



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

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

Preliminary remark: The general information on the Swiss asylum system as well as the legal basics and explanations are to be found in the yearly update of the AIDA report¹ on Switzerland, written by the Swiss Refugee Council.

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

Each asylum seeker is assigned an independent legal representative upon arrival in a federal asylum centre. Due to an increased number of arrivals in the second half of 2022, many asylum seekers had to be accommodated in additional structures in different locations, or were assigned to a canton earlier than normally foreseen by the system.² This has rendered regular effective contact between legal representatives and their clients logistically more challenging in practice.

¹ AIDA report on Switzerland, available in English at : <https://asylumineurope.org/reports/country/switzerland/>.

² SEM, Press release of 25 October 2022, www.sem.admin.ch/sem/fr/home/sem/medien/mm.msg-id-90875.html.





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)

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

The practice of the Swiss authorities as well as of the Federal Administrative Court in Dublin cases remained very restrictive in 2022:

Family criteria: The family criteria in particular are applied narrowly and the practice regarding the effective relationship and regarding the definition of family members is strict.

Vulnerabilities: Further, vulnerabilities are not sufficiently taken into account, especially those which are not visible such as psychological illnesses.

Mutual trust: The principle of mutual trust between Dublin countries is almost never challenged. Despite of reports which should raise doubts, the Court mostly refrains from doing research on its own on the situation in other Dublin countries and rarely asks the State Secretariat for Migration (SEM) to conduct thorough research.

Extension of transfer deadline: A questionable practice concerns the extension of the transfer-deadline to 18 months in cases where the persons did not disappear.³

Italy: Italy remained the most relevant Dublin country for Switzerland in 2022 (1'483 of a total of 6'830 Dublin-out requests concerned Italy). The Swiss practice regarding Italy is still very strict and the Court still states that there are no systemic deficiencies. Guarantees have to be obtained from the Italian authorities in family cases,⁴ as well as in take-back procedures for persons with serious health issues.⁵

In the view of the Swiss Refugee Council, there are systemic deficiencies in the reception system in Italy. Especially for vulnerable persons who are dependent on special services, access to adequate support is problematic and dependent on chance. Therefore, the Swiss Refugee Council advises against transfers to Italy.⁶

³ See for example Federal Administrative Court, Decision F-485/2021 of 26 March 2021; several cases are still pending in front of the Court.

⁴ Federal Administrative Court, Decision F-6330/2020 of 18 October 2021.

⁵ Federal Administrative Court, Decision D-4235/2021, 19 April 2022.

⁶ www.fluechtlingshilfe.ch/themen/laenderinformationen/dublinlaender-und-sichere-drittstaaten.





Bulgaria: On 11 February 2020 the Court issued a reference judgement on the question of systemic deficiencies in Bulgaria.⁷ 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 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 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.

In October 2022, the Federal Administrative Court dealt⁸ with a Dublin Bulgaria case, the Afghan complainant was suffering from health problems and drug addiction. He had been detained and mistreated in Bulgaria. The application for readmission to Bulgaria did not contain any information on the man's health condition and remained unanswered. The SEM used text modules to state that there were no indications of systemic deficiencies in Bulgaria and that the country had sufficient infrastructure. On the one hand, the Court considered the legally relevant medical facts to be incomplete. It also states that it cannot be assumed without further ado that the conditions in Bulgaria meet the requirements of international law. Furthermore, in view of the protection quotas for Afghans in Bulgaria, the Court considered it questionable whether the Bulgarian authorities take sufficient account of the non-refoulement requirement. Furthermore, the SEM had failed to deal with the effects of the war in Ukraine. Next, the SEM was asked to comment on the admissibility and reasonableness of a transfer to Bulgaria against the background of the report on police violence in Bulgaria and Croatia⁹ of the Swiss Refugee Council. The Swiss Refugee Council calls for a stop of Dublin transfers to Bulgaria.¹⁰

Croatia: Regarding the question of pushbacks, the SEM asked the Swiss embassy in Croatia to conduct an investigation. Decisions regarding Dublin Croatia cases in 2022 were amongst other based on those investigations, which are supposedly proving, that the problem of pushbacks is only relevant in the border region and should not effect Dublin returnees. The report of the embassy is not shared or publicly available, which makes it difficult to counter-argument and is in the view of the Swiss Refugee Council in breach of the right to be heard, as this would require the full inspection of the investigations of the embassy. Further, the Croatian NGO Centre for Peace Studies, who was consulted by the embassy for their research, was very surprised on the outcome and their citation. The Centre for Peace Studies told the Swiss newspaper “Wochenzeitung” that they were only meeting with an intern of the embassy, and that they shared the information that pushbacks are not just happening in the border region of Croatia but also within the country.¹¹ Taking into account the various reports¹² and evidence of pushbacks and the use of violence

⁷ Federal Administrative Court, Decision F-7195/2018, 11 February 2020.

⁸ Federal Administrative Court, Decision F-2707/2022, 12 October 2022.

⁹ Swiss Refugee Council, *Violences policières en Bulgarie et en Croatie : conséquences pour les transferts Dublin*, 13 September 2022, available in French (and German and Italian) at : <https://bit.ly/3EJZcsu>.

¹⁰ www.fluechtlingshilfe.ch/themen/laenderinformationen/dublinlaender-und-sichere-drittstaaten.

¹¹ WOZ, *Eine Kette der Verachtung*, 22 Dezember 2022, available in German at: <https://bit.ly/3l8L7yR>.

