Input by civil society organisations to the Asylum Report 2026

Dear Colleagues,

The production of the *Asylum Report 2026* is currently underway. The annual Asylum Report presents an overview of developments in the field of international protection in Europe.

The report includes information and perspectives from various stakeholders, including experts from EU+ countries, civil society organisations, researchers and UNHCR. To this end, we invite you, our partners from civil society, academia and research institutions, to share your reporting on developments in asylum law, policies or practices in 2025 by topic as presented in the online survey (**'Part A' of the form**).

We also invite you to share with us any publications your organisation has produced throughout 2025 on issues related to asylum in EU+ countries (**'Part B' of the form**).

These may be:

- reports;
- articles;
- recommendations to national authorities or EU institutions;
- open letters and analytical outputs.

Your input can cover information for a specific EU+ country or the EU as a whole. You can complete all or only some of the sections.

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.

All submissions are publicly accessible. For transparency, contributions will be published on the EUAA webpage and contributing organisations will be listed under the Acknowledgements of the report.

All contributions should be appropriately referenced. You may include links to supporting material, such as:

- analytical studies;
- articles;
- reports;
- websites;
- press releases;
- position papers.

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.

NB: Similarly to last year, this year's edition of the Asylum Report will be leaner and more analytical, with streamlined thematic sections. The focus will be on key trends in the field of asylum rather than on individual developments. For this reason, information shared by respondents to this call may be incorporated in the Asylum Report in a format different than in the past years. It will also feature prominently as info boxes in the country overviews.

Your input matters to us and will be much appreciated!

*Please submit your contribution to the Asylum Report 2026 by **Friday, 9 January 2026**.*

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X I accept the provisions of the EUAA Legal and Privacy Statements

General Observations

Before sharing information by thematic area, please provide your general observations on asylum developments as indicated in the following three fields:

1. **What areas would you highlight where important developments took place in the country/countries you cover?**

Alarmingly, in 2025 we have observed **forced deportations from Switzerland taking place under the Dublin-III regulation** directly from hospitals and psychiatric clinics. AsyLex has started challenging particularly disproportionate deportations using unnecessary force or neglecting to consider the fragile health situation or other vulnerabilities of the persons concerned (for more information, please see **Q13**).

In 2025, the Swiss State Secretariat for Migration (SEM) **systematically questioned the authenticity of evidence** demonstrating the prosecution of applicants in **Türkiye**. The consequences of this practice are grave, with numerous **deportees** being **immediately detained upon return to Türkiye** (for more information, please see **Q8**).

In March 2025, the SEM announced a change of practice regarding asylum seekers from **Afghanistan**, considering it 'reasonable' to 'return non-vulnerable men to Afghanistan in exceptional cases if the circumstances are favorable' (SEM, press release). Alarmingly, the Swiss government welcomed representatives of the Taliban to Switzerland in August 2025, with a view for them to identify Afghan nationals who can then be forcibly returned to Afghanistan.

SEM's practice concerning **Burundi** remains highly problematic. AsyLex is aware that SEM frequently **issues negative asylum decisions and removal orders while systematically questioning the credibility of political persecution** claims, despite ongoing reports of arbitrary arrests, torture, enforced disappearances, and repression of opposition members and returnees. AsyLex has observed a dismissive use of country of origin information, insufficient

consideration of exile activities, and a tendency to treat the Burundian situation as 'stabilised' or the medical care situation as sufficient, contrary to assessments by international human rights bodies. In December 2025, Level 3 deportations of rejected asylum seekers from Burundi took place again.
In one case concerning a rejected female applicant from Burundi, AsyLex approached the **UN Committee on Enforced Disappearance (CED)**, claiming that her deportation would expose her to a real risk of being detained incommunicado, forcibly disappeared, or murdered. The CED registered the case and issued interim measures halting the deportation, which implies that the CED sees a real risk of the client's deportation amounting to violations of the Convention on Enforced Disappearance.

Regarding asylum applications from **Syrians**, we are concerned by the decision moratorium by the SEM in December 2024, which has been **extended until September 2025**. This moratorium effectively **suspends substantive decision-making** on Syrian applications, leaving applicants in a prolonged state of legal uncertainty and delaying access to durable protection. Since September 2025, the SEM has taken up decision-making regarding asylum applications from vulnerable persons without claims relevant to refugee law, as well as from persons who have 'committed serious crimes in Switzerland or who pose a threat to Switzerland's internal or external security'.

On 8 October 2025, the Swiss Federal Council decided to further extend S status protection for persons fleeing Ukraine until 4 March 2027. However, we regret that the **practice has been tightened with regard to regional assessments**, leading to differentiated treatment depending on the area of origin (SEM, press release) (for more information, see **Q5**).

On a positive note, AsyLex is relieved about the decision by the Federal Supreme Court 2C_64/2025, dated 21 October 2025, which rules that **Eritreans may no longer be asked to sign a letter of repentance** to their own government with a view to having a passport issued to regularise their status in Switzerland. Requiring such an admission in order to obtain a residence permit was ruled disproportionate. The court also held that the requirement had no direct connection with the identity check and violates the nemo tenetur principle, which states that no one is obliged to incriminate themselves. Moreover, the court also points out that the general situation in Eritrea remains critical, particularly with regard to national service and the general human rights situation, and that the specific consequences of returning are unpredictable and arbitrary.

However, we are highly concerned by a **new provision in the Asylum Act** (Art. 10a Asylum Regulation 3) activated in April 2025 which **authorises the SEM to inspect and analyse data from the electronic devices of asylum seekers**—such as mobile phones and laptops. Authorities from the SEM are hereby granted the right to extract and temporarily retain personal data, including but not limited to telephone numbers, messages, photographs, geographical location data, and social media profiles, for a period of up to one year. While the law provides that electronic devices may only be accessed when no other means of verification are available, and requires a proportionality assessment, it **lacks concrete safeguards to ensure that consent is truly informed and voluntary**. In practice, asylum seekers may feel pressured to comply, fearing that refusal could delay or negatively impact their asylum claims. Moreover, the legal and regulatory framework is vague regarding the

scope of data that may be extracted, how such data is processed, and who may access it. The absence of clear, binding safeguards creates a **heightened risk of arbitrary interference with personal data**.

At the political level, we observe a continuation of **political attempts to attack the right to asylum and the human rights of asylum seekers**, predominantly by the Swiss People's Party (SPP) and the Free Democratic Party (FDP). Popular initiatives include the SPP's Border-Control Initiative (Grenzschutzinitiative) submitted to the Federal Council in September 2025, which calls for systematic identity checks at borders, blanket entry bans for asylum seekers, restricting the granting of asylum to a maximum annual quota of 5,000 people and the abolition of temporary admission (F permit), which grants temporary protection for persons who either qualify as refugees but have grounds for exclusion from asylum, or whose removal cannot be carried out for various reasons, including due to international law and humanitarian considerations. The initiative would effectively break with international human rights standards binding for Switzerland – such as the universally binding legal custom of *non-refoulement* – and the national asylum framework (see Schweizerische Flüchtlingshilfe for a more detailed assessment). We are also highly concerned by motions aiming to raise the minimum duration before persons with temporary protection can apply for a residence permit (B permit) from five to ten years in both chambers of parliament (National Council: motion 25.3274; Council of State: motion 25.3689). The success of these motions would effectively leave persons who cannot return to their country of origin in a prolonged period of limbo, and prevent them from full integration. We are also highly concerned by the so-called Sustainability Initiative (Nachhaltigkeitsinitiative), a popular initiative launched by the SPP on which the electorate is expected to vote in summer 2026. The initiative demands measures to ensure that the Swiss population remains below 10 million until 2050, which would fundamentally be in violation of the right to seek asylum, would practically lead to Switzerland exiting the Schengen agreement, and result in the diminishing of protections for foreign workers in Switzerland.

With regard to Switzerland's support for asylum capacity abroad, we are highly concerned about the financing of so-called **'safe zones' for children in Closed Controlled Access Centres (CCAC) on the Greek islands of Samos, Kos, Leros, and Chios** as part of the Swiss-Greek Cooperation Programme. Intended to provide a protected environment where unaccompanied children receive primary support and assistance upon arrival, **children are effectively detained under precarious conditions in fenced, confined sections** of the CCAC. Lawyers and humanitarian workers on the ground have consistently documented alarming conditions in these zones, including overcrowding forcing children to sleep in shifts on the floor, a lack of basic hygiene, and inadequate access to food and medical - including psychological - support and treatment. Rulings from both the European Court of Human Rights (ECtHR) and the Greek Administrative Court (Administrative Court of Syros, Decision AP7/2025, 21 February 2025) recognise these 'safe areas' as de facto detention centres.
In March 2025, the research collective WAV and the independent journal 'die Republik' published an investigative report regarding the deplorable conditions of children being held in the CCAC in Samos, which reveals that **Switzerland is aware of the inhumane reception**

conditions. A Swiss delegation visiting Samos in early February 2025 confirmed warnings repeatedly issued by frontline organisations that essential services such as food distribution, hygiene, and psychosocial support were "compromised". Internal communication obtained by the researchers shows that the Swiss embassy in Greece internally expressed "serious concerns over the escalating situation," revelations which have reportedly prompted Swiss authorities to consider withdrawing funding. Notwithstanding, Switzerland continues to fund these facilities without stringent monitoring mechanisms and enforceable conditions and without publicly positioning itself on the allegations made by NGOs, the investigative report, and national and international courts.
AsyLex is highly alarmed by the conditions in the centres and the continuation of the financial agreement without transparent mechanisms to improve the situation. Based on publicly available information, detailed reports from the Human Rights Legal Project (HRLP) operating in Samos, and direct communication with children held in these 'safe areas,' AsyLex filed an **Urgent Action request with the UN Working Group on Arbitrary Detention (WGAD)** on behalf of five children representing the broader structural problems. The WGAD is yet to assess the Urgent Action request.

2. **What are the areas where only few or no developments took place?**

Persistent concerns surround the **non-refoulement principle**, since we continue to observe that asylum seekers previously registered in Dublin countries like Croatia, where asylum seekers face systemic violations of their human rights and are at risk of **chain refoulement** – given that in 2024, only 71 of 26,000 asylum applications in Croatia were approved – are deported without a systematic, individualised risk assessment.

For other areas where none or only few developments took place, please refer to the AsyLex Asylum Report 2025 and AsyLex Asylum Report 2024.

3. **Would you have any observations to share specifically about the implementation of the Pact on Migration and Asylum in the national context of the country/ countries you cover?**

AsyLex is **highly critical of the adoption and implementation of the EU Migration and Asylum Pact**, due to the significant restrictions of protection for asylum seekers inherent to the Pact. For those seeking protection, the asylum procedure is already characterised by systematic shortcomings, which will be further exacerbated by the Pact. Instead of greater legal protection and solidarity, the Pact leads to longer waiting times, expanded grounds for detention, an increase in appeal possibilities, and fast-tracked decisions.

As an associated Schengen/Dublin state, Switzerland is required to participate in certain components of the new EU Migration and Asylum Pact (Regulation (EU) 2024/1351 ; Regulation (EU) 2024/1356 ; Regulation (EU) 2024/1358 ; Regulation (EU) 2024/1349 ; Regulation (EU) 2024/1359). While AsyLex recognises the necessity of Switzerland's participation in these instruments in order to preserve its Schengen/Dublin association and maintain stable relations with the European Union and its partner states, we hold that such participation cannot be

unconditional, and must not come at the expense of fundamental rights and refugee protection. Against this background, AsyLex took part in the consultation processes on the legislative amendments and regulatory adjustments required for implementation at national level, with the aim of ensuring that human rights standards and protection obligations are safeguarded.

In our consultation submitted in November 2024 (see **Annex**), we highlighted various issues of concern. A central concern relates to the Asylum and Migration Management Regulation (AMMR), which replaces the former Dublin system. While presented as a reform aiming towards greater responsibility sharing, the AMMR further tightens the criteria for determining state responsibility. In practice, this means that countries of first entry will remain responsible for asylum procedures in an even greater number of cases, thereby reinforcing existing structural imbalances rather than alleviating them. Furthermore, the regulation significantly weakens the protection of unaccompanied minors. The best interests of the child will no longer automatically constitute the primary consideration in responsibility determinations. Under the new framework, unaccompanied minors are assigned to the state in which they are registered rather than to the state in which they lodge their asylum application, a shift that risks significantly weakening existing safeguards for unaccompanied children and runs counter to established jurisprudence of the European Court of Human Rights. In addition, the AMMR allows for substantially extended transfer deadlines, potentially up to three years, which risks leaving asylum seekers in prolonged periods of legal uncertainty and social limbo.

Serious concerns also arise in connection with the Screening Regulation. Individuals apprehended without valid documentation may be detained for up to seven days without judicial review or guaranteed access to legal representation. This absence of effective oversight considerably increases the risk of disproportionate or arbitrary coercive measures. Moreover, the regulation prioritises the collection of biometric data at a very early stage, even before individuals are given the opportunity to explain their reasons for flight. This sequencing raises questions regarding respect for human dignity and procedural fairness.

The planned reform of the Eurodac system further exacerbates these issues. Data collection will be massively expanded to include not only fingerprints but also facial images, names and travel documents, with storage periods of up to ten years. Furthermore, such data can now be collected from children as young as six years old. At the same time, access to this data by law enforcement authorities will be broadened. As a result, asylum seekers risk being treated primarily as potential security threats rather than as individuals seeking protection, undermining the humanitarian foundations of asylum law (for a more detailed discussion of the human rights concerns regarding Eurodac, see our submission to the OHCHR regarding **the Right to Privacy in the Digital Age, Annex**)

In view of the fact that the implementation of the Asylum and Migration Pact was passed at the legislative level in October 2025 without the amendments we proposed in the first consultation process, we urged further adjustments to the regulatory changes in order to strengthen the rights of those seeking protection in the second consultation phase (see **Annex**). However, we regret that key legislative decisions were taken in parallel with the consultation processes, thereby significantly limiting the practical impact of those consultations.

In our second consultation, we called for a series of concrete measures to safeguard fundamental rights within the Swiss context. Recommendations included the introduction of a binding catalogue obliging Switzerland to assume responsibility in humanitarian cases, particularly for applicants in vulnerable situations such as children or persons presenting with serious illness, or applicants where severe human rights crises persist in the destination country.

AsyLex further demanded guaranteed access to free legal representation from the very beginning of the screening process. Prior to any transfer, binding assurances must be obtained from the destination state confirming effective access to necessary medical treatment. Finally, procedural rights must be strengthened, notably through the systematic provision of audio recordings and written transcripts of hearings to legal representatives, as well as through a thorough and fair assessment of individual vulnerabilities and special protection needs.

Unfortunately, in its final vote on the implementation of the pact at the legislative level during the autumn session in October 2024, Parliament failed to achieve any improvements in these areas. The new EU Migration and Asylum Pact is to apply from summer 2026.

It would have been essential that Switzerland used its remaining leeway, at least at the regulatory level, to ensure minimum standards of the rule of law, child protection and solidarity-based solutions. Regrettably, this has not been the case. AsyLex particularly laments the fact that Switzerland refused to participate in the solidarity mechanism, a choice that undermines collective responsibility and further weakens the protection framework for asylum seekers.

PART A: Contributions by topic

Please share **your reporting on developments in asylum law, policies or practices in 2025 by topic**. Kindly make sure that you provide information on:

- ✔ New developments and improvements in 2025 and new or remaining challenges;
- ✔ Changes in legislation, policies or practices, or institutional changes during 2025.

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)

Access to the asylum procedure has in 2025 still been significantly restricted by the decision moratorium on **Syrian asylum cases** imposed by the SEM in December 2024, which has been **extended until September 2025**. This moratorium effectively suspends substantive decision-making on Syrian applications, leaving applicants in a prolonged state of legal uncertainty and delaying access to durable protection. Since September 2025, the SEM has

taken up decision-making regarding asylum applications from individuals from Syria again, which will in a first step apply to vulnerable persons without claims relevant to refugee law, as well as to persons who have committed serious crimes in Switzerland or who pose a threat to Switzerland's internal or external security.

Moreover, we are concerned by the **amendment of the Foreign Nationals and Integration Act (AIG) in line with EU Regulation 2024/1717**, with significant implications for access to Swiss territory. Building on lessons from the COVID-19 pandemic, the reform introduces new rules on internal border controls within the Schengen area, creating additional possibilities to restrict entry. In practice, this **risks further limiting the effective right to lodge an asylum application**. People in vulnerable situations may be removed or refused entry at the border – especially when arriving from a neighbouring Schengen state – without being properly heard. As a result, the reform is likely to constitute yet another restriction on the practical ability to submit an asylum claim in Switzerland.

Further, we remain concerned about the **lack of systematic individual assessments** in Dublin procedures and under STC frameworks, and the **extremely short appeal deadlines**, especially in the accelerated proceedings (7 days) and Dublin proceedings (5 days) (for more information see **Q4**).

Otherwise, we refer to our observations provided in the AsyLex Input to the Asylum Report 2025 and AsyLex Input on Asylum Report, 2024.

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

Our concerns regarding the **lump-sum payment model for state-appointed legal representatives** during the asylum procedure highlighted in our AsyLex Asylum Report 2025 and previous reporting years persist. The **disincentive inherent to the lump-sum model results in state-appointed legal representatives refraining from lodging appeals**.

It remains particularly troubling to note that in **cases pertaining to Dublin decisions** on returns to Croatia, Romania, or Bulgaria, there is a marked tendency by state-paid legal representatives to terminate their mandates prior to filing an appeal against the decision. AsyLex continues to register an increase in such instances, compelling us to take on numerous mandates from clients who require legal representation to contest their inadmissibility decisions. This is especially alarming considering the extremely brief appeal deadlines, which span just five working days for inadmissibility decisions. Given this narrow window, many asylum seekers struggle to secure a representative who can accept their mandate in time.

Notably, state-appointed legal representatives **even refrain from lodging appeals in cases where subsequent appeals filed by private legal representatives are later deemed by the Federal Administrative Court (FAC) to be "not without merit" at least**. Our own case-work in 2025 demonstrates the issue of state-appointed legal representatives hastily terminating their mandate: in nearly half of the asylum appeal cases handled by AsyLex in 2025 – all of which

were cases in which state-appointed legal representatives had previously terminated their mandates – the FAC found that the appeals were not manifestly hopeless and appointed AsyLex as legal representative. The cessation of the mandates by state-appointed legal representatives was therefore unjustified, as confirmed by the Court's later assessment, and failed to comply with the stipulation that state-appointed legal representatives may only terminate their mandate if they see no chance of success (see Art. 102h Asylum Act).

Our observations in our own case-work are corroborated by a report from Pikett Asyl titled "Work of the service providers legal protection in the federal asylum centres – Based on a survey of asylum seekers", already mentioned in our contribution to the Asylum Report 2025. The report finds that in the first half of 2024, **61.11% of successful appeals in the Zurich region were brought forward by privately appointed legal representatives or even as layperson appeals**, rather than by state-appointed legal representatives, with this number increasing compared to 2023. The report has been made publicly available in January 2025.

We also criticise the **limited scope of the mandate of state-paid legal representatives** (see Art. 102k Asylum Act), which excludes legal representation in areas such as racism, hate speech or other forms of ill-treatment by authorities (e.g. cases of violence against asylum seekers by the police or security staff). While post-asylum protections exist for migrants through anti-discrimination advice centres in most cantons (see, e.g. "ZüRAS" in the canton of Zurich), individuals in the asylum process are not provided with information about these services or their availability, making them effectively inaccessible. Asylum seekers experiencing hate-speech, racism or other forms of ill-treatment are thus left unprotected and unable to access justice. The UN Committee Against Torture (CAT) and Amnesty International have criticised federal asylum centres for issues such as the use of racist language, mistreatment by security guards, confinement in small "reflection rooms," and a lack of clear complaints mechanisms. Asylum seekers often face insurmountable obstacles to lodging complaints or pursuing legal action against such abuses. Many are unaware of their rights or where to seek help, an issue exacerbated by a lack of independent monitoring and proactive safeguarding mechanisms in asylum centres. In this context, it is particularly problematic that asylum seekers, who cannot afford legal aid, do not have access to state-funded legal advice and representation.

We are also highly alarmed by the **persistence of Strategic Litigation Against Public Participation (SLAPP)** proceedings against NGOs providing legal assistance to asylum seekers. In one recent detention case, a judge of a cantonal compulsory measures court argued that Asylex "abused the proceedings by filing an obviously futile application for release from custody" and would generally "exploit and instrumentalise foreigners for its own purposes by conducting 'mass business' with them, which does not focus on protecting individual interests, but rather serves the political purposes and financial interests of AsyLex". The judge even **imposed the costs of the proceeding of 2,000 CHF personally on two of our lawyers**. While the **Federal Supreme Court dismissed these claims clearly and overturned the decision** in March 2025 (2_C_109/2025), stressing that the "contested decision stands in stark contradiction to the facts of the case and is based on general criticism of the activities of AsyLex", the case illustrates judicial attempts to **undermine asylum seekers' right to legal counsel and place undue personal and professional risks** on our staff and volunteers, simply for political disagreement with our work.

Similarly, **courts have threatened or actually made notifications to the bar association against AsyLex lawyers and other lawyers representing asylum seekers** for purported reasons such as non-prudent conduct. An alarming example of such SLAPP proceedings aiming to cause a chilling effect on legal advisors representing asylum seekers include the request of a judge from a compulsory measures Court in Basel to introduce a disciplinary proceeding against a lawyer for not being available to the judge for a couple of days – notably during cantonal festivities. In October 2025, the bar association rejected the request (AK.2025.27 (AG.2025.604)). In a report published on 21 October 2025 by the platform humanrights.ch discusses the increase in SLAPPs in Switzerland. For the article, humanrights.ch spoke to Gabriel Püntener, a well known legal representative for persons in the asylum procedure. He notes an increase in intimidation attempts against his work through SLAPPs since 2018, including the imposition of court costs on him personally as well as fines. AsyLex is highly concerned about these **intimidation tactics**, which aim to create a **chilling effect and impose undue personal risks** on both asylum seekers themselves and their legal representatives.

Other concerning instances in 2025 include the **refusal of the SEM to provide the files** in a Dublin case, arguing that the client had already received the files directly. Especially in light of the incredibly short appeal deadline of five days, this poses a significant obstacle to effective legal representation. Generally, we witness increasing obstacles to accessing our clients' files, with some **cantonal migration authorities demanding payment for file inspections**.

In light of the **new provision in the Asylum Act** (Art. 10a Asylum Regulation 3) activated in April 2025, which **authorises the SEM to inspect and analyse data from the electronic devices of asylum seekers** (for more information, see **Q1**), we are highly concerned that the **attorney-client privilege** could be infringed. While Swiss law protects the confidentiality of legal communications, the existing framework offers no effective safeguards to prevent the SEM from accessing sensitive legal correspondence during device inspections. This poses a serious threat to the integrity of the asylum process and undermines trust in legal representation. In this matter, the ECtHR has repeatedly affirmed that lawyer-client communications enjoy enhanced protection under Art. 8 ECHR, which explicitly states that "everyone has the right to respect for (...) his correspondence. In its case law, notably *Michaud v. France*, the Court stressed that any interference must be lawful, necessary and proportionate, and accompanied by adequate safeguards to prevent abuse. The lack of such safeguards in the current practice raises serious concerns about compatibility with these standards.

Finally, a deeply concerning development is the **systematic reduction and rejection of free legal assistance before the FAC**, the sole appellate body in asylum matters. This issue is particularly pressing because the denial of free legal assistance cannot be appealed to a higher court. Compounding this problem, compensation for legal costs (Parteientschädigung) in cases where appellants prevail has significantly decreased. In contentious cases, such compensation is often denied on the grounds of insufficient legal complexity, even when the cases raise substantial issues. This trend is particularly troubling for non-governmental organisations (NGOs), as it not only effectively hinders access to justice but also prevents or significantly complicates the work of NGOs.

For obstacles to effective legal representation in detention, please refer to **Q7**.

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)

As already outlined in our input to the Asylum Report 2024, we **regret that asylum hearings are not recorded**, and that the **accuracy of interpretation can therefore not be reviewed.** However, Art. 22 para. 7 of the **AMMR now foresees the recording of the personal hearing** throughout the determination of responsibility procedure. The stipulation is planned to be transposed into Art. 20bbis Asylum Regulation 1 und Art. 11e Asylum Regulation 3 (SEM, preliminary drafts regulations). AsyLex welcomes this development, given the weight of the hearing for the further proceedings, and the new opportunity this opens up to consult recordings in instances of lack of clarity, as well as to review the accuracy of interpretation services. That being said, we **highly regret** that Art. 11e para. 4 of Asylum Regulation 3 foresees that **legal representatives may hear the recording only on-site and upon request**, rather than systematically making the recordings electronically available. **Electronic delivery should be the norm** – not least as a necessary step towards aligning with previous developments in the field of electronic legal transactions, which in asylum law, for example, are being promoted by the standard practice of sending decisions to state legal representatives via the platform 'Privasphere' or the operation of the justitia.swiss platform by the Federal Administrative Court. We regret that this impractical and outdated approach was chosen, rather than ensuring fairness, efficiency, and quality review of interpretation services through the systematic sharing of files digitally.

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

We remain highly concerned by the lack of systematic, individualised risk assessments in Dublin and STC procedures. We witness how the **lack of an individualised risk assessment regularly leads to deportations which effectively are in violation of the non-refoulement principle**, the absolute and non-derogable prohibition against returning any person to a situation in which they face a real risk of irreparable harm, including death, torture, ill-treatment, and persecution. Many AsyLex clients have faced systemic neglect and/or direct violence by authorities in the responsible Dublin member State or STC. Their experiences include physical, psychological, and sexual abuse; denial of food, water, legal aid, and medical care; destitution; and arbitrary detention in countries such as Croatia, Bulgaria, Romania, and Greece. AsyLex is particularly concerned about frequent deportations to Croatia, where systemic abuses and a persistently low protection rate expose deportees to the risk of (chain) refoulement, and returns to Greece where beneficiaries of international protection are at the immediate risk of destitution due to a lack of state support.

In cases where individual human rights considerations have been insufficiently considered at the domestic level, **AsyLex regularly approaches UN Treaty Bodies in the form of individual**

communications. Most cases brought to international human rights mechanisms by AsyLex concern deportations under the Dublin III Agreement or a return to an EU member state classified as a so-called STC. Our success rate of around 75% in obtaining interim measures implies that **Switzerland regularly fails to sufficiently consider the human rights of asylum seekers and the principle of non-refoulement in the Dublin and STC context**.

In July 2025, **AsyLex received two final recommendations from CEDAW in its favour** regarding Greece (Z.E. and A.E. v. Switzerland, CEDAW/C/91/D/171/2021; K.J. v. Switzerland, CEDAW/C/91/D/169/2021), marking landmark decisions concerning the return of women under the Dublin and STC framework. In both cases, the Committee found that the deportation of the applicants to Greece, where they had previously been exposed to SGBV, would be in violation of Art. 2(c)-(f), Art. 3 and Art. 12. **Swiss authorities had failed to assess the women's gender-specific risks upon return,** including the risk of renewed violence, harassment by migration authorities, gender-based labour exploitation, and the lack of access to appropriate medical and psychological care. To our knowledge, the Committee applied Article 12 CEDAW (right to health) for the first time in a deportation context, due to the failure to examine whether survivors of SGBV could access recovery-oriented healthcare in the country of return. It further clarified that late disclosure of sexual violence, often resulting from trauma, must not automatically undermine credibility. The Committee urged Switzerland to take "all necessary measures to ensure that refugees who are victims of gender-based violence and in need of protection are **not returned to the country of first entry** [...] **without an individualised, trauma-informed, and gender-sensitive assessment of the real risk of irreparable harm**." The final recommendations thus stress that returns under the Dublin or STC procedure do not alleviate States from systematically conducting an individualised risk assessment. We are currently awaiting the State response on how the recommendations will be implemented.

While the overall number of asylum applications is declining in 2025 (23,767 applications up to the end of November, an 8.1% decrease compared to 25,884 in the same period in 2024), the number of people in Dublin procedures remains consistently high and therefore represents a growing share of all cases (SEM, Asylstatistik November 2025). Switzerland issued 9,507 Dublin-Out requests by the end of November 2025 and is thus likely to slightly exceed the total of 9,947 Dublin-Out requests recorded over the full year 2024. The number of people actually transferred from Switzerland under the Dublin system is also expected to rise slightly compared to the previous year, as is the number of persons transferred from other Schengen states to Switzerland (962 as of November 2025, compared to 869 in the whole of 2024). The number of Dublin-In requests lodged with Switzerland has already surpassed the total figure for the previous year. These numbers also include people who received subsidiary protection in another Dublin-state, but were forced to leave due to the dire circumstances there, most notably homelessness or total exclusion from societal services.

Especially in the second half of the year, the **sharp rise in negative decisions for people with international protection in Greece** led to a shift in the work of AsyLex, as these STC-Greece cases have replaced the Dublin-Croatia constellation as the predominant case type handled by AsyLex. This came with a change in jurisprudence concerning STC-Greece cases:

In 2022, in a leading judgment (E-3427/2021, E-3431/2021), the FAC held that it was **unreasonable to return particularly vulnerable persons to Greece** if they would be exposed to a situation of existential emergency. Persons in particularly vulnerable situations were defined as including minors and individuals with physical or psychological illnesses. The only exception envisaged was where there were favourable circumstances in the individual case that would make the removal reasonable. In September 2025, this **case law was revised** (D-2590/2025): although the court reiterated that living conditions in Greece are difficult for returnees, it did not consider the removal of a family with two minor children to be inadmissible or unreasonable. Instead, it argued that, since the family had been able to obtain Greek travel documents, they should also be able to access medical care if needed and could rely on support from their adult daughter. In doing so, the court shifted its focus towards the efforts made by beneficiaries of international protection to improve their situation in Greece.

These developments have not been accompanied by any improvement in conditions in Greece. While the SEM is financing the Greek asylum system with CHF 28 million in 2025 (SEM, press release) to justify a stricter approach to STC Greece cases, homelessness among people with international protection is soaring, and the Greek government has reduced its overall financial support for refugees by 30% as of October 2025.

Concerning Dublin cases, **Switzerland continues to tighten the rules, often in conflict with EU law and the jurisprudence of the CJEU**. In the decision F-7948/2024 of 15 April 2025 by the FAC, the court states that even a request of delay ending can restart the Dublin delay, in contradiction to the CJEU judgment in case C-338/21 of 30 March 2023, stating that a legal remedy against a decision other than the transfer decision cannot be viewed as a remedy or review within the meaning of art. 27 (3) or (4) of the Dublin III Regulation. As a result, asylum seekers are effectively discouraged from challenging arbitrary prolongations of Dublin transfer deadlines, since asserting their procedural rights may itself trigger a restart of the deadline.

A rather good news was the first case of **Take-Back after an erroneous decision** according to Art. 29 (3) Dublin III Regulation has been made after huge political pressure from several media outlets. It concerned a case in which **a child with sickle cell disease was deported in November 2024**, despite AsyLex arguing three times that the necessary treatment was not secured in Croatia. After the child and his parents were nonetheless forcefully deported and the child indeed received no medical support in Croatia, AsyLex requested the immediate Take-Back of the family according to the Dublin III Regulation, as the life of the child was in immediate danger. Only **after huge media pressure, did the family ultimately receive the option to return to Switzerland to receive urgently needed treatment** after almost four months in Croatia, which endangered the development of the child.

On another note, we are critical of the SEM's **refusal to directly enter into asylum requests in Dublin Italy constellations**, given that Italy has not accepted Take Back requests since December 2022. Affected persons thus unnecessarily remain in a situation of uncertainty and legal limbo while waiting for the expiry of the six month deadline before Switzerland is mandated to enter into their asylum request.

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

Building on our comments from 2023, 2024, and 2025, we recognise and welcome the retention of **protection status S ("S Permit")** introduced on March 11, 2022, for people seeking refuge in Switzerland as a result of Russia's war in **Ukraine**. This permit undeniably speeds up the procedure by eliminating the need to examine the grounds for asylum.

On October 8, 2025, the Swiss Federal Council decided to further extend the S status protection for persons fleeing Ukraine until March 4, 2027. However, we regret that the **practice has been tightened with regard to regional assessments**, leading to differentiated treatment depending on the area of origin (SEM, press release). AsyLex is concerned that the increasing reliance on regionalisation within an accelerated or prioritised framework **risks restricting access to protection for persons from areas deemed "safe" despite ongoing insecurity, displacement risks, and limited access to effective protection**. This practice may undermine the individual assessment of protection needs and reduce procedural safeguards in cases processed under prioritised or accelerated procedures. The decision to limit S status to only certain areas constitutes the implementation of a motion accepted by both chambers of parliament in December 2024 (Motion 24.3378) that we have already shared our concerns about in our input to the Asylum Report 2025.

On October 22, the Federal Council decided that, as of December 1, 2025, **S permit holders no longer need to obtain a special work permit**, but now simply have to give notification of employment start/stop. We welcome this development, which reduces administrative hurdles to access the labour market. However, in its meeting of October 22, the Federal Council also decided that S permit holders receiving social assistance may now be required to participate in professional integration or reintegration programmes (Federal Council, press release).

In general, we welcome the extensive rights that accompany the S permit, but hold on to our criticism regarding the striking difference in rights when juxtaposed with those of F permit holders. AsyLex firmly reiterates the **need to uniformly extend the rights granted under the S permit to all individuals granted temporary admission**.

The **24-hour procedure**, which applies to applicants from countries with very low recognition rates (Morocco, Algeria, Tunisia, and Libya), presents significant challenges for the legal representatives assisting asylum seekers. The particularly short deadlines make it practically impossible to provide adequate assistance and support to the applicants.

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)

In several Swiss cantons, asylum social assistance is increasingly provided through debit cards rather than cash, with the stated aim of preventing misuse of funds. However, organisations such as **Caritas** point out that asylum social assistance levels are already extremely low, leaving little scope for misuse and suggesting that the measure addresses a largely perceived rather than actual problem. At the same time, debit cards may offer limited benefits by facilitating access to basic financial infrastructure, particularly in a context where asylum seekers and persons with temporary protection often face barriers to opening bank accounts.

The debate has been further informed by a 2024 study showing that higher levels of asylum social assistance correlate with lower rates of petty crime and do not discourage employment. The **Swiss Refugee Council (SFH)** stresses that insufficient social assistance hampers integration and advocates for assistance levels aligned with the **Swiss Conference for Social Welfare (SKOS)** guidelines, as well as for nationwide minimum standards to address cantonal disparities.

As outlined previously in our AsyLex Asylum Report 2025, an important study by the Federal Migration Commission (FMC) highlighted that the emergency aid structures in Switzerland are not in line with the Convention on the Rights of the Child, to which Switzerland is a party. One of the main issues identified is housing. Specifically, there are no appropriate separate accommodations for families and unaccompanied children, and the overall living conditions are not child-friendly. There are no playrooms or activities for children, and the environment is generally unsuitable for their development. The National Committee for the Prevention of Torture (NCPT) criticised the **living conditions** in temporary asylum centres, particularly in civil defense shelters. Conditions in the shelters are challenging: limited space, no natural light, no clear separation of sleeping, eating, and communal areas, lack of privacy, and inadequate ventilation, among other issues. Such circumstances increase the risk of conflict, yet violence prevention measures are notably lacking. Additionally, alleged cases of violence reported to the NCPT have been poorly documented and insufficiently investigated.

Many of these emergency aid shelters are located in remote areas, leading to a lack of social interaction. This isolation negatively impacts the development and mental health of children, further violating their rights under the Convention. Concerningly, due to the shelters' remote location, some cantons are unable to provide access to schools, and children are instead taught within the facility. Experts have raised serious concerns about the quality of the education provided, which again constitutes a violation of the rights of the child under the Convention.

Lastly, issues regarding the **conditions in Federal Asylum Centres** persist (see NCPT report from 2022). We are particularly alarmed by the suicide of a minor right outside of a reception centre in Ticino in March 2025.

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)

We are highly alarmed by several **suicides and suicide attempts taking place in administrative detention centres in 2025**, including the suicide of 22-year-old person and a 62-year-old person within one month. Concerningly, suicidal clients in the Zurich Centre for Administrative Detention under Immigration Law (Zentrum für ausländerrechtliche Administratizhaft, ZAA) are commonly put in **solitary confinement** in so-called 'security-cells', rather than being provided with adequate psychological assistance. This practice is still applied under the guise of 'protection', despite the Administrative Court of Zurich having **ruled the practice unlawful** due to its disproportionality in 2022 (Administrative Court Zurich, VB.2021.0061, 28 July 2022). We are alarmed that the treatment of suicidal clients by the ZAA effectively amounts to violations of Art. 16 (prevention of acts of cruel, inhuman, or degrading treatment or punishment) of the Convention against Torture, and urgently **demand a halt to this inhumane practice**.

There are **no statistics collected by the SEM** regarding suicides and other deaths during the asylum and removal procedure in Switzerland. Upon AsyLex' request, the SEM stated that the collection of data is primarily the cantons' responsibility and that it is not possible for the SEM to differentiate suicides from other self-harm and harm caused by others without a doubt.

Access to legal representation in detention remains limited, as only a few cantons automatically assign legal representation. The lack of systematic access to legal representation for administrative detainees in Switzerland has been **reprimanded by the CAT** in its eighth periodic report on Switzerland in 2023. Since then, we have not noted any improvement of the situation.

We also witness that **state-appointed** legal representation is at times inadequate, as **lawyers lack specialised expertise**. AsyLex is aware of cases in which the legal representative only contacted the detained person for the first time weeks after taking on the mandate to explain the proceedings. The exact number of persons in detention without legal representation is not known due to a lack of publicly available data.

When AsyLex is appointed as a legal representative, we are inconsistently compensated (no compensation in the cantons of Thurgau and Ticino; compensation at a greatly reduced rate in the cantons of St. Gallen and Bern). Worryingly, the **refusal to compensate AsyLex** is based on the **reasoning that AsyLex is a non-profit association and therefore not profit-oriented**.

Further obstacles to effective legal representation include the **lack of consultation with legal representatives when planning detention hearings**. The extremely short notice makes it impossible for mandated legal representatives to attend the court hearing in some cases. Among others, we witness this trend in the cantons of Bern, Lucerne, Zug, St. Gallen, and Thurgau.

Moreover, **legal representation is sometimes actively obstructed by the court**. In a case led by AsyLex, a cantonal Compulsory Measures Court directly imposed the costs of the

proceedings for an application for release from detention on two of AsyLex' lawyers. While the decision was overturned by the Federal Supreme Court in March 2025 (2C_109/2025), the ideological reasoning behind the initial ruling and the precedent it aimed at setting are highly concerning (see **Q2** for more information).

Another pertinent issue of concern is the **lack of systematic judicial review for Dublin detention**. While Art. 80, para. 2 of the Federal Act on Foreign Nationals and Integration (Foreign Nationals and Integration Act, AIG) stipulates that detention in preparation for departure, administrative detention, and coercive detention must be reviewed within 96 hours, Dublin detention only undergoes judicial review upon request. The figures available from the Zurich District Court for the years 2021 to 2024 show that between 2021 and 2024, this led to **only 21.6% of cases of Dublin detention** being **reviewed by a court**. The consequences are hefty: **only 41.2% of the cases undergoing judicial review were confirmed**, which corresponds to only 8.9% of all detention orders. In contrast, 91% of detention pending deportation – which are systematically reviewed – were approved by the court (Swiss observatory for asylum and immigration law, 2025). Persons in Dublin detention are therefore at an excessive risk of unlawful detention.

