further great success before the Administrative Court of the Canton of Zurich in **Decision VB.2021.00661 of July 28, 2022 (Appendix 6)**.

Our client from Afghanistan was issued a non-entry decision, since Greece had previously granted him protection. This, despite the minority of our client, which, however, was contested by Switzerland, as well as the fact that he had survived multiple traumatic violent attacks while living on the streets of Greece. In Switzerland, he was subsequently placed in detention. Given his traumatic experiences and his young age, he was in an extremely bad mental condition. Due to acute suicidal tendencies, the client was placed in solitary confinement, only wearing his briefs and vest. The prison staff did not inform him about the reasons for the transfer into solitary confinement, nor was he allowed to contact us, his legal representatives. After two and a half days he was transferred back to regular detention, where he was able to inform us about his circumstances. This gave us the possibility to contest this detention order successfully. The court ruled that the client should have been transferred to a clinic on the basis of proportionality instead of ordering detention in solitary confinement.

Furthermore, AsyLex also successfully challenged the **lamentable conditions of detention in some Swiss detention centers, which did not meet legal standards**. This helps to ensure that the minimal standards, not only for our clients but for all people currently detained, are being respected.

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<sup>2</sup> For the definition as a safe third country, the Swiss authorities have to consider the political stability, compliance with human rights, the assessment of other EU/EFTA member states and UNHCR as well as other country specific criteria (Article 2 para. 1 Asylum Ordinance 1 [AsyIO 1]). Based on a bi-annual assessment, the list of safe third countries is defined and amended in the ASyIO 1, Annex 2 (available [here](#)). This list currently contains about 45 countries, namely the member states of EU/EFTA as well as further countries such as Albania, North Macedonia, Bosnia and Herzegovina, Senegal, Georgia, Ghana, India, Kosovo, Moldova, Mongolia or Montenegro.





- **Decision ERV 22 51, ERV 22 53 of 5 September 2022 (Appendix 7):** The Supreme Court of Appenzell Ausserrhoden found that the **separation requirement had been violated** in the case of one of our clients ([SRF News, 2022](#)). This is incompatible with European Court of Justice (ECJ) case law, which states that asylum seekers in **administrative detention must be housed separately from inmates under criminal detention**. While this decision was in favor of AsyLex's complaint and led to the release of our client, the Supreme Court of Appenzell Ausserrhoden did not rule on the further contested detention conditions, such as the factual solitary confinement, since our client was for about 4 months the only detainee in the deportation detention department, and had no access to his psychologist, or sufficient medical treatment including translation, nor access to Internet and was solely able to leave his cell when going to the yard or to the gym. Therefore, AsyLex appealed this decision, which is currently still pending before the Federal Supreme Court.
- **Decision [2C 781 2022](#)** of 8 November 2022: In a further case before the Federal Supreme Court, we challenged the detention conditions in an administrative detention facility in the canton of St. Gallen. The court ruled in our favor, explicitly stating that the **detention conditions violate international and federal law**. This specifically because our client did not have access to the Internet, the detention time in the cell was excessively long, the separation requirement was clearly violated as the prison was part of a police station and the other detainees were subject to the strictest pre-trial detention regime. Moreover, there was no specialized staff and visits were only possible with a partition, which has long been in violation of the Federal Supreme Court's jurisprudence.
- **Decision [2C 765/2022](#):** In another decision, the Federal Supreme Court approved our complaint, deciding that long periods of confinement up to 18 hours are not permissible and any restriction of freedom must be kept low and justified in each case. In addition, the Court confirmed that access to the Internet is guaranteed under the freedom of information and freedom of expression. Thus, the Court ruled that the administrative detention conditions in Moutier, canton of Bern, are unlawful.
- Moreover, AsyLex achieved further successes before the Federal Supreme Court, or already before cantonal courts in regard to Dublin detention. For instance, in the decision [2C 27/2022](#) of 9 May 2022 the Federal Supreme Court found that only because our client stated during the exit interview about his planned return to Bulgaria that he did not intend to go to Bulgaria and subsequently remained in the asylum center, **the detention ordered after 2 months was unlawful**, this due to a **lacking risk of absconding**. In connection with the lacking risk of absconding, AsyLex was able to achieve another success before the Federal Supreme Court (decision [2C 38/2022](#) of 7 July 2022 ).

Yet, it has to be noted that, since the **detention conditions in administrative detention are**





**frequently unlawful**, AsyLex achieves positive decisions already on the level of cantonal courts in many cases. Only a small number of cases have to be further contested before the Federal Supreme Court. In addition, **a violation of the right to be heard is increasingly determined by cantonal courts**. This is mainly due to a violation of the duty to provide reasons for the ordered detention, because the requested files do not arrive for days or are not kept properly (violation of the duty to keep files), or because we as legal representatives are not informed about subpoenas or hearings, despite having a known mandate. These practices of the cantonal migration authorities are of concern to AsyLex.