¹² See for example Swiss Refugee Council, *Violences policières en Bulgarie et en Croatie : conséquences pour les transferts Dublin*, 13 September 2022, available in French (and German and Italian) at : <https://bit.ly/3EJZcsu>; the report to the Croatian





against asylum seekers by the Croatian authorities, the association “Droit de rester” started a petition against Dublin transfers to Croatia.¹³ Also the Swiss Refugee Council calls for a stop of Dublin transfers to Croatia.¹⁴

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

In **autumn 2022**, the situation in the asylum field in Switzerland got tense due to the increase of asylum applications. Although, the overall number of asylum applications was not that high compared to other years, together with the refugees from Ukraine, the challenges in the whole migration sector became visible in terms of accommodation, care and support as well as in terms of procedures. The Swiss Refugee Council is observing the developments in the asylum sector with great concern.

In the view of the Swiss Refugee Council, the conditions in some federal asylum centres became untenable – especially in the regions of north-western and western Switzerland.¹⁵ The Swiss Refugee Council therefore welcomed the introduction of emergency measures intended for such extraordinary situations in order to ease the situation. In the emergency regime, the asylum procedure was decentralised and some steps were accelerated. This contains a risk regarding the rights of the asylum seekers. The Swiss Refugee Council emphasised that standards in favour of the asylum seeking persons must be respected at all times. In particular, child protection must be guaranteed in accommodation, care and asylum procedures: unaccompanied children and adolescents must have access to a person of trust and be accommodated separately from adults at any time.

The asylum procedure in Switzerland is already highly accelerated. Legal protection is working at full capacity due to the tense situation. In order for it to be able to effectively fulfil the responsibility assigned to it, sufficient time should also be provided for the individual procedural steps in the emergency regime. An incorrect assessment can have serious consequences for the asylum seekers and may lead to an increase in complaints.¹⁶

Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 14 August 2020, 3. Dezember 2021; the reports of the Border Violence Monitoring Networks and of the Centre for Peace Studies. Further, the reports in the media, for example The Guardian, *Croatian police accused of 'sickening' assaults on migrants on Balkans trail*, 21. Oktober 2021; Rundschau, Video-Beweis: *Kroatische Polizisten prügeln Migranten aus der EU*, 6. Oktober 2021; The Guardian, *Croatian border police accused of sexually assaulting Afghan migrant*, 7. April 2021; Der Spiegel, *»Sie haben wie blind auf mich eingeschlagen«*, 18. November 2020; Heute, *So brutal soll Kroatiens Polizei Migranten zurichten*, 25. Oktober 2020; Deutschlandfunk, *Polizeigewalt auf der Balkanroute «Sie brechen Arme, Beine, Köpfe»*, 31. Juli 2019.

¹³ <https://act.campax.org/petitions/stop-dublin-kroatien>.

¹⁴ www.fluechtlingshilfe.ch/themen/laenderinformationen/dublinlaender-und-sichere-drittstaaten.

¹⁵ Swiss Refugee Council, Press release of 1 November 2022, available in French (and German) at: <https://bit.ly/3jtp5pU>.

¹⁶ Swiss Refugee Council, Press release of 1 November 2022, available in French (and German) at: <https://bit.ly/3jtp5pU>.





Fast-track procedures: In October 2022, the fast-track procedures were re-introduced¹⁷ for certain countries of origin: Morocco, Tunisia, Algeria¹⁸ and the safe countries of origin. These procedures are specifically about merging the normally separate procedures of the Dublin-interview and the interviews according to Art. 26 and Art. 29 Asylum Act (AsylA) in the national asylum procedure for these selected countries. According to the SEM, this should enable the asylum procedure to be completed more quickly.¹⁹

Safe third countries: Civil society organisations expressed concern about the implementation of the safe third country concept in the absence of an adequate assessment on the human rights situation in the countries and in the absence of clarification about the possible risks to which a person returning there would be exposed. Repeatedly, precautionary measures - interim measures - are pronounced against Switzerland, on the basis of which the UN committees temporarily stop threatening expulsions.²⁰

Afghanistan: Due to the increased number of arrivals of asylum seekers in the second half of 2022, a significant number (6'268 applications out of a total of 21'819 applications until the end of November 2022²¹) of them from Afghanistan, the SEM introduced acceleration measures in the asylum procedures of persons from Afghanistan.²²

Unaccompanied minors: Due to the increased number of arrivals of asylum seekers in the second half of 2022, a significant number of them unaccompanied minors, the SEM introduced acceleration measures in the asylum procedures of unaccompanied minor asylum seekers.²³

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)

Remote locations of centres: Several federal centres, for example Boudry, Giffers/Chevrilles, Glaubenberg as well as the centre of Les Verrières are characterised by their isolation. The Boudry centre is located in a complex that includes the asylum processing centre and a former psychiatric hospital. It is several kilometres away from the surrounding village and about 15km from the town

¹⁷ Following the entry into force of the restructured asylum procedure in 2019, the previous accelerated procedures (i.e. fast-track and 48-hour procedures) were not used anymore.

¹⁸ Aargauer Zeitung, «Die Asylfrage ist sehr angespannt»: Bundesrätin Keller-Sutter interveniert bei der EU-Kommission – mit erstaunlichem Erfolg, 15 October 2022, available in German at: www.aargauerzeitung.ch/schweiz/die-asylfrage-ist-sehr-angespannt-ld.2358965?reduced=true.

¹⁹ Information from the SEM, 7 October 2022.

²⁰ See humanrights.ch, *Renvois: la pratique des autorités migratoires suisses menace les droits humains*, 18 March 2021, <https://bit.ly/3VHmq9i>.

²¹ SEM, Asylum statistics, November 2022, available at: <https://bit.ly/3Y8ie4s>.

²² SEM, Press release of 25 October 2022, available at: www.sem.admin.ch/sem/fr/home/sem/medien/mm.msg-id-90875.html.

²³ SEM, Press release of 25 October 2022, available at: www.sem.admin.ch/sem/fr/home/sem/medien/mm.msg-id-90875.html.





of Neuchâtel. The waiting and departure centre of Chevrilles is even 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, and 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 do not receive any pocket money.