On another note, we witness that **Courts are increasingly acquitting our clients** because the evidence underlying a detention order was inadmissible, namely due to **unlawful identity checks (racial profiling**) or **house searches in asylum shelters without a search warrant**. Switzerland's insufficient safeguards against racial profiling have recently been condemned at European level; in the case of Wa Baile v. Switzerland, the European Court of Human Rights reprimanded Switzerland for violating Art. 14 (the principle of non-discrimination) and Art. 13 (right to an effective remedy) of the European Charter of Human Rights. The case highlights the structural shortcomings of protections from racial profiling and clear rules of procedure regarding documentation of motives behind identity checks.

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)

Country-Specific Asylum Practices

Ukraine

Regarding procedures related to Ukrainians and S permits, see our comments to **Q5**.

Syria

In 2025, access to the asylum procedure for **Syrians** in Switzerland has remained significantly restricted due to the **decision moratorium** imposed by the SEM in December 2024 and extended until September 2025. This moratorium has effectively suspended substantive decision-making on Syrian asylum applications, leaving many applicants in a prolonged state

of legal uncertainty and delaying access to durable protection. Although the SEM **resumed decision-making** from September 2025, this has initially been limited to specific categories, namely vulnerable persons without claims relevant to refugee law and individuals who have committed serious crimes in Switzerland or who are considered a threat to the country's internal or external security.

Türkiye

In cases concerning applicants from **Türkiye**, the **SEM systematically questions the authenticity of evidence** submitted to substantiate pending or ongoing politically motivated criminal proceedings. In particular, documents such as arrest warrants, detention orders, summons, or court records are frequently dismissed as falsified or unreliable. Crucially, this scepticism is often not based on inconsistencies or concrete deficiencies in the individual case, but rather on general assumptions that documents originating from Türkiye are 'easily forged' or inherently unreliable. Such abstract distrust effectively replaces an individualised assessment of evidence with a blanket presumption, to the detriment of the applicants concerned.

This practice has been repeatedly criticised by refugee support organisations. The Swiss Refugee Council (SFH) has pointed out that such a **generalised suspicion undermines the principle of an individualised assessment of evidence** and shifts the burden of proof in an unreasonable manner onto asylum seekers, especially those fleeing authoritarian contexts where access to verifiable documentation is limited and where state institutions themselves are instruments of repression.

At the same time, **extensive country-of-origin information contradicts the SEM's dismissive approach**. There are documented cases of rejected Turkish asylum applicants being **immediately detained upon deportation** to Türkiye. Despite such cases, the SEM continues to enforce removals to Türkiye in cases where credible indicators of political persecution exist, including documented criminal proceedings. By rejecting evidence on the basis of abstract distrust rather than concrete rebuttal, the SEM effectively neutralises protection-relevant facts and exposes affected individuals to a foreseeable and documented risk of imprisonment, often for extended periods.

This practice raises serious concerns with regard to the principle of non-refoulement, procedural law, and standards of proof. When evidence of risk is discounted through generalised assumptions rather than assessed on its merits, the resulting decisions come dangerously close to violating Switzerland's obligations under international refugee and human rights law.

Afghanistan

In 2025, AsyLex observed an **increase in removal decisions by SEM** concerning **Afghan men** despite the continued systemic insecurity, repression of large groups of the Afghan population, persecution of minorities, and lack of effective state protection under Taliban rule. The SEM increasingly relies on a restrictive interpretation of internal protection alternatives and individualised risk, downplaying well-documented, country-wide human rights violations.

In March 2025, the SEM announced a change of practice regarding asylum seekers from Afghanistan, considering it 'reasonable' to 'return non-vulnerable men to Afghanistan in exceptional cases if the circumstances are favorable' (SEM, press release). Alarmingly, the **Swiss government welcomed representatives of the Taliban to Switzerland** in August 2025, with a view to identifying Afghan nationals with a view to forcibly returning them to Afghanistan.

Burundi

Similarly, SEM's practice concerning **Burundi** has been widely criticised in 2025 as **increasingly harsh and inhumane**. AsyLex is aware that SEM frequently issues negative asylum decisions and removal orders while systematically questioning the credibility of political persecution claims, despite ongoing reports of arbitrary arrests, torture, enforced disappearances, and repression of opposition members and returnees. AsyLex has observed a dismissive use of country of origin information, insufficient consideration of exile activities, and a tendency to treat the Burundian situation as 'stabilised' or the medical or the medical care situation as sufficient, contrary to assessments by international human rights bodies.

Taken together, these practices raise serious concerns about compliance with the principle of non-refoulement and procedural fairness at first instance.

Identity Documents and Restrictive Practice in Hardship Procedures

In **hardship procedures**, the question of whether applicants are able to obtain and submit identity documents continues to be handled very restrictively, both by the cantonal migration authorities and by the SEM. This approach is particularly counterproductive in country contexts where large groups of people remain in Switzerland under the emergency assistance regime due to the impossibility of return.

Those especially affected include rejected asylum seekers from **Eritrea** and **Tibet**. Tibetan applicants, for example, often find themselves in a situation where they are in practice unable to prove their identity at all, as they cannot establish contact with the Chinese authorities.

With regard to Tibetan refugees who have been living in Switzerland for many years, the SEM and some cantonal migration offices have signalled a willingness to cooperate in facilitating access to hardship residence permits. However, this has not yet resulted in a significant tangible relaxation of the criteria applied in practice.

Concerning the requirement to submit identity documents in the case of rejected Eritrean asylum seekers, a recent ruling by the Federal Court has been issued (2C_64/2025 of 21 October 2025), which rules that **Eritreans may no longer be asked to sign a letter of repentance** to their own government with a view to having a passport issued to regularise their status in Switzerland. Requiring such an admission in order to obtain a residence permit was ruled disproportionate. The court also held that the requirement had no direct connection with the identity check and violates the nemo tenetur principle, which states that no one is obliged to incriminate themselves. Moreover, the court also points out that the general situation in Eritrea remains critical, particularly with regard to national service and the general

human rights situation, and that the specific consequences of returning are unpredictable and arbitrary. It is to be expected that this judgment will lead to corresponding changes in administrative practice.

Excessive Delays in Family Reunification Procedures

At first instance, **family reunification applications are characterised by excessively long processing times**, even though the persons concerned often remain in desolate and dangerous situations. In many cases, applicants have already undertaken a burdensome and risky journey to a third country where a Swiss embassy is located in order to submit their application. In these countries, they frequently do not hold a residence permit, lack any social or institutional support network, and live in a state of constant insecurity. Many fear that they could be forcibly returned to their country of persecution at any time—a risk that is particularly acute given that their relatives in Switzerland have been recognised as needing protection due to persecution, which is precisely the basis for the family reunification request.

Despite these circumstances, the SEM, together with Swiss embassies and cantonal migration authorities, regularly takes more than one year to examine such applications. This prolonged duration persists notwithstanding the humanitarian urgency of the cases and indicates structural shortcomings in case management, prioritisation, and backlog handling at first instance.

Obstacles to representation

An issue observed by AsyLex, which has continuously worsened since 2024, is that the SEM often **provides only superficial translations of the submitted evidence**, if any at all. Moreover, these translations are typically made available only after the decision has been rendered. This practice significantly hinders legal representatives' ability to fully understand the facts during first-instance proceedings due to language barriers. Another growing concern is that the **burden of proof** is extremely high, and SEM's accusations of evidence falsification are often inadequately substantiated, with an increasing number of documents being deemed forged. These accusations extend to official documents, such as those from the Turkish Criminal Record (UYAP). The SEM refuses to provide detailed explanations, citing concerns that potential forgers could learn from the identified mistakes. Evidence is almost always rejected on grounds of not being verifiable. It even rejects on-site inspections by the legal representative for the same reason. As a result, it is practically impossible to challenge these allegations, as legal representatives are not given access to information about the alleged forgeries.

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

The insights from our AsyLex Asylum Report 2025 largely remain relevant and indicative of the persistent challenges within the asylum process.

The highly problematic practices regarding applicants from Burundi and Türkiye set out in our response to **Q8** have to a significant extent been upheld by the Federal Administrative Court

and, in certain respects, has even been reinforced or effectively established through its case law (Reference Ruling for Türkiye: E-4103/2024). As a result, **structural deficiencies in evidentiary assessment and risk evaluation have become entrenched at the second-instance level**, despite the serious legal and human rights concerns they raise. This development further limits the protective function of appeal proceedings and contributes to a restrictive and formalistic interpretation of protection obligations.

We are also highly concerned how **appeals against Dublin non-entry decisions are almost structurally rejected** on the basis of generalised assumptions that other Dublin member states and STCs provide adequate assistance and comply with regional and international human rights standards for asylum seekers (for more information, see **Q4**).

Moreover, the **procedural timelines for Dublin cases remain critically short** at five working days, leaving asylum seekers unaided at a crucial juncture, particularly if the mandate of the state-paid legal representation is terminated (see **Q2** for more information). AsyLex continues to encounter individuals attempting to lodge appeals on their own, often resulting in incomplete or flawed submissions. Despite our efforts to file supplementary appeals and request deadline extensions, the FAC frequently denies these requests, arguing that asylum seekers had their initial opportunity to appeal, therefore disregarding the absence of legal representation at this critical juncture (see also AsyLex Asylum Report 2023).

Furthermore, the **absence of oral hearings** before the second instance continues to be a significant deficit. AsyLex maintains that this is a critical flaw in the asylum process, since the written files alone do not offer an adequately comprehensive impression of a person, especially in terms of assessing credibility, compared to an in-person hearing.

AsyLex also continued to observe **excessive delays in asylum appeal proceedings before the FAC** in 2025. Despite the stated objective of the reformed asylum system to ensure swift and efficient procedures, asylum complaints often remain pending for many months, or even longer than a year, particularly in complex protection cases. This situation undermines the principle of an effective remedy within a reasonable time, as guaranteed by Swiss constitutional law and international human rights standards, and places asylum seekers in a prolonged state of legal uncertainty, frequently combined with precarious living conditions and limited access to integration measures.

This structural problem is clearly reflected in AsyLex's own practice. In 2025, almost all asylum complaints in which AsyLex was appointed as free legal representation remained pending until the end of the year, without a final judgment being issued. Such **systemic delays weaken the corrective function of judicial review**, particularly in cases involving removal orders to countries with serious human rights concerns. Prolonged appeal proceedings also **risk normalising first-instance deficiencies in SEM decision-making**, as delayed judgments reduce the practical effectiveness of legal protection and erode trust in the fairness and credibility of the Swiss asylum system as a whole.

As further examined in our response to **Q2**, the **issue of compensation for legal representation at second instance remained a matter of serious concern** in 2025. In a substantial number of cases, AsyLex was not granted any remuneration by the FAC, even

where appeals were successful or where AsyLex had been appointed as court-mandated legal counsel. This persistent practice raises fundamental concerns regarding the effective exercise of the right to legal representation and core principles of the rule of law. Inadequate and inconsistent compensation undermines the sustainability of specialised legal assistance in asylum proceedings and risks discouraging thorough and independent representation. The legal and systemic implications of this practice therefore remain profound and unresolved.

Lastly, we remain deeply troubled by the **request for advance payments** in many appeal cases. An advance payment is mostly requested when the appeal is considered as *prima facie* without merit, which may be fatal to destitute applicants in cases of a wrong assessment. This practice persists, despite the ECtHR's reprimands.

10. **Issues of statelessness in the context of asylum** (including identification and registration)

We refer to our AsyLex Asylum Report 2024, as the raised issues largely remain relevant.

A particular issue of concern remains the **non-transparent assessments by LINGUA**, a specialised unit within the SEM that conducts origin analyses when asylum seekers and other foreigners cannot present travel documents and the SEM has doubts about their claimed origin. Having represented clients in 2025 whose statehood was rejected on the basis of a LINGUA assessment, we remain alert to the **lack of review** for LINGUA expert opinions, the **impossibility of obtaining a full transcript** of the LINGUA assessment for legal representatives, and the **lack of transparency regarding the expert's qualifications.** We are particularly concerned about clients coming from countries or regions where clarifications with embassies are not possible, as is the case with persons claiming to originate from Gaza. If concerned persons cannot return to their claimed country of origin dismissed by LINGUA, they are effectively trapped in the emergency support system in Switzerland with no conceivable alternative. It is thus all the more important that origin assessments are transparently handled and subject to oversight.

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

Children

Despite the UN Committee on the Rights of the Child (CRC) reprimanding Switzerland as early as 2020 for failing to ensure children are heard systematically, disagreeing with Switzerland's argument that hearing the parents suffices, the **lack of individual, age-appropriate hearings** of children throughout the asylum procedure persists. **Even in cases where children have experienced severe violence, suffer from life-threatening medical conditions, or present with suicidal ideation**, they are not systematically heard, and requests for individual hearings are rejected. One such case led by AsyLex in 2025 concerns two girls who were to be deported to Croatia under the Dublin framework, despite having experienced sexual and gender-based violence (SGBV), medical neglect, detention in inhumane conditions, and

deplorable living conditions lacking food, water and protection in Croatia. As a result of the abuse, both girls suffer from anxiety, depression, suicidal ideation, and sleep disturbances, all worsened by fear of return. Subsequent requests for the children to be heard in a child-appropriate manner, however, were disregarded, with **the FAC rejecting the complainants' appeal as well as their repeated request to be heard in detail**. The deportations, which would have led to re-traumatisation and a real risk of irreparable harm, were only halted by interim measures obtained by AsyLex from the CRC.
The lack of systematic, individual hearings of children is not only in violation of Art. 12 of the Convention on the Rights of the Child, but also presents a **serious obstacle to an adequate vulnerability screening** of a group already in a position of heightened vulnerability.

Although the CRC reprimanded Switzerland in 2024 for the use of **problematic age assessment techniques**, the procedural deficiencies remain, including the use of unreliable medical assessment techniques and a neglect of the principle *in dubio pro minorem*, deriving from Art. 3(1) of the Convention on the Rights of the Child.

Moreover, we are alarmed by the **lack of consideration for children's specific health needs**, whose asylum requests and subsequent appeals are rejected even when **urgently needed medical care cannot be secured in the country they are to be removed to**. In 2025, AsyLex again brought such cases to the attention of the CRC in the form of individual communications as a last resort to halting life-threatening deportations (ICRC CHE (64); ICRC CHE (68)).

Another highly concerning case currently handled by AsyLex involves a **child victim of human trafficking and forced labour in Romania,** where he was registered under a false identity, silenced during asylum interviews, confined, beaten, threatened with death, and compelled to work without pay at a construction site. Despite disclosing these facts in Switzerland, expressing ongoing fear for his life, and showing clear signs of physical and psychological trauma, the SEM initiated a readmission request to Romania.

As already outlined in our AsyLex Asylum Report 2025, we are also concerned about the **accommodation of children in remote emergency aid shelters**, where they are socially isolated and do not have access to regular schooling. The **incompatibility** of emergency aid structures in Switzerland **with the Convention of the Child** was highlighted in a study by the Federal Migration Commission (FMC) in 2024 already.

In November 2025, UNICEF Switzerland, UNHCR Switzerland, Swiss Refugee Help and Save the Children Switzerland published a joint guide on how to improve the protection and participation of children in **collective accommodation centres**. The **minimal standards** developed in the guide directly address persistent issues in collective shelters, such as the **lack of child adequate spaces, lack of protection from indirect and direct forms of violence, and the inconsistent separation of children from single grown ups**.

Women

Concerns regarding **insufficient safeguards for gender-sensitive reception conditions and asylum hearings persist**, including cases in which women are not assured a 'female-only' interview and where their accounts of SGBV are not deemed credible. Together with Swiss Refugee Help, AsyLex highlighted these concerns in its contribution to the joint shadow report on Switzerland's implementation of the Istanbul Convention to the group Group of Experts on Action against Violence against Women and Domestic Violence published in October 2025.

The SEM does not recognise female gender as a reason for persecution. Women are also not automatically classified as a "social group" whose membership would justify a claim to protection solely on the basis of their gender. Although seven "specific social groups" are recognised in connection with gender, the SEM states that even in these cases, each individual case must be examined to determine whether gender-specific persecution relevant to refugee status exists.

In practice, the lack of recognition of women who have been victims of gender-specific violence as a social group worthy of protection is particularly evident in the case of **Afghan women**: their asylum applications in Switzerland continue to be examined on a case-by-case basis, rather than granting them collective protection status on the basis of gender-specific persecution. This approach contradicts European case law, which recognises all Afghan women as victims of gender-specific violence and thus determines that they are collectively worthy of protection.

Furthermore, we observe that **asylum procedures are not conducted in a gender-sensitive manner**. Women are regularly **denied credibility and subjected to disproportionate accountability**, with authorities failing to recognise the gender-sensitive difficulties of providing a coherent account of the abuse they have experienced. With regard to the assessment of the credibility of asylum applications, the SEM handbook emphasises that hearings must be conducted in an atmosphere of trust and empathy, stating: "An attentive yet firm approach is crucial when establishing the facts, especially when the grounds for asylum claimed touch on the intimate sphere of the person concerned." However, it is clear from legal representation that – especially in accelerated procedures, Dublin procedures, or STC constellations – in many cases, an environment of sufficient trust is not created that would enable the women concerned to open up. Furthermore, the **level of detail required** in the descriptions is **unreasonable**: in a recent case, the SEM accused a complainant of making too superficial statements about the physical appearance of her rapist (E-3506/2021, 19 February 2024). This is despite the fact that it is generally known that (repeatedly) recounting traumatic experiences can lead to retraumatisation and is often associated with shame – which can manifest in memory blocks, emotional numbness, or contradictory statements, among other things.

In addition, there is often a **lack of early gender-sensitive access to psychological support**, which would be central to processing the experience. When psychological reports are submitted, we also find that they are often insufficiently appreciated by the authorities.

It should also be noted that the **SEM has not developed or published any guidelines for dealing with particularly vulnerable asylum seekers (including victims of SGBV)**. Questions relating to the early identification of victims of gender-based violence – particularly in

accelerated procedures – therefore remain unresolved. Furthermore, no publicly available statistics on gender-specific reasons for applying to asylum are collected.

Despite the known risks for women who suffer gender-based violence, **the SEM and the FAC often expect them to have sought protection themselves beforehand and exhausted all domestic legal remedies – even in contexts where state protection does not exist and the danger is massive, thus placing the responsibility for the violence suffered on the victims.** This requirement is particularly striking in cases involving countries such as Türkiye and Iran. In Türkiye, it is assumed that the state provides adequate protection. In the case of Iran, two women were denied asylum despite previous official recognition of a lack of state protection, on the grounds that they had not sufficiently approached the authorities. In one extreme case, a woman who had been sexually abused by a judge should, in the opinion of the Swiss authorities, have filed a complaint with the authorities in order to be eligible for protection in Switzerland (E-5129/2020, 18 December 2023). This logic also extends to LGBTQI+ persons, as in the case of a repeatedly persecuted lesbian woman from Armenia who was denied asylum because she had not approached LGBTQI organisations despite several complaints to the authorities (D-5040/2020, 21 May 2025). Furthermore, this trend also affects young girls who are at risk of genital mutilation. Asylum is sometimes denied on the grounds that the danger does not exist if their families oppose the practice. Such an approach wrongly shifts the burden of protection from the State to private actors (E-3761/2020, 28 December 2021: E-1547/2019, 10 September 2021).

The **situation in federal centres for asylum seekers remains problematic with regard to women and girls**. In a report published in 2023, the NCPT points out the lack of female educators and specialists for the care of unaccompanied minors, amongst others. The same report identifies numerous cases of sexual or gender-based violence within the centres, as well as inadequate training of the staff responsible. Shortcomings are also noted in the care for LGBTQI+ persons: according to the NCPT's findings, there have been cases in which persons in the centres felt exposed because of their sexual orientation. Although the Commission notes that staff in the centres sometimes recognise this and make efforts to support the persons concerned, there is still room for improvement.

Lastly, **the assumption that Dublin transfers and returns to STCs do not require an individual analysis of gender-specific needs ignores the specific situation of the women concerned**—such as the concrete risk of retraumatisation when returning to an environment where they have previously experienced violence. Similarly, there is no systematic assessment of whether specialised psychological or medical care is available in the country of return for women who had previously been exposed to SGBV. **AsyLex regularly approaches the CEDAW** in cases where our clients' gender-specific experiences of violence in the country to which they are to be transferred, as well as the availability of gender-specific support services there, are not or insufficiently examined. Notably, in July 2025, **AsyLex received two final recommendations from CEDAW in its favour** regarding Greece (Z.E. and A.E. v. Switzerland, CEDAW/C/91/D/171/2021; K.J. v. Switzerland, CEDAW/C/91/D/169/2021), marking landmark decisions concerning the return of women under the Dublin and STC framework. In both cases, the Committee found that the deportation of the applicants to Greece, where they had previously been exposed to SGBV, would be in violation of Art. 2(c)-(f), Art. 3, and Art. 12. **Swiss authorities had failed to assess the women's gender-specific risks upon return,**

including the risk of renewed violence, harassment by migration authorities, gender-based labour exploitation, and the lack of access to appropriate medical and psychological care. To our knowledge, the Committee applied Article 12 CEDAW (right to health) for the first time in a deportation context, due to the failure to examine whether survivors of SGBV could access recovery-oriented healthcare in the country of return. It further clarified that late disclosure of sexual violence, often resulting from trauma, must not automatically undermine credibility. The Committee urged Switzerland to take "all necessary measures to ensure that refugees who are victims of gender-based violence and in need of protection are **not returned to the country of first entry** [...] **without an individualised, trauma-informed, and gender-sensitive assessment of the real risk of irreparable harm**." The final recommendations thus stress that returns under the Dublin or STC procedure do not alleviate States from systematically conducting an individualised risk assessment. Notably, in K.J. v. Switzerland, the Committee also considered it insufficient for Switzerland to dismiss the complainant's account of SGBV in Greece simply because it was disclosed later, noting that survivors often require time before they can speak about such violence.

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 outlined in response to **Q5**, the introduction of the **protection status** (S permit) for persons fleeing the war in Ukraine has provided **significantly more favourable conditions** than both the regular asylum procedure and temporary admission (F permit). While applications are still lodged in federal asylum centres, S permit holders are not required to reside there, often receive protection within a few days, have immediate access to employment (including self-employment), education, travel abroad and family reunification. By contrast, asylum seekers and persons with temporary admission from other countries face longer procedures, restrictions on housing and mobility and lengthy waiting periods for family reunification. Moreover, eligibility for the S permit is limited, excluding certain third-country nationals who fled Ukraine.
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.

For further information regarding the content of protection in Switzerland, please refer to our answer to **Q6**.

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

The situation regarding forced returns has not improved, and we remain deeply concerned about the procedures involved and the potential risks returnees may face upon their arrival in another country.

Forced deportations are organised as **'surprise returns'**, commonly carried out at night or in the early morning, meaning that we are often not informed in advance about the return date, even in cases involving families with children. This is particularly problematic in Dublin return cases. Without prior knowledge of flight details, it is impossible to properly prepare or ensure a humane reception upon arrival for returnees. This lack of information further hinders our ability to provide effective legal support and to safeguard the well-being of those affected. Furthermore, this practice has a serious impact on the mental health of those affected, who are often left in a state of constant fear of being deported forcefully by the police at night.

The European country receiving the most deportations from Switzerland, **Croatia, only accepts transfers via special flights.** This creates an inhumane situation where families are deported under level 4 deportations—the highest and last resort under Art. 28 of the Coercive Measures Regulation (SR 364.3). According to the wording of the regulation, deportation via special flights should only occur in cases where physical resistance is expected. However, in practice, deportations to Croatia under the Dublin III regulation are carried out exclusively via special deportation flights.

Forced deportations are also **applied to persons in extremely vulnerable situations**, including families with small children, many of which are deported directly from asylum centres by a team of ten police officers or more. In 2025, we have observed the extremely concerning practice of **forced deportations of our clients directly from mental health clinics** – including **children's mental health clinics**. Some example cases of AsyLex concerning particularly inhumane treatment include a client who was tied with a cerberus belt throughout the deportation flight after being directly captured from a clinic. Similarly, one client was deported in a wheelchair without the medication they needed, and after experiencing a mental breakdown on the way to the flight. In another case, a client was deported one day after experiencing a miscarriage – of which authorities were aware. In another case, a nine year old underweight child and his father were forcibly deported to Croatia by eight armed police officers who captured them directly in the asylum centre. In this particular case, the medical staff on the flight were not even aware of the medical conditions of the child, because the migration authorities had shredded the medical files. Alarmingly, these cases are not exceptional; despite the **Committee Against Torture's (CAT) reprimands** of Switzerland in 2023 for the disproportionate violence used during special flights, AsyLex observes a general **trend towards deporting persons directly from psychiatric clinics, disregarding their specific needs and vulnerabilities, and exposing them to disproportionate violence** throughout expulsions. Several of these return practices were also criticised by NCPT in its latest report published in July 2025.

AsyLex has started challenging the legality of particularly disproportionate deportations using unnecessary force or neglecting to consider the fragile health situation or other vulnerabilities of the persons concerned.

The issue with OSEARA's medical assessments remains unresolved, as only one doctor continues to sign all the reports. This raises serious concerns about the thoroughness and accuracy of these assessments, particularly given that individuals with severe vulnerabilities —including mental health issues, victims of sexual and gender-based violence, and survivors of torture (e.g., from Xinjiang)—are often inadequately evaluated or have their medical

concerns dismissed as implausible.
These assessments are typically based solely on existing medical certificates, without any direct examination of the individuals involved. Additionally, the evaluations are often conducted one or two months in advance, even in cases requiring urgent or intensive medical care, further exacerbating the risk to those affected.

While it was announced in 2024 that **OSEARA would, as of 2025, be required to share the mandate for determining transportability for special deportation flights and providing medical accompaniment on these flights** with JDMT Medical Services AG, following substantive criticism of the arbitrary nature of OSEARA's medical evaluations, we are not aware of any improvements.

Moreover, we are highly concerned by the change of practice regarding **returns to Afghanistan**. In March 2025, the SEM announced that it considers it 'reasonable' to 'return non-vulnerable men' to Afghanistan 'in exceptional cases if the circumstances are favorable' (SEM, press release). Alarmingly, the Swiss government **welcomed representatives of the Taliban to Switzerland** in August 2025, with a view for them to identify Afghan nationals that can then be forcibly returned to Afghanistan.

We are also alarmed by the consistent rejection of asylum applications and deportations to **Türkiye**, despite reports confirming that several returned applicants have immediately been detained upon arrival in Türkiye (for more information, see **Q8**).

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)

Resettlement

On 30 April 2025, the Federal Council decided to extend the **2024/2025 resettlement programme** until the end of 2027 (SEM Resettlement programmes since 2013). The **number of resettlement refugees** to be admitted, however, will lie **significantly below previous resettlement years and the initial quota for 2024/2025**. While the initially defined quota for the 2024/2025 programme was 1,600, for the second half of 2025, it was decided that only approximately 45 refugees would be admitted, while for 2026 and 2027 admissions would be capped at 400.

While AsyLex regrets that the reactivation of the resettlement was incredibly slow, we commend that **Switzerland publicly admitted that the suspension of the programme had been a mistake**. At the Global Refugee Forum Progress Review 2025 in Geneva, the SEM shared in a statement that the complete cessation of the programme significantly complicated its reactivation and led to a loss of expertise, given the need for intensive consultations, including with cantons, cities, and municipalities. Switzerland shared its learning that if the asylum system would come under 'heavy pressure' again – the official reasoning for the

suspension of the programme back in 2023 (SEM Resettlement) – the resettlement programme would be reduced rather than completely halted.

The focus for resettlement will prospectively lie on Türkiye and Egypt, with 40 resettlement refugees admitted from Egypt in October 2025 (SEM, Bundesrat Beat Jans unterzeichnet Migrationsabkommen in Ägypten). An official statement from Federal Council member Beat Jans regarding exact numbers and focus countries is to be expected in early 2026. Regrettably, however, AsyLex has already been informed that **pending resettlement cases from Lebanon have been handed over to UNHCR**. This is highly alarming, given that persons in highly vulnerable situations waiting for resettlement to Switzerland since the suspension of the resettlement programme in 2023 will be left without protection from Switzerland, and all the more concerning given the significant cuts in funding to UNHCR and the decrease in resettlement quotas globally.

Humanitarian Visas

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 para. 2 Regulation on entry and the issue of visas (OEV). The most recent concrete publicly accessible numbers of humanitarian visa requests received and approved regrettably date back to 2023. However, in practice, Swiss authorities **issue such visas in exceedingly few instances**, even when all legal conditions are fulfilled (AsyLex Asylum Report 2025).

In one **success by AsyLex in 2025 regarding humanitarian visa matters**, an objection to the SEM was finally approved in April 2025 after the Swiss consulate in Tehran had initially rejected our request made in February 2024. Notably, between the submission of the objection and the final decision, AsyLex made three additional submissions. The need for such persistence demonstrates once again the high burden of proof and restrictive approach – as does the fact that several of our clients whose requests were rejected or still pending received visas to other countries, such as the USA and Spain, which acknowledged their protection needs, while Switzerland refused or was very slow to act.

A persistent challenge in humanitarian visa applications is **the inability of severely threatened individuals to access Swiss embassies** in countries like Pakistan, Iran, and Türkiye to schedule appointments for visa applications. In 2025, we were particularly alarmed by the **temporary suspension of humanitarian visa applications** being processed in Iran due to the June war between Israel and Iran (News Service Bund, press release). After most of the embassy staff was evacuated from Iran, no more interview appointments were facilitated. Notably, no alternatives to in-person interviews were provided.

In 2025, we further witnessed an increasing trend of **embassies refusing to provide interview appointments** for our clients, even upon multiple requests made by clients and AsyLex. The reluctance to provide interview appointments and the difficulties in communication effectively

hinder persons in highly vulnerable situations to present their case properly and denies them the chance of an effective procedure.

Additionally, the prolonged duration of objection procedures following initial negative decisions from embassies remains a critical issue. First-instance decisions often take half a year, and in some cases, exceed a year. Given that applicants are frequently in life-threatening situations and often reside illegally in third countries to apply for visas, **these delays are deeply troubling**.

With regard to **Palestinians from Gaza**, we are alarmed that, to our knowledge, **no humanitarian visas were issued** in 2025. Even in cases including children with severe war injuries and health issues, and persons targeted by both Israel and Hamas, humanitarian visas have been rejected. On a positive note, however, we welcome that the **Swiss consulate in Ramallah facilitated online interviews** for persons applying for a humanitarian visa still present in Gaza. This practice should not remain an exception, but rather serve as a best practice to be implemented for humanitarian visa and family reunification applications – especially in exceptional moments such as the closure of the Swiss embassy in Tehran during Israel's bombardment of Iran, in countries in which Switzerland has no physical presence, and in general, given that the journey to an embassy itself often exposes applicants in already highly vulnerable situations to further risks.

Humanitarian evacuations for wounded children from Gaza

In August 2025, the Swiss Confederation, in collaboration with the cantons, decided on the **evacuation of 20 severely injured children from Gaza**. By the end of November 2025, 20 children and 78 accompanying family members had been evacuated (SEM, OPT-GAZA: Evacuation of warwounded children and their families from Gaza). However, we are shocked by the **refusal of several cantons to accept war-wounded children**. In the end, only 8 of 26 cantons participated in the initiative. Illustratively, the government council of the canton of Zurich stated in a press release that no children would be accommodated due to "severe security concerns", "financial distress for the health- and welfare system", and the "arbitrary and symbolic nature" of the initiative (Canton of Zurich, press release). We are highly critical of this inherently contradictory reasoning.

15. **National jurisprudence on international protection in 2025** (please include a link to the relevant case law and/or submit cases to the EUAA Case Law Database)

National Decisions:

- Decision F-5298/2024 from 12 June 2025: the Federal Administrative Court held that the SEM is required to investigate the situation of asylum seekers in Greece in Dublin cases and to take a position on whether or not there are systemic deficiencies in the country before ordering a transfer there.
- Decision D-2590/2025 from September 11 2025: the Federal Administrative Court reiterated that living conditions in Greece are difficult for returnees, and it did not

consider the removal of a family with two minor children to be inadmissible or unreasonable. Instead, it argued that, since the family had been able to obtain Greek travel documents, they should also be able to access medical care if needed and could rely on support from their adult daughter. In doing so, the court shifted its focus towards the efforts made by beneficiaries of international protection to improve their situation in Greece.

- Decision BGE 2C_64/2025 from October 21 2025: This case concerns the question of whether an Eritrean national can be obliged to sign a 'declaration of repentance' in order to obtain a Swiss residence permit. The court ruled in favour of the Eritrean national. It held that forcing someone to accuse themselves of a criminal offence in order to obtain a residence permit under foreign nationals law is incompatible with the Swiss rule of law and international guarantees (such as the right to a fair trial and the principle of non-self-incrimination).

Cases involving AsyLex:

- Decision 2C_109/2025 from 20 March 2025: the Swiss Federal Supreme Court upheld an appeal by two AsyLex lawyers against a cost order made by the Administrative Court of the Canton of Zug. The lower court had personally imposed court costs of CHF 2,000 on the lawyers for their client's application for release from custody. The reason given was that they had conducted the proceedings in a careless manner. The Federal Supreme Court overturned the costs imposed on the lawyers. No court costs were levied, and no party compensation was awarded.
- Decision CEDAW/C/91/D/171/2021 of July 4, 2025, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) found that the planned deportation of an Afghan refugee from Switzerland to Greece would violate the Convention on the Elimination of All Forms of Discrimination against Women. Finding of a violation: The Committee concluded that returning Z.E. to Greece would constitute a violation of Articles 2, 3, and 12 of the Convention. Switzerland had failed to conduct an individualised, trauma-sensitive, and gender-specific assessment of the risks to which the person concerned would be exposed as a victim of gender-based violence and due to her risk of suicide. In the Committee's view, the Swiss authorities did not give sufficient weight to the woman's special need for protection. They relied primarily on the theoretical assumption that Greece was a safe third country, without sufficiently examining the real risk of re-traumatisation or the lack of adequate medical care on the ground on an individual basis. In summary, the Committee criticises Switzerland for ignoring the individual wounds of those affected and treating them like mere numbers in a bureaucratic process, instead of recognising the real danger to their lives and health.
- Decision CEDAW/C/91/D/169/2021 of July 4, 2025, the UN Committee on the Elimination of Discrimination against Women (CEDAW) ruled that the planned deportation of Afghan national K.J. from Switzerland to Greece would violate the Convention on the Elimination of All Forms of Discrimination against Women. The Committee concluded that the return of K.J. would constitute a violation of Articles 2 (c)–(f), 3, and 12 of the Convention. Switzerland had failed to conduct an individualised,

trauma-informed and gender-specific risk assessment. The Swiss authorities (SEM and Federal Administrative Court) had dismissed her reports of violence in Greece as implausible because she had only reported them late in the proceedings. The Committee criticised this and emphasised that victims of gender-based violence often need a lot of time to be able to talk about their experiences. The Committee called on Switzerland to reopen the asylum proceedings, not to deport her until the reassessment had been completed, and to continue to provide her with specialised medical support. As in the above-mentioned case, the Committee emphasises that the bureaucratic application of the Dublin Regulation must not override the human rights obligation to examine individual cases involving victims of violence.

Decisions of Cantonal Tribunals:

- In Decision AK.2025.27 of October 8, 2025, the Supervisory Commission for Lawyers in the Canton of Basel-Stadt decided not to initiate disciplinary proceedings against two lawyers. A single judge for coercive measures filed a complaint because the law firm of the lawyers concerned could not be reached by telephone or email during the Basel Carnival week (11 to 14 March 2025). Although the commission noted that technical aids such as automatic email replies or answering machines would be easy to install today, the omission was not sufficient to initiate disciplinary proceedings as it was not considered significant.

International Decisions:

- Decision ECtHR Nr. 9087/18 of 11 December 2025, the case concerned the applicant's challenge to a summary penalty order from the public prosecutor's office imposing a fine on her. She complained that, on account of her absence from the hearing before the Police Court, her application to that end had been regarded as withdrawn. The Court held that the use of the legal fiction that the application had been withdrawn had disproportionately restricted the applicant's ability to exercise the right to Court. In particular, the Court noted that the use of that legal fiction had amounted to an indisputable presumption that the applicant had withdrawn her application, despite the fact that it had been clear that she had intended to pursue the matter and obtain a judicial examination of the criminal charges against her.

Part B: Publications

1. If available online, please provide links to relevant publications produced by your organisation in 2025:

2. If not available online, please share your publications with us at: Asylum.Report@euaa.europa.eu

3. For publications that due to copyright issues cannot be easily shared, please provide references using the table below.

	Title of publication	Name of author	Publisher	Date
1				
2				
3				
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Überstellungsfrist im Dublin-Verfahren: Ein Über- und Ausblick

Lea Hungerbühler | Nathalie Vainio

Inhaltsverzeichnis

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1 Einleitung

Marc Spescha war für die Autorinnen eine stetige Inspiration, sich für geflüchtete Menschen und ihre Rechte einzusetzen. Als Mitglied des Advisory Council von AsyLex und als Co-Leiter der Fachgruppe Migrationsrecht des Zürcher Anwalts-

verbandes hat er nicht nur gezeigt, wie wichtig es ist, Menschenrechtsverletzungen nicht tatenlos hinzunehmen, sondern auch, wie man diesen mit der Kraft des Rechts entschlossen entgegentritt. Dies gilt gerade im Bereich der Dublin-Verordnung (im Folgenden: Dublin-III-VO)[1]. Diese bildet seit Jahren einen zentralen Pfeiler des europäischen Asylsystems: Sie legt anhand konkreter Kriterien fest, welches Land für die Prüfung eines Asylgesuchs zuständig ist, das von einem Drittstaatenangehörigen in der Europäischen Union oder assoziierten Staaten[2] gestellt wird (im Folgenden: Dublin-Mitgliedstaaten). Das Ziel des sogenannten Dublin-Verfahrens ist, dass nur ein einziger Dublin-Mitgliedstaat das jeweilige Asylgesuch zu prüfen hat. Die Einleitung eines Dublin-Verfahrens durch ein (potenziell) nicht zuständiges Land ist freiwillig, womit es einem Dublin-Mitgliedstaat freisteht, auch bei fehlender Zuständigkeit gemäss Dublin-III-VO ein Asylverfahren im eigenen Land durchzuführen (sog. Selbsteintritt).[3] Zentrales Kriterium für die Bestimmung der Zuständigkeit ist die Wahrung der Familieneinheit.[4] Ist dieses nicht einschlägig, wird i.d.R. auf den Ort des ersten Asylgesuches bzw. die erste Erfassung der Fingerabdrücke im *Eurodac* System abgestellt.[5, 6] Angesichts der geografischen Lage der Schweiz als Binnenland vermag es kaum zu erstaunen, dass Menschen, welche in der Schweiz um Asyl ersuchen, regelmässig bereits in einem anderen Dublin-Mitgliedstaat erfasst wurden und die Zuständigkeit dieses anderen Landes gemäss Dublin-III-VO demnach einen Nichteintretensentscheid und die Überstellung in dieses Land zur Folge hat.