Finally, several further issues are of ongoing concern to AsyLex:

- **Alternatives** to detention are frequently **insufficiently assessed**.
  - Since the responsibility to provide legal representation in administrative detention lies with the individual cantons, great differences between the cantons are observable. Generally, **only a few detained asylum seekers have access to legal representation**.
  - **Administrative detention can be ordered up to 18 months**, which is, in our view, completely disproportionate.
- 8. Procedures at first instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, determination of international protection status, decision-making, timeframes, case management – including backlog management)**

Regarding procedures related to **Ukrainians** and S permits, see our comments to question No. 5.

Regarding the inadequate interviewing methods used with **children** by the State Secretariat for Migration (SEM) and the right of children to be heard, see our comments to question No. 4.

- 9. Procedures at second instance (including organisation of the process, hearings, written procedures, timeframes, case management – including backlog management)**

Our observations from 2021 continue to apply (for more details: [AsyLex Input on Asylum Report, 2022](#)).

In addition, and as seen above under response to question No. 2, there are **significant differences between the asylum regions on whether the state-paid legal representation appeals against negative decisions or not**. Between May 1, 2020 and November 25, 2022, the legal representatives in Bern appealed solely 117 times. In French-speaking Switzerland, however, 412 appeals were submitted. Accordingly, more appeals were approved or referred back to the lower court from the French-speaking part of Switzerland, as can be seen above (**Appendix 3, Federal Administrative Court (“FAC”) Statistics, 2022**).





Furthermore, as the deadlines for **Dublin cases are extremely short** (5 working days), the **asylum seekers are left alone at a very critical stage in case of termination of the mandate of the state-paid legal representation**. On several occasions, AsyLex was confronted with asylum seekers filing an incomplete appeal against the negative decisions by themselves. By the time the clients approached AsyLex, the deadline had passed. As we intended to file an appeal supplement, we requested an extension of time to do so. In most cases, however, the Federal Administrative Court (FAC) rejected our request on the grounds that the asylum seekers had already had the opportunity to file an appeal and consequently ignored the fact that they had not been legally represented at the first filing.

Moreover, the **FAC does not individually assess the evidence** submitted by asylum seekers who have to be returned under the Dublin III Regulation or to a so-called "safe third country"<sup>3</sup>, but merely refers to the legal obligations to which the respective state is bound and which the FAC considers sufficient. The fact that the individual risk is not assessed in detail, as stated in the response to question No. 4, is of great concern to AsyLex. In particular, because this often results in asylum seekers in need of protection being deported to places where they are at risk of (renewed) human rights violations.

Finally, also under the revised asylum law, **no oral hearings take place before the second instance**. In our view, this is problematic in many cases, since the written files do not provide the same comprehensive impression of a person, and notably their credibility, as a personal hearing.

#### **10. Availability and use of country of origin information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)**

Only scarce information on the reception conditions of returnees under the Dublin III Regulation is available in certain countries, such as Croatia, Bulgaria and Romania. Yet, both the State Secretariat for Migration (SEM) and the Federal Administrative Court (FAC), based on a questionable assessment of the Swiss embassies in the respective countries, argue that the reception conditions, as well as the access to the asylum procedure and the medical treatment would be sufficient. This despite the fact that **almost all of our clients who passed through countries along Europe's borders such as Bulgaria, Hungary and Croatia had experienced severe human rights violations**, including illegal pushbacks and the systematic detention in secret cage-like facilities before illegally being deported. These experiences are also described in numerous media reports ([WOZ Croatia](#), 2022; [Lighthouse report](#), 2023).

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<sup>3</sup> For the definition as a safe third country, the Swiss authorities have to consider the political stability, compliance with human rights, the assessment of other EU/EFTA member states and UNHCR as well as other country specific criteria (Article 2 para. 1 AsyIO Ordinance 1 [AsyIO 1]). Based on a bi-annual assessment, the list of safe third countries is defined and amended in the AsyIO 1, Annex 2 (available [here](#)). This list currently contains about 45 countries, namely the member states of EU/EFTA as well as further countries such as Albania, North Macedonia, Bosnia and Herzegovina, Senegal, Georgia, Ghana, India, Kosovo, Moldova, Mongolia or Montenegro.





Furthermore, it is highly concerning that **the assessments of the Swiss embassies in the respective countries frequently differ greatly from the assessments done by organizations working in the asylum field**, such as local organizations active on the ground. An example thereof is the assessment of the **admissibility of returns to Sri Lanka** in the aftermath of Sri Lanka bankruptcy in June 2022. While the Swiss Refugee Council, based on information from local organizations, elaborated on the fact that access to medical treatment and drugs cannot be guaranteed ([Swiss Refugee Council, 2022](#)), the SEM's note on "medical care during economic and supply crisis" dated July 29, 2022, came to another conclusion (**Appendix 8: SEM country note Sri Lanka, 2022**). Namely SEM claims that despite medications and fuel shortages, Sri Lanka's comparatively well-functioning health care system, including psychiatric clinics, remains accessible to all patients thanks to the improvisation of health care personnel and the support of external donors (**Appendix 8: SEM country note Sri Lanka, 2022**). Accordingly, Switzerland continues to deport rejected asylum seekers to Sri Lanka ([NZZ, 2022](#)).