Maxed out centres: On 25 October 2022, the SEM stated that the federal asylum centres were approaching saturation due to the increasing arrivals of asylum seekers as well as the ongoing arrival of Ukrainian nationals in search of protection.²⁴ According to media reports, the centre of Boudry was at that time accommodating 900 people whereas it has a capacity of 700, and people were forced to sleep in common spaces or in the corridor of the centres.²⁵ In order to increase the reception capacity, the SEM reallocated some spaces in the ordinary centres into dormitories and opened about 20 temporary federal asylum centres, increasing the capacity at federal level to over 10,000 places.²⁶ At the same time, the SEM has taken some measures to reduce the number of residents in federal centres: it implemented some measures to accelerate asylum procedures and it exceptionally attributed some asylum seekers to the cantons suspending their asylum procedure.²⁷

Temporary asylum centres: Most temporary asylum centres opened by the SEM belong to the army and consist in either military barracks²⁸ or military multi-purpose or sports halls. In the latter case, some curtains have been installed to provide for smaller dorms, but the personal and family sphere cannot be adequately respected in such big spaces that were not planned as accommodation. Furthermore, in at least two of the six asylum regions, the SEM has resorted to underground civil protection shelters as temporary federal asylum centres, which are not adequate to host asylum seekers. On 16 December 2022, the SEM communicated again that more military buildings were to be temporarily used as reception centres and that the army was going to provide for further support in the areas of logistics and transportation, but not assistance nor security. Given the acute lack of personnel, civil servants are also providing support in assistance tasks.²⁹

²⁴ Although the latter do not go through a normal asylum procedure, they are also accommodated during a few days in the Federal asylum centres for their registration before being attributed to a canton.

²⁵ RTS, Forum, 27 October 2022, available in French at: <https://bit.ly/3GAdLRt>.

²⁶ SEM, *Asile : la situation reste tendue*, media release of 22 December 2022, available in French (and German) at: www.sem.admin.ch/sem/de/home/sem/medien/mm.msg-id-92377.html.

²⁷ SEM, *Les centres fédéraux pour requérants d'asile frôlent la saturation – des départs anticipés pour les cantons s'imposent*, 25 October 2022, <https://bit.ly/3vy75gt>. The early attribution during the asylum procedure stopped on 15 December 2022.

²⁸ According to the media, military barracks are used although alternatives would be available, see <https://bajour.ch/a/clcuk1ox649024354fb0is3v9b8/das-sem-bringt-gefluechtete-lieber-unterirdisch-statt-in-hotels-unter>.

²⁹ SEM, *L'armée met des places d'hébergement supplémentaires à la disposition du SEM*, 16 December 2022, available at: <https://bit.ly/3Ikqnx4>. 4.





Temporary accommodation in cantons: As a result of the increase in refugees from the Ukraine, many cantons needed to create additional space in 2022. At least nine cantons are planning container settlements for this purpose or have already built some. Others started to use multipurpose halls with tents inside or are repurposing former office rooms. A few cantons called for help from the civil protection and opened up some subterranean collective shelters in civil defense facilities. These shelters are particularly problematic, since the asylum seekers need to live underground for an uncertain amount of time. Even though the cantons try to limit the duration to a few days or weeks, the actual stay can be longer according to the general housing capacity for refugees in the respective canton. Most cantons are prepared to reopen the underground facilities as an urgency measure, if their regular housing capacity is exceeded.

Host families: In the beginning of the war in Ukraine, the private accommodation with host families became quite common. The Swiss Refugee Council launched a project in collaboration with other organizations, the SEM and several cantons, to match persons fleeing from Ukraine granted temporary protection in Switzerland with host families.³⁰ An interim report of the evaluation expert group mandated by the Swiss Federal Department of Justice and Police on the temporary protection for persons fleeing Ukraine recognizes that private accommodation is an indispensable element for coping with a large arrival of protection seekers, and recommends this instrument to be integrated in a concept for emergency planning. Around 60% of persons with temporary protection live in private accommodation.³¹

Reporting offices within the federal centres: On 1st November 2022, the SEM has launched a pilot project creating two reporting offices (*Meldestelle*) in the federal asylum centres of Basel and Zurich. This was one of the consequences after there was a number of cases in which violence escalated in the federal asylum centres in 2020.³² The non-profit organisation SAH (*Schweizerisches Arbeiterhilfswerk*) has been mandated to manage those reporting offices. Asylum seekers residing in these two centres as well as security and assistance employees (but not employees of the SEM nor legal representatives) can address those offices with their complaints.³³ The offices provide counselling to the reporting person and transmit the complaints – only if wished, and in anonymised form – to the SEM with their recommendations, the SEM can then decide to follow or not. Although the office is placed outside the centre, the office is subordinate to the SEM and has no power to order any measures or proceed to investigations in alleged cases of violence. As such, it is not an independent complaint mechanism such as recommended by the Swiss National Commission for the Prevention of Torture (NCPT), the Swiss Refugee Council and Amnesty International, among others. However, it is a first step in that direction and it will allow to register the complaints and better identify future needs thanks to the final evaluation.

³⁰ See: Swiss Refugee Council, <https://bit.ly/3JEyxBE>.

³¹ SEM, *Groupe d'évaluation du statut S – Rapport intermédiaire du 30 novembre 2022*, p. 11-12, available in French at : <https://bit.ly/3jum096>.

³² The media reported excessive use of physical force by security personnel; see the Communication of 15 May 2020 of the Swiss Refugee Council on this matter, *Violence au centre fédéral pour requérants d'asile de Bâle*, available in French (and German) at: <https://bit.ly/2Z0xsvl>.