1 Verordnung (EU) Nr. 604/2013 des Europäischen Parlaments und des Rates vom 26.06.2013 zur Festlegung der Kriterien und Verfahren zur Bestimmung des Mitgliedstaats, der für die Prüfung eines von einem Drittstaatsangehörigen oder Staatenlosen in einem Mitgliedstaat gestellten Antrags auf internationalen Schutz zuständig ist.
2 Norwegen, Island, das Fürstentum Liechtenstein und die Schweiz.
3 Vgl. dazu Hruschka, 282 m.w.H.
4 Dublin-III-VO 8–11, 16; vgl. auch Dublin-III-VO, E. 14–18.
5 Dabei handelt es sich um die zentrale Fingerabdruckdatenbank der Europäischen Union, vgl. Verordnung (EU) Nr. 603/2013 des Europäischen Parlaments und des Rates vom 26.06.2013 über die Einrichtung von Eurodac für den Abgleich von Fingerabdruckdaten zum Zwecke der effektiven Anwendung der Verordnung (EU) Nr. 604/2013 zur Festlegung der Kriterien und Verfahren zur Bestimmung des Mitgliedstaats, der für die Prüfung eines von einem Drittstaatsangehörigen oder Staatenlosen in einem Mitgliedstaat gestellten Antrags auf internationalen Schutz zuständig ist und über der Gefahrenabwehr und Strafverfolgung dienende Anträge der Gefahrenabwehr- und Strafverfolgungsbehörden der Mitgliedstaaten und Europols auf den Abgleich mit Eurodac-Daten sowie zur Änderung der Verordnung (EU) Nr. 1077/2011 zur Errichtung einer Europäischen Agentur für das Betriebsmanagement von IT-Grosssystemen im Raum der Freiheit, der Sicherheit und des Rechts (Neufassung).
6 Vgl. Dublin-III-VO 7 ff.

Konkret prüft das Staatssekretariat für Migration (SEM) bei jedem Asylgesuch in einem ersten Schritt, ob die Schweiz zur Behandlung desselben gemäss der Dublin-III-VO überhaupt zuständig ist. Hierzu wird eine Befragung mit der asylsuchenden Person, insbesondere zum Reiseweg sowie zu den Familienverhältnissen, und ein Abgleich der Fingerabdrücke mit der zentralen Datenbank *Eurodac* durchgeführt. Stellt das SEM fest, dass ein anderer Dublin-Mitgliedstaat zuständig ist bzw. sein könnte für die Durchführung des Asylverfahrens, so wird dieser ersucht, die Person (wieder)aufzunehmen.[7] Dies ist bei fast jedem zweiten Asylgesuch der Fall.[8] Nach Zustimmung des anderen Dublin-Mitgliedstaates, welche unter Umständen stillschweigend erfolgen kann, erlässt das SEM einen Nichteintretensentscheid und ordnet die Wegweisung in den zuständigen Dublin-Mitgliedstaat an. Wenn kein anderer Staat zuständig ist, wird das nationale Asylverfahren durchgeführt.

Umgekehrt nimmt auch die Schweiz Personen von anderen Dublin-Mitgliedsländern auf bzw. zurück, wenn sie gemäss der Dublin-III-VO zur Durchführung des Asylverfahrens zuständig ist – tatsächlich werden von der Schweiz aus allerdings etwa drei Mal so viele Personen in einen anderen Dublin-Mitgliedstaat überstellt als Überstellungen in die Schweiz zu verzeichnen sind.[9]

Das Dublin-Verfahren ist an strikte Fristen gebunden[10] – auch für die Überstellung der asylsuchenden Person an den zuständigen Dublin-Mitgliedstaat. Wird diese Frist für die Überstellung (im Folgenden: Überstellungsfrist) nicht eingehalten, so hat dies zur Folge, dass die Zuständigkeit für die materielle Prüfung des Asylgesuchs auf den ersuchenden Staat übergeht (sog. Verfristung). Im Grundsatz beträgt die Überstellungsfrist sechs Monate seit (u.U. stillschweigender) Zustimmung zur Übernahme durch den ersuchten Dublin-Mitgliedstaat.[11] In der Theorie verfolgt das Dublin-System das Ziel, eine rasche Bestimmung des zuständigen Mitgliedstaats zu ermöglichen, um den effektiven Zugang zum Asylverfahren zu gewährleisten und eine zügige Bearbeitung der Asylgesuche sicherzustellen.[12] Gleichwohl treten in der Praxis immer wieder Konstellationen auf, in welchen eine Überstellung nicht innert Frist erfolgte – sei dies beispielsweise aufgrund eines generellen

7 Vgl. zum Verfahren Dublin-III-VO 20 ff.
8 Vgl. aktuelle statistische Daten unter https://www.sem.admin.ch/sem/de/home/publiservice/statistik/asylstatistik.html.
9 Vgl. für das Jahr 2023 https://www.sem.admin.ch/sem/de/home/sem/medien/mm.msg-id-100040.html.
10 Dublin-III-VO 21 ff.
11 Dublin-III-VO 29 Abs. 1.
12 Dublin-III-VO E. 5.

Übernahmestopps wie gegenwärtig in Italien, aus gesundheitspolitischen Überlegungen (insbesondere während der Covid-Pandemie), wegen Kapazitätsengpässen im übernehmenden Dublin-Mitgliedstaat oder aus medizinischen Gründen (Hospitalisierung der asylsuchenden Person, Schwangerschaft, Reiseuntauglichkeit).

Regelmässig drehen sich in der Folge Rechtsstreitigkeiten über Monate hinweg einzig und allein um die Frage, ob die Zuständigkeit der Schweiz zur Durchführung des Asylverfahrens aufgrund Ablaufs der Überstellungsfrist gegeben ist oder nicht. Ausgangspunkt hierfür sind zwei Aspekte: Erstens ist es oftmals strittig, ob die ordentliche Überstellungsfrist von sechs Monaten auf 18 Monate verlängert werden darf – dies ist nur dann zulässig, wenn die betroffene Person «flüchtig» ist bzw. war.[13] Zweitens ist des Öfteren unklar, ab welchem Zeitpunkt die Überstellungsfrist zu laufen beginnt, da der Zeitpunkt bei Erhebung eines Rechtsmittels mit aufschiebender Wirkung unter Umständen nach hinten verschoben wird.[14]

Der vorliegende Beitrag beleuchtet die aktuelle Rechtslage zur Überstellungsfrist im Hinblick auf diese beiden zentralen Aspekte: die Verlängerung der Überstellungsfrist über sechs Monate hinaus sowie die Frage des Beginns des Fristenlaufs. Hierfür werden Gesetzeswortlaut, nationale und internationale Rechtsprechung sowie Literatur beigezogen und dargelegt, wie eine EU-rechtskonforme Auslegung und Praxis ausgestaltet werden könnte. Abschliessend wird ein Blick in die Zukunft gewagt: Bis Mitte des Jahres 2026 hat die Schweiz den neuen EU-Migrationspakt umzusetzen.[15] Ein wichtiger Bestandteil desselben sind neue Vorgaben im Bereich der Zuständigkeitsregelung – womit sich auch Änderungen hinsichtlich der Überstellungsfristen ergeben.

2 Die Überstellungsfrist im Dublin-Verfahren

Jährlich sind Tausende von geflüchteten Menschen in der Schweiz mit einem Dublin-Nichteintretensentscheid konfrontiert. Dies bedeutet, dass sie – ohne in der Schweiz ein Asylverfahren zu durchlaufen – das Land verlassen müssen und in einen anderen Dublin-Mitgliedstaat überstellt werden, welcher für ihr Asylverfah-

13 Dublin-III-VO 29 Abs. 2.
14 Dublin-III-VO 29 Abs. 1 i.V.m. 27 Abs. 3.
15 Vgl. https://www.sem.admin.ch/sem/de/home/international-rueckkehr/kollab-eu-efta/eu-migrations-asylpakt.html.

ren zuständig ist.[16] Im Folgenden wird detailliert dargelegt, innert welchem Zeitraum eine solche Überstellung erfolgen kann («Überstellungsfrist») bzw. ab wann die Zuständigkeit auf die Schweiz übergeht («Verfristung»).

Die Überstellungsfristen sind in Art. 29 Dublin-III-VO geregelt. Gemäss Abs. 1 erfolgt die Überstellung, sobald dies praktisch möglich ist, nämlich wenn innert Frist keine Beschwerde erhoben wurde oder bei Beschwerdeerhebung die aufschiebende Wirkung nicht (rechtzeitig) gewährt wurde, und spätestens innerhalb einer Frist von sechs Monaten nach der Annahme des Aufnahme- oder Wiederaufnahmegesuchs durch einen anderen Mitgliedstaat oder der endgültigen Entscheidung über einen Rechtsbehelf mit aufschiebender Wirkung.

Die Bestimmung dieser sogenannten Überstellungsfrist bzw. des Eintritts der Verfristung ist insofern von zentraler Bedeutung, als ab diesem Zeitpunkt eine Überstellung der asylsuchenden Person an den anderen Dublin-Mitgliedstaat nicht mehr erfolgen kann.[17] Infolgedessen hat die Schweiz auf das Asylgesuch einzutreten, d.h., sie muss dieses materiell prüfen.[18]

2.1 Allgemeines zur Fristberechnung unter Dublin-III-VO

Einleitend sei auf Dublin-III-VO 42 hinzuweisen: Diese Bestimmung regelt in allgemeiner Weise die Fristberechnung unter der Dublin-III-VO.

Lit. a) äussert sich zum Tag, an welchem eine Frist zu laufen beginnt, sofern deren Beginn durch das Eintreten eines Ereignisses oder die Vornahme einer Handlung ausgelöst wird. In diesen Konstellationen wird der Tag, an dem das Ereignis eintritt oder die Handlung vorgenommen wird, bei der Berechnung der Frist nicht berücksichtigt – anders gesagt, beginnt der Fristenlauf am Folgetag.

In lit. b) wird festgelegt, wie das Fristende zu bestimmen ist, wenn eine Frist nach Wochen oder Monaten bemessen ist: So endet die Frist mit Ablauf des Tages, welcher in der letzten Woche denselben Namen bzw. im letzten Monat dieselbe Zahl

16 Die Dublin-III-VO ist unter Umständen auch auf Drittstaatenangehörige anwendbar, welche in der Schweiz kein Asylgesuch gestellt haben. Im Folgenden wird aufgrund der überwiegenden Bedeutung im Asylbereich jedoch einzig auf Konstellationen Bezug genommen, bei welchen die betroffene Person um Asyl ersucht.

17 Vgl. unten Ziff. 2.3.1.

18 In der Praxis verlangt das SEM in der Regel selbst nach offensichtlicher Verfristung, dass die betroffene Person ein schriftliches und begründetes Wiedererwägungsgesuch (vgl. AsylG 111c) einreicht, damit auf das Asylgesuch eingetreten wird. Nach der hier vertretenen Ansicht müsste nach Eintritt der Verfristung von Amtes wegen auf das Asylgesuch eingetreten werden.

trägt wie der Tag, an dem das Ereignis eingetreten ist oder die Handlung vorgenommen wurde, ab dem die Frist zu berechnen ist. Gibt es bei einer nach Monaten bemessenen Frist im letzten Monat keinen entsprechenden Tag, endet die Frist mit Ablauf des letzten Tages dieses Monats.

Lit. c) schliesslich stellt klar, dass die Dublin-Fristen auch Samstage, Sonntage und allfällige nationale Feiertage umfassen.

Die vorstehend erläuterten Prinzipien sind sodann bei sämtlichen nachfolgenden Überlegungen zu berücksichtigen.

2.2 Beginn des Fristenlaufs

Wie bereits erwähnt ist im Grundsatz von einer Überstellungsfrist von sechs Monaten auszugehen: Innert eines halben Jahres ist die asylsuchende Person an den anderen Dublin-Mitgliedstaat zu überstellen, andernfalls wird die Schweiz für die materielle Prüfung des Asylgesuches zuständig. Erste zentrale Frage ist sodann, wann diese Sechsmonatsfrist zu laufen beginnt.

Für den Beginn des Fristenlaufs ist der Zeitpunkt der Anerkennung des (Wieder-) Aufnahmegesuchs durch den ersuchten Mitgliedstaat (nachfolgend Ziff. 2.2.1) oder, falls gegen den Nichteintretensentscheid Beschwerde erhoben und dieser aufschiebende Wirkung gewährt wurde, der Zeitpunkt der Abweisung der Beschwerde (nachfolgend Ziff. 2.2.2) massgebend. Angesichts dessen, dass diese Konstellationen nicht einfach zu unterscheiden und zahlreiche Aspekte zu beachten sind, wird nachfolgend im Detail darauf eingegangen. Unter 2.2.3 wird schliesslich auf mögliche weitere Konstellationen eingegangen und aufgezeigt, dass die Dublin-III-VO abgesehen von den unter Ziff. 2.2.2 beschriebenen Konstellationen keinen Raum für eine Verschiebung des Fristenlaufs lässt.

2.2.1 Ohne Erhebung eines Rechtsmittels gegen die Dublin-Nichteintretensverfügung

Sofern gegen einen Dublin-Nichteintretensentscheid des SEM kein Rechtsmittel ergriffen wird, gestaltet sich die Bestimmung des Zeitpunkts, in welchem die Überstellungsfrist zu laufen beginnt, vergleichsweise einfach: Er wird generell durch den Tag der Zustimmung durch den anderen Dublin-Mitgliedstaat determiniert.[19]

19 Vgl. Dublin-III-VO 29 Abs. 1.

Dieses Datum ist jeweils der schriftlichen Rückmeldung der Dublin-Unit des ersuchten Staates, welche sich in den Asylakten befindet, zu entnehmen.

Wenn der ersuchte Dublin-Mitgliedstaat auf die Anfrage innert gemäss Dublin-III-VO festgelegter Frist nicht antwortet, so wird er bei Vorliegen von spezifischen Beweisen oder Indizien für seine Zuständigkeit und nach Ausbleiben einer Rückmeldung über eine gewisse Zeitdauer hinweg gleichwohl rückübernahmepflichtig.[20] Dies ist typischerweise der Fall, wenn die Fingerabdrücke der asylsuchenden Person gemäss *Eurodac* im entsprechenden Land erfasst wurden und dieses nicht innert einer bestimmten Antwortfrist[21] auf das Ersuchen antwortet. In dieser Situation beginnt die Überstellungsfrist nach Ablauf der Antwortfrist seit Zustellung der Anfrage zu laufen, da in diesem Zeitpunkt die Zustimmung fingiert und die Rückübernahmepflicht ausgelöst wird.[22]

Wird die Anfrage vom ersuchten Staat abgewiesen, so wird entweder der ersuchende Staat für die Durchführung des Asylverfahrens zuständig, oder dieser leitet innerhalb von drei Wochen seit ablehnender Antwort ein sogenanntes Remonstrationsverfahren[23] ein, in dessen Rahmen er doch noch die Zustimmung des ersuchten Staates zu erlangen versucht. Erfolgt diese nun, ist für die Berechnung der Überstellungsfrist der Zeitpunkt der vorläufigen Ablehnung des ersten (Wieder-) Aufnahmegesuchs massgebend.[24]

2.2.2 Bei Erhebung eines ordentlichen Rechtsmittels gegen die Dublin-Nichteintretensverfügung

Zu einer zeitlichen Verschiebung des Fristenlaufs[25] führt die Konstellation, in welcher (i) gegen den Dublin-Nichteintretensentscheid Beschwerde erhoben und (ii)

20 Vgl. Dublin-III-VO 22 Abs. 7 sowie 25 Abs. 2.

21 Die Frist variiert je nach Situation zwischen zwei Wochen und zwei Monaten, vgl. Dublin-III-VO 22 Abs. 7 und 25 Abs. 2.

22 Vgl. Dublin-III-VO 22 Abs. 7 sowie 25 Abs. 2. Für die Details zur Berechnung der Antwortfrist vgl. Ausführungen zu Dublin-III-VO 42, Ziff. 2.1. oben.

23 Vgl. Verordnung (EG) Nr. 1560/2003 der Kommission vom 02.09.2003 mit Durchführungsbestimmungen zur Verordnung (EG) Nr. 343/2003 des Rates zur Festlegung der Kriterien und Verfahren zur Bestimmung des Mitgliedstaats, der für die Prüfung eines von einem Drittstaatsangehörigen in einem Mitgliedstaat gestellten Asylantrags zuständig ist (nachfolgend DVO), Art. 5 Abs. 2.

24 BVGE 2018 VI/2 E. 9.6.

25 In Literatur und Rechtsprechung ist regelmässig von einer «Unterbrechung der Überstellungsfrist» die Rede. Diese Formulierung ist insofern irreführend, als die Frist nicht unterbrochen wird und später weiterläuft, sondern anschliessend erneut von vorne (d.h. erneut für sechs bzw. zwölf oder 18 Monate) zu laufen beginnt. Vgl. dazu Ghielmini/Hruschka, 11.

dieser aufschiebende Wirkung gewährt wurde.[26] In diesem Fall wird die Überstellungsfrist durch das Beschwerdeverfahren unterbrochen bzw. beginnt nach dessen Beendigung oder nach Wegfall der aufschiebenden Wirkung von Neuem zu laufen.

Wird demnach gegen einen Dublin-Nichteintretensentscheid Beschwerde vor Bundesverwaltungsgericht erhoben und wird dieser die aufschiebende Wirkung gewährt, so fällt der ursprüngliche Verfristungstermin dahin. Zu beachten ist, dass der Beschwerde gegen einen Nichteintretensentscheid im Dublin-Verfahren von Gesetzes wegen keine aufschiebende Wirkung zukommt; diese muss innerhalb der Beschwerdefrist beantragt werden.[27] Das Bundesverwaltungsgericht entscheidet innerhalb von fünf Tagen nach Eingang des Antrags auf aufschiebende Wirkung darüber; wird die aufschiebende Wirkung nicht innerhalb dieser fünf Tage gewährt, kann die Wegweisung vollzogen werden.[28]

In der Regel ordnet das Bundesverwaltungsgericht umgehend nach Beschwerdeeingang einen superprovisorischen Vollzugsstopp i.S.v. Art. 56 VwVG an. Dieser ist jedoch nicht mit der aufschiebenden Wirkung gleichzusetzen und er löst (noch) keinen neuen Fristenlauf gemäss Art. 29 Abs. 1 Dublin-III-VO aus.[29] Wenn der Vollzugsstopp innert fünf Tagen widerrufen, aufgehoben oder hinfällig wird, so gilt der ursprüngliche Fristbeginn (vgl. Ziff. 2.2.1).[30] Zu denken ist insbesondere an Fälle, in welchen die Beschwerde innerhalb von fünf Tagen abgewiesen wird.[31] Einzig wenn der superprovisorische Vollzugsstopp durch das Bundesverwaltungsgericht über mehr als fünf Tage hinweg bestehen bleibt bzw. wenn explizit aufschiebende Wirkung angeordnet wird, kommt der Beschwerde fristunterbrechende Wirkung nach Art. 29 Abs. 1 Dublin-III-VO zu.

Zusammenfassend ist demnach das Folgende festzuhalten: Der ursprüngliche Beginn der Überstellungsfrist wird durch die Erhebung eines Rechtsmittels nur dann zeitlich nach hinten verschoben, wenn das Bundesverwaltungsgericht einen superprovisorischen Vollzugsstopp anordnete, der mehr als fünf Tage dauerte, *oder* wenn der Beschwerde aufschiebende Wirkung nach Art. 107*a* Abs. 3 AsylG erteilt wurde.

Sind die erwähnten Voraussetzungen erfüllt, so entfällt der ursprüngliche Starttermin der Überstellungsfrist (vgl. Ziff. 2.2.1) und Letztere beginnt stattdessen ab

26 Vgl. Dublin-III-VO 29 Abs. 1.

27 AsylG 107*a* Abs. 1 und 2.

28 AsylG 107*a* Abs. 3.

29 BVGE 2014/31 E. 6.

30 Ausführliche Überlegungen dazu auch in Ghielmini/Hruschka, 12 ff.

31 Vgl. exemplarisch Urteil BVGer v. 01.11.2024, F-4483/2024, E. 6, in welchen die einschlägige Rechtsprechung detailliert dargelegt wird.

dem Datum des abweisenden Bundesverwaltungsgerichtsurteils zu laufen.[32] Bei einem gutheissenden reformatorischen Urteil erübrigt sich die Frage nach der Überstellungsfrist, da ein solches das Eintreten auf das Asylgesuch zur Folge hat. Kassiert das Bundesverwaltungsgericht den Entscheid, so bleibt die aufschiebende Wirkung aufrechterhalten und entfällt erst mit dem Datum der Rechtskraft der neuen SEM-Verfügung (bzw. bei erneuter Beschwerde demjenigen des neuen Bundesverwaltungsgerichtsurteils).[33]

2.2.3 Keine weiteren Gründe für die Verschiebung des Fristenlaufs

Schliesslich stellt sich die Frage, inwiefern ausserordentliche Rechtsmittel, insbesondere Wiedererwägungsgesuche, eine Unterbrechung der Überstellungsfrist auszulösen vermögen. Die aktuelle Praxis des SEM, bei ausserordentlichen Rechtsmitteln – selbst bei Gewährung von aufschiebender Wirkung durch das SEM – die Überstellungsfrist weiterlaufen zu lassen, entspricht diesbezüglich dem Wortlaut der Dublin-III-VO, wie nachfolgend dargelegt wird.

Art. 29 Abs. 1 Dublin-III-VO verweist für die Verschiebung des Fristbeginns explizit auf Art. 27 Abs. 3 Dublin-III-VO und besagt, dass der Beginn der Überstellungsfrist einzig dann verschoben wird, wenn «[...] [die] endgültige[...] Entscheidung über einen Rechtsbehelf oder eine Überprüfung [...] gemäss Artikel 27 Absatz 3 aufschiebende Wirkung hat». Voraussetzung für einen neuen Fristenbeginn ist damit, dass (i) es sich um eine endgültige Entscheidung über einen Rechtsbehelf handelt und dass (ii) dem Rechtsbehelf oder der Überprüfung gemäss Art. 27 Abs. 3 Dublin-III-VO aufschiebende Wirkung zukommt.

Art. 27 Abs. 3 Dublin-III-VO wiederum hält fest, dass die Dublin-Mitgliedstaaten zum Zwecke eines Rechtsbehelfs gegen eine Überstellungsentscheidung oder einer Überprüfung einer Überstellungsentscheidung in ihrem innerstaatlichen Recht verschiedene Möglichkeiten bzgl. aufschiebender Wirkung vorsehen können:

- lit. a: aufschiebende Wirkung *ex lege*;
- lit. b: automatische Aussetzung des Vollzugs und Überprüfung durch die Rechtsmittelinstanz; oder
- lit. c: aufschiebende Wirkung auf Antrag der beschwerdeführenden Person.

Der Schweizer Gesetzgeber hat sich für letztere Konstellation entschieden: Die aufschiebende Wirkung kann vom Bundesverwaltungsgericht auf Antrag der beschwerdeführenden Person (Version gemäss Art. 27 Abs. 3 lit. c Dublin-III-VO) gewährt (bzw. nicht gewährt) werden.[34]

32 BVGE 2015/19 E. 6.2; vgl. dazu auch EuGH v. 29.01.2009, C-19/08 (ECLI:EU:C:2009:41), E. 53.

33 BVGE 2015/19 E. 6.2; kritisch dazu Ghielmini/Hruschka, 15.

Demzufolge sind beide oben erwähnten Voraussetzungen für den Neubeginn des Fristenlaufs bei einem Wiedererwägungsverfahren nicht erfüllt: Erstens handelt es sich bei der Verfügung des SEM, mit welcher über ein Wiedererwägungsgesuch entschieden wird, nicht um eine *endgültige Entscheidung*, da diese noch vor Bundesverwaltungsgericht angefochten werden kann; zweitens ist das SEM nicht die gemäss Art. 27 Abs. 3 Dublin-III-VO i.V.m. Art. 107*a* AsylG zuständige Instanz für den Erlass derjenigen aufschiebenden Wirkung, welche zu einer Fristunterbrechung nach Art. 29 Abs. 1 Dublin-III-VO führen könnte – dies ist gemäss Art. 107*a* AsylG einzig das Bundesverwaltungsgericht.

Weder die Dublin-III-VO noch die nationale Gesetzgebung lassen daher Raum für eine weitere Konstellation, welche den Lauf der Überstellungsfrist neu auszulösen vermag.[35] Die Praxis, wonach bei Aussetzung des Vollzugs bei Wiedererwägungsgesuchen die Überstellungsfrist nicht neu zu laufen beginnt, ist angesichts dessen nicht zu beanstanden.

Abschliessend ist zu erwähnen, dass der Europäische Gerichtshof (EuGH) klarstellte, dass für die Verschiebung bzw. Neuauslösung der Überstellungsfrist einzig Art. 29 i.V.m. Art. 27 Dublin-III-VO zu beachten ist.[36] Weitere Gründe,[37] wie beispielsweise die aufgrund der Covid-Pandemie erschwerten bzw. verunmöglichten Überstellungen oder die Gewährung einer anders begründeten (vorübergehenden) Vollzugsaussetzung, vermögen die Überstellungsfrist weder zu verlängern noch neu laufen zu lassen.[38] Der EuGH erklärt im entsprechenden Vorabentscheidungsverfahren insbesondere, dass eine Verlängerung der Überstellungsfrist bzw. ein neuer Fristenlauf insbesondere nicht deshalb erfolgen könne, weil der ersu-

34 AsylG 107*a*; vgl. auch oben Ziff. 2.2.2. U.E. entspricht AsylG 107a Abs. 3 allerdings nicht Dublin-III-VO 27 Abs. 3 lit. c, da Letzterer eine automatische Nichtüberstellung bis zur Entscheidung über die aufschiebende Wirkung vorsieht, gemäss AsylG 107a Abs. 3 kann die Überstellung jedoch vollzogen werden, wenn das Bundesverwaltungsgericht die aufschiebende Wirkung innerhalb von fünf Tagen nicht gewährt.

35 Vgl. zur ähnlichen Rechtslage nach deutschem Recht NK Ausländerrecht-Müller, AsylG 34a N 18.

36 EuGH v. 30.03.2023, C-338/21 (ECLI:EU:C:2023:269) E. 74.

37 Angesichts dieser Rechtsprechung des EuGH ist davon auszugehen, dass die allfällige aufschiebende Wirkung, welche einer Beschwerde gegen eine Verfügung i.S. Verlängerung der Überstellungsfrist gewährt wird, nicht geeignet ist, nach der Beschwerdeabweisung den Fristenlauf für die Überstellung erneut auszulösen.

38 Vgl. EuGH v. 22.09.2022, C-245/21 und C-248/21 (ECLI:EU:C:2022:709), E. 71.

chende Staat den Übergang der Zuständigkeit zu vermeiden versucht – einzig die aufschiebende Wirkung, welche einem Rechtsbehelf gegen einen Nichteintretensentscheid aufgrund der Zweifel an der Rechtmässigkeit der Überstellungsentscheidung gewährt wird, vermag die Überstellungsfrist neu auszulösen.[39]

2.3 Dauer der Überstellungsfrist

Nachdem nun Klarheit geschaffen wurde in Bezug auf den Beginn des Fristenlaufs, stellt sich als nächstes die Frage nach der Dauer der Überstellungsfrist. Diese wird in Art. 29 Abs. 2 Dublin-III-VO festgelegt: Im Grundsatz beträgt die Überstellungsfrist sechs Monate. Diese Frist kann höchstens auf ein Jahr verlängert werden, wenn die Überstellung aufgrund einer strafrechtlichen Inhaftierung[40] der asylsuchenden Person nicht erfolgen konnte, und höchstens auf 18 Monate, wenn die Person flüchtig ist.

2.3.1 Prozessuale Fragen bzgl. Verlängerung der Überstellungsfrist

Die Verlängerung der Überstellungsfrist zufolge Flüchtigseins erfolgt unilateral durch den ersuchenden Dublin-Mitgliedstaat. Dieser hat den ersuchten Dublin-Mitgliedstaat ausdrücklich über die Verlängerung der Frist zu informieren, und zwar bevor die ursprüngliche Frist von sechs Monaten abgelaufen ist.[41] Erfolgt die Erklärung der Fristverlängerung verspätet, geht die Zuständigkeit für die Asylgesuchsprüfung auf den ersuchenden Dublin-Mitgliedstaat über.[42]

In Missachtung grundlegender prozessualer Ansprüche, insbesondere des rechtlichen Gehörs, entspricht es der Schweizer Praxis, dass die asylsuchende Person weder zur Verlängerung der Überstellungsfrist angehört noch dass ihr darüber von Amtes wegen eine Verfügung eröffnet wird. Der bzw. die Betroffene erhält somit

39 Vgl. EuGH v. 22.09.2022, C-245/21 und C-248/21 (ECLI:EU:C:2022:709), E. 74; ähnlich auch EuGH v. 30.03.2023, C-338/21 (ECLI:EU:C:2023:269), E. 74.

40 Selbstredend vermag die ausländerrechtliche Administrativhaft keine Verlängerung der Überstellungsfrist zu begründen, ebenso wenig eine zwangsweise Hospitalisierung (insbesondere fürsorgerische Unterbringung nach Schweizer Recht), vgl. EuGH v. 31.03.2022, C-231/21 (CLI:EU:C:2022:237), E. 29.

41 Art. 9 Abs. 2 der Verordnung [EG] Nr. 1560/2003 der Kommission vom 02.09.2003 mit Durchführungsbestimmungen zur Verordnung [EG] Nr. 343/2003 des Rates zur Festlegung der Kriterien und Verfahren zur Bestimmung des Mitgliedstaats, der für die Prüfung eines von einem Drittstaatsangehörigen in einem Mitgliedstaat gestellten Asylantrags zuständig ist [in der Fassung vom 30.01.2014 gemäss Durchführungsverordnung (EU) Nr. 118/2014].

42 Vgl. dazu auch Filzwieser/Sprung, Dublin-III-VO 29 N 13; DVO 9 N 1.

regelmässig erst bei (zufällig wahrgenommener) Akteneinsicht oder bei einem allfälligen Gesuch um explizite Feststellung der Verfristung[43] überhaupt Kenntnis davon, dass die Überstellungsfrist verlängert wurde.

Das prozessuale Vorgehen gegen eine Verlängerung der Überstellungsfrist richtet sich sodann nach dem gewöhnlichen Ablauf im Asylverfahren: Die Verfügung des SEM über das «Wiedererwägungsgesuch» kann innert 30 Tagen vor Bundesverwaltungsgericht angefochten werden. Die Bestimmungen zur Überstellungsfrist in der Dublin-III-VO sind *self-executing*, betroffene Personen können sich im Beschwerdeverfahren auf die richtige Anwendung sämtlicher objektiver Zuständigkeitskriterien der Dublin-III-VO und damit auf eine Verletzung der Bestimmung von Art. 29 Abs. 2 Dublin-III-VO berufen. [44]

Sofern das Flüchtigsein in einem gewissen Zeitpunkt während der sechsmonatigen Überstellungsfrist gegeben ist, so erfolgt gemäss Schweizer Praxis stets eine Verlängerung der Überstellungsfrist bis zur Maximaldauer, selbst wenn die betroffene Person wieder auftaucht. Diese Praxis wird dem Wortlaut der Dublin-III-VO nicht gerecht, welcher von einer Verlängerung auf «höchstens» 18 Monate spricht und damit eine Maximalgrenze vorgibt, wobei die konkrete Dauer nach pflichtgemässem Ermessen zu bestimmen wäre und hierfür das Verhältnismässigkeitsprinzip zu berücksichtigen wäre. Diesbezüglich sind stets auch der Sinn und Zweck der Verordnung, namentlich die «zügige Bearbeitung der Anträge auf internationalen Schutz»[45], zu berücksichtigen, welche u.E. eine Verlängerung um in der Regel maximal sechs Monate ab Wiederauftauchen rechtfertigen würde.[46] Dies ergibt sich auch daraus, dass der Gesetzgeber eine Dauer von sechs Monaten für die Organisation und Durchführung einer Überstellung im Dublin-Raum offensichtlich als angemessen erachtete und daher gerade hinsichtlich des Beschleunigungsgebotes nicht ersichtlich ist, womit sich eine längere Frist begründen liesse.

43 Dieses wird als Wiedererwägungsgesuch qualifiziert und ist in der Regel – entgegen dem Verordnungswortlaut, welcher von einer *ex lege* Zuständigkeit spricht – schriftlich einzureichen, damit das SEM nach Verfristung auf das Asylgesuch eintritt. Vgl. zur Frage der Qualifikation exemplarisch die Ausführungen in BVGer v. 20.06.2024, D-2291/2024, E. 2.

44 Vgl. BVGE 2015/19 E. 4; BVGE 2017 VI/9 E. 5; EuGH v. 25.10.2017, C-201/16 (ECLI:EU:C:2017:805), E. 46; EuGH v. 26.07.2017, C-670/16 (ECLI:EU:C:2017:587), E. 62; EuGH v. 19.03.2019, C-163/17 (ECLI:EU:C:2019:218), E. 70; ausführlich dazu auch Bergmann/Dienelt, AsylG 29 N 42; Romer, 25 ff.

45 Dublin-III-VO E. 5.

46 Vgl. dazu auch Hruschka/Progin-Theuerkauf, 349.

2.3.2 Voraussetzungen für die Verlängerung der Überstellungsfrist

Während die Sachlage bei der Verlängerung der Überstellungsfrist wegen strafrechtlicher Inhaftierung i.d.R. klar ist, führt die Fristverlängerung auf 18 Monate aufgrund «Flüchtigseins» häufig zu Rechtsstreitigkeiten, weshalb nachfolgend im Detail darauf einzugehen ist.

a) Definition «Flüchtigsein»

Der in der Dublin-III-VO verwendete Begriff des «Flüchtigseins» ist ein unbestimmter Rechtsbegriff, für welchen die Verordnung keine Legaldefinition enthält. Dementsprechend bedarf er der Auslegung, wobei die üblichen Auslegungsmethoden anzuwenden sind, insbesondere Wortlaut, Systematik sowie Sinn und Zweck. Diesbezüglich ist auch Art. 9 Abs. 1 DVO[47] mitzuberücksichtigen, welcher nicht von «Flüchtigsein», sondern von «sich entziehen» spricht.

In seinem wegweisenden Urteil definierte der EuGH «Flüchtigsein» wie folgt: Der Antragsteller ist dann «flüchtig» gemäss Art. 29 Dublin-III-VO, *«wenn er sich den für die Durchführung seiner Überstellung zuständigen nationalen Behörden gezielt entzieht, um die Überstellung zu vereiteln. Dies kann angenommen werden, wenn die Überstellung nicht durchgeführt werden kann, weil der Antragsteller die ihm zugewiesene Wohnung verlassen hat, ohne die zuständigen nationalen Behörden über seine Abwesenheit zu informieren, sofern er über die ihm insoweit obliegenden Pflichten unterrichtet wurde, was das vorlegende Gericht zu prüfen hat. Der Antragsteller behält die Möglichkeit, nachzuweisen, dass er diesen Behörden seine Abwesenheit aus stichhaltigen Gründen nicht mitgeteilt hat, und nicht in der Absicht, sich den Behörden zu entziehen.»* [48]

Für die Qualifikation als «flüchtig» ist damit ein gezieltes Entziehen vor den Behörden erforderlich, wobei dieses mit dem Ziel erfolgt, die Dublin-Überstellung zu vereiteln. Zudem muss das Verhalten kausal dafür sein, dass die Überstellung tatsächlich für einen gewissen Zeitraum objektiv nicht möglich ist.[49] Konkret ist demnach eine Absicht der betroffenen Person, die Überstellung zu verhindern, erforderlich sowie ein Entziehen vor den Behörden durch unbekannten Aufenthalt. Der EuGH fordert jedoch keinen eigentlichen Nachweis der Entziehungsabsicht, sondern stuft es als ausreichend ein, wenn die Person am Tag der (angekündigten)

47 Diese Bestimmung legt dar, wie die Information des ersuchenden Staates über die Fristverlängerung an den ersuchten Staat zu erfolgen hat.

48 EuGH v. 19.03.2019, C-163/17 (ECLI:EU:C:2019:218), E. 70.

49 Vgl. nachfolgend b).

Überstellung unbekannten Aufenthalts ist, obwohl sie nachweislich über die Folgen diesbezüglich belehrt wurde und ihr die Möglichkeit gewährt wurde, nachzuweisen, dass sie nicht flüchtig war.[50] Das Bundesverwaltungsgericht hat hierzu zu Recht präzisiert, dass dieser Zustand eine gewisse Zeit andauern muss – so reicht es für eine Verlängerung der Überstellungsfrist nicht aus, dass eine Person gerade zu einem bestimmten Zeitpunkt nicht in der ihr zugewiesenen Unterkunft angetroffen wird.[51] In jedem Fall ist es erforderlich, dass der Grund für die Nichtauffindbarkeit der betroffenen Person dieser zugerechnet werden kann.[52]

Das Bundesverwaltungsgericht verweist im Zusammenhang mit dem Begriff «flüchtig» auf 14 Abs. 2 lit. b und Art. 8 Abs. 3 AsylG, welche vorsehen, dass sich die asylsuchende Person den zuständigen Asylbehörden zur Verfügung halten muss.[53] Mit anderen Worten stellt die Schweizer Rechtsprechung auf die verwaltungs- bzw. asylrechtliche Mitwirkungspflicht ab und begründet regelmässig mit deren Verletzung ein «Flüchtigsein». Ob die lediglich vorübergehende bzw. für einige Tage dauernde Abwesenheit vom bekannten bzw. zugewiesenen Aufenthaltsort[54], ohne dass den für den Wegweisungsvollzug zuständigen Behörden der aktuelle Aufenthaltsort mitgeteilt wird, für eine Qualifikation als «flüchtig» gemäss der EuGH-Rechtsprechung ausreicht, scheint fraglich.[55] Dies gilt umso mehr, wenn Behörden, welche – womöglich in Unkenntnis der asylsuchenden Person – nicht für die Rückführung zuständig sind, den Aufenthaltsort kennen bzw. proaktiv darüber informiert wurden.[56]

Dass die Schweizer Rechtsprechung schliesslich die Tatsache, dass die Vollzugsbehörde den Aufenthaltsort mit «mehr oder weniger umfangreichen Ermittlungen» ausfindig machen könnte, völlig unberücksichtigt lässt,[57] kann mit der EuGH-Rechtsprechung kaum in Einklang gebracht werden. Diese verlangt eine Entzugs*absicht*, um die Überstellungsfrist zu verlängern. In Konstellationen, in welchen es den Behörden ein Leichtes wäre, durch ein Telefonat oder eine Nachfrage den

50 Zum Ganzen EuGH v. 19.03.2019, C-163/17 (ECLI:EU:C:2019:218), E. 50 ff.

51 BVGer v. 12.12.2016, E-4595/2016, E. 5.3; BVGer v. 26.03.2024, D-6964/2023, E. 6.

52 Filzwieser/Sprung, Dublin-III-VO 29 N 12; BVGE 2010/27 E. 7.2; EuGH v. 19.03.2019, C-163/17 (ECLI:EU:C:2019:218), E. 70.

53 Vgl. exemplarisch BVGer v. 31.08.2020, F-4207/2020, E. 6.2.

54 AsylG 28 Abs. 1.

55 A.M. BVGer v. 26.05.2023 E-2943/2023.

56 A.M. BVGer v. 08.01.2021 E-6320/2020, E. 4.3.

57 Vgl. exemplarisch BVGer v. 31.08.2020, F-4207/2020, E. 6.2.

Aufenthaltsort ausfindig zu machen, kann nach der hier vertretenen Ansicht nicht ohne Weiteres eine derartige Absicht unterstellt werden.