Furthermore, **countries such as Germany refrain from deporting asylum seekers who had been granted protection status in Greece back to this country**, because of lacking state protection and support. However, Switzerland continues deportations of asylum seekers to Greece when they have been granted protection status there. Although Switzerland introduced stricter criteria regarding vulnerable individuals in 2022, it continues to assume that the deportation to Greece for refugees is in principle reasonable. Only in the case of families with children, unaccompanied minors transfers and seriously ill persons, deportations are unreasonable, unless there are favorable conditions or circumstances ([FAC decision E-3427/2021 / E-3431/2021, 2022](#)).

Finally, the FAC often cites local NGOs in its decisions, arguing that they could provide asylum seekers with the necessary medical and social assistance upon return to the respective countries. In this context, however, **the FAC ignores the fact that this would rather be the responsibility of the respective state and not of these organizations to provide the needed support to returnees**, thus, indicating that the state fails to provide the necessary support and protection to the expelled asylum seekers.

**11. Vulnerable applicants (including definitions, special reception facilities, identification mechanisms/referrals, procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children)**

Our observations from 2021 continue to apply ([AsyLex Input on Asylum Report, 2022](#)):

- There are still **no special accommodations for vulnerable persons, families or women**. There is a **lack of places in the asylum shelters where asylum seekers can stay in privacy**. It is not even possible to lock the doors of their rooms. Therefore, asylum seekers are confronted with police entering their rooms - even at night while





they are sleeping - to forcibly deport (rejected) asylum seekers. These incidents are traumatizing for the asylum seekers.

- There is also a **lack of referrals to medical professionals, including psychologists**. This is especially true for asylum seekers in the Dublin procedure. This is of particular concern when dealing with victims of torture, racial discrimination, trafficking, or sexual and gender-based violence. Even when a particular vulnerability has been identified on paper, referral to specialized mental health or other support services is very limited or non-existent.
- In addition, such vulnerabilities are generally inadequately assessed and addressed by migration authorities during the asylum process (see responses to questions No. 1, 4, 9, and 10). Even when asylum seekers state that they have suffered human rights violations or have been victims of torture, trafficking or sexual and gender-based violence, no further questions are asked in this context and no action is taken on their behalf. Persons who have been trafficked in Switzerland are indeed referred to the Federal Office of Police (fedpol). However, AsyLex has no knowledge of any continuing investigative proceedings, as these are usually discontinued after a short period of time. **If the trafficking did not take place in connection to Switzerland, no measures are taken at all.**
- On the basis of a **generalized examination**, Swiss authorities frequently issue non-entry or negative asylum decisions, even where victims of mistreatment or sexual and gender-based violence are concerned. Often, Swiss authorities subsequently also order **administrative detention** in order to ensure enforcement of the deportation order. In administrative detention, however, alleged **victims of mistreatment or sexual and gender-based violence are regularly denied the possibility of psychological treatment**, which, for traumatized persons, amounts to inhuman treatment and regularly leads to suicidal attempts. Subsequently, these persons are returned to countries where they face renewed exposure to mistreatment or sexual and gender-based violence. Such returns mostly occur in the context of the Dublin III Regulation or to so-called “safe third countries”<sup>4</sup> (**Appendix 2: AsyLex Submission to the Special Rapporteur on torture, 2022**).
- In addition, AsyLex has observed that, in general, the **vulnerability of children is not sufficiently addressed in the Swiss asylum system**. Particularly for accompanied children the dangers specific to the deportation of children are not sufficiently addressed during their asylum procedure. As a result, their asylum applications are rejected even though they suffered serious human rights violations or have already integrated in Switzerland, which results in the children being uprooted from their

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<sup>4</sup> For the definition as a safe third country, the Swiss authorities have to consider the political stability, compliance with human rights, the assessment of other EU/EFTA member states and UNHCR as well as other country specific criteria (Article 2 para. 1 Asylum Ordinance 1 [AsyIO 1]). Based on a bi-annual assessment, the list of safe third countries is defined and amended in the ASyIO 1, Annex 2 (available [here](#)). This list currently contains about 45 countries, namely the member states of EU/EFTA as well as further countries such as Albania, North Macedonia, Bosnia and Herzegovina, Senegal, Georgia, Ghana, India, Kosovo, Moldova, Mongolia or Montenegro.