³³ *Le SEM crée un bureau des signalements pour deux centres d'asile*, *Le Temps*, 12 December 2022, <https://bit.ly/3QpvXkl>.





Emergency aid is provided in the form of non-cash benefits wherever possible. Persons under emergency aid are housed in specific shelters. 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 extremely 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 and health of asylum seekers, despite the chance of being granted a legal status at the end of the procedure.

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)

Alternatives to detention: In 2022, the Federal Council has examined and rejected the possibility of introducing electronic surveillance as an alternative to detention. However, it decided to propose the introduction of another alternative consisting in the obligation to stay in a specific accommodation during a few hours every day or night.³⁴

Reflection rooms: Each federal asylum centre has a so-called "reflection room". This is where asylum seekers whose behaviour poses a threat to other asylum seekers and the BAZ staff are temporarily placed while waiting that the police arrives. Following harsh critique on the concept and use of reflection rooms by the NCPT as well as the "*Oberholzer investigation report*"³⁵, the SEM has introduced an internal directive on the use of such rooms. Since 15 January 2023, the use of reflection rooms is also regulated in the Ordinance of the FDJP on the on the management of federal reception centres in the field of asylum and accommodation at airports. According to the newly introduced Article 29a, such temporary holding must be ordered by the management of the asylum centre only after having informed the police and can last a maximum of two hours, until the police reaches the centre. The holding of children under 15 years is forbidden. It is planned to introduce a similar legal basis in the asylum law as well.³⁶

New legal provision: Since June 2022, the Foreign Nationals and Integration Act FNIA provides for a new possibility of restraining the opportunities for detainees to have contact with specific persons or groups in cases where the person concerned is assumed to pose a specific risk

³⁴ Communication of the Federal Council, 16 December 2022, <https://bit.ly/3Vswtif>.

³⁵ Following accusations by non-governmental organisations and the media, former federal judge Niklaus Oberholzer was commissioned by SEM to investigate whether violence is being systematically used in federal asylum centres. For more information see <https://bit.ly/3PWN1h3>.

³⁶ See the consultation procedure for changes in the Asylum Act: www.sem.admin.ch/sem/fr/home/sem/medien/mm.msg-id-92639.html.





to internal or external security, and even ordering solitary confinement if the restrictions have proven inadequate to counter such security risk.³⁷

Access to the Internet: In October 2022, the Federal Supreme Court has ruled that access to the Internet must be provided to detainees in order for them to be able to keep social contacts outside detention.³⁸

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)

Too short deadlines in the accelerated procedure (24 hours for commenting on the asylum decision, 7 working days for an appeal): In the view of the Swiss Refugee Council the short deadlines cause excessive time pressure in the procedure and are therefore not conducive to the quality of the decision.³⁹

Contact between legal representation and health professionals prohibited: 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. In 2020, only email contacts were allowed between the infirmary of the centres. This situation has gotten even worse in 2021 – and did not improve in 2022 – as the legal representatives were forbidden to contact the infirmary, except for organisational requests such as an appointment date. Otherwise, they can only communicate through the SEM.⁴⁰ In an important judgment of 2019, the Federal Administrative Court stated that the unjustified lack of transmission of medical information represents a violation of the right to a lawful hearing.⁴¹

³⁷ Article 81(5) and (6) FNIA.

³⁸ Federal Supreme Court, Decision 2C_765/2022 of 13 October 2022, c. 5.2.3.

³⁹ Swiss Refugee Council, statement to the external evaluation of the new asylum system, August 2021, available in German at <https://bit.ly/3Yggy8k>.

⁴⁰ Federal Administrative Court, Decision D-2044/2022, 3 August 2022 (available here: <https://bit.ly/3C8vZXQ>) confirms that this worrying practice is still ongoing. In this case, the Federal Administrative Court had already rejected the applicant's first appeal (which concerned the execution of a Dublin transfer to Greece). At the basis of the Tribunal's reasoning was the fact that, according to the information available at the time, there was no medical indication that the applicant was suffering from any acute illness, and that, despite his diagnosed depression, he was overall in good shape. A revision request was later lodged against this first judgment, because the legal representatives was able to show that he had been denied access to the applicant's medical files at the SEM's request. Therefore, the fact that the applicant was actually under psychiatric treatment and at high medical risk hadn't been properly disclosed to the Court at the time of the first decision. Decision D-2044/2022 accepts the applicant's request to revise the case, and sends the file back to SEM for new assessment of the facts. See also, broadly on the assessment of medical issues during the asylum procedure: E-1413/2021, 8 April 2021 (available at: <https://bit.ly/3YnnYHe>); D-1008/2020, 26 July 2021 (available at: shorturl.at/koUW4); D-6591/2020, 13 January 2021 (available at: shorturl.at/dvx35).

⁴¹ For a more detailed description of the medical concept see in particular: Federal Administrative Court, Decision D-1954/2019, 13 May 2019; E-3262/2019, 4 July 2019.





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

One instance - Federal Administrative Court (FAC): 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 federal*, TAF).⁴² A further appeal to the Federal Supreme Court is not possible (except if it concerns an extradition request or detention, including in Dublin cases).⁴³ If there are to welcome the appeal, the Federal Administrative Court can either deliberate on the merits of a case and issue a new, final decision or cancel the decision and send the case back to the SEM for reassessment. Appeals are usually decided upon by three judges, while manifestly founded or unfounded cases are decided upon by one judge (with the approval of a second judge). Leading decisions (or coordination judgements) are taken by five judges. 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.⁴⁴

Scope of influence: It is important to note in this respect that the Federal Administrative Court cannot fully verify asylum decisions of the SEM.⁴⁵ 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.⁴⁶ 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.⁴⁷

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, usually amounting to 750 Swiss francs (around 750 Euros), 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.⁴⁸ Appeals filed by legal representatives working for the organisations mandated by the SEM are usually not subject to such advance payment. An advance payment is mostly requested

⁴² Article 105 AsylA. Most judgments of the Federal Administrative Court can be found at: <http://bit.ly/1NgE8vb>.