In jedem Fall ist Art. 14 Abs. 2 lit. b AsylG jedoch nicht so zu verstehen, dass die Behörden zu jedem Zeitpunkt wissen müssten, wo sich die asylsuchende Person jeweils aufhält oder gar, dass diese sich stets in ihrem Zimmer aufzuhalten hätte.[58] Gemäss Rechtsprechung reicht es, wenn die Behörde in der Lage ist, «die betreffende Person innert nützlicher Frist physisch zu erreichen».[59] So hat das Bundesverwaltungsgericht eine Verlängerung der Überstellungsfrist beispielsweise verneint in einem Fall, in welchem die asylsuchende Person nach einem stationären Klinikaufenthalt bei ihrem Bruder wohnte, worüber die ihr zugewiesene Unterkunft und zu einem späteren Zeitpunkt auch das SEM informiert wurden.[60] Obwohl das Bundesverwaltungsgericht zum Schluss kam, dass die Mitwirkungspflicht verletzt wurde, da die asylsuchende Person keinen formellen Antrag auf externe Unterbringung gestellt hat, hielt es ebenso fest, dass die Vollzugsbehörden nachweislich über den Aufenthaltsort der betreffenden Person informiert waren. Dass die geplante Überstellung scheiterte, konnte deshalb nicht allein der asylsuchenden Person angelastet werden und diese wurde zu Unrecht als «flüchtig» im Sinne der Dublin-III-VO qualifiziert.

Die deutsche Rechtsprechung geht hingegen davon aus, dass alleine die Verletzung von Mitwirkungspflichten noch keine Annahme eines Flüchtigseins rechtfertige, zumindest solange den Behörden der Aufenthaltsort der asylsuchenden Person bekannt ist und sie «die objektive Möglichkeit einer Überstellung – gegebenenfalls unter Anwendung unmittelbaren Zwangs – hat».[61] Explizit erklären die deutschen Gerichte auch, dass Flugunwilligkeit, der Aufenthalt im offenen Kirchenasyl oder das einmalige Nichtantreffen der asylsuchenden Person in der Unterkunft nicht zur Begründung einer Fristverlängerung ausreichen, ebenso wenig das Nichtbefolgen einer Aufforderung, einen Flug selbständig anzutreten.[62]

Selbstredend kann sodann eine Hospitalisierung – welche zwingend durch medizinisches Fachpersonal angeordnet worden sein muss – nicht als Flüchtigsein qualifiziert werden, wie dies in der Praxis teilweise getan wird. Der EuGH hat dies explizit klargestellt: Die Unterbringung in einem (psychiatrischen) Krankenhaus

58 BVGer v. 13.09.2024, E-377/2024, E. 5.1
59 Vgl. BVGer v. 12.12.2016, E-4595/2016, E. 5.3.
60 BVGer v. 30.09.2024, D-814/2024, E. 7.
61 BVerG v. 17.08.2021, 1 C 26.20.
62 BVerG v. 17.08.2021, 1 C 38.20; BVerG v. 17.08.2021, 1 C 26.20.

hat keine Fristverlängerung zur Folge, ebenso wenig die Unmöglichkeit der Überstellung aus gesundheitlichen Gründen.[63]

b) Kausalität zwischen Verhalten und Scheitern der Überstellung

Schliesslich muss das Verhalten (i.e. das Flüchtigsein) der asylsuchenden Person *kausal* dafür sein, dass diese nicht an den zuständigen Mitgliedstaat überstellt werden konnte.[64] Demnach gilt nur als flüchtig, wer absichtlich, durch eine Handlung oder Unterlassen, das Überstellungsverfahren behindert bzw. sich absichtlich zwecks Vereitelung seiner Überstellung den zuständigen Behörden entzieht – was beispielsweise vor Ablauf der Beschwerdefrist gegen den Dublin-Nichteintretensentscheid nicht der Fall sein kann[65] oder auch bei einer kurzen Abwesenheit zu Beginn der Überstellungsfrist nur schwer zu begründen wäre.

Wenn nicht das Verhalten der asylsuchenden Person, sondern das Verhalten der Behörden ursächlich war für das Scheitern der Überstellung, fehlt es an der Kausalität, welche für eine Verlängerung der Überstellungsfrist erforderlich ist. Wenn die Behörden beispielsweise die erforderlichen Formulare nicht rechtzeitig bereitstellen, so kann das Misslingen der Überstellung nicht der asylsuchenden Person zugerechnet werden.[66] Ebenso hat das Bundesverwaltungsgericht entschieden, dass der asylsuchenden Person nicht nachträglich fehlbares Verhalten in der Vergangenheit vorgeworfen werden darf, nachdem die Überstellung zu einem späteren Zeitpunkt wegen Verschuldens der Behörden scheiterte.[67] Im zitierten Entscheid verneinte das Bundesverwaltungsgericht – zu Recht – die Kausalität zwischen dem Verhalten der betroffenen Person und dem Scheitern der Überstellung.

c) Würdigung

Wie obenstehend dargelegt gibt die EuGH-Rechtsprechung klare Leitlinien vor, unter welchen Umständen eine asylsuchende Person als «flüchtig» zu qualifizieren ist und sich folglich eine Verlängerung der Überstellungsfrist rechtfertigt. Während die Rechtsprechung des Bundesverwaltungsgerichts diesen Grundsätzen weitgehend[68] Folge leistet, scheint die Praxis des SEM regelmässig signi-

63 EuGH v. 31.03.2022, C-231/21; ähnlich auch EuGH v. 16.02.2017, C 578/16.
64 EuGH v. 19.03.2019, C-163/17 (ECLI:EU:C:2019:218), E. 70; vgl. exemplarisch BVGer v. 24.06.2024, F-3495/2024, E. 6.1; BVGer v. 10.10.2023, D-4561/2023, E. 7.3.
65 BVGer v. 16.02.2023, E-833/2023; BVGer v. 04.12.2023, D-3831/2023, E. 5.3.
66 BVGer v. 20.02.2024, D-894/2024, E. 6.3.
67 A.a.O.
68 Eine Abweichung ist hinsichtlich der Frage, ob eine (einfache) Verletzung der Mitwirkungspflicht eine Verlängerung der Überstellungspflicht auslöst, zu erkennen.

fikant davon abzuweichen. Dies dürfte in Verkennung der Tatsache erfolgen, dass ein Grundgedanke des Dublin-Systems eine zügige Bearbeitung der Asylgesuche ist – und damit einhergehend eine rasche Festlegung des zuständigen Dublin-Mitgliedstaats. Die Verlängerung der Überstellungsfrist, welche überdies nach der hier vertretenen Auffassung zu Unrecht stets auf das Maximum der 18 Monate erfolgt, wäre demnach mit entsprechender Zurückhaltung vorzunehmen. Dies gilt umso mehr, als die lange Verfahrensdauer für die betroffenen Geflüchteten eine erhebliche Belastung darstellt – wobei zu betonen ist, dass in diesem Verfahrensstadium erst die Frage der Zuständigkeit geklärt werden soll und mithin das Asylverfahren selbst noch gar nicht begonnen hat, womit es anschliessend nochmal Monate bis Jahre dauern kann, bis ein endgültiger Entscheid über den Asylstatus einer Person vorliegt.

Zusammenfassend wäre es aus erwähnten Gründen erstrebenswert, dass die Verlängerung der Überstellungsfrist durch die Behörden ausschliesslich in jenen Fällen angeordnet würde, für welche sie vorgesehen ist: wenn die betroffene Person sich absichtlich der Überstellung entzieht und ihr Verhalten ursächlich ist dafür, dass die Überstellung nicht erfolgen konnte. Für über die EuGH-Rechtsprechung hinausgehende Ausweitung der Begriffsauslegung, insbesondere unter Bezugnahme auf ein nationales Konzept der (äusserst weitgehenden) Mitwirkungspflicht im Asyl- bzw. Wegweisungsverfahren, besteht weder Raum noch Bedürfnis.

3 Der neue EU-Migrationsrechtspakt und die künftige Rechtslage

Am 14.05.2024 hat der Rat der Europäischen Union das neue Migrations- und Asylpaket der EU angenommen. Die Reform des gemeinsamen europäischen Asylsystems (GEAS) hat zum Ziel, dass (i) die EU-Länder, in denen die meisten Migrantinnen und Migranten ankommen, entlastet werden, (ii) ein gerechterer und effizienterer Rahmen für die Registrierung und Bearbeitung von Asylanträgen geschafft wird und (iii) die Sekundärmigration verringert wird.[69]

Obwohl die beiden zentralen neuen Elemente der Reform (Verfahren an den Aussengrenzen des Schengen-Raums und ein Solidaritätsmechanismus) für die Schweiz nicht bindend sind, enthält die GEAS Weiterentwicklungen des Schen-

69 Ausführlich dazu https://www.europarl.europa.eu/topics/de/article/20170627STO78418/die-reform-des-gemeinsamen-europaischen-asylsystems.

gen-/Dublin-Besitzstands, die die Schweiz übernehmen muss.[70] Umsetzungsfrist der EU-Verordnungen ist der 17.05.2026.

Die bisher geltende Dublin-III-VO wird durch die neue Verordnung über das Asyl- und Migrationsmanagement (AMM-VO[71]) ersetzt. Dabei ergeben sich auch gewisse Änderungen hinsichtlich der Überstellungsfrist: Während die bisher geltende sechsmonatige Überstellungsfrist unverändert bleibt, wird die derzeitig vorgesehene Verlängerung der Frist auf höchstens 18 Monate neu auf drei Jahre ausgeweitet.[72] Die Voraussetzungen für die Verlängerung der Überstellungsfrist werden ebenfalls angepasst: Künftig wird dies nicht nur bei Flüchtigsein möglich sein, sondern auch wenn die betreffende Person «sich der Überstellung körperlich widersetzt, sich vorsätzlich für die Überstellung untauglich macht oder die für die Überstellung erforderlichen medizinischen Anforderungen nicht erfüllt». Wenngleich damit weitere Konstellationen zu einer Verlängerung der Überstellungsfrist führen können, sind die von der Rechtsprechung etablierten Prinzipien weiterhin zu berücksichtigen. So ist auch in Zukunft nur dann von einer Verlängerung der Frist auszugehen, wenn die geflüchtete Person das Scheitern der Überstellung beabsichtigt und die Handlung bzw. Unterlassung kausal war für das Misslingen des Wegweisungsvollzuges.

Hinsichtlich der maximalen Dauer der Überstellungsfrist ergibt sich die erwähnte Änderung, dass nicht mehr 18 Monate, sondern drei Jahre – und zwar neu ab Mitteilung des Überstellungshindernisses an den übernehmenden Dublin-Mitgliedstaat[73] – als *absolutes* Maximum vorgesehen sind. Gleichzeitig wird aber zusätzlich eine neue *relative* Frist eingeführt, wonach ab dem Zeitpunkt, in welchem eine Person den Behörden wieder zur Verfügung steht, eine Frist von drei Monaten für die Überstellung gilt.[74] Diese Änderung dürfte die aktuelle, dem Gesetzeswortlaut widersprechende Praxis korrigieren, gemäss welcher jedes «Flüchtigsein» zu einer Verlängerung der Frist auf die Maximaldauer von 18 Monaten führt.

70 Vgl. zur Umsetzung in der Schweiz https://www.sem.admin.ch/sem/de/home/international-rueckkehr/kollab-eu-efta/eu-migrations-asylpakt.html.

71 Verordnung (EU) 2024/1351 des Europäischen Parlaments und des Rates vom 14.05.2024 über Asyl- und Migrationsmanagement, zur Änderung der Verordnungen (EU) 2021/1147 und (EU) 2021/1060 und zur Aufhebung der Verordnung (EU) Nr. 604/2013.

72 AMM-VO 46 Abs. 2.

73 Die entsprechende Mitteilung durch den ersuchenden Dublin-Mitgliedstaat hat im Hinblick auf das Beschleunigungsgebot sowie den Sinn und Zweck der Verordnung (weiterhin) unverzüglich zu erfolgen.

74 AMM-VO 46 Abs. 2 *in fine*. Beträgt die ursprüngliche sechsmonatige Überstellungsfrist zu diesem Zeitpunkt noch mehr als drei Monate, so ist die ursprüngliche Frist massgebend.

Gesamthaft ist davon auszugehen, dass die geänderten Bestimmungen zur Überstellungsfrist zahlreiche neue Fragen aufwerfen werden, welche einer Klärung durch die Rechtsprechung bedürfen. Wenngleich die Verlängerung der absoluten Frist für die Überstellung auf drei Jahre dem Grundgedanken der raschen Verfahren zuwiderläuft, kommt Letzterer in der relativen Dreimonatsfrist zum Ausdruck und sollte sich auch künftig in der Rechtsprechung widerspiegeln.

4 Fazit und Ausblick

Das Dublin-System bildet seit Jahrzehnten das Rückgrat des europäischen Asylrechts und dient dazu, die Zuständigkeit für die Prüfung von Asylanträgen effizient zu regeln. Die Praxis in der Schweiz und den anderen Mitgliedstaaten zeigt hingegen, dass das System nicht ohne Herausforderungen ist. Insbesondere die Regelungen zu Überstellungsfristen werfen zahlreiche praktische und rechtliche Fragen auf, die immer wieder zu Unsicherheiten und Rechtsstreitigkeiten führen.

Im Hinblick auf die Überstellungsfristen im Dublin-Verfahren ist festzuhalten, dass ihre Einhaltung von zentraler Bedeutung ist, um die Effizienz des Systems zu gewährleisten und gleichzeitig die Rechte der asylsuchenden Personen zu schützen. Eine klare Definition der Bedingungen für Fristverlängerungen und deren transparente Anwendung sind daher essenziell, um sowohl den rechtlichen Vorgaben als auch den humanitären Ansprüchen gerecht zu werden. Die Praxis zeigt jedoch, dass die Umsetzung dieser Regelungen regelmässig nicht einheitlich erfolgt und insbesondere auf nationaler Ebene Raum für Verbesserung besteht.

Mit der Einführung des neuen EU-Migrations- und Asylpakets stehen umfassende Änderungen bevor, die auch die Schweiz als assoziierten Dublin-Staat betreffen werden. Diese Änderungen werden auch die Thematik der Überstellungsfrist umfassen. Eine sorgfältige Prüfung und Ausgestaltung der neuen nationalen Praxis, insbesondere im Hinblick auf die Auslegung von Begriffen wie «Flüchtigsein», wird essenziell sein, um eine rechtskonforme Anwendung des neuen Regelwerks zu gewährleisten. Die kommenden Jahre bieten die Chance, bestehende Schwächen zu adressieren, sodass die Schweizer Praxis den rechtlichen Vorgaben sowie dem Sinn und Zweck des Dublin-Systems gerecht wird.

Der Schweizer Härtefall: Secondos und die Landesverweisung

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* Wir danken Hudha Abdul Cader, BLaw HSG, für die sprachliche und stilistische Prüfung des Manuskripts.

CESCR: Input to Draft General Comment on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development

Commentary by AsyLex

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A. About the Commenting Organization

AsyLex is an independent, Switzerland-based association providing online legal assistance and representation to asylum seekers in Switzerland and beyond. Our work is performed primarily by volunteers, who provide legal counseling and court representation in cases involving Swiss asylum procedure and immigration detention.

B. General Comment on the Draft

We thank the Committee on Economic, Social and Cultural Rights (hereinafter "the Committee") for the opportunity to provide comments on the draft regarding Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development.

In this context, we welcome the Committee's focus on disadvantaged individuals and groups in Chapter V of the draft. We share the Committee's view that these groups "experience disproportionate harm to their enjoyment of economic, social, and cultural rights" and face "disproportionate risks from the impacts of the planetary environmental crises".[1]

While refugees and internally displaced persons are briefly mentioned in the scope of this chapter,[2] specific attention is solely given to Indigenous peoples, peasants, pastoralists, fisherfolk, and future generations.[3] We, therefore, respectfully urge the Committee to include a dedicated section that specifically addresses the situation of asylum seekers.

While it is undoubtedly a challenge for states to fully realize the economic, social, and cultural rights of their own citizens, this task becomes even more complex when it comes to asylum seekers. As individuals who have fled their home countries, asylum seekers often find themselves in a heightened state of vulnerability, having left behind familiar environments and faced difficult circumstances. Consequently, they are particularly exposed to a risk of suffering disproportionate harm in the enjoyment of their economic, social, and cultural rights.

In light of this, states must prioritize the protection and realization of these rights for asylum seekers. Failure to do so may, in certain cases—particularly in the context of return, deportation or expulsion, amount to a violation of the *jus cogens* principle of *non-refoulement*.

[1] CESCR, Draft Comment, §81, p. 17.
[2] CESCR, Draft Comment, §82, p.17.
[3] CESCR, Draft Comment, p.17-19.

The following sections will elaborate on these concerns in greater detail and provide specific recommendations for revising the General Comment.

C. Specific Comments on the Draft

AsyLex invites the Committee to reconsider Chapter V "Implications for disadvantaged individuals and groups" in order to include a section on asylum seekers. It has been well-established that migrants, refugees and internally displaced persons are in "particularly vulnerable situations".[4]

C.1. Asylum Seekers and Environmental Crises

The draft General Comment acknowledges that migrants, refugees and internally displaced persons are disproportionately affected by impacts of planetary environmental crisis.[5] It is therefore crucial for the Committee to focus on the specific implication for migrants, refugees and asylum seekers.

The link between environmental degradation, climate change, natural disaster and migration has been well-established. Environmental degradation and pollution is an important driver for migration. A number of international refugee law instruments implicitly include it. Both the 1984 Cartagena Declaration on Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa define refugees as an individual who fled their country because their life or freedom have been threatened, by circumstances or events disturbing public order.[6] The latter can encompass natural disasters as they clearly disturb the public order, and threaten their life or freedom.

Consequently, the Committee is urged to consider including and elaborating on these aspects in its General Comment as well.

C.2. Asylum Seekers and the *Non-Refoulement* Principle in the Context of Economic, Social and Cultural rights

An additional aspect which requires attention by the Committee in light of this General Comment is the nexus between a violation of economic, social and cultural rights and the principle of *non-refoulement*. Particularly since sending back individuals to places affected by natural disasters or environmental pollution, where their economic and social rights would not be guaranteed, amounts to *non-refoulement*. Human rights bodies have already acknowledged a duty of *non-refoulement* when that person's economic and social rights would be violated.[7] This notably includes violations of the right to health and life expectancy,[8] no access to school[9], or a lack of access to food, shelter and sanitation.[10] In our daily work at AsyLex, we frequently observe that States often neglect to adequately consider the accessibility of social, economic, and cultural rights, leaving rejected asylum seekers vulnerable to threats to their safety and well-being, and further obstructing their potential for sustainable development upon removal. Therefore, by doing a joint reading of human rights jurisprudence and the analysis provided, including our own

[4] Committee against Torture, General Comment No. 4 § 40.
[5] CESCR, Draft General Comment §82, p. 17
[6] 1984 Cartagena Declaration on Refugees, Conclusion No. 3; 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, Article 2.
[7] M. Ferolla Vallandro do Valle, "Fleeing Deprivation: Deducing *Non-Refoulement* Obligations from Economic, Social and Cultural Rights" 2024 *International Journal of Refugee Law.*
[8] *M.K.A.H v Switzerland* [2021] Committee on the Rights of the Child No. CRC/C/88/D/95/2019§10.6–10.8; *ZH v Sweden* [2021] Committee on the Right of Persons with Disabilities No. CRPD/C/25/D/58/2019 §10.4-10.11; *KS and MS v Denmark* [2017] Human Rights Committee CCPR/C/121/D/2594/2015 §7.5-7.7; *Mortlock v United States* [2008] Inter-American Commission on Human Rights Nº 63/08.
[9] M. Foster, "Non-Refoulement on the basis of Socio-Economic Deprivation: The Scope of Complementary Protection in International Human Rights Law" 2009 *New Zealand Law Review* 2(54) 257-310.
[10] *Warda Osman Jasin v Denmark* [2015] Human Rights Committee No. CCPR/C/114/D/2360/2014 §8.4, 8.9-10 ; *M.S.S. v Belgium and Greece* [2011] European Court of Human Rights No.30696/09 §249-264, 366-368.

practical observation in scope of AsyLex's daily legal work, it is clear that non-refoulement violations can arise when an individual is sent back to a place where their rights would not be respected.

D. Conclusion

The duty of States to pay particular focus on these groups is confirmed by Article 2(2) of the Covenant, which obliges States to secure the rights of individuals without discrimination, including migratory status. Therefore, States should ensure that climate change and environmental damage do not undermine the rights of asylum seekers and refugees as enshrined in the Covenant. Likewise, subjecting an individual because of his migratory status to a risk of a violation of their economical, social and cultural rights upon removal, may amount to *non-refoulement* and would violate the principle of non-discrimination.

Therefore, it is crucial to remind States that, when rejecting asylum claims or issuing deportation orders, they must take into account the availability and accessibility of economic, social, and cultural rights upon removal, in order to align with their *jus cogens* obligations, particularly within the framework of the *non-refoulement* principle.

E. Recommendations

In light of what has been explained above, AsyLex makes the following recommendations:

- The Committee is urged to reiterate that States must respect and ensure the rights of all individuals, regardless of their migratory status, in line with the principle of non-discrimination.
- We encourage the Committee to draw upon the approaches of African and Latin American countries, particularly in the context of environmental challenges, in order to integrate a global perspective on refugee rights into its General Comment.
- The Committee is strongly urged to address the issue of *non-refoulement* in connection with the deprivation of economic, social, and cultural rights upon the removal of rejected asylum seekers in its General Comment.

Subject: Human Rights Council Resolution A/HRC/RES/57/14 on the human rights of migrants

Commentary by AsyLex Regarding Switzerland

Authors: **Lena Schulthess, Joëlle Spahni**

Date: **20 January 2025**

Contact: **international@asylex.ch**

A. About the Commenting Organization

AsyLex is an independent, Switzerland-based association providing legal assistance and representation to asylum seekers in Switzerland and beyond. Our work is performed primarily by volunteers, who provide legal counseling and court representation in cases involving Swiss asylum procedures and immigration detention.

We welcome the Office of the High Commissioner for Human Rights' (OHCHR) call to receive relevant information for the preparation of its report on human rights monitoring in the context of migration to the Human Rights Council in reference to resolution A/HRC/RES/57/14. We thank the OHCHR for the opportunity to contribute by sharing our practical experience with human rights monitoring in the Swiss asylum context. Specifically, our input focuses on the challenges to effective monitoring and provides recommendations for implementing robust monitoring mechanisms within the migration context. This particularly in the context of accessible legal representation of asylum seekers in the Swiss asylum system, lacking monitoring mechanisms with regards to detention, the treatment of asylum seekers at Switzerland's international borders and in detention, insufficient access to information on the treatment of asylum seekers on compulsory deportation flights and the importance of including asylum seekers' and civil society inputs in the establishment of new asylum-related legislation.

B. Relevant Information for the Preparation of the Report on Human Rights Monitoring in the Context of Migration

This section delves into critical obstacles impeding effective human rights monitoring in the context of migration in Switzerland, particularly in the Swiss asylum system. By examining restricted access to legal representation, the treatment of asylum seekers during detention and border procedures, and the marginalization of key stakeholders in asylum policy development, it highlights systemic challenges undermining the rights of asylum seekers. Additionally, the absence of robust mechanisms to oversee human rights compliance during deportation flights underscores pressing accountability gaps.

B.1) Short-Comings in Legal Representation of Asylum Seekers as a Safe-Guard for Compliance with Human Rights

Free and easily accessible legal representation is essential to ensuring compliance with asylum seekers' rights by migration authorities and courts. Thus, we welcome the general right to legal representation in Switzerland as forsean in Article 102f-102k of the Swiss Asylum Act.[1] Nevertheless we are concerned about the practical implementation of it, since it still leaves uncountable asylum seekers without representation in those moments when representation would be needed the most.

A crucial obstacle to safe-guarding asylum seekers' rights, particularly their access to justice, is the limited scope of the state-paid legal representatives mandate (see Article 102k of the Swiss Asylum Act), which excludes important areas such as cases of racism, experienced hate speech or other forms of ill-treatment by authorities (e.g. cases of violence against asylum seekers by the police or security staff). While post-asylum protections exist for migrants through anti-discrimination advice centers in most cantons (see e.g. "ZüRAS"[2] in the canton of Zurich), individuals in the asylum process are not provided with information about these services or their availability, making them effectively inaccessible. Asylum seekers experiencing hate-speech, racism or other forms of ill-treatment are thus left unprotected and unable to access justice. The UN Committee Against Torture (CAT) and Amnesty International have criticized federal asylum centers for issues such as the use of racist language, mistreatment by security guards, confinement in small "reflection rooms," and a lack of clear complaints mechanisms.[3] Asylum seekers often face insurmountable obstacles to lodging complaints or pursuing legal action against such abuses. Many are unaware of their rights or where to seek help, an issue exacerbated by a lack of independent monitoring and proactive safeguarding mechanisms in asylum centers. In this context, it is particularly problematic that asylum seekers, who cannot afford legal aid, do not have access to state-funded legal advice and representation.

Further aggravating inadequate access to justice for asylum seekers is the remuneration model for state-appointed legal representation. Lawyers are paid a lump sum per asylum seeker, irrespective of the complexity of individual cases and whether or not they file an appeal. These misaligned incentives frequently result in state-appointed legal representatives refraining from lodging appeals, even in cases where the Federal Administrative Court deems subsequent appeals filed by private legal representatives to be "not without merit" at least. A report from Pikett Asyl titled "Work of the service providers legal protection in the federal asylum centres – Based on a survey of asylum seekers" highlights that in the first half of 2024, 61.11% of successful appeals in the Zurich region were brought forward by privately appointed legal representatives or even as layperson appeals, rather than by state-appointed legal representatives.[4] Given that state-appointed legal representatives may only terminate their mandate if they see no chance of success (See Art.102h Asylum Act[5]), these findings are very worrying. Once state-appointed legal representatives decide to resign their mandates, asylum

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[1] https://www.fedlex.admin.ch/eli/cc/1999/358/en#art_102_f.
[2] https://zueras.ch/Home/.
[3] Amnesty International. "Switzerland: Submission to the UN Committee on the Elimination of Racial Discrimination 105th session, 15 November – 3 December 2021", October 28, 2021. https://www.amnesty.org/en/documents/eur43/4913/2021/en/;
UN Committee Against Torture (CAT/C/CHE/CO/8), 11 December 2023. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FCHE%2FCO%2F8&Lang=en.
[4] The report will be published in due time on Pikett Asyl's Website. https://pikett-asyl.ch/de/monitoring.
[5] https://www.fedlex.admin.ch/eli/cc/1999/358/en#art_102_h

seekers may only refer to legal representation subject to costs or non-governmental organisations offering their services for free, such as AsyLex.

Lastly, AsyLex is concerned with the planned integration of the EU Asylum Act into Swiss law's implications for access to legal aid, if implemented without reservations and specifications. Concretely, one of the provisions of the EU Asylum Pact to be partially implemented in Switzerland does not explicitly foresee legal representation from the beginning, which is in direct conflict with the right to legal representation as forsean in Article 102f of the Swiss Asylum Act.[6] This is particularly concerning in light of the potential automatic detention during this screening process. Temporary detention should only occur in exceptional cases, such as when there is a violation of cooperation duties, a risk of flight, or a threat to public security[7]. Moreover, it must always be proportionate and can only be ordered for a maximum of three days. The seven-day maximum period for the review as it is currently forsean is disproportionate, particularly given that it involves the restriction of a fundamental right.

B. 2) Concerns about Deprivation of Liberty (Detention), especially Short-Term Detention without Judicial Review and Access to Adequate Services

The use of detention at Switzerland's external borders raises significant human rights concerns, particularly regarding short-term detention and the use of detention under Dublin transfer orders. A recent regulation (Art. 73, para. 1 lit. c AIG[8]) adopted by parliament permits authorities to detain individuals at the border for up to 72 hours without judicial review or even a written order. The absence of oversight or documentation during these three-day detentions exacerbates concerns about transparency, accountability, and the effectiveness of legal remedies, essentially leaving asylum seekers without monitoring mechanisms to safe-guard the protection of their fundamental rights.

In addition to short-term detentions, the manner in which cantonal migration authorities make use of detention to facilitate Dublin transfers exhibits significant shortcomings in complying with human rights standards. First, in some cantons, such as Fribourg and Lucerne, detention is applied almost automatically to enforce Dublin transfer orders, raising serious questions about proportionality and necessity. While AsyLex has challenged the length of Dublin detentions and eventually obtained a Federal Supreme Court ruling that Dublin detention may not exceed six weeks,[9] practice shows that some cantons attempt to circumvent this limit. This further highlights the need for stronger enforcement of judicial decisions and safeguard mechanisms against arbitrary detention. Secondly, AsyLex has regularly pointed out insufficient access to healthcare and psychological care in Dublin detention. This is particularly harmful to survivors of trauma or sexual violence as well as children. Just recently, AsyLex has been involved in a case of a suicidal client, whose mental state had been improving up until the person was detained under the framework of a Dublin detention, where the person then renewedly attempted suicide. Besides appealing the ordered detention, the mental state of the client was still not taken into consideration adequately in the ruling. Consequently, In these cases as well, it is crucial to place greater emphasis on human rights monitoring.

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[6] https://www.fedlex.admin.ch/eli/cc/1999/358/en#art_102_f.
[7] https://www.fedlex.admin.ch/eli/oc/2007/758/fr
[8] https://www.fedlex.admin.ch/eli/oc/2007/758/fr
[9] Federal Supreme Court. 2C_610/2021. March 11, 2022. https://www.bger.ch/ext/eurospider/live/de/php/aza/http/index.php?lang=de&type=show_document&highlight_docid=aza://11-03-2022-2C_610-2021&print=yes

The ordering of automatic and often disproportionately-long Dublin detentions as well as the lack of independent oversight in detention centers with regards to access to health and psychological services represent a serious risk to compliance with human rights. Independent monitoring mechanisms as well as procedural judicial review of detentions are crucial steps to ensure the upholding of basic rights of asylum seekers in Dublin detention.

B. 3) Persisting Obstacles to Adequate Monitoring of Compliance with Human Rights during Compulsory Deportation Flights

In order to monitor compliance with human rights standards throughout deportation flights, the National Commission for the Prevention of Torture (NCPT) documents the treatment of deportees by cantonal migration authorities. The NCPT publicly shares yearly reports regarding the documented deportations for different cantons and asylum regions, as well as occasional thematic observations on compulsory deportations.

While AsyLex welcomes the authorities' cooperation with the NCPT and the public availability of the NCPT's general observations, critical obstacles to accessing information on individual cases persist. AsyLex systematically requests NCPT observations on the deportation of our clients, however, as a rule, the reports transmitted are minimalistic and highly censored, preventing us from accessing complete information on the treatment and well-being of our clients and thus leaving us incapable of ensuring compliance with human rights standards throughout compulsory deportations.

Given that the NCPT documents persisting short-comings in the adherence of enforcement authorities with international human rights conventions, such as the Convention for the Rights of the Child when it comes to the use of coercive measures against children, or the Convention against Torture with regards to the preemptive use of coercive measures,[10] It is essential that legal representatives have complete access to detailed documentation of the treatment of their clients throughout deportation flights, above all in cases of especially vulnerable asylum seekers such as children or persons in need of medical or psychological care.

B. 4) Urgently Required Monitoring at Switzerland's External Borders to Counter Persisting Push-Back Practices

Civil society organizations, such as AsyLex, have raised significant concerns about alleged push-back practices at Switzerland's borders, both in the south (Italian border) and in the north (German and Austrian borders). These practices reportedly involve preventing asylum seekers from lodging applications. In some cases, asylum seekers are even provided with train tickets to cross into another country without being informed of their right to seek asylum in Switzerland.[11] Such actions raise serious legal concerns, particularly regarding potential violations of the Dublin Agreement and the principle of non-refoulement, which prohibits returning individuals to a place where they face a risk of persecution or harm.

A 2018 case involving an AsyLex client highlights the profound consequences of these practices. The client recounted an encounter with a Swiss border official who initially expressed sympathy, suggesting that the asylum process in Switzerland would be challenging and implying that Italy might be a better option, where they could remain freely without entering a camp. However, when the client

[10] State Secretariat of Migration & National Commission Against Torture. "Résumé du rapport de la Commission nationale de prévention de la torture (CNPT) relatif au contrôle des renvois en application du droit des étrangers Janvier à décembre 2023". https://www.newsd.admin.ch/newsd/message/attachments/88736.pdf.
[11] AsyLex Input on Asylum Report, 2022: https://euaa.europa.eu/sites/default/files/2022-03/asylex.pdf

insisted on applying for asylum in Switzerland, the official's demeanor shifted, and the client experienced psychological pressure to reconsider their decision. Only after the client demonstrated their unwavering determination to proceed did officials bring in someone with better English skills to facilitate the process. This experience underscores the critical importance of ensuring asylum seekers have access to justice, accurate information, and fair treatment during border and asylum procedures but also highlights the broader need for independent human rights monitoring to identify and address such violations.

B. 5) Failure to Integrate Civil Society Actors and Asylum Seekers Into the Development of a New Federal Asylum Strategy

Effective human rights monitoring in the context of migration requires the meaningful participation of civil society and those directly affected by policies, such as asylum seekers. Independent review in itself can function as a monitoring mechanism, which renders diverse participatory processes essential to ensure state compliance with human rights.

Currently, the Swiss federal government, in collaboration with cantonal, city and municipal authorities, is working on a new asylum strategy due to be adopted by mid-2025. However, while the federal government has stressed the importance and intention of consulting civil society in this process, civil society actors have in practice been informed rather than involved. The small number of NGOs that have indeed been selected to share their inputs were presented with the already established pillars[12]

The approach taken by the governmental authorities entails significant shortcomings, which have been criticized by AsyLex as well as many other NGOs in individual and multi stakeholder letters to the responsible entities. Most fundamentally, the process has been criticized for completely leaving asylum seekers out of the drafting process, which is alarming, given that they are the ones directly concerned by any new strategy. Secondly, the integration of civil society actors as described above seems highly performative and lacks sincere consultation. This example also highlights the missed opportunity to incorporate the perspectives of civil society and affected individuals, which could serve as vital mechanisms for ensuring that strategies are aligned with human rights standards and the actual needs of those impacted.

C. Recommendations

Based on the aforementioned considerations, we recommend to consider the following aspects, in scope of the report on human rights monitoring in the context of migration:

1. **Ensure Comprehensive Legal Representation for Asylum Seekers**
   Guarantee access to extensive and free legal representation for asylum seekers as a fundamental safeguard for their human rights, ensuring that all individuals can effectively challenge decisions and access justice.
2. **Strengthen Monitoring and Accountability Mechanisms in Asylum Centers**
   Establish independent, transparent monitoring systems in asylum centers to ensure thorough investigation of all allegations of violence, abuse, or ill-treatment, with perpetrators held accountable.

[12] https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-101774.html

3. **Implement Standardized Judicial Review for Detention**
   Ensure judicial oversight of all detention orders to uphold the principles of proportionality and limit the duration of detention in line with international human rights standards.
4. **Create Accessible Monitoring Mechanisms in Detention Centres**
   Develop accessible complaint mechanisms within detention centers and ensure that detainees have prompt access to necessary medical and psychological care, in order to safeguard their fundamental rights.
5. **Guarantee Full Transparency in Deportation Monitoring Reports**
   Ensure that all monitoring reports related to compulsory deportations are made fully accessible, with complete transparency on the treatment and conditions of deported individuals, especially for vulnerable groups.
6. **Develop Independent Monitoring Mechanisms at External Borders**
   Establish independent, effective monitoring systems at borders to counteract pushback practices and ensure compliance with international protection obligations, such as non-refoulement.
7. **Enhance Civil Society and Asylum Seeker Involvement in Policy Development**
   Involve civil society organizations and asylum seekers from the earliest stages in the development of policies, regulations, and strategies affecting their rights, rather than limiting consultations to the final stages or pro forma feedback on already established frameworks.

OHCHR: Call for input by the Special Rapporteur on trafficking in persons, especially women and children. This particularly on "Migrant domestic workers and trafficking in persons: prevention, rights protection and access to justice"

Input by AsyLex regarding Switzerland

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Date: 28 February 2025

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A. About the Commenting Organization

AsyLex is an independent, Swiss-based association providing legal assistance and representation to asylum seekers in Switzerland and beyond. Our work is performed primarily by volunteers, who provide legal counseling and representation in cases involving Swiss asylum procedures and immigration detention.

We would like to express our gratitude to the Special Rapporteur on trafficking in persons, especially women and children, for issuing a call for contributions on this critical issue. In light of this, we would like to bring the following issues to the Special Rapporteur's attention.

B. Responses to Special Rapporteur's Questions

1. Current challenges of Victims of Human Trafficking in Switzerland

1.1. Current Issues relating to Identification of VOT in asylum procedures

In Switzerland, many victims of human trafficking (VOT) remain undetected, particularly due to the accelerated asylum procedure introduced in 2019. This fast-track process does not give survivors enough time to process their trauma or build the trust necessary to disclose their experiences. According to the Fachstelle Frauenhandel und Frauenmigration (FIZ), VOT often lack the time to prepare for the initial interview, increasing the risk of re-traumatization. As a result, the accelerated asylum procedure is **inherently incompatible** with improving the detection of VOT, as it does not provide them with the opportunity to present their cases effectively during the asylum process.

As stated in Art. 26(3) AsylA, the SEM typically only asks about possible trafficking on an optional basis. Although the SEM implemented special interviews for potential trafficking victims in 2021, due to a change in practice starting 2024, it only applies to asylum seekers from specific countries of origin or Dublin countries, where human trafficking is most prevalent.

As a result, cases of exploitation from countries not usually linked to trafficking often go unnoticed. When trafficking is suspected, SEM simply provides a flyer with information on support organizations alongside the usual paperwork. However, according to FIZ, victims rarely reach out to these organizations on their own. Thus, a specialist would be needed to properly assess and identify potential victims.

Special attention and expertise are essential for identifying VOT, including during medical checks under Art. 26 AsylA. Medical factors, such as gynecological issues and psychological conditions, are often key indicators of human trafficking (HT). For example, 28% of victims represented by the NGO *I Have Rights* had sexually transmitted diseases.

AsyLex has previously represented clients whose histories of Sexual and Gender-Based Violence (SGBV) went undetected by authorities, as expedited asylum procedures do not ensure a standardized procedure for screening vulnerabilities, including the assignment of trained HT (medical) professionals. Additionally, current waiting times for psychological support in the asylum process can extend from weeks to months, preventing VOT from accessing the specialized medical care necessary for proper identification.

Therefore, a clear and standardized detection procedure, led by well-trained professionals, is urgently needed—something that was already highlighted in GRETA's 2019 country report on Switzerland.

1.2 Issues regarding Access to Protection and Legal Advice / Representation

A further issue with the accelerated asylum procedure is that state-paid legal representatives, guaranteed for each case since March 2019, are paid a lump sum per asylum seeker (Art. 102k(2), AsylA). This payment model allows them to terminate their mandate before filing an appeal if they believe the chances of success are low. This becomes especially problematic for VOT, whose cases are often not properly identified, leaving them without legal representation when they need it most. If the state-appointed lawyer ends their mandate after a negative SEM decision, asylum seekers and particularly VOT face difficulties finding new representation due to tight appeal deadlines (5 or 7 days) and the challenges of accessing lawyers in remote asylum centers.

For VOT, especially those who came from Dublin states, legal representation is crucial, since Switzerland applies the Dublin regulation very strictly, which significantly hinders their ability to access asylum proceedings. Without proper legal representation, it becomes nearly impossible for these individuals to have their cases heard fairly in Switzerland.