familiar environment. In various cases led by AsyLex, **neither the State Secretariat for Migration (SEM) nor the courts took the affected children's best interest properly into account.** Quite frequently, the children involved were not even heard. Deportations of families with rejected asylum applications are ordered (e.g. to Sri Lanka), even though the children were born and raised in Switzerland. Moreover, the SEM and the courts regularly consider asylum applications as inadmissible where applicants are already registered in another European country (namely based on the Dublin III Regulation). **In such inadmissibility decisions, the specific risks for the children involved are generally not considered and it is simply referred to the theoretical legal obligations the country of return has.** Such inadmissibility decisions are even taken in situations where the children are severely traumatized and urgently need mental health support, where the child or the family suffered severe human rights violations in the country of return, and even where there is a high risk of further human rights violations upon return. In various situations like these, AsyLex brought the case to the attention of the Committee on the Rights of the Child, and for all such communications, interim measures were granted (No. 126/2020, No. 174/2022, No. 200/2022, No. 155/2021, No. 191/2022, No. 163/2021, No. 181/2022). In some cases, the Swiss authorities subsequently reconsidered their decision and refrained from deportation. These constellations reveal that the Swiss authorities and courts do (or at least did initially, before the Committee intervened) not properly consider relevant rights of the child.

## **12. Content of protection (including access to social security, social assistance, health care, housing and other basic services; integration into the labour market; measures to enhance language skills; measures to improve attainment in schooling and/or the education system and/or vocational training)**

As seen under the response to question No. 5, the introduction of the protection status (“S permit”) for people fleeing the war in Ukraine brought many **advantages compared to the regular asylum procedure and the existing temporary protection status** (“F permit”). Although the asylum seekers still have to apply in the federal asylum centers, they do not have to live there, but can **choose between this accommodation and private accommodation.** In many cases, S permits are **granted after only three days of application.** With the S permit, people **can work**, even self-employed, and **children can attend public schools.** Furthermore, with the S permit, **travel is allowed immediately**, this includes even short trips to Ukraine. Finally, people with an S permit can **immediately apply for family reunification.** Thus, in many ways, people who have fled the war in Ukraine have more rights than asylum seekers from other countries. These asylum seekers are, for example, housed in federal asylum centers and are not entitled to private housing. Also, despite the introduction of the accelerated asylum procedure, which requires completion of the asylum process within 140 days, the process for obtaining an S permit is much faster. In addition, people granted an F permit must wait three years to apply for family reunification with their family and also cannot travel abroad.





A further issue in this context is that **not all people fleeing the war in Ukraine are eligible for the S permit**. Only Ukrainian nationals and third-country nationals with a permanent residence permit in Ukraine or with a temporary residence permit who cannot return to their country of origin are eligible for the S permit. Other third-country nationals who do not have a legal residence permit in Ukraine (e.g., asylum seekers who were still in the asylum process) are excluded.

The fact that asylum seekers from Ukraine are granted the above outlined rights from the very beginning is highly welcomed by AsyLex. In our view, this shows that **fewer restrictions are possible during the asylum procedure and should therefore apply to everyone**.

### 13. Return of former applicants for international protection

Our observations from 2021 continue to apply ([AsyLex Input on Asylum Report, 2022](#)):

- We are still highly concerned about the procedures of forced returns as well as about the threats returnees may face upon arrival in the other country (be it returns to other Dublin member states, a “safe” third country or the country of origin).
  - The policy of “**surprise returns**” continues to be conducted. Thereby, neither the applicants - including families with children - nor we as legal representatives are informed upfront about the date of return. This happens especially in cases of Dublin returns. This is particularly concerning in the context of returns to countries where the human rights situation is critical as expelled asylum seekers face (renewed) exposure to mistreatment or sexual and gender-based violence. Previous knowledge about these returns would enable us to arrange for a humane welcoming situation upon arrival. Particularly the situation in the Canton of Fribourg is highly concerning in this regard, where also the inspection of the complete files regarding the return flight, even after the deportation, is rejected.
  - An issue of concern in this context is the institutionalization of **inhuman treatment during forced deportations**: The decisions on the legal stay of a person based on the Asylum Act or the Foreigners and Integration Act are enforced by administrative law enforcement measures. One of these measures is forced deportation, which occurs when the person concerned, who has received a deportation order, does not leave the country voluntarily within a predefined time frame. Depending on how willing the person concerned is to cooperate with a forced deportation, the deportation is carried out according to different levels, level 4 being the most restrictive one. Level 4 deportations are applied if a person is considered so recalcitrant that they are unable to travel on an ordinary scheduled flight, even if handcuffed. In this case, a special flight with increased restraint is carried out for this person. It should be noted that the **authorities define the term “recalcitrant” very broadly: Anyone who has refused to take a flight once can be considered recalcitrant**. In the case of level 4 deportations, the person concerned is tied to a wheelchair with up to eight cable ties, where a helmet is put on their head. **AsyLex also has**





**knowledge of cases where families were deported under the level 4 regime.** Parents were treated in the manner explained above, while the children were separated from them and handed over to the police during the flight. Thereby, the usually already **highly traumatized children become re-traumatized and the dignity and personal integrity of the parents concerned is systematically violated.** Level 4 deportations systematically use methods that fall under the category of internationally condemned inhuman treatment. Even though level 4 deportations are (at least supposed to be) always accompanied by the National Commission for the Prevention of Torture (NCPT), the information about the exact situation is limited due to significant redaction (blacking out) of their reports. Even more concerning, also in cases of level 2 or 3 flights, **coercive measures are applied, namely against vulnerable people**, and in these constellations no independent monitoring takes place at all, leaving the persons concerned fully exposed to the police and security staff involved.