⁴³ Article 83(c)-(d) Federal Supreme Court Act.

⁴⁴ Article 106 AsylA.

⁴⁵ 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.

⁴⁶ 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.

⁴⁷ 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, p. 11.

⁴⁸ Article 63(4) APA.





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).⁴⁹ No advance payment can be demanded for unaccompanied asylum-seeking children in appeal procedures.⁵⁰

Notably, in many cases, the **Court only cancels the first instance decision without reforming it.**

The fact that the appeal procedure is **exclusively carried out in writing** can represent an obstacle since the appellant has no direct contact with the judges and can only express themselves in written form. The Court has the possibility to order a hearing if the facts are not elucidated in a sufficient manner, however in practice, it does not make use of this possibility. As asylum seekers are not familiar with the Swiss legal system and mostly do not have sufficient knowledge of the official languages, they depend on the support of others. In case their assigned legal representative lays down their mandate, people have to turn to services from civil society, which often lacks funding.

Also, in **Dublin procedures**, the 5 day deadline for an appeal makes it very difficult for a new legal representative to gather all documents to file a decent appeal, as this deadline is mostly not 5 days anymore once they are involved. Address other offices for legal advice outside of the centres, often takes time, as they are often not open every day and it's even more difficult for persons located in very remote centres (see question 6).

For Dublin procedures, the criticism regarding the restrictive practice concerns also the jurisprudence of the Federal Administrative Court. (see question 4)

Criticism from UN-CAT: In a decision⁵¹ against Switzerland, the UN-CAT considered that the asylum procedure before the SEM/Federal Administrative Court (FAC) suffered from significant shortcomings. It stated that the judgment of the FAC, given by a single judge, with only an anticipated and summary assessment of the complainant's arguments, based on a questioning of the authenticity of the documents submitted, but without taking measures to verify them, constituted a breach of the procedural obligation to ensure an effective, independent and impartial examination required by Article 3 of the Convention. Regarding the effectiveness of the remedies available to the person concerned - the appeal to the FAC and the request for reconsideration - the UN-CAT notes that the Swiss instances had not applied the suspensive effect to these steps and that the demand for the costs of the proceedings, while the complainant was in a precarious financial situation, deprived him of the possibility of turning to the judiciary to have his complaint examined by the judges of the Federal Administrative Court.⁵²

⁴⁹ For example ECtHR, *MA v Switzerland*, Application No 52589/13, 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.

⁵⁰ Federal Supreme Court, Decision 12T_2016, 16 October 2017.

⁵¹ CAT/C/75/D/972/2019, B.T.M., 9 December 2022, available in French at: <https://bit.ly/3XrB5XA>.

⁵² § 8.7.





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

SEM and FAC have their own COI units: In Switzerland, both the SEM and the FAC have their own country analysis units for researching and preparing country of origin information (COI).⁵³ The Swiss Refugee Council has an independent COI-Unit as well which provides COI-reports and information.⁵⁴

Methodology and limited public access to COI products: Both instances draw on public information from the Internet, consult non-public internal (Kompass database) and external (databases operated by EU partner countries) databases. The country analysis departments of the SEM and the FAC also consult experts. They also base COI on on-site investigations (fact-finding missions, liaison officers, embassy information). Some of the COI products of the SEM's country analysis are published, while those of the FAC country analysis are not publicly accessible. In the publicly available products of the SEM's country analysis, the sources of the information are verifiably identified and it is explicitly stated that the international COI quality standards are met. In leading decisions and other important rulings of the FAC, the sources used for COI are usually disclosed. This allows for verifiability and traceability by means of the sources used. In the SEM decisions, this verifiability is not always given.⁵⁵

Equality of arms regarding COI is not guaranteed in the asylum procedures: As mentioned above, not all reports of the SEM COI unit are publicly accessible. For example, as of January 2023, a COI research on the impact of the economic crisis on the health services in Sri Lanka (carried out in July 2022 by the SEM) has not yet been published on the SEM website. Therefore, equality of arms is not always guaranteed in the asylum procedures.

COI not always taken sufficiently into account by decision makers: There are indications that decision makers do not always take sufficiently into account relevant COI to assess the situation in the country of origin. Further, some medical COI researches seem to have been carried out superficially without clarifying the actual access (including the real cost coverage by health insurances or the state, access to health services also in rural areas, etc.).

⁵³ Swiss Refugee Council, Handbuch zum Asyl- und Wegweisungsverfahren, 3rd Edition, 2021, p. 393.

⁵⁴ Available on the website of the Swiss Refugee Council: www.fluechtlingshilfe.ch/publikationen/herkunftslaenderberichte.

⁵⁵ Swiss Refugee Council, Handbuch zum Asyl- und Wegweisungsverfahren, 3rd Edition, 2021, p.393-394.





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)

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 reformed 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.