1.3 Exclusion from Access to Victim Aid for Victims of Human Trafficking

As victims of serious crimes, VOT are in need of immediate and effective psychological and financial support. However, Swiss law restricts this access in most cases, namely if the exploitation took place outside of Switzerland (Art. 17 in conj. with Art. 3 Victim Aid Act). The Victim Aid Act states that only persons victimized on Swiss soil and/or that have residence status in Switzerland are entitled to receive victim aid. The exploitation for a large number of VOT occurs outside of Switzerland. Consequently, even the small number of VOT who are identified in Switzerland are often ineligible for victim support publically funded by cantonal victim aid, leaving them once again in vulnerable and precarious situations. For example, 90% of the VOT who FIZ counsels from the asylum sector are not entitled to victim aid.

1.4 Criminalisation of illegal entry and stay

In Switzerland, individuals without the proper documentation for entry or stay face imprisonment, with the risk of repeated punishment if apprehended again, as it is considered a continuing offense. The criminalization of illegal entry and stay forces vulnerable individuals, including VOT, further into hiding. Many fear the police due to stigma, the threat of forced returns, or past traumatic experiences, which only increases their risk of further exploitation. Access to legal representation in cases of illegal entry and stay is often limited, as it is not part of the mandate of state-paid legal representatives during asylum proceedings. AsyLex' experience shows that legal proceedings in these cases often focus solely on the illegal act itself, rather than the underlying reasons. When VOT state trafficking or exploitation

as the cause of their illegal stay, the legal system typically demands proof, which can be difficult to provide and may retraumatize VOT. Furthermore, giving testimony is challenging, as VOT may fear retaliation for themselves or their families if they accuse their exploiters.

2. Challenges under the "New Pact on Migration and Asylum"

The EU Pact on migration and asylum is announced to be instrumental in combating human trafficking across and outside of Europe. However, in unison with many other civil society actors, AsyLex is convinced that its policy changes will have a **further adverse impact** on the dark figure of HT survivors who stay undetected in asylum procedures. In this context, AsyLex expresses serious concerns regarding the "**Überprüfungsverordnung**" (Screening Regulation), which governs the initial contact between refugees and authorities as part of a border check procedure. The Screening Regulation constitutes, in part, a development of the Schengen/Dublin acquis and will therefore have partially binding effects on Switzerland. This regulation includes a preliminary health check, the determination of "protection needs," identity verification, data recording in Eurodac, and security checks, all of which can take up to seven days. AsyLex is particularly critical of this process, as it allows the State Secretariat for Migration (SEM) to refuse entry during this review period and obligates asylum seekers to remain available to the authorities, effectively leading to a deprivation of liberty. For VOT, this legal limbo can be particularly re-traumatizing.

According to Article 102h(1) of the Screening Regulation, asylum seekers are only granted legal representation after the conclusion of this procedure. This contradicts the current practice in Swiss asylum law, which, following the latest revision of the asylum law, mandates that asylum seekers are provided with legal representation from the outset, as previously mentioned. Legal representation is crucial during the screening process to ensure a comprehensive and standardized assessment of vulnerabilities, including the identification of VOT. Without legal representation from the beginning, there is a significant risk that VOT will remain undetected and be further criminalized. Therefore, the need for a unified, detailed methodology for identification, along with careful execution and access to legal representation, becomes even more critical with the changes introduced by the new EU Pact on migration and asylum.

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C. Conclusion and Learnings

The challenges faced by VOT in Switzerland highlight systemic gaps in identification, protection, and access to justice within the country's asylum framework. The accelerated asylum procedure, lack of effective early detection mechanisms, and absence of mandatory medical screenings significantly hinder the ability to recognize and support VOT, leaving many undetected and at risk of deportation or further exploitation. The restrictive nature of victim aid laws and the criminalization of irregular entry further exacerbate their vulnerability, limiting their ability to seek help and rebuild their lives.

Legal representation remains a critical issue, as the current state-paid model leaves many asylum seekers without proper legal support at crucial stages of the process. The upcoming EU Pact on Migration and Asylum is expected to make it even more difficult to identify and protect VOT and having them access legal representation during screening, exposing victims who are already traumatized and have experienced serious human rights violations to further harm.

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Zürich, 14. März 2025

20.451 n
Parlamentarische Initiative Marti Samira «Armut ist kein Verbrechen»; Vernehmlassungsantwort

Sehr geehrte Damen und Herren,

Im Namen des Vereins AsyLex bedanken wir uns für die Gelegenheit zur Stellungnahme zur rubrizierten Parlamentarischen Initiative. Nachfolgend finden Sie unsere Vernehmlassungsantwort.

Freundliche Grüsse

Michel Brülhart, CEO AsyLex

1. Einleitung und Vorbemerkung

Vorliegende soll auf die Parlamentarische Initiative von Nationalrätin Samira Marti «Armut ist kein Verbrechen» Stellung genommen werden. AsyLex folgt in weiten Teilen den Positionen der Schweizerischen Flüchtlingshilfe und der Demokratischen Jurist*innen und begrüßt die Annahme der parlamentarischen Initiative durch National- und Ständerat. Damit anerkennt das Parlament, dass die zunehmende Verknüpfung von Sozialhilfebezug mit ausländerrechtlichen Maßnahmen problematisch ist und hier Handlungsbedarf besteht. AsyLex setzt sich für eine klare Trennung zwischen Sozialhilfe- und Migrationsrecht ein. Sozialhilfe darf nicht als Instrument zur Migrationssteuerung missbraucht werden, sondern muss allen armutsbetroffenen Menschen, unabhängig von Herkunft und Aufenthaltsstatus, ein menschenwürdiges Leben ermöglichen.

2. Das Wichtigste in Kürze

- AsyLex unterstützt die parlamentarische Initiative «Armut ist kein Verbrechen», die mehr Rechtssicherheit für ausländische Staatsangehörige schaffen soll. Betroffene sollen Sozialhilfe beziehen können, ohne um ihren Aufenthaltsstatus fürchten zu müssen.

- Die Verknüpfung von Sozialhilfebezug mit aufenthaltsrechtlichen Konsequenzen führt dazu, dass viele Menschen auf ihre ihnen zustehende Unterstützung verzichten und unter dem Existenzminimum leben.

- Der vorliegende Gesetzesentwurf ist ein Schritt in die richtige Richtung, bedarf jedoch Anpassungen, um das Ziel der Initiative zu erreichen.

- AsyLex fordert, den Begriff «eigenes Verschulden» durch «Mutwilligkeit» zu ersetzen, um sicherzustellen, dass Sozialhilfebezug nicht pauschal als Grund für einen Widerruf der Aufenthaltsbewilligung gewertet wird.

3. Zielsetzung der Initiative «Armut ist kein Verbrechen»

Die Initiative reagiert auf die im Jahr 2019 eingeführten Verschärfungen im Ausländer- und Integrationsgesetz (AIG), die den Widerruf von Aufenthalts- und Niederlassungsbewilligungen bei Sozialhilfebezug erleichtert haben. Diese Reform hatte weitreichende Auswirkungen, die über die eigentliche Bekämpfung von Sozialhilfemissbrauch hinausgehen. In der Praxis führen kantonale Unterschiede in der Umsetzung dazu, dass Sozialhilfebeziehende mit ausländischem Pass schnell unter Generalverdacht geraten. Zudem haben viele Betroffene aus Angst vor einem Bewilligungsverlust darauf verzichtet, Sozialhilfe zu beantragen, obwohl sie darauf angewiesen wären. Dies führt zu prekären Lebensumständen, Verschuldung, Wohnungsverlust und eingeschränktem Zugang zu medizinischer Versorgung. Besonders betroffen sind Familien mit Kindern.

Die parlamentarische Initiative zielt darauf ab, diese Verschärfungen abzumildern, indem sie verhindert, dass langjährig in der Schweiz lebende Personen allein wegen unverschuldetem Sozialhilfebezug ihre Bewilligung verlieren. Sie fordert, insbesondere, dass bei Ausländerinnen und Ausländern, die sich seit mehr als zehn Jahren ohne Unterbrechung und ordnungsgemäss in der Schweiz aufhalten, ein Widerruf der Aufenthalts- oder Niederlassungsbewilligung wegen unverschuldetem Bezug von Sozialhilfe nicht mehr möglich ist. Gemäss Initiativtext sollte hingegen der Widerruf einer Niederlassungsbewilligung oder einer Aufenthaltsbewilligung weiterhin möglich bleiben, wenn die betreffende Person die eigene Bedürftigkeit mutwillig herbeigeführt oder unverändert gelassen hat.

4. Anpassungen des Gesetzesentwurfs notwendig

Der Gesetzesentwurf der Staatspolitischen Kommission (SPK-N) weicht in zwei wesentlichen Punkten von der Initiative ab: Die vorgeschlagene Schutzfrist von zehn Jahren entfällt, und der Begriff «Mutwilligkeit» wird durch «eigenes Verschulden» ersetzt. Diese Änderungen schwächen die Initiative und lassen weiterhin Rechtsunsicherheiten bestehen. AsyLex fordert daher, die Initiative in ihrer ursprünglichen Form umzusetzen, um Ermessensspielräume zu reduzieren.

4.1 Schutzfrist von zehn Jahren

In der parlamentarischen Initiative wird gefordert, dass der Widerruf der Aufenthalts- oder Niederlassungsbewilligung nach einem ununterbrochenen Aufenthalt von zehn Jahren in der Schweiz nicht mehr möglich sein soll, außer bei mutwillig herbeigeführter oder mutwillig unveränderter Bedürftigkeit. Dabei wird dem Umstand Rechnung getragen, dass Ausländerinnen und Ausländer mit einer Niederlassungsbewilligung normalerweise schon seit vielen Jahren in der Schweiz leben, hier stark verwurzelt und oft auch hier geboren und aufgewachsen sind. Sie haben in der Regel mehrfach unter Beweis gestellt, dass sie hier auf dem Arbeitsmarkt- und sozial integriert sind. AsyLex erachtet diese Forderung der Initiative als zentral, damit der langjährige Aufenthalt und die nachweislich guten Integrationsleistungen berücksichtigt werden.

Im erläuternden Bericht kritisiert die SPK-N jedoch, dass unklar bleibe, was dies für ausländische Personen bedeutet, die weniger als zehn Jahre in der Schweiz leben und Sozialhilfe beziehen. Sie hält fest, dass bereits heute in jedem Fall die Verhältnismäßigkeit und das Verschulden geprüft würden, unabhängig von der Aufenthaltsdauer. Eine explizite Nennung einer Frist könnte für kürzer Anwesende negative Konsequenzen haben, da das Verschulden möglicherweise weniger berücksichtigt würde.

AsyLex betont, dass die Einführung einer Schutzfrist von zehn Jahren in Übereinstimmung mit der bundesgerichtlichen Rechtsprechung den Schutz des Privatlebens dieser Personen stärken würde und ihnen mehr Sicherheit bei der

Inanspruchnahme von Sozialhilfe geben würde.[1] Bezüglich Personen mit einem kürzeren Aufenthalt wird eine Anpassung der Verhältnismäßigkeitsprüfung und der Begrifflichkeit des eigenen Verschuldens gefordert, um mehr Rechtssicherheit zu schaffen. Auch die Praxis der Kantone soll angepasst werden, insbesondere in Bezug auf den Widerruf der Bewilligung von Personen, die länger als zehn Jahre in der Schweiz sind.

4.2 «Mutwilligkeit» statt «Verschulden»

Sollte auf eine festgelegte Schutzfrist verzichtet werden, wird es umso wichtiger, dass bei der Prüfung eines Widerrufs von Aufenthalts- und Niederlassungsbewilligungen klar definierter Rechtsbegriffe verwendet werden. Der Gesetzesentwurf sieht hier - anders noch als die parlamentarische Initiative - explizit «Verschulden» vor.

Im Kontext von Armut ist der Verschuldensbegriff problematisch, da strukturelle Faktoren oft eine größere Rolle bei der Armut spielen als individuelles Verhalten. In der Rechtspraxis wird der Begriff des „Verschuldens“ unterschiedlich- und oft eng ausgelegt, was dazu führen kann, dass Menschen mit weniger offensichtlichen Armutsursachen unter Verdacht stehen, nicht genug zu tun, um aus der Sozialhilfe herauszukommen.

AsyLex ist der Ansicht, dass der Widerruf einer Aufenthaltsbewilligung eine höhere Hürde erfordert als einfaches Verschulden. Entsprechend wurde in der parlamentarischen Initiative bewusst der Begriff „Mutwilligkeit“ verwendet, da er vom Bundesgericht entsprechend präzisiert wurde.[2] Mutwilligkeit bedeutet gemäss bundesgerichtlicher Rechtsprechung, dass jemand absichtlich oder leichtfertig seine Verpflichtungen nicht erfüllt. Ziel ist es damit, den Widerruf von Aufenthaltsbewilligungen auf Fälle zu beschränken, in denen Menschen absichtlich missbräuchlich Sozialhilfe beziehen, was auch der Intention der Gesetzesänderung von 2019 entspricht.

Dementsprechend werden folgende Formulierung der fraglichen Gesetzesartikel vorgeschlagen:

Art. 62 Abs. 1bis

1bis Bei der Prüfung eines allfälligen Widerrufs nach Absatz 1 Buchstabe e ist zu berücksichtigen, ob die betroffene Person ~~durch eigenes Verschulden~~ die Sozialhilfeabhängigkeit mutwillig herbeigeführt ~~und ihr Arbeitspotenzial oder andere Möglichkeiten, nachhaltig von der Sozialhilfe unabhängig zu werden, unzureichend genutzt hat~~ oder mutwillig unverändert gelassen hat.

[1] BGE 149 I 66, E. 4.1-4.4
[2] Vgl. u.a. BGer 2C_490/2023 vom 31.05.2024 E. 5.2.

Art. 63 Abs. 1bis

1bis Bei der Prüfung eines allfälligen Widerrufs nach Absatz 1 Buchstabe c ist zu berücksichtigen, ob die betroffene Person ~~durch eigenes Verschulden~~ die Sozialhilfeabhängigkeit mutwillig herbeigeführt ~~und ihr Arbeitspotenzial oder~~ ~~andere Möglichkeiten, nachhaltig von der Sozialhilfe unabhängig zu werden,~~ ~~unzureichend genutzt hat~~ oder mutwillig unverändert gelassen hat.

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Frau
Bundespräsidentin Keller-Sutter
Eidgenössisches Finanz-
departement (per E-Mail)
ep27@efv.admin.ch
CH-3003 Bern

Zürich, 02.05.2025

Bundesgesetz über das Entlastungspaket 27;
Vernehmlassungsantwort

Sehr geehrte Frau Bundespräsidentin Keller-Sutter
Sehr geehrte Damen und Herren

Im Namen des Vereins AsyLex bedanken wir uns für die Gelegenheit zur Stellungnahme zu den Massnahmen basierend auf dem Bundesgesetz über das Entlastungspaket 27. Nachfolgend finden Sie unsere Vernehmlassungsantwort.

Mit vorzüglicher Hochachtung

MLaw Joanna Freiermuth

1. Einleitung und Vorbemerkung

Gemäss dem erläuternden Bericht zur Eröffnung des Vernehmlassungsverfahrens vom 29.01.2025 sei der Bundeshaushalt im Ungleichgewicht, weshalb Massnahmen ergriffen werden sollen.[1] Der Bundesrat schlägt daher ein umfassendes Massnahmenpaket vor. Darin sind insbesondere Einsparungen in Höhe von knapp einer Milliarde Franken im Asyl- und Flüchtlingsbereich vorgesehen - konkret signifikante Kürzungen der Globalpauschalen. AsyLex äusserst sich in der Folge ausschliesslich zu den Massnahmen in diesem Bereich und stützt sich dabei grundsätzlich auf die Position der Schweizerischen Flüchtlingshilfe (SFH).

2. Das Wichtigste in Kürze

AsyLex lehnt die vorgesehene Verkürzung der Geltungsdauer der Globalpauschalen im Rahmen des Entlastungspakets 27 (EP 27) entschieden ab.

Die geplante Kürzung würde zu einer Kostenverschiebung vom Bund zu den Kantonen, Gemeinden und Städten führen, welche einem Bruch mit der Integrationsagenda gleichkäme. Zusätzlich dürfte die Kürzung der Pauschalen zu einem Leistungsabbau in der Asylsozialhilfe führen, was angesichts der bereits jetzt unter dem Existenzminimum liegenden Ansätze nicht hingenommen werden kann.

AsyLex befürwortet eine rasche Integration von Geflüchteten in den Arbeitsmarkt. Es scheint jedoch unrealistisch, dass innerhalb von drei Jahren ab Einreichen des Asylgesuchs eine nachhaltige Erwerbsintegration erreicht werden kann. Ein derartiger Zeitdruck erweist sich vielmehr als kontraproduktiv: Geflüchtete würden mangels ausreichender Sprach- und Fachkenntnisse in prekäre Arbeitsverhältnisse im

[1] Eidgenössisches Finanzdepartement 29.1.2025: Entlastungspaket 2027 für den Bundeshaushalt. Erläuternder Bericht zur Eröffnung des Vernehmlassungsverfahrens, S. 8 (nachfolgend: Erläuternder Bericht).

Niedriglohnbereich gedrängt, aus denen ein beruflicher Aufstieg kaum möglich ist. Die Folge ist eine langfristige Abhängigkeit von staatlicher Unterstützung. Aus fiskalischer wie integrationspolitischer Sicht ist eine nachhaltige Arbeitsmarktintegration wesentlich zielführender – sie gelingt dann, wenn Geflüchtete auf sprachlicher und beruflicher Ebene – etwa durch eine Berufslehre – gezielt und ausreichend vorbereitet werden.

3. Das bisherige Abgeltungssystem

Die Betreuung und Unterstützung von Flüchtlingen, vorläufig Aufgenommenen, anerkannten Schutzsuchenden, Staatenlosen und Asylsuchenden ist eine Verbundaufgabe. Durch die vorgesehene Verkürzung der Geltungsdauer der Globalpauschalen nimmt der Bund eine einseitige Systemänderung vor, welche voraussichtlich zu einer Mehrbelastung der Kantone, Gemeinden und Städten führen wird.

Der Bund finanziert über Globalpauschalen die Kosten, welche den Kantonen im Asyl- und Flüchtlingsbereich für Sozialhilfeleistungen entstehen. Diese monatlichen Pauschalen, die im schweizerischen Durchschnitt rund CHF 1’500 betragen, sind zweckgebunden (Art. 88 Abs. 3 AsylG). Für Asylsuchende, vorläufig Aufgenommene und schutzbedürftige Personen ohne Aufenthaltsbewilligung werden zusätzlich auch die Kosten der medizinischen Grundversorgung übernommen (Art. 88 Abs. 2 AsylG). Die Dauer, in welcher die Pauschalen ausbezahlt werden, ist gesetzlich geregelt und variiert je nach Aufenthaltsstatus:

- max. 7 Jahre nach Einreise bei vorläufig Aufgenommenen und Resettlement-Flüchtlingen (Art. 87 Abs. 3 AIG);
- max. 5 Jahre nach dem Asylgesuch für anerkannte Flüchtlinge und Staatenlose (Art. 88 Abs. 3 AsylG);
- max. 5 Jahre nach dem Gesuch um vorübergehenden Schutz – ggf. mit anschliessend halber Globalpauschale bei Vorliegen einer Aufenthaltsbewilligung (Art. 88 Abs. 3 AsylG);
- bis zur rechtskräftigen Entscheidung bei laufenden Asylverfahren (Art. 88 Abs. 2 AsylG).

Zusätzlich wird ein an die Erwerbsquote gekoppeltes Anreizsystem eingesetzt, das Fehlanreize bei der beruflichen Weiterbildung und Teilzeiterwerbstätigkeit vermeiden soll. So werden beispielsweise für erwerbstätige Personen über 25 Jahren mit sehr niedrigem Einkommen weiterhin Globalpauschalen ausbezahlt, während höhere Einkommen zu keinem Anspruch führen.

Im Kern dienen die Globalpauschalen primär dazu, die Vollzugsaufgaben der Kantone im Bereich der Sozialhilfe und Betreuung von Geflüchteten zu subventionieren, während eine steuerliche Steuerung der Integrationsförderung nicht der hauptsächliche Zweck dieser Pauschalen ist.

4. Vorgeschlagene Massnahme: Verkürzung der Geltungsdauer der Globalpauschalen

Es ist gemäss des Sparpakets vorgesehen, die maximale Geltungsdauer der Globalpauschalen für alle vorläufig Aufgenommenen, Flüchtlinge, Schutzbedürftige und Staatenlose auf vier Jahre zu senken. Hiermit soll gemäss des Erläuternden Berichts die Integration beschleunigt werden. Insbesondere die rasche berufliche Integration bei Personen im erwerbsfähigen Alter soll zu einer Ersparnis der Sozialhilfegelder führen . So sollen die genannten Personen bereits nach drei Jahren nach Einreichung des Asyl- bzw. Schutzgesuchs oder ihrer Einreise erwerbstätig sein oder bei Arbeitslosigkeit durch die Regelstrukturen betreut werden.[2] Diese Einsparung entspricht betragsmässig etwa 15% des gesamten Sparpakets.

5. Einordnung der vorgeschlagenen Massnahme

AsyLex begrüsst selbstredend das Ziel einer raschen Arbeitsmarktintegration, allerdings muss diese nachhaltig und zielführend sein. Aus nachfolgenden Gründen ist dies bei der hier vorgeschlagenen Massnahme nicht der Fall:

4.1 Herausforderungen bei der Umsetzung der geplanten Kürzungen

In erster Linie erscheint die vorgeschlagene Massnahme *nicht realistisch*. Es ist zu beachten, dass Geflüchtete sich nach ihrer Einreise zuerst für lange Zeit im laufenden Asylverfahren befinden. So dauerte im Jahr 2023 das Asylverfahren (trotz des Anspruchs auf Beschleunigung) durchschnittlich 315 Tage.[3] In dieser Zeit befinden sich Asylsuchende in der Asylunterkunft, wo sie in der Regel kaum die Möglichkeit haben, die Sprache zu lernen oder sich sonst zu integrieren. Stattdessen sind sie in mehrheitlich abgelegenen Asylzentren wirtschaftlich und gesellschaftlich völlig isoliert. Die eigentliche Integration beginnt daher (wenn überhaupt) generell erst nach Gewährung des Aufenthaltsstatus, weswegen es gerade für Personen mit einem Status im Sinne des schweizerischen Asylgesetzes besonders schwierig sein wird, in nur drei Jahren eine Arbeitsstelle zu finden, mit welcher sie dauerhaft unabhängig von der Sozialhilfe sein werden. Viel eher scheint es wahrscheinlich, dass sie tief bezahlte Stellen oder Teilzeitstellen annehmen, wodurch sie dann aber längere Zeit trotzdem noch von der Sozialhilfe unterstützt werden müssten. Dies zeigen insbesondere auch die ersten Ergebnisse der Integrationsagenda Schweiz. Diese zielt darauf ab, bereits bestehende

[2] Erläuternder Bericht, S. 49.

[3] Staatssekretariat für Migration 2024: Monitoring Asylsystem. Bericht 2023. Bericht der AG Monitoring Asylsystem zuhanden von EJPD.KKJPD und SODK. S. 5, besucht am 23.04.2025.
Monitoring Integrationsförderung: Ausbildungssituation junger vorläufig Aufgenommener und anerkannter Flüchtlinge, besucht am 21.03.2025.

kantonale Integrationsprogramme zu intensivieren. Es soll eine möglichst schnelle und gleichzeitig aber auch eine möglichst nachhaltige Integration ermöglicht werden.[4] Um dieses Ziel zu erreichen, haben Kantone, Gemeinden und der Bund fünf Wirkungsziele definiert. Die Zielvorgaben zur Erwerbstätigkeit wurden knapp erreicht, wobei aber eine gesamthafte Reevaluation noch aussteht. Vor diesem Hintergrund scheint es nicht realistisch, dieses Ziel in drei Jahren zu erreichen.

Ähnliches gilt auch bei Jugendlichen und jungen Erwachsenen, welche sich ebenfalls bereits nach drei Jahren in einer Ausbildung befinden bzw. diese sogar schon abgeschlossen haben müssten. Jugendliche und junge Erwachsene haben bei Ankunft in der Schweiz oftmals erheblichen Nachholbedarf, bevor sie sich überhaupt an eine weitergehende Berufsausbildung heranwagen können. 5 Jahre nach der Einreise hatten 52% eine postobligatorische Ausbildung absolviert oder waren dabei eine solche zu absolvieren. Dies weist darauf hin, dass nach drei Jahren dieses Ziel kaum erreicht werden kann.[5]

4.2 Negative Konsequenzen der früheren Arbeitsintegration

Aus Sicht von AsyLex erweist sich diese Massnahme als wenig zielführend und realitätsfern. Zwar ist sie auf Bundesebene als Sparvorgabe konzipiert, tatsächlich würde sie jedoch lediglich dazu führen, dass die finanziellen Belastungen auf die Kantone, Städte und Gemeinden abgewälzt werden. Vier Jahre nach der Einreise sind nur etwa 30 bis 35 Prozent der vorläufig Aufgenommenen und anerkannten Flüchtlinge erwerbstätig – viele davon bleiben trotz Arbeitsaufnahme aufgrund niedrigqualifizierter Beschäftigungen weiterhin finanziell abhängig.[6] Grund dafür sind schlechte Bezahlung, Schichtarbeit oder Teilzeitarbeit, sowie beschränkte Aufstiegsmöglichkeiten und eine geringe Arbeitssicherheit. Bei Verlust der Arbeitsstelle besteht sodann stets das Risiko, arbeitslos zu bleiben, gerade bei Personen ohne beruflichen Abschluss.[7] Auch die bisherigen Erfahrungen, beispielsweise bei Personen mit Schutzstatus S, zeigen, dass eine deutliche Steigerung der Erwerbsquote in kurzer Zeit kaum realisierbar ist. Folglich würden die Sozialhilfekosten nicht mehr primär auf Bundesebene, sondern fortan überwiegend auf den unteren Staatsebenen anfallen. Dies könnte bedeuten, dass bei unverändertem Integrationsfortschritt in den Jahren 2027 und 2028 die Kantone, Städte und Gemeinden zusätzlich Einsparungen in Höhe von bis zu einer Milliarde Franken kompensieren müssen.

Diese Kostenverlagerung birgt zudem signifikante gesellschaftliche Risiken. Zwar ist in den vergangenen Jahren insbesondere bei Risikogruppen und im Asyl- und

[4] Staatssekretariat für Migration: Faktenblatt Integrationsagenda, besucht am 23.04.2025.

[5] Monitoring Integrationsförderung: Ausbildungssituation junger vorläufig Aufgenommener und anerkannter Flüchtlinge, besucht am 21.3.2025.

[6] Monitoring Integrationsförderung, Erwerbssituation von vorläufig Aufgenommenen und Flüchtlingen, besucht am 10.3.2025. Die Varianz ergibt sich aus den unterschiedlichen Einreisejahren der abgebildeten Gruppen.

[7] Robert Fluder et.al. 2017: Berufliche Integration von arbeitslosen Personen Schlussbericht zuhanden des SECO. S. IV.

Flüchtlingsbereich ein Rückgang der Sozialhilfequote zu verzeichnen,[8] jedoch wird die verkürzte Bezugsdauer der Bundesabgeltungen voraussichtlich zu einem deutlichen Anstieg der Sozialhilfekosten auf kantonaler und kommunaler Ebene führen. Ein solcher sprunghafter Kostenanstieg könnte den politischen Druck verstärken, die Leistungen in der Asylsozialhilfe weiter zu reduzieren – ein Bereich, in dem die aktuellen Ansätze je nach Region bereits zwischen 20 und 70 Prozent unter den von der Schweizerischen Konferenz für Sozialhilfe definierten Existenzminimum liegen.[9] Gemäss Berechnungen der SKOS 2016 waren fast die Hälfte aller Vollzeit. Erwerbstätigen vorläufig Aufgenommenen und Flüchtlingen weiterhin auf Sozialhilfe angewiesen und gehörten zu den «working poor».[10] Selbst acht Jahre später sind immer noch ein Fünftel der 2016 eingereisten Asylsuchenden zwar erwerbstätig, aber trotzdem noch auf die Sozialhilfe angewiesen.[11] Insbesondere Familien mit Kindern wären dadurch gefährdet, da bereits die regulären Sozialhilfemassnahmen häufig nicht ausreichen, um den besonderen Bedürfnissen von Kindern und Jugendlichen gerecht zu werden. Schätzungsweise rund 35'000 Kinder in der Asylsozialhilfe könnten durch ein Leben unter dem Existenzminimum und eingeschränkte gesellschaftliche Teilhabe langfristig in ihrer Entwicklung und Zukunftsperspektive erheblich beeinträchtigt werden.[12]

Nicht zuletzt würde die Verkürzung auch der Integrationsagenda Schweiz widersprechen. Hierin wurde festgehalten, dass spätestens sieben Jahre nach Einreise aller erwachsenen vorläufig Aufgenommen und anerkannten Flüchtlingen eine nachhaltige Integration in den Arbeitsmarkt stattfinden soll. Eine abschliessende Evaluation ist hierzu zwar noch nicht möglich, jedoch zeigen sich erste positive Tendenzen, weswegen es schade wäre, die langwierig erarbeiteten Grundprinzipien der Integrationsagenda bereits wieder in die entgegengesetzte Richtung abzuändern. Dies gilt insbesondere, da die geplanten Änderungen basierend auf den initialen Erkenntnissen nicht nachhaltig umgesetzt werden können.

3. Alternativen zur vorgeschlagenen Massnahme

Wie bereits mehrfach erwähnt, dürfte das Ziel einer raschen und nachhaltigen Integration von Geflüchteten in den Arbeitsmarkt breit geteilt sein. Auch die damit verbundenen positiven fiskalischen Effekte stehen ausser Frage. Aus unserer Sicht ist dieses Ziel jedoch mit anderen, gezielteren Massnahmen deutlich wirksamer und gleichzeitig menschenrechtskonform zu erreichen, insbesondere durch:

[8] Medienmitteilung des Bundesamts für Statistik vom 16.12.2024: Sozialhilfequote sinkt 2023 erneut und liegt neu bei 2,8%, besucht am 26.3.2025.

[9] Schweizerische Konferenz für Sozialhilfe 2023: Der Grundbedarf für den Lebensunterhalt in der Asylsozialhilfe. S.3.

[10] Schweizerische Konferenz für Sozialhilfe (SKOS) 2016: SKOS-Factsheet. Berufliche Integration von Flüchtlingen und vorläufig Aufgenommenen. S.2.

[11] Medienmitteilung des Bundesamtes für Statistik vom 16.12.2024: Sozialhilfequote sinkt 2023 erneut und liegt neu bei 2,8%, besucht am 26.3.2025.

[12] Büro BASS 2024: Die materielle Situation von Kindern und Jugendlichen in der Sozialhilfe. Schlussbericht. S.62.

- **Berücksichtigung der Sprachkenntnisse bei der Kantonszuteilung**, um sprachliche Hürden bei der Arbeitsintegration auf das Minimum zu reduzieren;

- **Abbau administrativer Hürden**: Vereinfachung der Bewilligungs- und Meldeverfahren und Vereinfachung der Anerkennung ausländischer Ausbildungen und Zertifikate;

- **Unterstützung von Arbeitgebenden**, etwa durch niederschwellige Anlaufstellen, Abschaffung der Quellenbesteuerung, längerfristige Planungssicherheit (insbesondere bei Status S);

- **Überarbeitung des Status der vorläufigen Aufnahme**: Eine neue Bezeichnung (Abkehr vom irreführenden “vorläufig”) und mehr Mobilität zwischen Kantonen und Sprachregionen würden den Einstieg in den Arbeitsmarkt vereinfachen.

4. Fazit

Die vorgeschlagene Massnahme der Kürzung der Globalpauschalen führt in erster Linie zu einer Verschiebung der Ausgaben vom Bund auf die Kantone, netto ist jedoch gesamtschweizerisch keine langfristige Kosteneinsparung zu erwarten. Im Gegenteil dürften derartige Kürzungen unter Umständen gar einen gegenteiligen Effekt zur Folge haben, indem die langfristige Arbeitsmarktintegration durch den kurzfristigen Druck erschwert wird. Anstelle einer Kostenverschiebung auf Kantone und Gemeinden bzw. auf einen späteren Zeitpunkt seien stattdessen zielführende Massnahmen, insbesondere im Bereich des Bürokratieabbaus, zu ergreifen, welche bestehende Hürden der Arbeitsmarktintegration abbauen und so tatsächlich und nachhaltig zu einer Reduktion der Abhängigkeit von staatlichen Leistungen durch geflüchtete Personen führen werden.

Call for inputs: Global Trends and Developments on Torture

Input by AsyLex regarding Switzerland

Date: 9 May 2025

Contact: international@asylex.ch

A. About the Commenting Organisation

AsyLex is an independent Swiss NGO offering free online legal support to asylum seekers and refugees. Since 2017, we have supported over 14'000 individuals in navigating the Swiss asylum system, regardless of their background.
Our office team of 14 coordinates around 150 trained volunteers provide assistance in areas such as family reunification, detention, criminal law, social assistance and international litigation.
Through its Rights in Exile platform, AsyLex also serves displaced persons globally by offering access to legal information, local legal practitioners, and a space for collaborative knowledge exchange. Internationally, AsyLex represents individuals before UN human rights bodies, including the CAT, CRC, CERD, CED and CEDAW.

We thank the Special Rapporteur on Torture for the opportunity to contribute to the upcoming report to the 80th UN General Assembly. Our submission addresses migration and asylum, particularly protection from refoulement and administrative detention, based on concerns identified through our legal representation of asylum seekers and refugees in Switzerland.

B. Responses to the Special Rapporteur's Questions

1. Migration-asylum and protection from refoulement - Challenges observed in the daily practice

Switzerland must uphold international and domestic obligations to prohibit torture and uphold the principle of non-refoulement. Article 25(3) of the Swiss Federal Constitution[1] explicitly prohibits refoulement to a country where a person is at risk of torture or other cruel, inhuman, or degrading treatment or punishment (CIDTP). Provisions in the Swiss Asylum Act further reinforce this protection, including Art. 5[2] and the Foreign Nationals and Integration Act, Art. 83[3].

Despite legal guarantees, AsyLex's daily work reveals that Switzerland often lacks thorough implementation when assessing whether a forced removal to a Dublin State, a "safe third

[1] See: https://www.fedlex.admin.ch/eli/cc/1999/404/en#art_25
[2] See: https://www.fedlex.admin.ch/eli/cc/1999/358/en#art_5
[3] See: https://www.fedlex.admin.ch/eli/cc/2007/758/en#art_83

country" or even countries of origin might violate Art. 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which prohibits the refoulement of people.

1.1 Faulty Reliance on Theoretical Legal Obligations of State of Return

AsyLex observes that Switzerland often relies on the theoretical legal obligations of receiving countries rather than examining the factual conditions on the ground before enforcing deportations. This practice is particularly evident in the management of returns to the Dublin States or "safe-third countries[4]".
In the case of Croatia, for instance, authorities often disregard credible reports and legal precedents indicating serious human rights concerns—such as the 2022 report by the Council of Europe's Committee for the Prevention of Torture (CPT)[5], which documents widespread police violence, substandard detention conditions, and inadequate medical care. AsyLex has represented vulnerable individuals who suffered serious harm in Croatia, including ill-treatment by law enforcement and degrading detention. Many suffer long-term trauma and health issues, making forced returns particularly alarming.

This lack of evidence-based, individual assessment raises serious concerns about Switzerland's compliance with its international human rights obligations.

AsyLex has also documented troubling deportation practices to countries of origin, such as Eritrea. Since 2021, the Committee against Torture (CAT)[6] has repeatedly found Switzerland in violation of Article 3 of the Convention by permitting removals to Eritrea. Despite these warnings, Swiss courts continue to rely on outdated case law, like the 2018 precedent set by the Federal Administrative Court—which states that "(re)assignment to military service does not in itself render deportation 'unreasonable[7] " - issued prior to the CAT's more recent conclusions. However, this severely contradicts independent evidence, showing Eritrean service involves forced labour and arbitrary punishment, with no legal alternative to conscription[8].

These cases illustrate Switzerland's broader failure to account for real-world conditions, risking violations of the non-refoulement principle.

[4] See: https://www.fedlex.admin.ch/eli/cc/1999/358/en#art_31_a and See: https://www.fedlex.admin.ch/eli/cc/1999/359/fr#annex_2/lvl_u1
[5] European Committee for the Prevention of Torture and inhumane or degrading treatment or Punishment, Report to the Croatian 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 19 to 29 September 2022, available at: https://rm.coe.int/1680ad6168.
[6] See for instance: CAT/C/76/D/983/2020 of 18 July 2023; CAT/C/74/D/887/2018 of 22 July 2022; CAT/C/73/D/872/2018 of 28 April 2022; CAT/C/73/D/914/2019 of 28 April 2022; CAT/C/72/D/916/2019 of 12 November 2021; CAT/C/71/D/900/2018 of 27 July 2021.
[7] See: FAC E-5022/2017, § 6.2.5, available at: https://bvger.weblaw.ch/pdf/E-5022-2017_2018-07-10_41ada7f7-b1d2-4267-bd84-cb2721c8a74b.pdf
[8] See e.g. https://www.ohchr.org/en/documents/country-reports/ahrc5624-situation-human-rights-eritrea-report-special-rapporteur and Palacios-Arapiles, S. (2023). Enslaved by their Own Government: Indefinite National Service in Eritrea. In: Van Reisen, M., Mawere M., Smits, K., & Wirtz, M. (eds), Enslaved Trapped and Trafficked in Digital Black Holes: Human Trafficking Trajectories to Libya. Bamenda, Cameroon: Langaa RPCIG, pp. 195-254.

1.2. Lack of Individualised Assessment

AsyLex regularly observes that Swiss authorities neglect case-specific assessments, often overlooking health conditions that place vulnerable individuals—such as families, single mothers, or torture survivors—at heightened risk of non-refoulement violations. The UN Human Rights Committee has echoed these concerns, notably in the case of Joseph Ndukaku Chiakwa, who died during deportation after Swiss authorities failed to account for his serious health conditions.[9]
The Committee also criticised Switzerland for not fully recognising expert reports based on the Istanbul Protocol, which documents torture and ill-treatment[10]. To date, Swiss authorities rarely fund such assessments, often disregarding medical reports. The Federal Administrative Court continues to treat these reports as optional and insufficient on their own, undermining the credibility of torture claims and weakening protection against forced returns[11].

AsyLex frequently represents clients with severe physical and mental health conditions, including PTSD and suicidal ideation. Even when such conditions are thoroughly documented, the SEM routinely disregards the Istanbul Protocol. AsyLex regularly encounters cases where individuals are deported directly from hospitals. A recent example involved the deportation of a gravely ill child who was removed straight from a hospital while undergoing treatment for chronic sickle cell anemia, highlighting ongoing failures to draw lessons from the tragic case of Joseph Ndukaku Chiakwa[12]. Staff at the St. Gallen Children's Hospital later confirmed they had not been informed of the child's sudden transfer to Croatia[13].

1.3 Limited Access to Adequate Legal Aid

Switzerland's asylum system presents serious barriers to justice, which leads to individuals being subjected to the risk of refoulement.

Since the introduction of Switzerland's accelerated asylum procedure in 2019, the lump-sum payment model for state-funded legal aid has discouraged lawyers from filing appeals after negative decisions.[14]. Consequently, many applicants face the critical 5–7 day appeal window without legal support and must rely on NGOs like AsyLex. Data from Pikett Asyl show that in the first half of 2024, over 60% of successful appeals in the Zurich region were filed by privately appointed lawyers or laypersons—not state-mandated representatives[15]—despite the legal requirement that the latter must only withdraw if no chance of success exists[16]. This disproportionately affects individuals in remote centres who lack timely access to alternative legal assistance, undermining the right to an effective remedy.