- Another concerning aspect is the medical assessment made by the private company OSEARA which gives approval to (forcibly) remove people with medical issues. In our perspective, **the assessments are not sufficient and oftentimes biased** - namely when severely ill people's condition is being assessed based on existing medical certificates only, without even talking to the person concerned. We are particularly concerned about the situation of people with severe mental health issues, children and victims of sexual and gender-based violence. It should be noted that all OSEARA reports are signed by one single doctor, rendering it factually impossible for this doctor to indeed examine each individual case properly. In this regard it might be noteworthy also that there are significant conflicts of interest, since OSEARA is directly mandated and paid by those exact authorities who strive to return the persons concerned.
- When it comes to the countries to which returns took place in the year 2022, we are particularly concerned about the **returns to Ethiopia, Sri Lanka, Democratic Republic of Congo and Turkey**, where it is well known that returnees face a significant risk of persecution, as well as **Dublin returns to Croatia, Bulgaria and Romania**, where almost all people concerned had previously suffered police violence and further human rights abuses. Furthermore, we are still concerned about **Dublin returns to Italy and France**, where returnees in most cases do not have access to shelter and other basic needs upon return. We, therefore, generally ask for a more prudent and forward-looking approach when deciding whether a return can take place or not.
- Where it was not yet too late, AsyLex filed **various complaints before the UN human rights treaty bodies**, as can be seen under response to question No. 1 and 4, and - in the vast majority of cases - **interim measures were granted.**





#### **14. Resettlement and humanitarian admission programmes (including EU Joint Resettlement Programme, national resettlement programme (UNHCR), National Humanitarian Admission Programme, private sponsorship programmes/schemes and ad hoc special programmes)**

In special cases, e.g. in the case of immediate, serious and concrete danger to life and limb, Switzerland provides for the possibility that foreigners who do not meet the requirements for entry into Switzerland may exceptionally be allowed entrance into Switzerland for a longer-term stay in accordance with [Art. 5 para. 3 FNIA](#) i.C.w [4 Abs. 2 OEV](#). Yet, **not a single one of the very numerous so-called humanitarian visa applications submitted by AsyLex was granted**. This is despite the fact that the majority of AsyLex's clients, for whom we submitted a humanitarian visa application, have a high-risk profile and fled in the context of the Taliban takeover in Afghanistan. This indicates an **extremely strict practice** or rather a **non-functioning humanitarian visa institution** (see e.g. [Blick, 2023](#) and [swissinfo.ch, 2023](#)).

In this context, AsyLex is also very concerned about the inability of the severely threatened persons themselves to reach the relevant Swiss embassies (especially those in Pakistan, Iran and Turkey) to make an appointment to apply for a humanitarian visa to Switzerland. However, through the intervention of legal representatives such as AsyLex, interview appointments were granted to the client. This suggests a **discriminatory practice between requests from legal representatives and those from private individuals**, which is unacceptable.

Over time, however, **not even the requests of legal representatives were answered**. AsyLex therefore had to contact the Secretaries of State to point out this inaction. Only then did our clients receive appointments again.

Finally, as seen under question No. 6 the **resettlement program for 2022/2023 was paused** by decision of November 30, 2022, allegedly because of the lacking capacities, leaving refugees stranded in particularly vulnerable conditions in third countries. Yet, these people who received a positive decision until November 30, 2022, will still be resettled to Switzerland until March 2023. What concerns further resettlement assessments, the Federal Council will reevaluate the situation again in spring 2023. So far, **641 of the planned 1820 resettlement refugees for 2022/2023 have been accepted to Switzerland**. Another 350 to 400 people who have already been selected for the program can still enter until the end of March 2023. For the remaining 800 or so, it is a matter of waiting ([Blick, 2022](#)). Hence, the decision only concerns 800 persons per year and AsyLex has knowledge of people, who, despite this decision, received positive resettlement decisions. This temporary suspension of the resettlement appears to have been politically motivated. **AsyLex urges the new Federal Councillor and Head of the Federal Department of Justice and Police Elisabeth Baume-Schneider, who took office on January 1, 2023, to end the suspension of the resettlement program.**





### **15. Relocation (ad hoc, emergency relocation; developments in activities organised under national schemes or on a bilateral basis)**

There is **no update since our report from 2019**. We therefore refer to our comments from two years ago.

We regret that **Switzerland is not actively involved in any relocation schemes**. It would be appreciated if Switzerland accepts applicants who currently stay in other countries, be it within or outside Europe - noting that in fact it is impossible for (hardly) any asylum seeker to arrive in Switzerland by legal ways.