No **special accommodation** is granted to highly traumatised people, and their access to healthcare and health assistance is limited in practice through different factors. 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,⁵⁶ according to which there is room 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. Guidelines were published in November 2021 detailing how the administration intends to implement the results of these reports.⁵⁷

GREVIO report 2022: The country report on Switzerland of the Istanbul Convention monitoring body, the GREVIO, was published in November 2022. For what specifically concerns the asylum field⁵⁸ the Committee regrets the absence of a procedure for screening vulnerabilities and early detection of women victims of gender-based violence and is concerned about the persistent lack of sensitivity and understanding of gender-based violence issues among SEM staff.⁵⁹ GREVIO furthermore notes that the protection offered to women nationals of 'safe' countries is not always sufficient: this is because allegations of violence are rejected on the grounds that the third State in question would have the capacity to protect the victim, inter alia because that State has ratified the Istanbul Convention. GREVIO requests that the Swiss authorities take measures to improve the capacity to detect cases of violence against women and to assess the capacity of countries of

⁵⁶ Swiss Confederation, *Rapport sur la situation des femmes et des filles relevant du domaine de l'asile*, October 2019, available in French (and German and Italian) at: <https://bit.ly/2w01y6Z>. See also: Anne-Laurence Graf, *Eine Zusammenfassung der Empfehlungen zum Schutz von asylsuchenden Frauen und Mädchen im Anschluss an das Postulat Feri*, October 2021, available in German (and French) at: <https://bit.ly/3GMF8pd>.

⁵⁷ SEM, *Situation von Frauen und Mädchen in den Bundesasylzentren: Bericht zur Umsetzung der Massnahmen in Erfüllung des Postulates 16.3407 Feri vom 9. Juni 2016*, 17 November 2021, available in German (and French) at: <https://bit.ly/3GQDI2I>.

⁵⁸ The Istanbul Convention is very comprehensive, and only 2 articles, namely art. 60 and 61, specifically refer to asylum seekers and refugees.

⁵⁹ GREVIO, Baseline Evaluation Report – Switzerland, November 2022, para. 268. The report is available in English here: <https://bit.ly/3G0SBKQ>.





origin to provide effective protection. They could, in this context, refer to the existing GREVIO evaluation reports.⁶⁰ Finally, GREVIO strongly encourages the Swiss authorities to ensure that asylum-seeking women and girls are given optimal support in the asylum procedure, so that they have the opportunity to disclose all the grounds on which they seek international protection.

In a report published in 2016 and subsequently updated in 2018 by Asile LGBT Genève, it was highlighted that the reception and accommodation conditions were particularly worrisome for **LGBTI** asylum seekers.⁶¹ This has been confirmed by another report, again concerning LGBTQI+ asylum seekers, published in November 2022 by the Observatory for Asylum and Foreigners Law in the french-speaking Switzerland.⁶²

In its report published in November 2022, GREVIO regretted that “it is difficult to gain an up-to-date picture of the situation in all cantons” as well as the “wide disparities in accommodation conditions and in strategies to protect women from violence”. According to the report, the main sour points remain the “major shortcomings in training on gender-based violence for staff working in collective accommodation centres, and a lack of practical tools to help detect cases of violence⁶³

Accommodation for unaccompanied minors has been quite critical in 2022 given the overall strain placed on the reception and accommodation system, especially in the second half of the year. Not only are minors sometimes moved to remote locations away from the federal asylum centres but, due to lack of resources, centres are in dire need of social workers and educators to work with them during the time they are in the centres. Also, contact with the person of trust (legal representation) is more challenging in practice when the minors are placed in different locations. These circumstances pose the risk of further alienation, discomfort, and isolation for the minors, which may in turn enhance the risk of them leaving the centres unannounced and unnoticed. The Swiss Refugee Council and other NGO follow up closely on the developments, in exchange with the authorities and legal protection actors.

Legal representation of unaccompanied minors: Three years into the restructured procedure, it is to be noted that unfortunately a lot still needs to be done to ensure that legal representatives acting as persons of trust have the necessary support and resources to carry out their tasks in the best possible way.⁶⁴ Recent exchanges fostered by the Swiss Refugee Council confirm that the exchange and dialogue between the persons of trusts and other actors responsible for the

⁶⁰ GREVIO report – Switzerland, para 270 and 272. The Swiss Refugee Council published a report on the use of GREVIO report within the Swiss practice in 2021, the report is available (in French and German) on the website of the Swiss Refugee Council: <https://bit.ly/3Q272D5>.

⁶¹ 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>.

⁶² ODAE, Asile LGBTQI+ - La situation des personnes LGBTQI+ dans le domaine de l'asile, 15 November 2022, available in French at: <https://bit.ly/3vpCFwj>.

⁶³ GREVIO, Baseline Evaluation Report – Switzerland, November 2022, para. 276. The report is available in English at: <https://bit.ly/3G0SBKQ>.

⁶⁴ CRC, Concluding observations – Switzerland, October 2021, p. 14. The report is available at: <https://bit.ly/3VBR0Rj>.





children's well-being and care inside the centres (social workers, educators, teachers, etc) is often made difficult or hindered by cumbersome bureaucratic requirements. Furthermore, the need remains to better clarify the responsibilities and tasks of the persons of trust working inside the centres and the social workers that are active at a cantonal level. Shortcomings in the care and support of UASC are unfortunately the consequence. As an example, while an increasing number of unaccompanied children continue to disappear from asylum centres, there are no standard protocols in place to ascertain how to approach the issue and to better protect UASC from the risk of falling prey of trafficking networks.⁶⁵

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)

In general, **persons with the status of temporary protection** face many obstacles and disadvantages compared to persons who were granted asylum. The Swiss Refugee Council has been arguing for a more “positive” protection status instead of the temporary admission status for a long time, so far unfortunately without success.⁶⁶

Family reunification: According to the law, persons with a temporary protection status have to wait three years after having received temporary admission to 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 as soon as the person arrives in Switzerland, 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). The spouse has to speak the national language at the place of residence or be registered for language support services.⁶⁷ The application must be filed with the competent cantonal migration authority, which passes it on to the SEM. Certain deadlines apply to the application.⁶⁸ The 5 (or 1 for children 12 and over) year time limit to apply for family reunification starts at the end of the three-year waiting period. 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 November 2022, the Federal

⁶⁵ This issue had already been tackled by GRETA in its second report on Switzerland (available here: <https://bit.ly/3Y2IbSE>), see para 95: “GRETA urges the Swiss authorities to strengthen efforts to prevent trafficking of unaccompanied or separated children by addressing the problem of such children going missing, in particular by providing suitable safe accommodation and adequate supervision, as well as systematically carrying out police investigations into disappearances of unaccompanied and separated children and strengthening follow up and alert systems on reports of missing children”. See also the CRC, Concluding observations – Switzerland, October 2021, which urges the State to “investigate reports of alleged disappearance of children during the asylum procedure, establish their whereabouts and prosecute those responsible for crimes involved in such disappearances”, page 14. The report is available here: <https://bit.ly/3YZx7H5>.