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[9] See e.g. UN Press Release, Committee against Torture concludes forty-fourth session, 14.05.2010, available at: https://www.ohchr.org/en/press-releases/2010/05/committee-against-torture-concludes-forty-fourth-session?LangID=F&NewsID=10046
[10] HRC, Concluding observations on the fourth periodic report of Switzerland, CCPR/C/CHE/CO/4, 22 August 2017, available at: https://digitallibrary.un.org/record/1312177?v=pdf
[11] See: FAC, D-1939/2022 and D-1947/2022 of 19 July 2022, available at: https://entscheide.weblaw.ch/cache.php?link=19-07-2022-d-1939-2022&sel_lang=de
[12] Blick, "Wie die Schweiz einen kranken Jungen ausschaffte", 8 February 2025, available at: https://www.blick.ch/politik/schaerfere-asylpolitik-wie-die-schweiz-einen-kranken-jungen-ausschaffte-id20571682.html and:https://www.blick.ch/fr/suisse/la-suisse-va-t-elle-laisser-mourir-cet-enfant-expulse-en-croatie-id20692374.html
[13] Ibid.
[14] See also: https://bündnis-rechtsarbeit-asyl.ch.
[15] Pikett Asyl. Fachbericht zur Arbeit der Leistungserbringer Rechtsschutz in den Bundesasylzentren. January 2025. p. 26.
[16] Asylum Act Art. 102h, available at: https://www.fedlex.admin.ch/eli/cc/1999/358/en#art_102_h.

1.3.1 Shrinking Operational Space of Pro Bono Legal Aid Providers

Organisations like AsyLex, which fill critical legal aid gaps for asylum seekers, increasingly face obstruction and criminalisation by authorities, including through Strategic Lawsuits Against Public Participation (SLAPP) lawsuits. Legal aid faces intimidation, harassment, and threats from authorities, including complaints to bar associations and personal sanctions—aimed at deterring advocacy, especially in sensitive cases like administrative detention.

Access to justice is further restricted by denying legal representatives' entry to asylum centres, despite legal guarantees under Article 102(f) of the Swiss Asylum Act[17]. These barriers hinder case preparation and legal guidance, limiting asylum seekers' ability to challenge official decisions.

Providing legal help to undocumented migrants is sometimes framed as "supporting illegal stay," exposing lawyers to prosecution. Even with clear evidence of violations, such as pushbacks or unlawful detention, judicial authorities often delay proceedings, showing little will to ensure accountability or fair treatment.

Inconsistent legal representation, regional disparities in aid, obstruction of advocates, and tight appeal deadlines collectively undermine Switzerland's obligation to ensure fair, equal protection under international law.

2. Challenges in the Context of Administrative Detention

2.1. Insufficient Consideration of Alternatives to Detention

Swiss law provides several alternatives to administrative detention, such as regular check-ins, providing adequate financial security, depositing travel documents, and geographical inclusion and exclusion mechanisms[18]. However, in practice, cantonal migration offices rarely assess whether such alternative measures could be applied. The CAT has also recommended Swiss authorities to restrict detention strictly to what is necessary and proportionate. The CAT additionally noted that detention should not be used to induce persons to take steps that would jeopardise their rights or interests. However, this is precisely what "detention for disobedience"[19] leads detainees to do, as it is intended to further pressure them to voluntarily return to their home country. Finally, the CAT has recommended that administrative detention should be ordered consistently across cantons to minimise arbitrary treatment[20], a step unfulfilled.

[17] Asylum Act, available at: https://www.fedlex.admin.ch/eli/cc/1999/358/en?msclkid=c7f287a9c7ae11ec84162511ff3b9165&print=true.
[18] See: Loi fédérale sur les étrangers et l'intégration, https://www.fedlex.admin.ch/eli/cc/2007/758/en?version=20230701, Art. 64e and 74
[19] Loi fédérale sur les étrangers et l'intégration, https://www.fedlex.admin.ch/eli/cc/2007/758/fr, Art. 78
[20] CAT, "Concluding observations on the eighth periodic report of Switzerland*", Published 28. July 2023, Accessed 01. November 2023, p. 07, Link: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FCHE%2FCO%2F8&Lang=en

2.2. Penal-Like Conditions of Administrative Detention in Switzerland

By law (Art. 81 FNIA), people in administrative detention must be held separately from criminal detainees, and detention conditions must reflect its non-punitive purpose[21].
In practice, limited facilities mean detainees are still occasionally held in pre-trial or criminal prisons. Even designated centres like the one in Zurich[22] or Basel[23] resemble penal institutions, with harsh conditions, limited outdoor access[24], and structural designs that exacerbate psychological stress. Numerous court rulings[25] have condemned these practices, demanding that administrative detention conditions be adapted to comply with both Swiss and European law. Yet, disparities remain.
Legal aid access is inconsistent and dependent on the canton, especially in early detention stages and remote centres—undermining detainees' ability to challenge their detention and access remedies.

2.3. Lacking Access to Sufficient Psychological Treatment

Detention centres often lack sufficient psychiatric care. Despite UNHCR recommendations [26], individuals with mental health issues are often placed in administrative detention rather than appropriate psychiatric care facilities. Psychiatric treatment, when available, typically involves medication rather than proper therapy.

Solitary confinement—commonly used after suicide attempts—is still applied under the guise of "protection," despite condemned by courts[27]. Recent incidents, such as a suicide at the administrative detention centre in Zurich in April 2025[28], underscores the system's ongoing failure. Psychiatric institutions often refuse detainees due to lack of records, strained resources, and staffing shortages, further impeding care.

[21] Loi fédérale sur les étrangers et l'intégration, https://www.fedlex.admin.ch/eli/cc/2007/758/fr, Art. 81
[22] See: https://www.zh.ch/de/direktion-der-justiz-und-des-innern/justizvollzug-wiedereingliederung/vollzugseinrichtungen-zuerich/zentrum-fuer-auslaenderrechtliche-administrativhaft.html
[23] See: https://www.bs.ch/jsd/bdm/justizvollzug/gefaengnis-baesslergut
[24] Hausordnung ZAA, 2022, Link: https://www.zh.ch/content/dam/zhweb/bilder-dokumente/organisation/direktion-der-justiz-und-des-innern/juwe/fhg/Hausordnung%20Flughafengef%C3%A4ngnis%20-%20Ausl%C3%A4nderrechtliche%20Administrativhaft.pdf
[25] See BGer 2C_765/2022 of 13. October 2022 and BGer 2C_781/2022 of 08. November 2022 and BGer 2C_278/2021 of 27. July 2021
[26] humanrights.ch, "Die ausländerrechtliche Administrativhaft – Kritik und Alternativen", Published 07. October 2020, Accessed 01. November 2023, Link: https://www.humanrights.ch/de/ipf/menschenrechte/migration-asyl/administrativhaft-kritik-alternativen; UNHRC, "Pacte international relatif aux droits civils et politiques", Published 22. August 2017, Accessed 01. November 2023, Link: https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsr2bAznTIrtkyo4FUNHETCRatPeVQaTXOzHQnnQpdO4U%2Fn4UKD5kngN2k%2FEUoIn6cA1unXLcg2EMLE%2BEAYnnWVHGPXw1x4EY74EDrcEAdtyT
[27] EUAA Report, 2023; AsyLex Submission to the Special Rapporteur on Torture, 2022
[28] https://www.zh.ch/de/news-uebersicht/medienmitteilungen/2025/05/eingewiesene-person-im-zentrum-fuer-auslaenderrechtliche-administrativhaft-tot-aufgefunden.html

3. Recommendations

We kindly request the Special Rapporteur on Torture to consider the following recommendations for his forthcoming report:

3.1. Protection from Refoulement

- Strengthen compliance with non-refoulement by conducting thorough, individualised assessments, focusing on medical and psychological vulnerabilities.
- End exclusive reliance on theoretical legal obligations when assessing return destinations.
- Prohibit deportations from medical or psychiatric facilities, ensuring respect for medical ethics and due process.
- Ensure comprehensive access to legal representation for all asylum-related matters.

3.2. Administrative Detention as a Last Resort

- Ensure administrative detention is used only as a last resort, prioritising alternatives to detention.
- Ensure full separation of administrative and criminal or pre-trial detention.
- Place individuals with mental health issues in psychiatric care facilities, not administrative detention.

OHCHR: Call for Inputs for Report on Right to Privacy in the Digital Age

Commentary by AsyLex Regarding Switzerland

Date: **28.05.2025**

Contact: **international@asylex.ch**

Word Count: **2461**

A. About the Commenting Organization

AsyLex is an independent Swiss NGO offering free online legal support to asylum seekers and refugees. Since 2017, it has supported over 15 '000 individuals in navigating the Swiss asylum system, regardless of origin, religion, gender, age, family situation, financial means or prospect of success.

Around 150 trained volunteers, coordinated by a core office team of 14, provide specialized assistance in areas such as family reunification, detention, criminal law, social assistance and international litigation. Through its Rights in Exile platform, AsyLex also serves displaced persons globally by offering access to legal information, local legal practitioners, and a space for collaborative knowledge exchange. Internationally, AsyLex represents individuals before UN human rights bodies including the CCPR, CRC, CERD, CAT, and CEDAW.

We welcome the Office of the High Commissioner for Human Rights' (OHCHR) call to receive relevant information for the preparation of its report on "The right to privacy in the digital age" in reference to resolution 54/21. We thank the OHCHR for the opportunity to contribute by sharing our practical experience and general concerns with breaches of the right to privacy of asylum seekers in Switzerland.

B. Overview

The rapid advancement of data collection and processing capabilities raises serious concerns regarding adherence to the right to privacy, which constitutes a fundamental right as guaranteed in a variety of human rights treaties. At international level, Art. 12 of the Universal Declaration of Human Rights (UDHR)[1] recognises privacy as a fundamental right, and Art. 17 of the International Covenant on Civil and Political Rights (ICCPR) states that "No one shall be subjected to arbitrary or unlawful interference with their privacy, home or correspondence."[2] General Comment No. 16 (1988) on Art. 17 ICCPR further urged States to establish national legislation prohibiting interference with the right to privacy.[3] At European level, fundamental rights with regards to data protection are safeguarded in Art.

[1] UN General Assembly, Universal Declaration of Human Rights, 217 A (III), 10 December 1948, https://www.un.org/en/about-us/universal-declaration-of-human-rights. [accessed 28 May 2025]
[2] UN General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights. [accessed 28 May 2025]
[3] UN Human Rights Committee (HRC), CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 8 April 1988, https://www.refworld.org/legal/general/hrc/1988/en/27539. [accessed 28 May 2025]

8 of the Charter of Fundamental Rights of the European Union (CFR)[4] and Art. 8 of the European Convention on Human Rights (ECHR).[5] Concrete principles for the collection of data are further enshrined in the General Data Protection Regulation (GDPR), which is the basis for the processing of personal data within the EU.[6]

While ensuring compliance of data collection with the right to privacy is a critical issue across all parts of today's digitized world, we would like to raise specific concerns regarding the disproportionate impact of data surveillance on asylum seekers.[7] On the one hand, there are significant differences in the extent of data collected and processed on asylum seekers in comparison to nationals, both at borders and throughout the national asylum proceeding. On the other hand, asylum seekers and refugees are especially prone to becoming victims of illegitimate data collection that would necessitate consent. Due to language barriers, oftentimes a lack of knowledge on their rights and the legal framework of the reception country, and fears of potential consequences on their asylum procedure in case of non-compliance with migration authorities and law enforcement, asylum seekers may share data without being aware about their right to deny consent or without understanding how the data will be used.

C. Responses to the Report's Questions

In the Swiss asylum context, two recent developments raise serious concerns about the compatibility of data collection and processing practices with fundamental rights; the expansion of EURODAC as part of the new EU Pact on Migration and Asylum[8], which constitutes a part of the Pact that will also take effect in Switzerland,[9] and a new asylum regulation at federal level. This report outlines how both new regulations have severe implications on the right to privacy as enshrined in international and regional human rights treaties.

1. Expansion of the The European Asylum Dactyloscopy Database (EURODAC): A threat to asylum-related data processing systems' compatibility with fundamental rights

EURODAC is used by EU Member States as well as the Schengen Area associated countries Iceland, Norway, Liechtenstein, and Switzerland for storing and circulating fingerprint data used to determine responsibility for international protection under the Dublin III Regulation[10]. Operational since 2003, EURODAC was reformed in 2013 under Regulation (EU) 603/2013[11], which set out the legal basis to

[4] European Union, Charter of Fundamental Rights of the European Union, 2012/C 326/02, 14 December 2007, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT. [accessed 28 May 2025]

[5] Council of Europe, European Convention on Human Rights, as amended by Protocols Nos. 11, 14 and 15, ETS No. 005, 4 November 1950, https://www.echr.coe.int/documents/d/echr/convention_ENG. [accessed 28 May 2025]

[6] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng. [accessed 28 May 2025]

[7] *UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, echoes the observation that people on the move are disproportionately affected by digitization: "although emerging digital technologies are now prevalent in the governance of all aspects of society, unique concerns exist in the border and immigration context (...)".* (Racial and xenophobic discrimination and the use of digital technologies in border and immigration enforcement" for the 48th session of the Human Rights Council. Art. 3a. https://www.ohchr.org/en/documents/thematic-reports/ahrc4876-racial-and-xenophobic-discrimination-and-use-digital. [accessed 27 May 2025])

[8] Website of the European Commission. "Pact on Migration and Asylum: A common EU system to manage migration", 21 May 2024. "https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en. [accessed 27 May 2025]

[9] *The new EU Asylum Pact consists of ten texts, five of which are partially or fully binding for Switzerland, including the new EURODAC Regulation.*

[10] European Union: Council of the European Union, Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), OJ L. 180/31-180/59; 29.6.2013, (EU)No 604/2013, 29 June 2013, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02013R0604-20130629. [accessed 27 May 2025]

[11] European Union: Council of the European Union, Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for

enable law enforcement and Europol to access the database. Under the 2013 regulation, it is also included that whoever refuses to have their fingerprints taken can, effectively, be forced to do so by means of coercion, including detention.[12]

As part of the new European Union Pact on Asylum and Migration, Regulation (EU) 603/2013 is being replaced by Regulation (EU) 2024/1358[13]. The reform of the legal framework aims for a massive expansion of data collected and stored: while the database currently only stores fingerprints and information on when and where the data has been recorded, the revision foresees the inclusion of facial images, names, previous names, birth dates, nationality, and travel document information. The Member State responsible for asylum seekers, any transfers, legally binding rejection decisions and applications rejected as inadmissible or unfounded are also recorded in the new database. Furthermore, *sans papiers* apprehended at national level, persons with temporary protection (status F in Switzerland) and resettlement refugees are now also fully recorded in EURODAC. For all groups of persons listed, the age limit for data storage will be lowered from 14 to 6 years. Moreover, where Regulation (EU) 603/2013 already laid out the legal basis to enable law enforcement and Europol to access the database – a decision taken without prior consent of persons whose data had been stored before the legislation came into force[14] –, access to EURODAC is now being extended for the benefit of migration and police authorities at all levels of government.[15] In addition, EURODAC will be closely linked to other EU-wide databases as part of 'interoperability' and access will be simplified, particularly for law enforcement authorities.

The purposes of the current EURODAC Regulation (EU) No 603/2013 are very narrowly defined. They are limited to determining the Member State responsible for examining an application for international protection lodged by a third-country national or stateless person in a Member State, and by certain authorities for the purposes of security and law enforcement. The revised EURODAC Regulation (EU) 2024/1358 greatly expands the legal purposes of the database and now lists ten new aspects for which data can be stored and used in EURODAC. The data collected in a database originally established to clarify the responsible member state for asylum applications will now not only be used for the determination of the responsible Member State, but extensively for migration control, to prevent secondary migration, to assist with returns and for criminal prosecution.

This expansion of use of the data collected, in combination with the interoperability of EURODAC with other Europe-wide databases, the storage of data not only on asylum seekers, but also on resettlement, 'illegal migration', temporary protection and more, and the opening up of the database to law enforcement is a highly alarming blending of purpose, that effectively turns the existing EURODAC system into an extensive monitoring instrument. The widely different purposes for which the data is utilized essentially means that **the new system fails to ensure that the collection of personal data follows a '*specified purpose*', a prerequisite for deference from the fundamental**

law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast), OJ L. 180/1-180/30; 29.6.2013, (EU)2003/86, 29 June 2013, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0603. [accessed 27 May 2025]

[12] European Union: Council of the European Union, Regulation (EU) No 603/2013, Article 8, Paragraph (3)(a). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0603. [accessed 27 May 2025]

[13] Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL_202401358. [accessed 27 May 2025]

[14] Kaurin. D. (May 2019). Data Protection and Digital Agency for Refugees – World Refugee Council Research Paper No. 12. *Centre for International Governance Innovation*. P. 12. https://www.cigionline.org/static/documents/documents/WRC%20Research%20Paper%20no.12.pdf. [accessed 27 May 2025]

[15] In the Swiss context, this concretely means allowing access for the State Secretariat for Migration and cantonal migration offices in matters relating to asylum and immigration law, and Fedpol, the Federal Intelligence Service, cantonal and municipal police forces for the purpose of criminal prosecution.

right to privacy, as stated amongst others in Paragraph 2 of Art. 8 of the CFR.[16] In addition to breaching fundamental rights, the broad utilization of the data gathered for different purposes and by different authorities also constitutes a violation of Art. 5, Paragraph b) of the GDPR, which states that personal data shall be "collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes."[17]

Furthermore, the greatly expanded catalog of purposes justifies neither the massive expansion of data collection and storage nor the greatly expanded use of data. In its General Comment No. 16, the Human Rights Committee emphasised that any interference with the right to privacy as enshrined in Art. 17 ICCPR must meet the criteria of legality, *necessity*, and *proportionality.*[18] Similarly, paragraph c) of Art. 5 GDPR demands that the collection of personal data is "adequate, relevant and *limited to what is necessary* in relation to the purposes for which they are processed."[19] Moreover, the GDPR stipulates the principle of 'storage limitation', which sets out that personal data collected must be kept "for no longer than is necessary for the purposes for which the personal data are processed."[20] Neither the allegedly more efficient functioning of the Dublin system nor the desire to "obtain a more comprehensive picture of the persons registered in the system"[21] justify the collection of highly sensitive biometric and personal data —including from minors as young as six—, making it available to numerous authorities throughout Europe, and storing it for up to ten years. This, even if the persons concerned have, for example, acquired a residence permit or have long since left the Schengen area. We thus maintain that **the extent of data collection, including on children as young as six years old, is neither proportional nor "limited to what is necessary"** and that **the duration of data storage is thus completely disproportionate**.

In sum, both in terms of internationally agreed upon fundamental rights as well as regional legislative frameworks, AsyLex is highly concerned with the reform of the EURODAC regulation: the kind of data stored, the duration of storage, and the various different purposes for which it is used show that the new regulation essentially legalizes disproportionate and misappropriated surveillance of people on the move.

2. Asylum Regulation 3 on the processing of personal data: infringement on and lack of safeguards to ensure consent

Art. 17 of the ICCPR is explicit in its guarantee of the right to be free from arbitrary or unlawful interference with one's privacy, family, home, and correspondence. In its General Comment No. 16, the Human Rights Committee emphasises that any interference with privacy must meet the criteria of

[16] *Paragraph 2 of Art. 8 of the European Union Charter of Fundamental Rights (CFR) sets out that personal data "must be processed fairly for specified purposes on the basis of consent of the person concerned or some other legitimate basis laid down by law*. (European Union, Charter of Fundamental Rights of the European Union, 2012/C 326/02, 14 December 2007, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT. [accessed 28 May 2025])

[17] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), Article 5, Paragraph b,)https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng. [accessed 28 May 2025]

[18] UN General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966, Art. 17, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights. [accessed 28 May 2025]

[19] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), Art. 5, Paragraph c), https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng. [accessed 28 May 2025]

[20] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), Art. 5, Paragraph e), https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng. [accessed 28 May 2025]

[21] Schweizerische Eidgenossenschaft, (14 August, 2024). Genehmigung und Umsetzung der Notenaustausche zwischen der Schweiz und der EU betreffend die Übernahme der Verordnungen (EU) 2024/1351, (EU) 2024/1359, (EU) 2024/1349, (EU) 2024/1358 und (EU) 2024/1356 (EU-Migrations- und Asylpakt), p. 119. https://www.newsd.admin.ch/newsd/message/attachments/88963.pdf. [accessed 28 May 2025]

legality, necessity, and proportionality, in accordance with the principles of the Covenant.[22] This protection is applicable to actions perpetrated by both state and non-state actors, necessitating the establishment of clear legal regulations governing the collection, storage, and dissemination of personal data. The confidentiality of communications, particularly those between legal counsel and their clients, must be protected to prevent misuse and uphold the rights of individuals.

In a landmark decision, Germany's highest administrative court found that the practice of searching asylum seekers' phones without sufficient suspicion violates fundamental rights and is therefore illegal and disproportionate.[23] Despite this ruling setting a strong precedent for the protection of privacy, recent legislative and regulatory developments in Switzerland raise significant concerns about the compatibility of national practices with the aforementioned obligations. As of April 2025, a new provision in the Asylum Act[24] authorises the Swiss Secretariat of Migration (SEM) to inspect and analyse data from the electronic devices of asylum seekers—such as mobile phones and laptops—where the identity, nationality, or travel route of an applicant cannot be established through other means.[25] Authorities from the SEM have been granted the right to extract and temporarily retain personal data, including but not limited to telephone numbers, messages, photographs, geographical location data, and social media profiles, for a period of up to one year.[26]

While the law provides that electronic devices may only be accessed when no other means of verification are available, and requires a proportionality assessment, it lacks concrete safeguards to ensure that consent is truly informed and voluntary.[27] In practice, asylum seekers may feel pressured to comply, fearing that refusal could delay or negatively impact their asylum claims. This power imbalance effectively undermines the voluntariness required for any legitimate restriction of privacy rights under Art. 17 of the ICCPR.

Moreover, the legal and regulatory framework is vague regarding the scope of data that may be extracted, how such data is processed, and who may access it. The absence of clear, binding safeguards creates a heightened risk of arbitrary interference with personal data. As emphasized by the Human Rights Committee, any collection of personal information must be clearly defined, strictly necessary, and proportionate to a legitimate aim.[28] The broad and insufficiently regulated powers currently granted to the SEM do not meet these standards.

A particularly concerning aspect is the potential infringement on attorney-client privilege. While Swiss law protects the confidentiality of legal communications, the existing framework offers no effective safeguards to prevent the SEM from accessing sensitive legal correspondence during device inspections. This poses a serious threat to the integrity of the asylum process and undermines trust in legal representation. In this matter, the European Court of Human Rights has repeatedly affirmed that lawyer-client communications enjoy enhanced protection under Art. 8 ECHR, which explicitly states

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[22] UN Human Rights Committee (HRC), CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 8 April 1988, https://www.refworld.org/legal/general/hrc/1988/en/27539. [accessed 28 May 2025]

[23] Bundesverwaltungsgericht Pressemitteilung Nr. 13/2023 vom 16.02.2023, *Voraussetzungen der Auswertung digitaler Datenträger durch das Bundesamt für Migration und Flüchtlinge im Asylverfahren*, available at: https://www.bverwg.de/pm/2023/13 [accessed 16 April 2025]

[24] Asylverordnung 3 über die Bearbeitung von Personendaten vom 1. Mai 2024, AS 2024 208 (SR 142.314). https://www.fedlex.admin.ch/eli/oc/2024/208/de. [accessed 28 May 2025]

[25] Mitteilung der Bundeskanzlei, *Auswertung elektronischer Datenträger von Asylsuchenden startet am 1. April*, 25.03.2025, available at: https://www.news.admin.ch/de/nsb?id=104629. [accessed 16 April 2025]

[26] Swissinfo, *How Switzerland and Europe use AI tech for migration control*, 04.02.2025, available at: https://www.swissinfo.ch/eng/foreign-affairs/how-switzerland-and-europe-use-ai-tech-for-migration-control/88822424#.

[27] Swissinfo, *Swiss government to use phone data to identify asylum seekers*, 02.05.2024, available at: https://www.swissinfo.ch/eng/swiss-politics/swiss-government-to-use-phone-data-to-identify-asylum-seekers/76827631. [accessed 16 April 2025]

[28] UN Human Rights Committee (HRC), CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 8 April 1988, https://www.refworld.org/legal/general/hrc/1988/en/27539. [accessed 28 May 2025]

that "everyone has the right to respect for (...) his correspondence.[29] In its case law, notably *Michaud v. France*, the Court stressed that any interference must be lawful, necessary and proportionate, and accompanied by adequate safeguards to prevent abuse. The lack of such safeguards in the current practice raises serious concerns about compatibility with these standards.[30]

Although this measure is presented as a way to accelerate asylum procedures, it raises serious concerns regarding fundamental rights, particularly the right to privacy under Article 17 of the ICCPR. The extensive and intrusive inspections of personal devices risk exposing sensitive information and violating the confidentiality of communications—especially between asylum seekers and their legal representatives. Such protections are essential to ensure a fair asylum process and the meaningful exercise of legal rights. Furthermore, the current approach lacks sufficient safeguards to ensure informed and voluntary consent, increasing the risk of coercion and arbitrary infringements on privacy.

D. Recommendations

In light of the above, we respectfully request that the following recommendations be considered in the OHCHR report:

1. New laws introduced which touch the right to privacy must generally ensure that data collection is necessary, delimited in purpose, proportional, and stored for a clearly justifiable duration only.
2. Data collected from asylum seekers must be used solely for a clearly defined purpose. Its use for purposes other than those originally stated — or for multiple purposes simultaneously — should be strictly avoided.
3. Legal protections that ensure compliance with fundamental rights must be strengthened, especially for persons in vulnerable positions such as asylum seekers.
4. Migration authorities and law enforcement must adequately and transparently inform asylum seekers on the purpose, proportionality and legality of data collection.
5. The confidentiality of legal communications must be upheld at all steps of the asylum procedure.
6. Authorities must recognize that asylum seekers are in particularly vulnerable situations and may be especially at risk of harm from data collection. Accordingly, all data collection practices and procedures affecting asylum seekers must be specifically adjusted to address and mitigate these risks.

[29] Council of Europe, European Convention on Human Rights, as amended by Protocols Nos. 11, 14 and 15, ETS No. 005, 4 November 1950, https://www.echr.coe.int/documents/d/echr/convention_ENG. [accessed 28 May 2025]

[30] ECtHR, Fiche thématique – Secret professionnel des avocats, available at: https://www.echr.coe.int/documents/d/echr/fs_legal_professional_privilege_fra#:~:text=%C2%AB%20%5BS%5Di%20l. [accessed 28 May 2025]

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Herr
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Eidgenössisches Justiz- und Polizeidepartement EJPD(per E-Mail)
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Zürich, 2. Juni 2025

Förderung der Erwerbstätigkeit von Personen mit Schutzstatus S und Zulassungserleichterungen für in der Schweiz ausgebildete Drittstaatsangehörige: Vernehmlassungsantwort

Sehr geehrter Herr Bundesrat Jans
Sehr geehrte Damen und Herren

Im Namen des Vereins AsyLex bedanken wir uns für die Gelegenheit zur Stellungnahme in oben erwähnter Sache. Nachfolgend finden Sie unsere Vernehmlassungsantwort zu den geplanten Gesetzesänderungen zur Förderung der Erwerbstätigkeit von Personen mit Schutzstatus S.

Mit vorzüglicher Hochachtung

Michel Brülhart, CEO AsyLex

1. Einleitung und Vorbemerkung

Gemäss dem erläuternden Bericht zur Eröffnung des Vernehmlassungsverfahrens vom 26. Februar 2025 will der Bundesrat die Erwerbstätigkeit von Schutzbedürftigen fördern und die Zulassung zum Arbeitsmarkt für in der Schweiz ausgebildete Drittstaatsangehörige erleichtern. Mit dem vorliegenden Entwurf zur Änderung des Ausländer- und Integrationsgesetzes, des Asylgesetzes, der Verordnung über Zulassung, Aufenthalt und Erwerbstätigkeit sowie der Verordnung über die Integration von Ausländerinnen und Ausländern sollen Bestimmungen über die Erwerbstätigkeit von Drittstaatsangehörigen geändert werden. Dazu soll eine Meldepflicht bei der öffentlichen Arbeitsvermittlung eingeführt, ein Anspruch auf Kantonswechsel für erwerbstätige Schutzbedürftige geschaffen, die Bewilligungspflicht für eine Erwerbstätigkeit für Personen mit Schutzstatus S in eine Meldepflicht umgewandelt und die Teilnahmepflicht an Massnahmen mit dem Ziel der beruflichen Ein- oder Wiedereingliederung auch auf schutzbedürftige Personen ausgeweitet werden. Zudem soll der Rückweisungsbeschluss zum Geschäft 22.067 des Bundesrates umgesetzt werden, welches darauf abzielt, in der Schweiz ausgebildeten Ausländerinnen und Ausländern den Zugang zum Arbeitsmarkt zu erleichtern. Im Übrigen soll neu die Verlängerbarkeit der kantonalen Integrationsprogramme vorgesehen werden. AsyLex äusserst sich in der Folge ausschliesslich zu den Massnahmen betreffend Schutzbedürftige und stützt sich dabei grundsätzlich auf die Position der Schweizerischen Flüchtlingshilfe (SFH).

2. Das Wichtigste in Kürze

AsyLex begrüsst grundsätzlich die Erleichterung und Förderungen der Arbeitsmarktintegration von Personen mit Schutzstatus S durch die vorgesehenen Gesetzesänderungen. Allerdings erachtet AsyLex einzelne Elemente der Vorlage als zu einschränkend, um die angestrebte Wirkung vollumfänglich zu erreichen. Zusammenfassend vertritt AsyLex folgende Standpunkte

Eine Melde- anstatt einer Bewilligung stärkt den Arbeitsmarktzugang
AsyLex unterstützt die Umwandlung der Erwerbsbewilligung in eine Meldepflicht für Personen mit Schutzstatus S. Das reduziert administrative Hürden, erleichtert die Anstellung und schafft Gleichbehandlung mit anderen Schutzgruppen.

Der Zugang zum RAV muss wirksam gestaltet werden
Die neue Meldepflicht arbeitsloser Schutzsuchender beim RAV ist ein überfälliger Schritt. Entscheidend für den Erfolg sind jedoch klare Zuständigkeiten, geschultes Fachpersonal und kantonsübergreifende Zusammenarbeit – sonst bleibt die Massnahme wirkungslos.

Der erleichterte Kantonswechsel ist zu begrüssen, braucht aber realistische Kriterien
Der Anspruch auf Kantonswechsel für erwerbstätige Personen mit Schutzstatus S wird begrüsst. Die Voraussetzungen (z. B. vollständige Sozialhilfeunabhängigkeit, 90-Minuten-Arbeitsweg) sind jedoch zu restriktiv und behindern eine nachhaltige Integration – insbesondere für betreuungspflichtige Personen.

Integrationsmassnahmen müssen freiwillig und bedarfsorientiert sein
Verpflichtende Teilnahmen an Integrationsprogrammen ohne Berücksichtigung individueller Lebensumstände – wie Kinderbetreuung – sind problematisch. Sanktionen wie Sozialhilfekürzungen gefährden die soziale Integration und wirken oft kontraproduktiv. Freiwilligkeit und Unterstützung wirken nachhaltiger.

3. Meldung von stellenlosen Personen mit Schutzstatus S bei der öAV (Art.53 Abs. 5 VE-AIG)

AsyLex begrüsst die geplante Anpassung des Meldeverfahrens ausdrücklich. Die vorgesehene Erweiterung der bestehenden Regelung – wonach kantonale Sozialhilfebehörden künftig auch stellenlose Personen mit Schutzstatus S an die öffentliche Arbeitsvermittlung melden sollen – ist ein wichtiger Schritt. Sie schafft eine formale Gleichstellung mit anerkannten Flüchtlingen und vorläufig aufgenommenen Personen und ermöglicht dieser Personengruppe einen systematischen Zugang zu den Dienstleistungen des RAV.

Aus unserer Sicht kommt dies einem längst überfälligen Schritt gleich: Viele Schutzsuchende mit Status S möchten arbeiten. In unserer Beratung erleben wir jedoch regelmässig, dass der Zugang zum Arbeitsmarkt an strukturellen Hürden scheitert. Zwar bringen zahlreiche Betroffene Sprachkenntnisse und berufliche Vorerfahrung mit, doch fehlt es oft an Orientierung im Schweizer Arbeits- und Sozialsystem, an stabilen Netzwerken und an institutioneller Unterstützung. Das betrifft insbesondere auch die

Zusammenarbeit mit dem RAV, die in vielen Kantonen erst mit zeitlicher Verzögerung ansetzt – etwa nach Erreichen eines bestimmten Sprachniveaus – und für viele Betroffene nicht ohne weiteres verständlich oder zugänglich ist.[1]

Der Erfolg der geplanten Meldepflicht wird jedoch entscheidend davon abhängen, wie sie in der Praxis umgesetzt wird. Ohne klare Schnittstellen, ausreichend geschultes Personal und eine koordinierte Weiterbearbeitung der gemeldeten Fälle droht die Massnahme zur administrativen Leerformel zu werden.[2] Integration funktioniert nicht durch Datenweitergabe allein, sondern durch Verantwortung – und zwar auf Seiten aller beteiligten Institutionen. Die öffentliche Arbeitsvermittlung darf nicht isoliert agieren; sie muss Teil eines integrierten Prozesses sein, in dem Begleitung, Information und realistische Erwartungen zusammenspielen.

Ein zentrales Element für das Gelingen der Massnahme ist die personelle Ausstattung der RAV. Aus unserer Sicht reicht es nicht aus, Schutzsuchende formell an die Arbeitsvermittlung weiterzuleiten – es braucht auch Fachpersonen, die im Umgang mit geflüchteten Personen geschult und für deren spezifische Ausgangslagen sensibilisiert sind. Die Anforderungen an Orientierung, Kommunikation und Erwartungsmanagement unterscheiden sich deutlich von denen anderer stellensuchender Personen. Ohne entsprechende Qualifikation auf Seiten des RAV besteht das Risiko, dass die Integrationsförderung ins Leere läuft oder sogar zu Frustration auf beiden Seiten führt. Damit die neue Regelung nicht nur administrativ, sondern auch menschlich wirksam wird, sind gezielte Schulungen und personelle Ressourcenanpassungen zwingend notwendig.[3]

Herausfordernd gestaltet sich insbesondere die Situation in jenen sieben Kantonen, in denen bislang keine systematische Zusammenarbeit mit den RAV besteht.[4] Wie die neue Pflicht dort umgesetzt werden soll, ist noch nicht ersichtlich – ebenso, ob unter diesen Voraussetzungen überhaupt von einer einheitlichen, schweizweiten Anwendung gesprochen werden kann. Wenn der Zugang zu arbeitsmarktlicher Unterstützung vom Wohnkanton abhängt, gefährdet das nicht nur die Chancengleichheit, sondern auch die Legitimität des gesamten Integrationsansatzes. Als digital arbeitende NGO mit schweizweiter Perspektive erleben wir täglich, wie gross regionale Unterschiede ausfallen können – und wie dringend nötig ein Rechtsrahmen ist, der diese Unterschiede nicht reproduziert, sondern strukturell ausgleicht.[5]

Über die inhaltliche und strukturelle Umsetzung hinaus möchten wir zudem auf einen weiteren Aspekt hinweisen, der für die Realisierbarkeit nicht unerheblich ist: die personellen und finanziellen Rahmenbedingungen. Obwohl der Bundesrat von geringen Auswirkungen spricht, wird gleichzeitig eingeräumt, dass Mehrkosten bei der

[1] Denise Efionay-Mäder et al. (2025): «Berufsintegration geflüchteter Frauen aus der Ukraine»; SEM (2024): Programm S – Fachbericht 2024;OECD (2016): Making Integration Work: Refugees and others in need of protection.

[2] OECD (2016): Making Integration Work: Refugees and others in need of protection; Denise Efionay-Mäder et al. (2025): «Berufsintegration geflüchteter Frauen aus der Ukraine»; SEM (2024): Programm S – Fachbericht 2024.

[3] Denise Efionay-Mäder et al. (2025): «Berufsintegration geflüchteter Frauen aus der Ukraine»; OECD (2016): Making Integration Work: Refugees and others in need of protection.

[4] Denise Efionay-Mäder et al. (2025): «Berufsintegration geflüchteter Frauen aus der Ukraine».

[5] Denise Efionay-Mäder et al. (2025): «Berufsintegration geflüchteter Frauen aus der Ukraine».

Arbeitslosenversicherung entstehen könnten – ohne jedoch eine konkrete Schätzung vorzulegen.[6] Angesichts der Zahl an Personen mit Schutzstatus S und der bis mindestens 2026 geltenden Schutzregelung wäre eine grobe Orientierung zu den finanziellen Implikationen hilfreich für die politische und gesellschaftliche Einordnung.[7] Damit das RAV seiner integrationsfördernden Rolle gerecht werden kann, braucht es ausreichend geschultes und sensibilisiertes Fachpersonal, was personelle Ressourcenveränderung braucht.[8] Auch dieser Aspekt sollte in die Planung und Kommunikation mit einbezogen werden.

Damit die Meldepflicht ihr Potenzial entfalten kann, braucht es deshalb mehr als eine gesetzliche Grundlage: Es braucht tragfähige Kooperationsstrukturen, qualifizierte Fachpersonen und einen verbindlichen politischen Willen, Integration als gemeinsame Aufgabe zu verstehen – nicht als verwaltungstechnischen Vorgang. Nur unter diesen Bedingungen kann das Ziel einer fairen, wirksamen und menschenrechtskonformen Arbeitsmarktintegration für Personen mit Schutzstatus S tatsächlich erreicht werden.

4. Kantonswechsel von Personen mit Schutzstatus S (Art. 75a VE-AsylG)

Die Erleichterung des Kantonswechsels für erwerbstätige Schutzsuchende mit Status S wird von AsyLex generell begrüsst. Die entsprechenden Voraussetzungen erachtet AsyLex jedoch weiterhin als zu streng und wenig wirksam.

Zuerst gilt es zu beachten, dass eine langfristige Unabhängigkeit von der Sozialhilfe meist eine mehrjährige Phase der Qualifizierung und Berufserfahrung in der Schweiz erfordert.[9] Betrachtet man lediglich Personen mit Schutzstatus S, die seit etwa zwei Jahren in der Schweiz leben, zeigt sich, dass die Erwerbsquote unter Personen mit Schutzstatus S deutlich höher ist als im Durchschnitt.[10] Zunächst ist zu berücksichtigen, dass die Mehrheit der Personen mit Schutzstatus S Frauen sind (62 %),[11] von denen viele auf eine geeignete Kinderbetreuung angewiesen sind. Strukturelle Faktoren, die insbesondere Frauen stark betreffen, wie fehlende oder unzureichende Kinderbetreuungsangebote sowie ein eingeschränkter Zugang zu bestimmten Arbeitsbereichen, wirken sich daher besonders negativ auf die Erwerbstätigkeit dieser Personengruppe aus.[12] Diese Faktoren spiegeln sich in der Erwerbsquote als auch in den niedrigen Durchschnittslöhnen von Personen

[6] EJPD (2024): Vernehmlassungsunterlagen zur Änderung des AIG und der VIntA.