### **16. National jurisprudence on international protection in 2022 (please include a link to the relevant case law and/or submit cases to the EUAA Case Law Database)**

Swiss legislation (Art. 85 § 7 Act on Foreign Nationals and Integration) requires people who are temporarily admitted to Switzerland to wait for three years before applying for family reunification. Temporary admission is a type of legal status extended to persons whose removal would notably be in violation of international law, impossible or unreasonable. The three year waiting period time limit was recently re-activated by the Federal Administrative Court (FAC) in its case [F-2739/2022](#) of 24 November 2022. Complying with the case law of the European Court of Human Rights (M.A. and others v. Denmark, 6697/18) the FAC held that the waiting period cannot be applied strictly and automatically. Swiss authorities therefore have to consider each case individually and in accordance with the obligations under art. 8 ECHR already shortly before a person has been temporarily admitted for two years.

Moreover, in 2022 Switzerland introduced stricter criteria regarding the deportation of vulnerable individuals to Greece (decision [E-3427/2021 / E-3431/2021](#) of 28 March 2022). Nevertheless, it continues to assume that the deportation to Greece for refugees is in principle reasonable. For more information see our comments under question No. 10 ([FAC. 2022](#)).

#### **Further decisions mentioned within the response to questions No. 1-15:**

- **Decision [F-5395/2021](#) of 25 January 2022:** This case concerned an Afghan asylum seeker who received a **non-entry decision**, since arguably **Bulgaria** was responsible for his asylum procedure under the Dublin III Regulation. This despite the fact that **his asylum claim was rejected in Bulgaria** and, therefore, he would be subject to detention under precarious conditions in Bulgaria. Furthermore, he had already **attempted suicide** in the Dublin deportation center in Switzerland. AsyLex filed a complaint before the FAC on behalf of the client. The Court found that the State Secretariat for Migration (SEM) had insufficiently assessed the medical situation of the complainant as well as his access to medical care and adequate accommodation in Bulgaria. Thus, the case was referred back to the lower court, which then decided to conduct the asylum procedure of our client in Switzerland.





- **Decision [F-3214/2022](#) of September 1, 2022:** AsyLex appealed to the FAC in another ordered return under the Dublin III Regulation. This time on behalf of an Iranian asylum seeker who was ordered to return back to **Italy**. There, however, he had fallen victim to **rape**. In addition this client suffered from severe **depression and PTSD** and he was at risk of committing **suicide**. In the context of the rape, the FAC ruled that the complainant had omitted to describe the incident in sufficient details. Concerning the risk of suicide and the client's mental condition in general, the FAC stated that Italy would have the necessary infrastructure and suicidal tendencies were not considered an obstacle to execution. However, with respect to the extremely volatile health situation of the complainant and the corresponding assessment by the SEM that short-term deterioration in the health condition of the complainant could occur in the course of the transfer, the FAC found the transfer to be inadmissible. This was due to a doctor's report, according to which the complainant needed seamless medical treatment. Consequently, the FAC ruled that the SEM must obtain guarantees and conduct further clarification on how the very vulnerable complainant can be transferred to Italy under exclusion of any danger. In the event of an absence of such guarantees, the SEM would be ordered to refrain from returning the complainant under the application of the sovereignty clause. Since the SEM was unable to obtain the required guarantees, the case was referred back to the lower court, which then entered into the asylum request with its decision of September 22, 2022.
- **Decision [F-4019/2022](#) of November 1, 2022 (Appendix 4):** A married Iraqi couple was ordered to **return to Lithuania under the Dublin III Regulation**, even though the wife was severely psychologically impaired due to, among other things, a **rape in Lithuania**. The SEM did not sufficiently address the violations suffered and the resulting risks with respect to a renewed expulsion. Therefore, AsyLex filed a reconsideration request on their behalf, in which the wife's pregnancy was submitted to the authority for attention as a **high-risk pregnancy**. In its decision, the FAC stated that **the fitness to travel must be assessed at the time of the decision**, or at least at a sufficiently determinable point in time, and not, as claimed by SEM, shortly before the departure to Lithuania. This determination of fitness to travel shortly before departure is the responsibility of the cantonal migration office. According to the FAC, however, this decision cannot be delegated by the SEM to the cantonal enforcement authority. Thus, the case was referred back to the lower court for a more detailed assessment. A decision by the SEM is still pending.
- **Decision [2C\\_610/2021](#), of 11 May, 2022:** In this case AsyLex challenged Switzerland's practice of holding Dublin detainees for longer than the maximum period of 6 weeks provided for in the Dublin III Regulation. The Federal Supreme Court ruled in our favor and **confirmed the maximum duration of 6 weeks in the context of Dublin detention**.