⁶⁶ See the latest positioning of the Swiss Refugee Council of 25 Mai 2022, available in French (and German) here: <https://bit.ly/3WZc0SQ>.

⁶⁷ Article 85(7) FNIA.

⁶⁸ Article 74(2)-(3) Ordinance on Admission, Stay and Gainful Employment.





Administrative Court decided in a leading judgment,⁶⁹ that for persons with a temporary admission, the statutory waiting period of three years is no longer strictly and automatically applicable. Applications for family reunification must already be examined after one and a half years if further waiting is disproportionate in individual cases. The judgment has immediate effect. The Federal Administrative Court adapted its case law to a ruling of the ECtHR.⁷⁰

Travel documents and re-entry permits: For persons with temporary admission there are important legal and 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.⁷¹ 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.⁷² 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.

13. Return of former applicants for international protection

Inappropriate practices: The Swiss National Commission for the Prevention of Torture (NCPT) criticized several practices in the returns of former applicants for international protection as not appropriate and inadequate. For example the separation of a family, a pregnant woman who was cuffed even while breastfeeding. In several cases, the persons were fully restrained in one case for the whole duration of the flight. The NCPT recommends abstaining from the use of full tethering in general. In one case the police officers were hooded, which was criticized as inappropriate. The

⁶⁹ Federal Administrative Court, Decision F-2739/2022, 22 November 2022 (in French): <https://bit.ly/3PYVvf1>; media release in English (German, French and Italian) <https://bit.ly/3WMIkZr>.

⁷⁰ ECtHR, Application no. 6697/18, *M.A. v Denmark*, available at: <http://bit.ly/3HAjLKs>.

⁷¹ Article 9 RDV.

⁷² Articles 4(4) and 10 RDV.





NCPT observed that also cooperative persons were tethered, which was criticized as inadequate.⁷³

Undeclared special flights: Research by the independent digital news platform “Republik” showed that in 2022 a deportation flight was set up to deport foreigners without attracting public attention and without human rights observers being on board. According to the research of the “Republik”, the federal government falsely declared the special flight on the route from Zurich to Lyon in France as **ordinary** scheduled flights. Less strict human rights standards apply to deportations on scheduled flights: The observers of the Anti-Torture Commission, who monitor every special flight, only extremely rarely accompany deportations on scheduled flights.⁷⁴

Forced Covid-Tests: The use of force to conduct COVID-tests was criticised by several NGOs as well as of the NCPT,⁷⁵ who reported several incidents where violent measures were applied to conduct the necessary test. The NCPT spoke out against the use of forced COVID-tests, so did the Swiss Refugee Council.⁷⁶

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)

Access to humanitarian visas for Switzerland remains subject to high requirements and restrictive conditions and is hampered by formal and technical hurdles. The number of humanitarian visas has fallen sharply since 2016, from 228 visas in 2016 to only 94 visas in 2021.⁷⁷ As a result of the extremely restrictive practice in issuing humanitarian visas and the high rejection rate, the Swiss Red Cross has discontinued its advisory activities for applicants in this field in 2021.⁷⁸

The Federal Department of Justice and Police decided on 30th November 2022 to temporarily suspend admissions under the 2022-23 resettlement program, following a respective recommendation from the Special Task Force for Asylum (SONAS). The decision was officially

⁷³ NCPT, report of September 2022: Bericht an das Eidgenössische Justiz- und Polizeidepartement (EJPD) und die Kantonale Konferenz der Justiz- und Polizeidirektorinnen und -direktoren (KKJPD) betreffend das ausländerrechtliche Vollzugsmonitoring von April bis Dezember 2021. Available in German at: <https://bit.ly/3JCZ2qQ>.

⁷⁴ Republik, *Abschiebungen um jeden Preis*, 17 January 2023, available in German at: <https://bit.ly/3HtrRDr>.

⁷⁵ NCPT, report of September 2022: Bericht an das Eidgenössische Justiz- und Polizeidepartement (EJPD) und die Kantonale Konferenz der Justiz- und Polizeidirektorinnen und -direktoren (KKJPD) betreffend das ausländerrechtliche Vollzugsmonitoring von April bis Dezember 2021. Available in German at: <https://bit.ly/3Yj9Jmt>.

⁷⁶ Swiss Refugee Council, *Änderung des AIG: Covid-19-Test bei der Ausschaffung – Vernehmlassungsantwort der Schweizerischen Flüchtlingshilfe*, 6. Juli 2021, available in German and French at: <https://bit.ly/3JA1FKb>.

⁷⁷ Swiss Refugee Council, *Analyse des Staatssekretariats für Migration zu komplementären Zugangswegen in die Schweiz - Stellungnahme der Schweizerischen Flüchtlingshilfe*, available in German at: <https://bit.ly/40rvj0r>.

⁷⁸ See the Swiss Red Cross final report of December 2021 with recommendations based on 7 years of assisting persons applying for humanitarian visa: <https://bit.ly/3HQRTkv>.





justified with the current strain on the asylum system as a result of the influx of displaced persons from Ukraine and a general increase in asylum applications. Refugees who have already received a positive resettlement admission decision will be admitted to Switzerland until the end of March 2023. The resumption of resettlement operations is supposed to be re-evaluated in spring 2023.