[7] SEM (2025): «Asylstatistik 2024».

[8] SEM (2024): Programm S – Fachbericht 2024.

[9] Berner Fachhochschule (2018): «Nachhaltige Ablösungen in der Sozialhilfe».

[10] SFH (2025): «Erwerbsintegration von Geflüchteten aus der Ukraine erzielt Fortschritte».

[11] SEM (2025): «Asylstatistik 2024».

[12] Denise Efionay-Mäder et al. (2025): «Berufsintegration geflüchteter Frauen aus der Ukraine».

mit Schutzstatus S - insbesondere Frauen[13] - wieder. Daher sind viele trotz Teilzeitarbeit weiterhin (teilweise) auf Sozialhilfe angewiesen.

Die Voraussetzung, dass beim Kantonswechsel sämtliche Familienangehörige sozialhilfeunabhängig sein müssen, ist zu restriktiv und berücksichtigt die Herausforderungen, mit denen Geflüchtete mit Schutzstatus S konfrontiert sind, ungenügend. Das Staatssekretariat für Migration (SEM) sollte auch bei (teilweiser) Sozialhilfeabhängigkeit einen Kantonswechsel bewilligen. In jedem Fall ist die individuelle Situation der Geflüchteten bei der Beurteilung eines Kantonwechsels zu berücksichtigen.

Die Festlegung des zumutbaren Arbeitswegs auf 90 Minuten pro Weg, wie in Art. 67a Abs. 2 Bst. a für vorläufig aufgenommene Personen vorgesehen, erachtet AsyLex als einschränkend und kontraproduktiv. Für betroffene Personen würde der tägliche Arbeitsweg unter diesen Voraussetzungen bis zu drei Stunden in Anspruch nehmen, was sie von einer Stelle Annahme abhalten kann. In einer Studie von der Berner Fachhochschule[14] gaben 13 % der befragten Personen mit Schutzstatus S an, dass ein „zu langer Weg zur Arbeit“ einer der Gründe für ihre Erwerbslosigkeit sei. Dabei ist es besonders schwierig für Personen mit Kinderbetreuungspflichten, die ohnehin bereits eingeschränkten Zugang zum Arbeitsmarkt haben, lange Arbeitswege gerecht zu werden. Zudem wird der Weg aus der Sozialhilfe durch die Transportkosten unnötig erschwert. Die Voraussetzung von 90 Minuten pro Strecke für einen Kantonswechsel trägt nicht zur Überwindung von Integrationshindernissen bei, sondern wirkt kontraproduktiv und erschwert die nachhaltige berufliche Integration. AsyLex verweist in diesem Zusammenhang auf seine Position aus dem Jahr 2023 für aufgenommene Flüchtlinge sowie die Forderungen der SFH: Ein zumutbarer Arbeitsweg sollte auf höchstens eine Stunde pro Weg festgelegt werden.

AsyLex ist der Ansicht, dass der Anspruch auf Kantonswechsel unter den entsprechenden Bedingungen die Arbeitsmarktintegration von Personen mit Schutzstatus S nur unzureichend fördert. Die Voraussetzung der vollständigen Sozialhilfeunabhängigkeit sowie die Begrenzung des Arbeitswegs auf 90 Minuten pro Strecke verkennen die Hürden und Lebensrealitäten Personen mit Schutzstatus S – insbesondere jener mit Betreuungspflichten. Dabei erweist sie sich als kontraproduktiv: Ein Kantonswechsel sollte dazu beitragen, eine bestehende oder zukünftige Sozialhilfeabhängigkeit zu ablösen, statt davon abhängig gemacht zu werden, dass bereits keine Sozialhilfe mehr bezogen wird. AsyLex fordert, dass der zumutbare Arbeitsweg auf maximal eine Stunde reduziert sollte, und ein Kantonswechsel auch bei (teilweiser) Sozialhilfeabhängigkeit ermöglicht werden sollte.

[13] Das Erwerbseinkommen liegt bei der Mehrheit der Personen mit Schutzstatus S unter CHF 3’000 pro Monat. SEM (2025): «Beschäftigungsgrad und Lohn 3. Quartal 2024».

[14] Berner Fachhochschule (2023) «Arbeitsmarktrelevante Mermale».

5. Umwandlung der Bewilligungspflicht für erwerbstätige Schutzbedürftige in eine Meldepflicht (Umsetzung Geschäft 23.3968; Art. 53 und 65 bis 65c VE-VZAE)

Die Aufnahme und Beendigung einer unselbstständigen oder selbständigen Erwerbstätigkeit sowie ein Stellenwechsel von Schutzbedürftigen mit Status S sollen neu einer Meldepflicht unterliegen und nicht mehr von den Behörden bewilligt werden müssen. Dies entspricht der Regelung, wie sie bereits für anerkannte Flüchtlinge und vorläufig Aufgenommene gilt.[15]

Die aktuell geltende Bewilligungspflicht für Personen mit Schutzstatus S stellt eine Hürde für Arbeitgebende dar. Die teils langen Bearbeitungszeiten der Bewilligungen durch die zuständigen Behörden führen zu Verzögerungen bei der Anstellung der Betroffenen. Ein Stellenantritt ist erst nach Vorliegen der Bewilligung erlaubt. Dies wiederum wirkt sich direkt auf die Bereitschaft der Arbeitgebenden aus, Personen mit Schutzstatus S einzustellen. Durch die Umwandlung in eine Meldepflicht können auch behördeninterne Prozesse vereinfacht und dadurch beschleunigt werden, da für anerkannte Flüchtlinge, vorläufig Aufgenommene und Schutzbedürftige gleichermassen dieselben gesetzlichen Bestimmungen gelten.

Aus Sicht von AsyLex wird damit eine unnötige administrative Hürde abgebaut und der Zugang zur Erwerbstätigkeit für Personen mit Schutzstatus S effektiv erleichtert. AsyLex unterstützt die Umwandlung der Bewilligungspflicht in eine Meldepflicht auch vor dem Hintergrund der Gleichbehandlung von Geflüchteten.

[15] Art. 65 VZAE.

6. Ausweitung der Teilnahmepflicht an Massnahmen zur beruflichen Ein- oder Wiedereingliederung auf Personen mit Schutzstatus S; Einführung der zeitlichen Verlängerbarkeit kantonaler Integrationsprogramme (Art. 10 Abs. 1 VE-VIntA sowie Art. 14 Abs. 2 VE-VIntA)

AsyLex steht dem Ansatz, Erwerbstätigkeit durch Teilnahmeverpflichtungen zu fördern, grundsätzlich kritisch gegenüber. Eine solche Verpflichtung sollte nicht ohne Berücksichtigung der individuellen Lebensumstände erteilt werden. Auch stellt AsyLex die Wirksamkeit von Sanktionen im Hinblick auf die Integration infrage.

Vor einer verpflichtenden Teilnahme an Massnahmen zur beruflichen Integration müssen die Arbeitsmarktfähigkeit und die individuellen Lebensumstände der Betroffenen geprüft und berücksichtigt werden. Wie bereits dargelegt, ist ein erheblicher Anteil schutzbedürftiger Personen auf Kinderbetreuung angewiesen. Fehlende oder kostenintensive Betreuungsangebote stellen dabei ein häufig genanntes Hindernis für die Arbeitsmarktintegration geflüchteter Frauen dar[16]. Zusätzlicher Druck und Aufwand entstehen durch die Doppelschulung ukrainischer Kinder und den damit verbundenen zusätzlichen Online-Unterricht.[17] Unter solchen Bedingungen kann sich eine verpflichtende Teilnahme an Integrationsmassnahmen als schwer vereinbar und wenig zielführend erweisen – insbesondere dann, wenn zusätzlich lange Arbeitswege hinzukommen.

Besonders problematisch ist aus Sicht von AsyLex die Möglichkeit von Sozialhilfekürzungen, wenn Personen der Teilnahmeverpflichtung nicht nachkommen können. Hier besteht ein deutliches Spannungsverhältnis zwischen dem Ziel einer verstärkten Integration und der Androhung von Leistungskürzungen. Reduzierte Unterstützungsansätze können die soziale Integration erheblich erschweren,[18] was dem Zweck der Massnahmen – nämlich der beruflichen Ein- und Wiedereingliederung – zuwiderläuft. Zudem wird die Wirksamkeit von Sanktionsandrohungen im Kontext der Integrationsforschung in Frage gestellt. Die Ermächtigung der Betroffenen – etwa durch

[16] Denise Efionay-Mäder et al. (2025): «Berufsintegration geflüchteter Frauen aus der Ukraine».

[17] Denise Efionay-Mäder et al. (2025): «Berufsintegration geflüchteter Frauen aus der Ukraine».

[18] Ruedi Illes (2020/2021) in «Jahrbuch für Migrationrecht».

freiwillige Teilnahme sowie durch Massnahmen wie eine gemeinsame Ziel- und Handlungsplanung zwischen Behörden und Betroffenen[19] – wird von Sozialarbeitenden als menschenwürdige Vorgehensweise bevorzugt und erweist sich als nachhaltiger Faktor für Integration.[20]

Der Anspruch auf den Grundbedarf ist ein Grundrecht. Kürzungen der Sozialhilfe sollten daher stets verhältnismässig erfolgen und die individuelle Situation angemessen berücksichtigen. Spezifisch ist zu berücksichtigen, dass die meisten Kantone an Personen mit Schutzstatus S schon deutlich tiefere Sozialhilfebeträge ausbezahlen, als etwa in den SKOS- Richtlinien vorgesehen ist.

AsyLex sieht verpflichtende Integrationsmassnahmen, die individuelle Lebensumstände unberücksichtigt lassen, kritisch und hinterfragt deren Wirksamkeit. Statt Sozialhilfekürzungen, die die Integration erschweren können, unterstützt AsyLex freiwillige und bedarfsorientierte Massnahmen, die die Lebensrealität der Betroffenen angemessen berücksichtigen.

[19] Michel, Claudia et al. (2018): «Die Einflussfaktoren eines Sozialdienstes für nachhaltige Integration».

[20] AvenirSocial (2014): «Sanktionen in der Sozialhilfe – Die Position von AvenirSocial».

OHCHR: Call for inputs Report on Externalization of Migration and the Impact on the Human Rights of Migrants

Commentary by AsyLex Regarding Switzerland

Date: **10 June 2025**

Contact: **international@asylex.ch**

Word Count: **2000**

A. About the Commenting Organization

AsyLex is an independent Swiss NGO offering free online legal support to asylum seekers and refugees. Since 2017, it has supported over 15 '000 individuals in navigating the Swiss asylum system, regardless of origin, religion, gender, age, family situation, financial means or prospect of success.

Around 150 trained volunteers, coordinated by a core office team of 16, provide specialized assistance in areas such as family reunification, detention, criminal law, social assistance and international litigation. Through its Rights in Exile platform, AsyLex also serves displaced persons globally by offering access to legal information, local legal practitioners, and a space for collaborative knowledge exchange. Internationally, AsyLex represents individuals before UN human rights bodies including the CCPR, CRC, CERD, CAT, and CEDAW.

We welcome the Special Rapporteur on the Human Rights of Migrants' call to receive relevant information for his report to the 80th session of the General Assembly on the externalization of migration. We thank the Special Rapporteur for the opportunity to contribute by sharing our practical experience and general concerns with regards to Switzerland's externalization practices.

B. Responses to the Special Rapporteur's Questions

Art. 14, paragraph 1 of the Universal Declaration of Human Rights recognizes the right to seek and enjoy asylum from persecution."[1] Regardless of the grounds for seeking asylum or eligibility for refugee status, international human rights law unequivocally prohibits the expulsion of any individual when there is a real risk of serious harm to life or physical integrity upon deportation. The principle of non-refoulement is enshrined in the 1951 Refugee Convention[2], the 1984 Convention again Torture[3] and the 2006 Convention for the Protection of All Persons from Enforced Disappearance[4]. The non-refoulement principle is part of customary international law. It is thus an absolute norm and universally binding to all States, whether or not they are parties to the above mentioned Convention.[5]

[1] Art. 14, par. 1, UN General Assembly, Universal Declaration of Human Rights, 217 A (III), 10 December 1948; available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights. [accessed 5 June 2025]
[2] Art. 33, 1951 Refugee Convention, available at: https://www.unhcr.org/media/1951-refugee-convention-and-1967-protocol-relating-status-refugees. [accessed 6 June 2025]
[3] Art. 3, 1984 Convention against Torture, available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading. [accessed 6 June 2025]
[4] Art. 16, 2006 Convention for the Protection of All Persons from Enforced Disappearance, available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced. [accessed 6 June 2025]
[5] *See for example.:* Syahrin, M. A. (2021). The Principle of Non-Refoulement as Jus Cogens: History, Application, and Exception in International Refugee Law. *Journal of Indonesian Legal Studies,* 6(1), 53-82. https://doi.org/10.15294/jils.v6i1.43350. [accessed 6 June 2025]

While Switzerland recognizes the principle of non-refoulement as absolute in nature and has enshrined the ban on refoulement in Art. 5 of the Swiss Asylum Act[6], as well as the respect for international law in the Swiss Constitution[7], AsyLex observes highly concerning developments that threaten the absolute nature of the non-refoulement principle which we intend to bring to the attention of the Special Rapporteur with this submission.

Specifically, this report focuses on two key developments: current political trends that seek to externalize asylum procedures—such as through return hubs or agreements that shift responsibility for processing asylum claims to so-called "safe third countries" (STC)—and Switzerland's financial involvement in strengthening asylum systems in third countries. AsyLex is deeply concerned about the human rights implications of such externalization practices, particularly given Switzerland's insufficient assessment and monitoring of its partners' compliance with fundamental rights standards. Moreover, these developments risk gradually eroding the absolute nature of the non-refoulement principle. The prioritization of political objectives—such as curbing migration—over a rights-based and dignified asylum process is, in our view, highly alarming.

1. An Alarming Trend Towards Externalization: Political Attempts to Outsource Migration

International legal guidance, including from UNHCR, strongly emphasizes that externalization practices often violate international law, including the principle of non-refoulement and the right to access asylum, and highlights the inherent risks in outsourcing asylum procedures and delegating responsibility to third countries that may not provide adequate protection.[8]

At European-level, concerning developments regarding the externalization of asylum procedures are increasing, including efforts to establish so-called 'return hubs'[9] in third countries, as well as proposals to broaden the category of third countries to which an asylum seeker may be transferred by loosening the connection criteria–a key safeguard that currently requires a meaningful link between an asylum seeker and the so-called STC to which they may be transferred[10].

While the expansion of the STC principle as stipulated in the EU Pact on Migration and Asylum is currently not applicable to Switzerland and Switzerland has not yet formalized any return hub agreements, recent years saw persistent efforts by members of parliament to push for such initiatives. In 2021, a parliamentary motion by the Swiss People's Party (SPP) called on the Federal Council to draft legislation which allows for the establishment of asylum centers abroad.[11] Similarly, creating a legal basis to accommodate asylum seekers in an STC while their asylum request is being processed – and to have them remain there even if asylum is granted – was proposed to the Federal Council.[12] Both

[6] Swiss Asylum Act, Art. 5 https://www.fedlex.admin.ch/eli/cc/1999/358/en?msclkid=c7f287a9c7ae11ec84162511ff3b9165&print=true
[7] Art. 5(4), 1999 Swiss Constitution, available at: https://www.fedlex.admin.ch/eli/cc/1999/404/en [accessed 6 June 2025]
[8] *See for example*: UN High Commissioner for Refugees (UNHCR), *UNHCR Note on the "Externalization" of International Protection*, 28 May 2021, https://www.refworld.org/policy/legalguidance/unhcr/2021/en/121534. [accessed 09 June 2025]
[9] *'Return hubs' are centers in third countries in which asylum seekers would await the outcome of their asylum decision. In response to a number of European countries pushing for the establishment of 'return hubs' in third countries, the EU Commission is currently pushing for the inclusion of return hubs in upcoming legislation, which was welcomed and described "as a possible deterrence for irregular migration" by "Austria, Bulgaria, Czech Republic, Denmark, Germany,* Greece, Italy, Latvia, and Malta". *See*: https://www.euronews.com/my-europe/2025/02/04/exclusive-eu-commission-poised-to-propose-controversial-migrant-return-hubs [accessed 4 June 2025]
[10] *The most recent proposal under the 2024 agreement on the Asylum Procedures Regulation, as part of the new EU Pact on Migration and Asylum, significantly dilutes this criteria, requiring merely that an individual have transited through the STC or that an agreement exists between the STC and the EU. S*ee: European Commission: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2024/1348 as regards the application of the 'safe third country' concept. COM/2025/259 final. 20.05.2025. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52025PC0259. [accessed 3 June 2025]
[11] Motion Nr. 21.3785, «Die Schweiz soll dem Beispiel Dänemarks folgen und Zentren für Asylsuchende ausserhalb von Europa schaffen», submitted by Quadri Lorenzo on 17 June 2021. https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20213785. [accessed 3 June 2025]
[12] Motion Nr. 21.3992, «Gewährleistung des Schutzes von Asylbewerbern in einem sicheren Drittstaat», submitted by SPP on 14 June 2021. https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20213992. [accessed 3 June 2025]

motions argued that such measures would benefit Switzerland by reducing its attractiveness as a reception country and deterring asylum seekers from seeking refuge. In 2023, another motion by the SPP called on the Federal Council to present a concrete legal proposal to carry out asylum procedures in third countries.[13] While the motion was framed as a measure to combat human trafficking and smuggling, it explicitly stated the aim of minimizing the number of people reaching Switzerland. Also in 2023, a member of the Free Democratic Party (FDP) demanded the establishment of a pilot project of sending Eritrean nationals to asylum centers in third countries.[14]

While all of these motions have been denied by the Federal Council, in February 2024, the Federal Council accepted a postulate which called for an analysis of potentially "outsourcing asylum procedures and expulsion enforcement".[15] The Federal Council argued that "[it] is of the opinion that it is appropriate to present the most recent efforts and discussions at European level as part of a current analysis and to examine their compatibility with Swiss law and international obligations."[16]

AsyLex is deeply concerned about the implications of these developments toward externalization of the asylum procedure, wherein the acceptance of the most recent postulate is particularly alarming. While the outcome of the forthcoming report remains unknown, AsyLex fears that the Federal Council may follow political momentum aligned with a broader European normalization of externalization and attempts of deterrence—rather than firmly rejecting these approaches in light of Switzerland's human rights and international obligations.

Our concerns regarding compliance with the non-refoulement principle is based on our observations of Switzerland's current deportations to STCs. Often, both systemic human rights violations and individual abuses asylum seekers have previously suffered in those countries are ignored: in over 75% of individual cases we brought before UN human rights treaty bodies such as the CAT, CRC, and CEDAW and CERD interim measures were issued to prevent deportation on grounds of a real-risk of non-refoulement violations. A substantial number of these cases involve clients facing deportation to countries that Switzerland designates as STCs, including Croatia, Greece, Slovenia, and Bulgaria.

In light of Switzerland's already inadequate assessment of the risk of refoulement, AsyLex is highly concerned about further third-country agreements, as we seriously question how compliance with human rights standards by migration authorities and in asylum centres abroad would be effectively monitored. Furthermore, there is a pressing question about what connection criteria would be applied to determine the eligibility of third countries to receive transferred asylum seekers, given the risks associated with sending individuals to places with which they have little or no personal ties or knowledge.

2. Funding Human Rights Violations Abroad: Switzerland's Current Financial Engagement in Equipping Migration Authorities in Third Countries

AsyLex' concern about insufficient monitoring of third country partners' compliance with fundamental rights are grounded in Switzerland's current equipping of migration authorities abroad.

[13] Motion Nr. 23.3950, «Paradigmenwechsel in der Asylpolitik. Unterbinden von Migrationsrouten, Bekämpfung von Schlepperwesen und Kriminalität», submitted by Chiesa Marco on 16 June 2023. https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20233950. [accessed 3 June 2025]
[14] Motion Nr. 23.3176, «Rückführung von Eritreern, deren Asylantrag abgelehnt wurde. Lancierung eines Pilotprojekts in einem Drittstaat», submitted by Müller Damian on 15 March 2023. https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20233176 . [accessed 3 June 2025]
[15] Postulate Nr. 23.4490, «Auslegeordnung zu Asylverfahren und zum Wegweisungsvollzug im Ausland», submitted by Caroni Andrea on 22 December 2023. https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20234490 . [accessed 3 June 2025]
[16] Ibid.

One troubling example of this is Switzerland's funding of so-called 'safe areas' for unaccompanied migrant children in the Closed Controlled Access Areas (CCAC) in Greece. Intended to provide a protected environment where unaccompanied children receive primary support and assistance upon arrival, children are effectively detained under precarious conditions in fenced, confined sections of the CCAC. The situation is well known: lawyers and humanitarian workers on the ground have consistently documented alarming conditions, including overcrowding forcing children to sleep in shifts on the floor, a lack of basic hygiene, and inadequate access to food and medical - including psychological - support and treatment.[17]

Rulings from both the European Court of Human Rights (ECtHR)[18] and the Greek Administrative Court[19] recognize these 'safe areas' as de facto detention centers. Despite these legal findings and numerous reports about the appalling conditions, Switzerland continues to fund these facilities. From January 2024 to 15 June 2025, Switzerland allocated over 4 million CHF to support 'safe areas' on the islands of Samos, Leros, Chios, and Kos.[20] This funding is part of the Swiss-Greek Cooperation Programme, which aims to "strengthen asylum procedures, infrastructure and accommodation for vulnerable migrants, integration, and voluntary return," and forms thus part of a broader externalization strategy, ensuring that those minors do not continue their flight towards Switzerland.[21]

However, the conditions in these 'safe areas' reveal a lack of effective monitoring to ensure respect for fundamental rights. A Swiss delegation visiting Samos in early February 2025 confirmed warnings repeatedly issued by frontline organizations, that essential services such as food distribution, hygiene, and psychosocial support were "compromised." According to an investigative report, the Swiss embassy internally expressed "serious concerns over the escalating situation," revelations which have reportedly prompted Swiss authorities to consider withdrawing funding.[22]

Based on these information, detailed reports from the Human Rights Legal Project (HRLP) operating in Samos, and direct communication with children held in these 'safe areas,' AsyLex has concluded that these children are effectively subjected to arbitrary detention in the CCAC. Thus, together with HRLP, AsyLex filed an Urgent Action request to the UN Working Group on Arbitrary Detention (WGAD) on behalf of five children representing the broader structural problems. The WGAD is yet to assess the Urgent Action request.

Given Switzerland's awareness of the situation and latest developments—including the most recent evacuation of the 'safe area' of Samos[23] — it is imperative that Switzerland publicly acknowledge its responsibility and launch a thorough investigation into its funding and oversight practices.

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[17] Emmanouilidou, L. et al. (31 March 2025). *Unaccompanied Children Sleep on the Floor in Shifts in Greece's 'Model Camps'. The EU is Aware*. Solomon. https://wearesolomon.com/mag/focus-area/migration/unaccompanied-children-sleep-on-the-floor-in-shifts-in-greece-model-camps/. [accessed 03 June 2025]

[18] ECtHR, T.A. and others v. Greece, no. 152932/20, 03.10.2024. Available at: https://hudoc.echr.coe.int/#%7B%22itemid%22:%5B%22001-236050%22%5D%7D.

[19] ADMINISTRATIVE COURT OF SYROS - DECISION AP7/2025, 21 February 2025.

[20] Swiss Federal Department of Foreign Affairs. *Safe Areas for Unaccompanied Migrant Children (Samos, Leros, Chios and Kos islands)*. https://www.eda.admin.ch/countries/greece/en/home/schweizer-beitrag/second-swiss-contribution/projekte/Safe_Areas_for_Unaccompanied_Migrant_Children.html?_x_tr_sl=en&_x_tr_tl=de&_x_tr_hl=de&_x_tr_pto=sc. [accessed 03 June 2025]

[21] Swiss Federal Department of Foreign Affairs (May 2024). *Factsheet Greek Cooperation Programme May 2024*. https://www.eda.admin.ch/content/dam/countries/countries-content/greece/en/Factsheet_May%202024.pdf. [accessed 03 June 2025]

[22] Emmanouilidou, L. et al. (31 March 2025). *Unaccompanied Children Sleep on the Floor in Shifts in Greece's 'Model Camps'. The EU is Aware*. Solomon. https://wearesolomon.com/mag/focus-area/migration/unaccompanied-children-sleep-on-the-floor-in-shifts-in-greece-model-camps/. [accessed 03 June 2025]

[23] Human Rights Legal Project, (1 June 2025). All Unaccompanied Children Relocated From the Samos CCAC, Following HRLP Intervention. https://www.humanrightslp.eu/post/all-unaccompanied-children-relocated-from-the-samos-ccac-following-hrlp-intervention. [accessed 03 June 2025]

3. The Solidarity Mechanism of the European Pact on Asylum and Migration: A Crucial Crossroad

The new EU Pact on Migration includes provisions for a "solidarity pool", requiring EU member States to support each other in situations of "migratory pressure". This may take effect through relocation of applicants for international protection, financial contributions to i.a. reintegration, border management and actions in third countries, or alternative measures such as capacity building.[24] While participation in the solidarity mechanism is not legally binding for associated states, including Switzerland,[25] they explicitly have the option to participate, which the Swiss Federal Council has proposed to do. At this stage, however, it is unclear which of the proposed solidarity measures Switzerland would adopt as part of its engagement— and whether the proposal would be approved by parliament and, potentially, the Swiss electorate.[26]

While AsyLex appreciates the Federal Council's willingness to participate in the solidarity pool, we believe that it is crucial which solidarity mechanism Switzerland chooses to adopt. Given the documented risks of refoulement associated with externalization practices and the absence of effective oversight for financial support to migration authorities abroad, we are concerned that funding measures such as border enforcement, returns, or the operation of closed control centers at the EU's external borders could further heighten the threats to fundamental rights already observed. Rather, we urge Switzerland to process more asylum claims in Switzerland and relocate recognized refugees, ensuring compliance with fundamental rights locally.

C. Recommendations

In light of the above raised concerns, we invite the Special Rapporteur to include the following recommendations into its report for the 80th session of the General Assembly:

1. States must avoid any externalization practices that risk breaching the principle of non-refoulement or asylum seekers' right to seeking protection.
2. States must implement transparent, thorough monitoring and clear accountability mechanisms for all parties involved in cooperation with migration authorities in third countries.
3. Regulations on the STC principle must not allow transferring asylum seekers to countries where they lack ties or access to effective protection.
4. States must prioritize solidarity in hosting refugees and processing asylum seekers before providing financial support to migration authorities abroad, ensuring that the fundamental rights and well-being of asylum seekers remain the highest priority.

[24]European Union: Council of the European Union, European Union: European Parliament, *Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013*, 32024R1351, 14 May 2024 Art. 56 ff,, https://www.refworld.org/legal/reglegislation/council/2024/en/148011. [accessed 09 June 2025]
[25] Ibid.
[26] Federal Council Press Release of 16 May 2025. OUI AU PACTE EUROPÉEN SUR LA MIGRATION ET L'ASILE, PARTICIPATION SOUS CONDITION AU MÉCANISME DE SOLIDARITÉ. https://www.parlament.ch/press-releases/Pages/mm-spk-n-2025-05-16.aspx?lang=1033. [accessed 09 June 2025]

Call for Submission on the draft of the Committee on the Rights of the Child's general comment No. 27 on children's right to access to justice and to an effective remedy

Commenting Organization: **AsyLex**

Date: **30 June 2025**

Contact: **international@asylex.ch**

Word Count: **2446 (including Footnotes)**

A. About the commenting organisation

AsyLex is an independent Swiss NGO offering free online legal support to asylum seekers and refugees. Since 2017, it has supported over 15 '000 individuals in navigating the Swiss asylum system, regardless of origin, religion, gender, age, family situation, financial means or prospect of success.

Around 150 trained volunteers, coordinated by a core office team of 16, provide specialized assistance in areas such as family reunification, detention, criminal law, social assistance and international litigation. Through its Rights in Exile platform, AsyLex also serves displaced persons globally by offering access to legal information, local legal practitioners, and a space for collaborative knowledge exchange. Internationally, AsyLex represents individuals before UN human rights bodies including the CCPR, CRC, CERD, CAT, and CEDAW.

We welcome the Committee on the Rights of the Child ("the Committee")'s initiative to receive feedback on the draft of the General Comment No. 27 on the crucial issue of children's right to access to justice and effective remedies and thank the Committee for the opportunity to contribute.

B. Feedback on the Draft Commentary No. 26

1. Definitions and General Remarks

For the purpose of the commentary, the addressed draft restricts the definition of "access to justice" to "the ability for children to obtain a just and timely remedy for violations of children's rights, through avenues adapted to children" *(Paragraph 9)*. While AsyLex understands the necessity to delimit the scope of the commentary, we applied a broader understanding in our input[1] for the first round of consultations, interpreting the right to justice to include general compliance with children's fundamental rights in all legal and administrative proceedings affecting them – including asylum proceedings.

With regards to what an 'effective remedy' or 'redress' could entail, we consider it essential to include regularisation of a child's stay in the country of arrival, if the child has experienced violations of his or her rights in their country of origin, the Dublin country they are assigned to, or the so-called Safe Third Country (STC). In these cases, the jurisdiction of the country that processes their asylum claim extends beyond

[1] Appendix 1.

national borders, as the child has the right to protection from non-refoulement. While the draft states that "states should establish and recognize extraterritorial jurisdiction for certain child rights violations" *(Paragraph 18 (iv))*, and includes the right to access to justice and an effective remedy for "all children within the State's jurisdiction" *(Paragraph 18 (ii))*, it does not explicitly state that an effective remedy for children having experienced rights violations – or being at risk of such – in the country they are to be deported to entails regularisation in the country of asylum. A clarification that **protection from non-refoulement can be an effective remedy** for asylum seeking children would significantly strengthen the draft, both in terms of protecting the right to redress for all children and **strengthening the absolute nature of the non-refoulement principle** through reiteration. This could, for example, be included as follows:

- *Paragraph 67* : add after the last sentence "For refugee and migrant children having experienced rights violations in their country of origin or in their first country of asylum, guarantees of non-recurrence include the regularisation of their stay in the country of asylum or a third country, in line with the principle of non-refoulement"

2. Reiteration of Concerns Previously Shared with the Committee

Within the Swiss asylum system, AsyLex observes practices that violate the rights of the child as determined by the convention. As stated earlier, we perceive protection from rights violations at all steps of administrative procedures involving children as integral to a sound understanding of the right to justice.

In this section, we highlight the concerns previously shared with the Committee through a short summary, followed by recommendations on where the draft could address them more concretely.

2.1 Shortcomings in the Individualised Evaluation of the Child's Best Interest Throughout the Asylum Proceeding

In 2021, the Committee reprimanded Switzerland on insufficiently prioritising the **best interest of the child** in asylum proceedings, as stipulated in Art. 3, paragraph 1 of the Convention on the Rights of the Child ("Convention")[2], and urged the development of a procedure to determine the best interest of the child in all asylum proceedings.[3] However, AsyLex' practical experience shows that Switzerland still fails to adequately address the needs of the child in asylum procedures, neglecting the specificities of the child's situation. In our previous input for the Commentary No. 27 we outlined cases we had brought before the Committee due to an inadequate assessment of the children's mental and physical health, their family ties, and social integration, which led to a violation of their best interest.

In order to stress the importance of assessing each child's individual best interest in all administrative proceedings, we would suggest the following adaptation:

- *Paragraph 15 (b)*: Add that "mechanisms must be established to systematically assess the individual best interest of each child in all administrative proceedings, including asylum proceedings, taking into account the specificities of their personal situation and needs. This should apply to all children,

[2] Committee on the Rights of the Child. (20 November 1989). *Convention on the Rights of the Child.* Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

[3] Committee on the Rights of the Child. (2021) *Concluding observations on the combined fifth and sixth periodic reports in Switzerland.* Paragraph 43 a) i). Available at: <https://www.ohchr.org/en/documents/concluding-observations/crcccheco5-6-concluding-observations-combined-fifth-and-sixth>.

independent of their age and – if asylum seeking children are concerned – whether they are accompanied by family members or not."

2.2 Systematic Violation of the Child's Right to be Heard

In spite of the Convention enshrining the child's **right to be heard** in Art. 12, and subsequent clarifications by the Committee that a child's young age or vulnerability should not deprive them of this right,[4] Switzerland fails to systematically hear children in asylum proceedings, due to a general perception that children must not be heard separately as their interests coincide with their parents'. Despite the Committee reprimanding Switzerland for this practice,[5] we continue to observe that children are not heard individually, as discussed in our previous submission.

To ensure adherence to the right to be heard at all steps for asylum seeking children, we recommend the following extensions in the relevant paragraphs:

- *Paragraph. 15(d):* We would like to suggest explicitly including that "systematic procedures should be established that guarantee that all children of all age groups are given the opportunity to express their views independently throughout all administrative procedures, including the asylum process".
- *Paragraph 45*: We would suggest adding "including administrative procedures, such as asylum procedures", for example in the first sentence.

2.3 Inadequate Attention to Children's Mental and Physical Health

While the Committee's 2017 General comment stipulates that asylum proceedings should entail a best-interest determination when deporting migrant families, including with regards to a child's mental health,[6] we regularly encounter cases of children who are about to be expelled to countries in which they cannot **access** the **mental and physical support** they urgently need – or where they had previously experienced severe mistreatment. In various of our cases, it was only through the Committee's intervention by granting interim measures following AsyLex' individual communication, that children were prevented from being returned to a country in which they would have faced refoulement. Further, children's health is often insufficiently considered in asylum decisions, due to the extremely short appeal deadline and the absence of standardized assessment mechanisms.

As part of ensuring compliance with the right to life, survival and development (Art. 6 of the Convention), we would suggest the following concretisation:

- *Paragraph 15 (c) :* Include that "children throughout all administrative proceedings must have access to health services, provided by specialised staff, and that short, medium and long-term impacts are considered in all administrative proceedings, including asylum proceedings".

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[4] Committee on the Rights of the Child. (2013). *Committee on the Rights of the Child General comment No. 1*. Available at: <https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf>.

[5] Ibid., Paragraph 7.3. and Committee on the Rights of the Child. (2021) *Concluding observations on the combined fifth and sixth periodic reports in Switzerland*. Paragraph 43 b). Available at: < https://documents.un.org/doc/undoc/gen/g21/293/54/pdf/g2129354.pd>.

[6] See Art. 32(G) of the *Joint General Comment No. 3 (2017) between the Committee and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/joint-general-comment-no-3-cmw-and-no-22-crc-context>

2.4 Lacking Access to Adequate Education

Although the Swiss Constitution enshrines the **right to education** for all children until the age of 16,[7] children in asylum centers do not have access to the same quality, diversity and number of hours of education as Swiss citizens. In cases where asylum seeking children would have the right to join the regular schooling system and where it would be sensible as they are expected to remain in Switzerland for an extended period, AsyLex has made the experience that authorities are reluctant to enable access without external pressure.

As access to education is an essential prerequisite for a child to access their rights, we recommend the following amendment:

- *Paragraph 82*: Add after the first sentence "In order to access their rights, it must first be ensured that all children, including children in asylum centers or detention, have access to adequate education"

2.5 Inappropriate Age Assessment Procedures

In spite of the Committee criticizing Swiss authorities for the use of physical examinations as an age assessment method,[8] they continue to engage in intrusive and potentially retraumatizing medical examinations.[9] In doing so, Swiss authorities not only risk breaching the children's physical integrity, but, as these methods are often inadequate, they also risk further child's rights violations due to wrongfully treating them as an adult.

While the comment addresses that, in case of uncertainty regarding a child's age, the benefit of the doubt should be given to the individual, we would suggest the following addition:

- *Paragraph 18 (ii)* : Add after the final sentence "If age assessment is conducted nonetheless, harmful age assessment methods should be avoided at all costs, prioritising child-appropriate and non-invasive methods instead"

3. Further Feedback on the Draft

In addition to the previously mentioned issues, we recommend the following changes:

- *Paragraph 7 (a)* : replace with "Clarify the obligations of States parties under the Convention and provide authoritative guidance to States parties and other actors involved in criminal, civil, and administrative proceedings on how to ensure access to justice and an effective remedy for children"
- *Paragraph 9 (b)* : replace with "the outcome of the process and the redress provided, including reparations, the cessation of the violation, and prevention of future violations"

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[7] Swiss Federal Constitution, Art. 62

[8] Committee on the Rights of the Child. (2021). *Concluding observations on the combined fifth and sixth periodic reports in Switzerland.* Para. 43 c). Available at: <https://documents.un.org/doc/undoc/gen/g21/293/54/pdf/g2129354.pd>.

[9] *Parliament Interpellation, Nr. 16.3598: Altersbestimmung bei Asylsuchenden. Sind die medizinischen Studien wissenschaftlich glaubwürdig und rechtlich haltbar?,* By Mazzone Lisa (17 June 2016). Available at:, <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20163598>.

- *Paragraph 12 (i)* : add "or procedures affecting the determination of children's rights, whether civil, criminal or administrative in nature"
- *Paragraph 15 (a)* : add "regardless of their migration or any other status, including whether accompanied, unaccompanied or separated" after "All children should be treated with impartiality"
- *Paragraph 16 (b)* : add "legal" before "situation"
- *Paragraph 18 (ii)* : explicitly include "the state of their asylum proceeding" to the factors that should not lead to exclusion of a child's right to justice and an effective remedy
- Paragraph 18 (v) : add to the final sentence "and should thus be long enough to ensure an in-depth and child-appropriate assessment of a child's past experiences is possible before a final decision is made"
- *Paragraph 18 (b)* : change "cases involving deportation by children in situations of migration" to "in cases involving deportation of children or their family members"
- *Paragraph 19* : add "asylum centers" in between "institutions" and "detention centers"
- *Paragraph 31:* add after the final sentence that "States must not restrict the work or independence provided by independent legal aid providers, i.a. through physical barriers, intimidation practices or Strategic lawsuit against public participation (SLAPP) procedures"
- *Paragraph 34*: add "past experiences with authorities" to reasons which may contribute to children's distrust
- *Paragraph 36*: add a paragraph right after this one on the general importance of administrative proceedings respecting the right to privacy to be upheld with regards to data protection, for example "All data collected on children throughout any criminal, civil or administrative proceedings and the duration of storation must meet the principles of *legality*, *necessity*, and *proportionality,* as enshrined in Art. 17 ICCPR*"*.[10] We hereby want to bring the non-compliance with these standards at borders to the Committee's attention, as we are witnessing in the case of the revision of EURODAC Regulation (EU) 2024/1358[11] as part of the new EU Pact on Migration and Asylum,[12] which will allow for the excessive collection and disproportionate duration of storing data from children as young as six years old.
- *Paragraph 39* : replace "child victims and witnesses of crime" with "all children in criminal, civil or administrative proceedings
- *Paragraph 40* : change "access legal assistance" in the last sentence to "access independent legal advice, assistance and representation"
- *Paragraph 41* : add "including legal, medical and psychosocial" after "holistic support"
- *Paragraph 48:* include "asylum centers" in the first sentence
- *Paragraph 52* : add "protection status in another country" as an example of what reparations may include
- *Paragraph 83* : add "and migration authorities" after "including lawyers"

[10] UN General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966, Art. 17, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights. [accessed 28 May 2025]

[11] Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL_202401358.