- **Decision VB.2021.00661 of July 28, 2022 (Appendix 6):** In the context of **solitary confinement** AsyLex achieved a further great success before the Administrative Court of the Canton of Zurich. Our client from Afghanistan was issued a non-entry decision, identifying Greece as the responsible country for his asylum claim. This despite the minority of our client, which, however, was contested by Switzerland, as well as the fact that he had survived multiple traumatic violent attacks while living on the streets of Greece. In Switzerland, he was subsequently placed in Dublin detention. Given his traumatic experiences and his young age, he was in an extremely bad mental condition. Due to acute suicidal tendencies, the client was placed in solitary confinement, only wearing his briefs and vest. The prison staff did not inform him about the reasons for the transfer into solitary confinement, nor was he allowed to contact us, his legal representatives. After two and a half days he was transferred back to regular detention, where he was able to inform us about his circumstances. This gave us the possibility to contest this detention order successfully. The Court even ruled that the client should have been transferred to a clinic on the basis of proportionality instead of ordering detention in solitary confinement.
- **Decision ERV 22 51, ERV 22 53 of 5 September 2022 (Appendix 7):** The Supreme Court of Appenzell Ausserrhoden found that the **separation requirement had been violated** in the case of one of our clients ([SRF News, 2022](#)). This is incompatible with European Court of Justice (ECJ) case law, which states that asylum seekers in **administrative detention must be housed separately from inmates under criminal detention**. While this decision was in favor of AsyLex's complaint and led to the release of our client, the Supreme Court of Appenzell Ausserrhoden did not rule on the further contested detention conditions, such as the factual solitary confinement, since our client was for about 4 months the only detainee in the deportation detention department, and had no access to his psychologist, or sufficient medical treatment including translation, nor access to Internet and was solely able to leave his cell when going to the yard or to the gym. Therefore, AsyLex appealed this decision, which is currently still pending before the Federal Supreme Court.
- **Decision [2C\\_781\\_2022](#) of 8 November 2022:** In a further case before the Federal Supreme Court, we challenged the detention conditions in an administrative detention facility in the canton of St. Gallen. The court ruled in our favor, explicitly stating that the **detention conditions violate international and federal law**. This specifically because our client did not have access to the Internet, the detention time in the cell was excessively long, the separation requirement was clearly violated as the prison was part of a police station and the other detainees were subject to the strictest pre-trial detention regime. Moreover, there was no specialized staff and visits were only possible with a partition, which has long been in violation of the Federal Supreme Court's jurisprudence.





- **Decision [2C 765/2022](#) of 13 October 2022:** In another decision, the Federal Supreme Court approved our complaint, deciding that long periods of confinement up to 18 hours are not permissible and any restriction of freedom must be kept low and justified in each case. In addition, the Court confirmed that access to the Internet is guaranteed under the freedom of information and freedom of expression. Thus, the Court ruled that the administrative detention conditions in Moutier, canton of Bern, are unlawful.
- **Decision [2C 27/2022](#) of 9 May 2022:** The Federal Supreme Court ruled that the detention ordered was **unlawful due to the lacking risk of absconding**. According to the Court, the person's statement two months earlier during the exit interview that he did not intend to return to Bulgaria was not sufficient to justify a detention order.
- **Decision [2C 38/2022](#) of 7 July 2022:** In connection with the lack of flight risk, AsyLex was able to achieve another success before the Federal Supreme Court.
- **Decision [E-3427/2021 / E-3431/2021](#), of 28 March 2022:** According to the FAC, deportations of asylum seekers to Greece are only unreasonable in the case of families with children, unaccompanied minors transfers and seriously ill persons, unless there are favorable conditions or circumstances.

For further national jurisprudence on international protection in 2022, we refer to the submission of the Swiss Refugee Council.

## 17. Other important developments in 2022

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## References and sources

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### 18. Please provide links to references and sources or upload any related material in PDF format

#### Question 1:

*Issue at the northern and eastern Swiss border:*

<https://www.srf.ch/news/schweiz/transitland-schweiz-jetzt-aeussert-sich-keller-sutter-zur-asylkritik-aus-deutschland>

*Previous EUAA input by AsyLex:*

<https://euaa.europa.eu/sites/default/files/2022-03/asylex.pdf>

*Short-term detention without judicial review:*

<https://www.parlament.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=58911>





**Appendix 1:** AsyLex Submission on “Safe Third Countries”, 2022

*Reports on issues in context of Croatia, Bulgaria and Romania:*

<https://www.woz.ch/2013/europaeische-fluechtlingspolitik/der-fall-madina>

<https://www.lighthousereports.nl/investigation/europes-black-sites/>

[https://www.cms.hr/system/publication/pdf/182/CommonReport\\_2022.pdf](https://www.cms.hr/system/publication/pdf/182/CommonReport_2022.pdf)

<https://drive.google.com/file/d/1PQwdaWtjvz7XIQzm7EkCOdEKOYe6iaWg/view>

<https://www.fluechtlingshilfe.ch/publikationen/news-und-stories/polizeigewalt-in-kroatien-und-bulgarien-sfh-fordert-auf-ueberstellungen-zu-verzichten>