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

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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)

Iran: As for what concerns Iran, the Federal Administrative Court recognises in its jurisprudence that people who express themselves critically of the regime, especially in social media, are increasingly subject to mass reprisals. Nevertheless, Swiss practice grants asylum only to those whose engagement goes beyond typical mass activities and who are therefore perceived by the regime as serious and dangerous opponents. With regard to conversion to Christianity, Swiss practice considers that only those who are active in their church or who engage in proselytism face an increased risk of persecution. Unbearable psychological pressure in the event of return is only admitted in the case of missionary activity by the applicant. In other cases, it is accepted that Iranian nationals may exercise their Christian faith privately.⁷⁹ Regarding domestic violence, case law has significantly improved since 2021, when the Federal Administrative Court recognised that state authorities are not willing to provide effective protection for women who are victims of violence.⁸⁰

Ethiopia: Despite the conflict in Tigray, the Court considers that there is no widespread violence in the whole of Ethiopia that could justify ineligibility for removal. The question, then, of whether the Court recognizes a war or widespread violence in the Tigray region in particular is not entirely clear. In its jurisprudence, there are elements in favour of recognition, as well as elements against. On the one hand, in several of its judgments, it mentions, with reference to Tigray, war, humanitarian crisis, serious conflicts between the central Ethiopian government and the TPLF, ethnic tensions and protest movements, or the exceptional situation in Tigray, so that its jurisprudence must be put into perspective for this region. But on the other hand, other judgments state that the enforcement of removal in all regions of Ethiopia is reasonably required. And there are no cases in which it clearly recognizes the ineligibility of removal to the Tigray region because of the conflict situation there.

⁷⁹ See for example Federal Administrative Court, Decision D-2344/2020, 9 February 2022, c. 6.3.3.

⁸⁰ Federal Administrative Court, Decision E-2470/2020, 26 January 2021, c. 6.7.1.





On a practical level, the SEM communicated to the media that it would no longer carry out removals to Ethiopia of asylum seekers from Tigray since November 2020 and that since December 2021, it would have suspended all removals to Ethiopia until further notice.

Family reunification for persons with a temporary admission: In November 2022, the Federal Administrative Court decided in a leading judgement, that for persons with a temporary admission, the statutory waiting period of three years is no longer strictly and automatically applicable. Applications for family reunification must already be examined after one and a half years if further waiting is disproportionate in individual cases. The judgement has immediate effect. The Federal Administrative Court adapted its case law to a ruling of the ECtHR. According to the ECtHR ruling, if the waiting period exceeds two years, the national authorities must assess each individual case to determine whether a further delay in family reunification violates the right to respect for family life. In doing so, they must take into account in particular the intensity of the family relationship, the degree of integration already achieved in the host country, the existence of insurmountable obstacles to the family's life in the country of origin and the best interests of the child.

17. Other important developments in 2022

Status S – Ukraine : 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. It was activated for the first time in the context of the war in Ukraine by the Federal Council on 11 March 2022. The status shows some parallels to the EU Temporary Protection Status. It is provided to a certain category of persons (listed below) without undergoing an asylum procedure. Only in obvious cases of asylum grounds (it remains to be seen what “obvious” means), access to the asylum procedure is granted. The status allows immediate access to the labour market as well as freedom of movement within Europe.

Protection status S applies to the following categories of persons:

- a. Ukrainian citizens seeking protection and their family members (partners, underage children and other close relatives and who were fully or partially supported at the time of the escape) who were resident in Ukraine before 24 February 2022;
- b. Persons seeking protection of other nationalities and stateless persons as well as their family members as defined in letter a who have applied for international or national protection status in Ukraine prior to 24 February 2022;
- c. Protection seekers of other nationalities and stateless persons as well as their family members as defined in letter a, who are in possession of a valid short stay or residence permit giving them a valid right of residence in Ukraine and who cannot be returned to their home countries in safety and permanently.





Afghanistan: On 15 February 2022, the SEM released a report on the potential risk profiles for being targeted by the Taliban.⁸¹ Anyone who is persecuted in a way that is relevant under refugee law is granted asylum. Those who do not meet these requirements are usually granted temporary admission. If there is an application for re-examination or if the case is pending before the Federal Administrative Court, the SEM generally orders temporary admission.

The practice and jurisprudence on Afghani asylum applications remain quite restrictive. For instance, according to the administration and the Courts, there's no risk of forced recruitment of underage soldiers by the Talibans, throughout the country. While the 'safety net' of temporary admission allows the authorities to provide some protection to most of the Afghans coming to Switzerland, this status is not as comprehensive and solid as the refugee status.

In 2022, the Swiss Society of Forensic Medicine published a report,⁸² which attempts to bring some uniformity and clarity to the way forensic examinations are conducted. The report points out in particular that some examinations (especially dental examinations) can be influenced by ethnicity: the lack of reference studies can be highlighted if necessary, depending on the applicant's origins. The Federal Administrative Court admitted for instance the lack of baseline studies on tooth maturation for the Afghan population.⁸³ Rather than leading to a more limited and cautious use of forensic medical examinations as a whole, however, recent observations by the Swiss Refugee Council suggest that the main effect of the report was to give even greater weight to the results of sterno-clavicular tomography.

References and sources

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

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⁸¹ Available in German at: <https://bit.ly/3iFylGR>.

⁸² SSML, Forensische Altersdiagnostik, June 2022, available in German at: <https://bit.ly/3C62nKI>.

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

Contact details

Name of organisation: Swiss Refugee Council

Name and title of contact person: Adriana Romer, lawyer

Email: adriana.romer@osar.ch

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