**Appendix 2:** AsyLex Submission to the Special Rapporteur on torture, 2022

**Question 2:**

**Appendix 3:** Federal Administrative Court (“FAC”) Statistics, 2022

*Information on S status in the canton of Zurich:*

<https://www.zh.ch/de/soziales/sozialhilfe/sozialhilfehandbuch/flexdata-definition/3-zustaendigkeit/3-1-zustaendigungsordnung-in-der-sozialhilfe/3-1-04-unterstuetzungszustaendigkeit-fuer-personen-des-asyl-und-fluechtlingsbereichs.html>

*SEM communication on requests for reconsideration in the context of Afghanistan:*

<https://www.sem.admin.ch/sem/de/home/asyl/afghanistan.html#-188048901>

**Question 4:**

*Dublin decisions:*

- Decision [F-5395/2021](#) of 25 January, 2022
- Decision [F-3214/2022](#) of 1 September, 2022
- **Appendix 4:** Decision F-4019/2022 of 1 November, 2022
- Decision [2C\\_610/2021 Supreme Court](#) of 11 May, 2022

**Appendix 5:** AsyLex Submission on Child Rights, 2022

**Question 5:**

*SEM decision regarding Covid-19:*

<https://www.sem.admin.ch/sem/de/home/sem/medien/mm.msg-id-92228.html>





## Question 6:

*Increase in asylum applications:*

<https://www.blick.ch/politik/prognose-des-sem-zahl-der-asylgesuche-bleibt-stabil-id18256480.html>

<https://www.blick.ch/politik/justizministerin-setzt-uno-programm-aus-keller-sutter-laesst-fluechtlinge-warten-id18156718.html>

<https://www.swissinfo.ch/eng/politics/swiss-migration-authorities-struggling-with--overlapping-crises-/48011034>

<https://www.swissinfo.ch/eng/politics/swiss-refugee-centres-reach-bursting-point/48005914>

*Differential treatment amongst provisionally admitted asylum seekers:*

- Accommodation:  
<https://www.sem.admin.ch/sem/fr/home/sem/aktuell/ukraine-krieg.html#51539973>
- Permit F Factsheet:  
[https://www.osar.ch/fileadmin/user\\_upload/Themen/Asyl\\_in\\_der\\_Schweiz/Aufenthaltstatus/200430\\_Tableau\\_droits\\_et\\_obligations\\_fr.pdf](https://www.osar.ch/fileadmin/user_upload/Themen/Asyl_in_der_Schweiz/Aufenthaltstatus/200430_Tableau_droits_et_obligations_fr.pdf)
- Permit S Factsheet:  
[https://www.osar.ch/fileadmin/user\\_upload/Publikationen/Juristische\\_Themenpapiere/220314\\_Factsheet\\_Status\\_S\\_nach\\_BR-Entscheid\\_FR.pdf](https://www.osar.ch/fileadmin/user_upload/Publikationen/Juristische_Themenpapiere/220314_Factsheet_Status_S_nach_BR-Entscheid_FR.pdf)

## Question 7:

*Detention conditions:*

<https://www.srf.ch/news/schweiz/kein-platz-schlechte-raeume-strafanstalt-gmuenden-in-ausser-rhoden-in-desolatem-zustand>

*Detention decisions:*

- **Appendix 6:** VB.2021.00661 of July 28, 2022
- **Appendix 7:** ERV 22 51, ERV 22 53 of 5 September 2022
- [2C 781 2022](#) of 8 November 2022
- [2C 765/2022](#) of 13 October 2022
- [2C 27/2022](#) of 9 May 2022
- [2C 38/2022](#) of 7 July 2022

## Question 10:

**Appendix 8:** SEM country note Sri Lanka, 2022

*Continued deportations to Sri Lanka:*





<https://www.tagesanzeiger.ch/trotz-chaos-im-land-weist-die-schweiz-gefluechtete-nach-sri-lanka-aus-331873761781>

*FAC decision regarding expulsion to Greece of vulnerable people with protection status:*

<https://jurispub.admin.ch/publiws/download?decisionId=28bbd11a-465e-4066-b751-3ef42e53ba55>

#### **Question 14:**

*Humanitarian Visa legal basis:*

<https://www.fedlex.admin.ch/eli/cc/2007/758/en>

<https://www.fedlex.admin.ch/eli/cc/2018/493/fr>

*Humanitarian Visa regarding Afghanistan:*

<https://www.blick.ch/ausland/afghanen-hoffen-auf-humanitaere-visa-die-schweiz-laesst-uns-im-stich-id18268683.html>

<https://www.swissinfo.ch/eng/politics/swiss-reject-vast-majority-of-afghan-visa-applications/48242368>

#### **19. Feedback or suggestions about the process or format for submissions to the Asylum Report**

We would appreciate more time to prepare this report next time.





## Contact details

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**AsyLex**

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