[12] Website of the European Commission. "Pact on Migration and Asylum: A common EU system to manage migration", 21 May 2024. "https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en. [accessed 27 May 2025]

OHCHR: Call for inputs on women, girls and enforced disappearances (concept note for CED General Comment n°2)

Commentary by AsyLex Regarding Switzerland

Date: **14 July 2025**

Contact: **international@asylex.ch**

Word Count: **2538 (Footnotes excluded)**

A. About the Commenting Organization

AsyLex is an independent Swiss NGO offering free online legal support to asylum seekers and refugees. Since 2017, it has supported over 15 '000 individuals in navigating the Swiss asylum system, regardless of origin, religion, gender, age, family situation, financial means or prospect of success.

Around 150 trained volunteers, coordinated by a core office team of 16, provide specialized assistance in areas such as family reunification, detention, criminal law, social assistance and international litigation. Through its Rights in Exile platform, AsyLex also serves displaced persons globally by offering access to legal information, local legal practitioners, and a space for collaborative knowledge exchange. Internationally, AsyLex represents individuals before UN human rights bodies including the CCPR, CRC, CERD, CAT, CED and CEDAW.

B. Focus of the Contribution to the Committee's General Comment No. 2

We welcome the Committee on Enforced Disappearances ('Committee')'s call for input on its upcoming General Comment No. 2 on "Women, Girls and Enforced Disappearances." We appreciate the opportunity to contribute by sharing our practical experience and concerns regarding the situation of women and girls affected by gender-based enforced disappearance in the context of forced migration.

Women face specific risks regarding enforced disappearance due to gender-based discrimination and gender-specific vulnerabilities. They are disappeared for reasons such as challenging gender norms, suffer indirect and gendered consequences of the disappearance of their male relatives, are exposed to sexual and gender-based violence (SGBV) at the hands of their abductors, and are confronted with gendered obstacles to accessing justice. All such vulnerabilities are further exacerbated for women in forced migration, due to legal uncertainty, lack of protection, heightened exposure to violence and exploitation, and limited access to justice, redress, and reparation.

We would therefore welcome if the draft be expanded to include dedicated language addressing the specific and intersectional risks to women in situations of forced migration, as the concept note currently only makes limited reference to women in the context of forced migration.[1] This input aims to support the drafting of such language by providing concrete examples and suggestions on different sections of the current concept note.

1. Section i. Prevention – The Specific Prevention Needs for Women in Forced Migration

The Prevention section addresses the need of "detecting situations of risk and eradicating the structural and social causes that perpetuate the practice of enforced disappearances such as discrimination and systematic violence against women" (Para. 22) and to address enforced disappearance of women and girls with a

[1] Concept Note, Para. 3. & Para. 5.

"comprehensive perspective that combines criminal action with prevention and protection policies with a gender perspective" (Para. 25).

A comprehensive understanding of the specific situations of risk for women in forced migration is essential to draw up preventive measures that may mitigate the dangers of women falling victim to enforced disappearance. This includes all steps of a woman's flight–from the migration route to a final asylum decision.

1(A) Need for Safe Pathways to Prevent Enforced Disappearance on Irregular Migration Routes

We are highly concerned with the dangers women face on migration routes, which include enforced disappearance, SGBV, and trafficking in persons, especially for the purpose of sexual exploitation, labour exploitation and domestic servitude.[2] As protection mechanisms are largely absent on irregular routes, these dangers are especially acute.

To address this protection gap and contribute to preventing situations of enforced migration on irregular migration routes, we perceive it essential to stress the importance of safe pathways, such as resettlement, humanitarian visas, family reunification, and other complementary legal channels, as they offer vital alternatives to these dangerous journeys.

Rather than seeing efforts to expand safe pathways, however, we are increasingly confronted with their global decline–UNHCR warns that resettlement quotas in 2025 will be the lowest in two decades.[3] In Switzerland, where AsyLex works primarily, refugee resettlement has been effectively suspended since 2024, with only drastically reduced quotas planned for the coming years.[4] Further, the Swiss Federal Council's proposal for Switzerland to voluntarily participate in the solidarity mechanism of the EU Asylum Pact was rejected by the National Council in June 2025.[5] While the final decision is still to be made, inconsistent commitments to safe pathways, including relocation and resettlement, are highly worrying, and effectively reflect a lack of commitment to safe passage.

As this decline significantly curtails safe options for women and girls who are most vulnerable to harm on irregular migration routes, **we would suggest including migration routes as an area of high risk, and safe pathways as an effective tool for prevention** in the Committee's Commentary.

Moreover, even where safe pathways exist, the lack of remote possibilities for applying are highly problematic: women from countries in which no diplomatic missions of countries that could provide protection exist, such as Afghanistan, Palestine (Gaza) and Sudan, must travel to third countries to access embassies. The journey itself exposes women and girls to severe risks of violence, disappearance, and exploitation. This danger could be mitigated if states considered using new technologies to assess eligibility remotely—without requiring physical presence—thereby reducing the exposure of vulnerable women to such risks.

It is therefore also necessary to design safe pathways in a manner that specifically addresses and minimises the unique vulnerabilities of women and girls, ensuring they are not further exposed to enforced disappearance or other forms of gender-based violence during the process. **We suggest the Committee include the need for a gender-sensitive lens in application procedures to safe pathways as a preventive measure**.

1(B) A Need to Safeguard the Non-Refoulement Principle More Effectively to Prevent Enforced Disappearance Upon Deportation

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[2] UN Women. Policy Brief: From Evidence to Action: Tackling Gender-Based Violence, p. 2. (2021). Available at: <https://www.unwomen.org/en/digital-library/publications/2021/10/policy-brief-from-evidence-to-action-tackling-gbv-against-migrant-women-and-girls>

[3] UN. Briefing Note: UN Refugee Agency estimates 2.5 million people need resettlement. (24 June 2025). Available at: <https://www.unhcr.org/news/briefing-notes/un-refugee-agency-estimates-2-5-million-people-need-resettlement>

[4] State Secretariat for Migration. Resettlement programmes since 2013. Available at: <https://www.sem.admin.ch/sem/en/home/asyl/resettlement/programme.html>

[5] Schweizer Radio und Fernsehen. Press release: EU-Migrations- und Asylpakt – Nationalrat ist gegen freiwillige europäische Asyl-Solidarität. (19 June 2025). Available at: <https://www.srf.ch/news/schweiz/eu-migrations-und-asylpakt-nationalrat-ist-gegen-freiwillige-europaeische-asyl-solidaritaet>

Art. 16 of the Convention holds that signatory parties shall not expel persons to another state where there are substantial grounds for believing that they would be in danger of being subjected to enforced disappearance. In order to determine whether there are such grounds, all relevant considerations shall be undertaken by the competent authorities, including, where applicable, the existence in the state concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law.

In spite of Switzerland having ratified the Convention, AsyLex regularly represents clients whose individual risk of refoulement with regards to enforced disappearance is insufficiently considered and/or who are to be deported to countries where systematic human rights violations, including enforced disappearance, are well documented.

When asylum seeking women are deported to contexts in which they face a real risk of enforced disappearance, they are also exposed to gender-specific risks, such as SGBV during disappearance. We therefore deem it highly relevant for the Commentary to **address the need for rigorous assessments of women asylum seekers' real risks of falling victim to enforced disappearance upon deportation** and suggest **including the need for such assessments, as well as legalisation in the country of asylum, as crucial preventive measures**.

Insufficient Assessment of Individual Risk of Enforced Disappearance Upon Deportation

AsyLex represents clients whose well-founded fear of falling victim to enforced disappearance due to their personal situation is assessed insufficiently. This includes women who have been threatened with both enforced disappearance and SGBV in their country of origin.

Most recently, AsyLex brought one such case to the attention of the Committee in the form of an individual communication. Case No. 8/2025 concerns a woman from Burundi whose father had been targeted by the Imbonerakure, Burundi's ruling party's youth militia, and arbitrarily imprisoned and held incommunicado without formal charges or due process for three years. One year after his enforced disappearance, her mother was abducted and detained without charges for three days, during which she was exposed to torture and severe sexual violence. Shortly after her release, she died due to the torture she suffered in detention. AsyLex' client herself was threatened at gunpoint with the same fate as her mother – a threat of disappearance, SGBV and death. Due to the real risk of enforced disappearance and further gender-based violence, she fled to Switzerland, where she applied for asylum. However, her asylum claim was rejected. Only the interim measures issued by the Committee on 10 July 2025, after AsyLex had submitted an individual communication on her behalf, currently prevent deportation to Burundi, where she would face a real risk of enforced disappearance.

Deportation to Countries Where Systematic Enforced Disappearance Persists

In addition to insufficient individual assessments of the potential risk of enforced disappearance a woman may face upon deportation, AsyLex is highly concerned that Switzerland carries out forced deportations to states with a documented record of enforced disappearance such as Sri Lanka, Iraq, and Ethiopia. In the case of Ethiopia, for example, which is well-known for wide-spread and well-documented practice of enforced disappearance,[6] AsyLex has intervened in multiple cases of forced deportations. In 2021, only last-minute interim measures from the Committee on the Elimination of Discrimination against Women prevented one of our female clients from deportation to Ethiopia on a collective removal flight.[7] The deportation was about to take place although the risk of her being subjected to severe SGBV, including enforced disappearance, could not be excluded. Despite these warning signs, forced deportations to Ethiopia continue, including a recent flight in February 2025.

Deportations To Dublin Member States Where Women Face "Short-Term Enforced Disappearance"

[6] See, for example: Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties to the Conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia. (2021). Available at: <https://digitallibrary.un.org/record/3947207?v=pdf>

[7] AsyLex. Press Release: LAST SECOND: United Nations Committees stop deportation of two clients to Ethiopia. (7 June 2021, updated 14 April 2022). Available at: <https://www.asylex.ch/post/paving-the-path-to-a-brighter-future>

As has been clarified by the Committee on numerous occasions, enforced disappearances do not require a temporal limitation.[8] In other words, as soon as a person is deprived of liberty by state authorities, which refuse to disclose their fate or whereabouts, it is considered that that person is being subjected to an enforced disappearance. If such enforced disappearances are limited in time, but meet the constitutive elements of the definition, they are referred to as "short-term enforced disappearances."[9]

Alarmingly, Switzerland carries out deportations to Dublin member states in which asylum seekers regularly fall victim to short-term enforced disappearances at the hands of migration and state authorities, such as Croatia, Romania, and Bulgaria.[10] Refugees and asylum seekers are detained at borders, transferred incommunicado under inhumane conditions, and held in secret detention facilities without access to legal counsel or contact with the outside world.[11] For instance, two young girls, aged five and three, were detained separately in a cold room for five hours without information or food, later enduring violence while witnessing their father's torture. Other clients reported sexual violence at the hands of Croatian border guards.[12] While refugees and asylum seekers are thus especially vulnerable to short-term enforced disappearance due to limited knowledge of their rights, lack of support networks, and absence of legal protection, women and girls face additional gendered risks of exploitation, sexual violence, and human trafficking in these conditions.

Such cases illustrate the lack of thorough individual assessments regarding the risk of enforced disappearance upon deportation, which–in addition to violating Art. 16 of the Convention–essentially constitutes a failure to prevent enforced disappearance. We would thus highly recommend **including the need for gender-sensitive risk assessments with regard to enforced disappearance in all asylum procedures** and the need to **refrain from deporting women to countries in which they face real risk of enforced disappearance, so as to prevent their enforced disappearance**.

2. *Section ii. Investigation and Prosecution – Heightened Obstacles to Reporting Enforced Disappearance for Women in Forced Migration*

The concept note's section on investigation and prosecution reiterates the duties states have with regard to investigating, prosecuting and punishing violations of human rights and international humanitarian law (Para. 26), as well as the need to incorporate a gender and intersectionality perspective in such processes (Para. 28).

Women in forced migration face intersectional difficulties in reporting and having their claims effectively investigated: especially when committed by migration or other state authorities, they face issues reporting enforced disappearances and SGBV due to their legal status, and are further believed less due to the "a negative view of the credibility of women and girl victims/survivors".[13] Further, they often face a disproportionate burden of responsibility in the eyes of authorities when reporting SGBV–in the case of one woman from Iran, for example, the Swiss Federal Administrative Court reprimanded her for not having addressed national authorities in Iran after being sexually abused by a judge.[14]

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[8] Committee on Enforced Disappearances, *Estela Deolinda Yrusta and Alejandra del Valle Yrusta v Argentina*, Communication No. 1/2013, (CED/C/10/D/1/2013), 12 April 2016, para 10.3, Available at: <https://juris.ohchr.org/casedetails/2141/en-US> ; Committee on Enforced Disappearances and Working Group on Enforced or Involuntary Disappearances "Joint statement on so-called 'short-term enforced disappearances'" (2024) CED/C/11, para 6. Available at: <https://digitallibrary.un.org/record/4069020?v=pdf>

[9] Ibid.

[10] AsyLex, "Commentary by AsyLex regarding Switzerland on the call for inputs with a view to issuing a joint statement on the notion of short-term enforced disappearance" (2023). Available at : <https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/cfis/short-term-disap/submission-short-term-ED-CED-WGEID-cso-asylex-en.pdf >

[11] AsyLex and Centre Peace for Studies, "Submission of Reliable Information Containing Well-Founded Indications That Torture is being Systematically Practised in the Republic of Croatia, in Violation of Art. 20 of the Convention Against Torture" (2025) para 35. Available at: <https://drive.google.com/file/d/1N-f3D6DMsIS0W-sbjTGTqDCo3pshN05y/view?usp=sharing>; see also Border Violence Monitoring Network, "Input to the Joint Statement on the Notion of Short-Term Enforced Disappearance," 14 August 2023. Available at: <https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/cfis/short-term-disap/submission-short-term-ED-CED-WGEID-cso-bvmn-en.pdf>

[12] AsyLex and Centre for Peace Studies, "Submission of Reliable Information Containing Well-Founded Indications That Torture is being Systematically Practised in the Republic of Croatia, in Violation of Art. 20 of the Convention Against Torture" (2025) para 27-30.

[13] Concept note, para. 6.

[14] E-5129/2020, (18 December 2023). Available at: <https://bvger.weblaw.ch/cache?id=606fa0b5-04b9-44b0-9b47-6792887f2f50&quiLanguage=fr&q=E-5129%2F2020&filters=%5B%5D&sort-field=relevance&sort-direction=relevance>

AsyLex observes that many victims remain unaware of their right to report, often because their enforced disappearance was perpetrated by state authorities or due to a lack of access to legal assistance and information about their rights.[15] Even when complaints are filed, AsyLex has documented numerous cases where competent authorities fail to take action. This problem is especially acute in countries like Croatia, where authorities have a well-documented history of neglecting investigations into human rights abuses, with complaints against civil servants by criminal prosecution bodies being rejected in more than 95% of cases.[16] The Council of Europe's Committee for the Prevention of Torture has condemned Croatia for systematically failing to investigate allegations of torture and ill-treatment against migrants. Moreover, the European Court of Human Rights has ruled against Croatia for its failure to conduct effective investigations, highlighting the ongoing absence of effective remedies.[17] There is a specific gendered dynamic to the lack of remedies, as disregarded complaints often concern women who are victims of SGBV at the hands of authorities.[18]

We suggest the Commentary include the **specific obstacles women in forced migration face when trying to access reporting mechanisms and effective investigation due to the intersection of their situation of forced migration and gender**.

3. Section vi. Repair – Deportation With no Means of Rehabilitation

Article 24(4) of the Convention obliges states parties to ensure, within their legal systems, that victims of enforced disappearance have the right to obtain reparation and prompt, fair, and adequate compensation. The concept note clarifies the different elements compensation entails, including rehabilitation, satisfaction and guarantees of non-repetition.

Women whose asylum claim is rejected after having experienced enforced disappearance, and who are–against the non-refoulement principle as enshrined in Art. 16 of the Convention–deported to countries where they cannot rehabilitate effectively due to retraumatisation and a lack of psychological support, are denied their right under Art. 24(4) of the Convention.

AsyLex is concerned that Switzerland carries out deportations without an adequate individual assessment of whether direct and indirect victims of enforced disappearance will have access to rehabilitation services, legal remedies, or other forms of reparation in the country of return. In countries such as Ethiopia, Iraq, and Sri Lanka—where reparation mechanisms are weak, inaccessible, or entirely absent—there is a serious risk that returnees will be denied their right to redress and recovery from trauma.

The concern of insufficient assessment is further acute in the context of the Dublin system and the use of so-called "safe third countries," where asylum claims are often dismissed without thorough individual examination. This practice is particularly harmful to asylum seekers with complex trauma related to enforced disappearance—especially when the violation occurred in the very country to which they are being returned

We thus suggest the Commentary **include the need for incorporating a risk and rehabilitation assessment in asylum procedures**. In cases where return would expose victims to environments without access to justice, psychosocial support, or legal remedies, providing victims with **protection status may be the only viable means of fulfilling the state's obligation to provide effective reparation** under Article 24(4).

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[15] AsyLex and Centre for Peace Studies, "Submission of Reliable Information Containing Well-Founded Indications That Torture is being Systematically Practised in the Republic of Croatia, in Violation of Art. 20 of the Convention Against Torture" (2025) para 58-64.
[16] Lidija Horvat, "Cruel, Inhuman and Degrading Treatment of Persons Deprived of their Liberty: Croatian Experience in the Context of International Human Rights Standards," 2023. Doctoral Thesis, University of Zagreb, Faculty of Law, p. 232. Available at: <https://repozitorij.pravo.unizg.hr/islandora/object/pravo:5601>
[17] *MH and others v Croatia* [2022] European Court of Human Rights No. 15670/18 and No. 43115/18.
[18] AsyLex and Centre for Peace Studies, "Submission of Reliable Information Containing Well-Founded Indications That Torture is being Systematically Practised in the Republic of Croatia, in Violation of Art. 20 of the Convention Against Torture" (2025) para 27-30.

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Zürich, den 18. September 2025

Vernehmlassung: Verordnungsänderungen aufgrund der Übernahme und Umsetzung der Verordnung (EU) 2024/1717 zur Revision des Schengener Grenzkodex (Schengen-Weiterentwicklung) sowie aufgrund einer Änderung des Ausländer- und Integrationsgesetzes

Sehr geehrter Herr Bundesrat Jans,
Sehr geehrte Frau Schaer und sehr geehrte Frau Tuffer
Sehr geehrte Damen und Herren

Im Namen des Vereins AsyLex bedanken wir uns für die Möglichkeit zur Stellungnahme zu der vorgesehenen Übernahme und Umsetzung der Verordnung (EU) 2024/1717 zur Änderung der Verordnung (EU) 2016/399 über einen Unionskodex für das Überschreiten der Grenzen durch Personen. Nachfolgend finden Sie unsere detaillierte Stellungnahme.

Wir bedanken uns für die wohlwollende Berücksichtigung unserer Vernehmlassungsantwort.

Mit freundlichen Grüssen

Michael Meyer
Legal Advisor
AsyLex

1. Grundsätzliche Bemerkungen

AsyLex lehnt den Entwurf der Verordnungsänderungen aufgrund der Übernahme und Umsetzung der Verordnung (EU) 2024/1717 zur Revision des Schengener Grenzkodex (Schengen-Weiterentwicklung) sowie aufgrund einer Änderung des Ausländer- und Integrationsgesetzes des Eidgenössischen Justiz- und Polizeidepartements ab. AsyLex befürwortet grundsätzlich die Übernahme und Umsetzung der EU-Verordnung, aber nicht zu jedem Preis. Die Schengen-Assoziierung der Schweiz sollte nicht aufs Spiel gesetzt werden, aber die Übernahme und Umsetzung der EU-Verordnung darf nicht zulasten der Menschenrechte fallen. Eine weitere Einschränkung der Grundrechte von Asylsuchenden wird deshalb abgelehnt.

2. Detaillierte Bemerkungen zu den vorgeschlagenen Änderungen

2.1 Bemerkungen von AsyLex zum Recht auf Asyl

2.1.1 Änderungen der VEV

2a Abschnitt Einreisebeschränkungen zum Schutz der öffentlichen Gesundheit

AsyLex fordert generell, dass Grenzkontrollen einheitlich durchgeführt werden und sich nicht kantonal unterscheiden. Grenzkontrollen sollen in der Kompetenz des Bundes liegen und nicht durch die Kantone durchgeführt werden. Einreisebeschränkungen und weitere Massnahmen zum Schutz der öffentlichen Gesundheit oder aus einem anderen Grund dürfen die Menschenrechte von asylsuchenden Personen auf keine Weise beeinträchtigen.

Art. 10a Ausnahmen von den Einreisebeschränkungen

Absatz 1

AsyLex befürwortet Absatz 1 grundsätzlich, fordert jedoch, dass an den Schweizer Grenzen der Zugang zum Asylverfahren jederzeit gewährleistet sein muss, dies gilt auch für Flugplätze an Schengen-Aussengrenzen.

Absatz 2

AsyLex befürwortet Absatz 2 grundsätzlich. Ausnahmen basierend auf humanitären Gründen sind stets eingehend zu prüfen und einzelfallspezifisch in jedem Fall zu gewähren.

Art. 10b Bescheinigung für die Reise von nicht visumspflichtigen Drittstaatsangehörigen

AsyLex befürwortet Art. 10b.

Art. 11 Abs. 2 Erteilung von Visa für kurzfristige Aufenthalte

AsyLex befürwortet die Ausnahme der Einreiseverweigerung in Absatz 2.

Art. 30 Vorübergehende Wiedereinführung von Grenzkontrollen an den Schengen-Binnengrenzen der Schweiz

AsyLex spricht sich klar gegen die vorübergehende Wiedereinführung von Grenzkontrollen an den Schengen-Binnengrenzen der Schweiz aus. AsyLex fordert, dass an den Schweizer Grenzen der Zugang zum Asylverfahren jederzeit gewährleistet sein muss. Bestehen Zweifel, ob ein Asylgesuch vorliegt, muss die betroffene Person einem Asylverfahren zugeführt werden. Zudem sollte die Kompetenz über die vorübergehende Wiedereinführung von Grenzkontrollen nur beim Bundesrat liegen und selbst in dringenden Fällen nicht durch das EJPD entschieden werden. Zudem ist „in dringenden Fällen“ in Absatz 2 Bst. b nicht definiert, was zu Unsicherheiten führen kann. Der Begriff muss deshalb erläutert und verständlich gemacht werden. Schwerwiegende Mängel sollen zudem nicht zur vorübergehenden Wiedereinführung von Grenzkontrollen führen. Die Verhältnismässigkeit der Wiedereinführung von Grenzkontrollen muss stets gewährleistet werden. Es gilt schliesslich anzumerken, dass Binnengrenzkontrollen der Idee des freien Schengenraumes zuwiderlaufen und ohnehin nicht von der Pflicht entbinden, jedes Asylgesuch entgegenzunehmen und zu prüfen.

Art. 31 Zuständigkeit für die Grenzkontrollen

AsyLex fordert, dass an den Schweizer Grenzen der Zugang zum Asylverfahren jederzeit gewährleistet sein muss. Dies bedeutet, dass bei Zweifeln oder Unklarheiten, ob eine Person bereits ein Asylverfahren durchlaufen hat, zwingend ein Verfahren eingeleitet werden muss, um die Fluchtgründe der Person anzuhören. Der Umkehrschluss birgt enorme persönliche Gefahren für Geflüchtete und ist deshalb zwingend zu verhindern. AsyLex fordert zudem, dass in jedem Fall eine Übersetzung der Wegweisungsverfügung in die Muttersprache der wegzuweisenden Person erfolgt. Eine Verfügung gilt nicht als rechtskräftig eröffnet, wenn keine Übersetzung stattgefunden hat, da nicht davon ausgegangen werden kann, dass die Person angemessen über ihre Rechte in einer verständlichen Weise informiert wurde. Dies würde den Zugang zu Rechtsmitteln erschweren bzw. vollständig verunmöglichen.

2.2 Bemerkungen von AsyLex zur fehlenden Anhörung und zur Gefahr des Untergehens von Fluchtgründen bei Einreisebeschränkungen

AsyLex nimmt mit Sorge zur Kenntnis, dass die Umsetzung der Verordnung (EU) 2024/1717 in Form von Art. 5b AIG-E keine explizite Regelung zum rechtlichen Gehör (Anhörung) vorsieht, bevor eine Einreisebeschränkung ausgesprochen wird. Dies gilt insbesondere im Hinblick auf Einreiseverweigerungen an den Schengen-Aussengrenzen aufgrund von Bedrohungen der öffentlichen Gesundheit gemäss Art. 21a SGK.

Die vorgeschlagene Regelung erlaubt Einreiseverweigerungen aus Gründen der öffentlichen Gesundheit (z. B. bei Pandemien), ohne dass betroffene Personen angehört oder individuell geprüft

werden. Dies widerspricht grundlegenden rechtsstaatlichen Prinzipien wie dem Recht auf rechtliches Gehör (Art. 29. Abs. 2 BV), Verhältnismässigkeit (Art. 5 Abs. 2 BV) sowie dem Grundsatz des non-refoulement (Art. 25 Abs. 3 BV, Art. 33 GFK).

Besonders bei Personen, die aus Schutzgründen fliehen, besteht die Gefahr, dass ihre Anliegen nicht einmal zur Kenntnis genommen werden, weil sie gar nicht erst einreisen dürfen – ohne Möglichkeit zur Anhörung oder rechtlichen Vertretung. In der Praxis besteht somit die Gefahr, dass Menschen, die aus politischen, religiösen oder humanitären Gründen geflüchtet sind, nicht gehört werden und ihr Gesuch gar nicht erst geprüft wird.

In der Praxis besteht ein erhebliches Risiko, dass Schutzsuchende, die sich an einer EU-Aussengrenze oder einem Flughafen befinden und aus einem Krisengebiet fliehen, pauschal zurückgewiesen werden, ohne dass ihre Fluchtgründe individuell geprüft werden. Dies ist aus Sicht von AsyLex nicht akzeptabel.

Einreisebeschränkungen aus gesundheitlichen Gründen dürfen nicht dazu führen, dass das Asylrecht de facto ausgehöhlt wird, Personen mit Schutzstatus nicht identifiziert werden und die Verletzlichkeit besonders gefährdeter Gruppen, wie Kranke, Kinder oder Opfer von Menschenhandel, ignoriert wird.

Gerade in Krisensituationen wie Pandemien ist aber zu befürchten, dass pauschale Einreiseverbote oder restriktive Grenzmassnahmen dazu führen, dass Fluchtgründe nicht erkannt werden – etwa, weil es an der Grenze zu keinen Gesprächen, Übersetzungsdiensten oder Anhörungen kommt. Viele Menschen bringen ihren Asylwunsch nicht spontan und aktiv vor, insbesondere unter Stress, Angst oder Unkenntnis der Sprache.

In der Praxis zeigen Fälle aus Flughäfen oder EU-Aussengrenzen (z. B. Griechenland, Ungarn, Polen), dass auch schutzbedürftige Personen zurückgewiesen oder isoliert wurden, ohne dass ihre individuelle Lage geprüft worden wäre. Eine derartige Praxis darf sich unter dem neuen Rechtsrahmen nicht institutionalisieren.

2.3 Bemerkungen von AsyLex zur Vereinbarkeit der Verordnungsänderungen mit Kinderrechten

Art. 3 Abs. 1 des Internationalen Übereinkommens über die Rechte des Kindes (KRK) hält fest, dass bei allen Massnahmen, die Kinder betreffen, einschliesslich der von Gerichten, Verwaltungsbehörden oder Gesetzgebungsorganen getroffenen, das Wohl des Kindes vorrangig zu berücksichtigen ist. AsyLex ist alarmiert, dass die Verordnungen das absolute Kindeswohl ungenügend berücksichtigen. Stattdessen werden Grenzkontrollen und vage gehaltene nationale ‘Sicherheitsinteressen’ priorisiert. Inwiefern sichergestellt werden soll, dass die mit den Verordnungsanpassungen einhergehende Aushöhlung des Rechts auf Asyl mit dem internationalem Recht, einschliesslich des Übereinkommens, vereinbar sind – wie es diese laut Absatz 5.1 des erläuternden Berichts zur Eröffnung des Vernehmlassungsverfahrens des EJPD angeblich sein sollen – ist nicht nachvollziehbar.

2.3.1 Änderungen der VZAE

<u>Art. 88a Absatz 2: Spezielle Situation von unbegleiteten Minderjährigen</u>

AsyLex befürwortet, dass weiterhin die Beiordnung einer Vertrauensperson für unbegleitete minderjährige Ausländer:innen im Wegweisungsverfahren vorgesehen ist.

2.3.2 Änderungen der VEV

2a Abschnitt Einreisebeschränkungen zum Schutz der öffentlichen Gesundheit

AsyLex begrüsst die Klarstellung des Rechts auf gemeinsame Einreise von Elternteilen mit unbegleiteten Kindern in Art. 10a, Absatz 2b. Jedoch sehen wir dringenden Ergänzungsbedarf auf Einreisen von unbegleiteten Minderjährigen. So soll eine Erweiterung zur Ausnahme von Einreisebeschränkung für alleinreisende Kinder vorgenommen werden. Dies ist unabdingbar, um sicherzustellen, dass Art. 10 u.a. mit den Verpflichtungen der Schweiz unter Art. 8 EMRK und Art. 10 KRK vereinbar ist.

Art. 10a Ausnahmen von den Einreisebeschränkungen

Die Vorlage sieht vor, dass minderjährige Kinder gemeinsam mit ihren Elternteilen einreisen können, wenn diese über eine Ausnahme von Einreisebeschränkungen verfügen. Hierbei verfehlt es die Vorlage, sicherzustellen, dass Kinder stets mit ihrer primären Bezugsperson einreisen können, auch wenn diese nicht ein biologisches Elternteil ist. Fälle, in denen zum Beispiel ein erwachsenes Geschwister die primäre Bezugsperson ist, werden nicht reflektiert. AsyLex schlägt eine entsprechende Klarstellung zur Auslegung von Abs. 2c oder eine explizite Ergänzung in einem zusätzlichen Buchstaben vor.

Art. 30 Vorübergehende Wiedereinführung von Grenzkontrollen an den Schengen-Binnengrenzen der Schweiz

Asylex lehnt in jeglicher Hinsicht die Wiedereinführung von vorübergehenden Grenzkontrollen ab - insbesondere im Hinblick auf die damit einhergehenden Einschränkungen des Zugangs zum Asylverfahren für unbegleitete Kinder. Unbegleitete Kinder haben sowohl ein besonderes Interesse daran, nicht im Land der Erstregistrierung um Asyl zu ersuchen, als auch einen dementsprechenden Anspruch unter Art. 8 des Dublin-III-Abkommens. Die Wiedereinführung von vorübergehenden Grenzkontrollen bedroht das Recht auf Zugang zum Asylverfahren allgemein und steht ferner im Widerspruch zu den erweiterten Zuständigkeitsbestimmungen für Kinder.

2.4 Bemerkungen von AsyLex zur fehlenden Übersetzung der Standardformulare

Asylex erachtet es als stossend, dass betroffenen Drittstaatsangehörigen in der vulnerablen Situation einer drohenden Wegweisung gestützt auf den SGK aufgrund fehlender Kenntnis über die Eröffnung mittels Standardformular oder fehlender Sprachkenntnis das rechtliche Gehör faktisch als Strafe

verweigert wird. Dies insbesondere mit Blick auf das erhöhte Rechtsschutzinteresse, welches in Situationen wie dieser klar zu bejahen ist.

Drittstaatsangehörige, die nicht alle Einreisevoraussetzungen im Sinne von Art. 6 Abs. 1 GSK erfüllen und nicht zum in Art. 6 Abs. 5 GSK genannten Personenkreis gehören, werden gemäss Art. 64c Abs. 1 lit. b AIG i.V.m. Art. 14 SGK bei Aufgriff in der Schweiz nach zuvor erfolgter Überquerung einer Schengen-Aussengrenze formlos weggewiesen, es sei denn, sie verlangen unverzüglich[1] die Ausstellung eines Standardformulars im Sinne von Art. 64b AIG (Art. 64c Abs. 2 AIG). Dieses Standardformular bedarf sodann gemäss Art. 64f Abs. 2 AIG keiner Übersetzung.

Eine betroffene drittstaatsangehörige Person wird so im Regelfall ohne weitere Anhaltspunkte aus der Schweiz und aus dem Schengenraum verwiesen, es sei denn sie verlangt unverzüglich die Ausstellung eines Standardformulars. Dabei ist bereits extrem fraglich, inwiefern eine betroffene Person bei ihrer Wegweisung – eine Situation, die per se geprägt ist von Stress und Unklarheit – unverzüglich in Kenntnis über den Anspruch sein soll, sich die grundsätzlich formlos erfolgende Wegweisung schriftlich ausfertigen zu lassen.

Falls die Person über ihr Recht in Kenntnis gesetzt wird und davon wie verlangt unverzüglich Gebrauch macht, wartet die nächste Hürde. Das ausgestellte Standardformular wird potenziell nicht in einer für sie verständlichen Sprache ausgestellt, was erneut die Gefahr der Unkenntnis über ihren rechtlichen Handlungsspielraum birgt.

Wenn eine Wegweisungsverfügung per Standardformular eröffnet wird, ist von der verfügenden Behörde ein Informationsblatt mitzureichen, welches grundsätzlich in den fünf Sprachen vorliegen muss, die von «illegal Einreisenden» am häufigsten verwendet wird (Art. 26e Abs. 1 VVWAL; Art. 23 Abs. 3 Rückführungsrichtlinie). Diese sind den Kantonen vom SEM zur Verfügung zu stellen (Art. 26e Abs. 3 VVWAL). Die Kantone stehen jedoch unter keiner Verpflichtung, diese zu benutzen und sind daher komplett frei in der Gestaltung dieser Informationsblätter.[2] So wird neuer Raum für föderalistische Ungleichheit und Willkür geschaffen, was zur Folge hat, dass Betroffene im Kanton A allenfalls ausreichend in Kenntnis sind über ihre rechtlichen Möglichkeiten, wohingegen Betroffene im Kanton B weiter verloren vor vollendeten Tatsachen stehen.

Dass diese Regelung gemäss SEM praktisch von geringer Relevanz sein dürfte, da den Schweizer Behörden im Regelfall die Kenntnis über Wegweisungsverfügungen an den Schengen-Aussengrenzen fehle,[3] wirkt mit Blick auf Sinn und Zweck des Schengen-Normkomplexes absolut fragwürdig und verklärend. Im Sinne der Rechte der Betroffenen muss davon ausgegangen werden, dass die Behörden über an den Schengen-Aussengrenzen erfasste Wegweisungsverfügungen in Kenntnis sind und zur Durchsetzung dieser bereit sind. Dabei gilt es anzumerken, dass sich die Sachlage und Lebensumstände der Betroffenen seit ihrer Überquerung der Schengen-Aussengrenzen problemlos

[1] vgl. SEM, Weisungen AIG, Ziff. 6.3.2, wonach «unverzüglich» meint, dass das Begehren direkt nach Erlass der formlosen Wegweisung gestellt werden muss
[2] Vgl. hierzu auch Kammermann Barbara, in: Caroni Martina/Thurnherr Daniela (Hrsg.), Ausländer- und Integrationsgesetz (AIG), 2. Aufl., Bern 2024, Art. 64f AIG N 4 f.
[3] vgl. SEM, Weisungen AIG, Ziff. 6.3.2.3

verändert haben können (wie zahlreich dokumentierte [sexualisierte] Gewalterfahrungen von Geflüchteten, in Kroatien, Griechenland, Bulgarien oder Ungarn zeigen), sodass allenfalls trotz Vorliegen eines gültigen Wegweisungsentscheids Aussengrenzen im Falle der Prüfung in der Schweiz die Einreisevoraussetzungen im Sinne von Art. 6 Abs. 1 GSK bzw. Art. 6 Abs. 5 GSK als erfüllt zu erachten sind. Eine erneute Prüfung im Grundsatz ist daher unabdingbar.

2.5 Bemerkungen von Asylex zum Einreiseverbot

AsyLex möchte betonen, dass jedes Einreiseverbot klare Ausnahmen für Personen enthalten sollte, die einen gültigen Asylantrag gestellt haben oder von Verfolgung bedroht sind. Grenzkontrollmassnahmen dürfen nicht unbeabsichtigt Personen davon abhalten, Zuflucht zu suchen oder den ihnen nach internationalem Recht zustehenden Schutz in Anspruch zu nehmen.

Im Zuge der aktuellen Verordnungsänderungen, insbesondere der Umsetzung der Verordnung (EU) 2024/1717 zur Revision des Schengener Grenzkodex, wurden Massnahmen zur Verstärkung der Grenzkontrollen und zur Gewährleistung der öffentlichen Sicherheit eingeführt. Dabei ist auch die Möglichkeit vorgesehen, bei Verdacht auf Sicherheitsrisiken Einreiseverbote auszusprechen.

Diese Massnahmen sollen zwar verschiedenen Herausforderungen im Zusammenhang mit Migration und Sicherheit begegnen, es muss jedoch unbedingt sichergestellt werden, dass die anstehenden Verordnungsanpassungen mit den internationalen Verpflichtungen der Schweiz, insbesondere denen aus der Genfer Flüchtlingskonvention von 1951, im Einklang stehen.

Die Genfer Flüchtlingskonvention schreibt vor, dass Personen, die Asyl suchen, nicht wegen ihrer illegalen Einreise oder ihres illegalen Aufenthalts bestraft werden dürfen, wenn sie vor Verfolgung oder ernster Schädigung fliehen. Daher muss die Einführung von Einreiseverboten zur Aufrechterhaltung der öffentlichen Sicherheit sorgfältig abgewogen werden, wobei die Rechte von Personen, die internationalen Schutz vor Verfolgung suchen, frei von im Gesetzeswortlaut festgehaltener Stigmatisierung zu wahren sind.

Darüber hinaus fordert AsyLex den Bestand wirksamer Garantien und Verfahren zur Sicherstellung, dass Personen, welche mit einem Einreiseverbot belegt worden sind, die Möglichkeit haben, ihren Asylantrag ohne Angst vor Repressalien zu stellen. Eine Prüfung von Fluchtgründen, welche eine Verfolgung von Leib und Leben beinhalten, muss vorgehen. Dazu gehören ein angemessener Zugang zu Rechtsbeistand und die Bereitstellung von Informationen über ihre Rechte.

Die im Rahmen der Verordnungsänderungen getroffenen Massnahmen müssen im Einklang mit den humanitären Verpflichtungen der Schweiz umgesetzt werden und die Rechte der Schutzsuchenden müssen gewahrt und geschützt werden. Die Schweiz sollte sich im Einklang mit ihrer humanitären Tradition weiterhin zu einem sicheren und menschenwürdigen Umgang mit Migration bekennen, der sowohl den Rechtsrahmen, als auch den gemeinsamen Werten der Würde, der Achtung und des Beistands vulnerabler Personen entspricht.

3. Fazit

Mit den genannten Vorschlägen soll eine Beschneidung der Grundrechte der Asylsuchenden durch unspezifische Formulierungen und Möglichkeiten zum Erlass abweichender Bestimmungen verhindert werden. AsyLex lehnt aufgrund der starken Eingriffe in die Menschenrechte von vulnerablen Personen, die Übernahme und Umsetzung der EU-Verordnung ab. Es gilt die einzelnen Gesetzesänderung zu präzisieren und sicher zu stellen, dass die Grundrechte auf Privatsphäre aller Personen, auch Drittstaatsangehörige, nicht unverhältnismässig und ungerechtfertigt eingeschränkt werden. Das fundamentale Recht um Asyl zu ersuchen, darf keinesfalls untergraben werden. Die aktuelle und geplante Gesetzeslage sichert dieses fundamentale Recht nicht. Entsprechend müssen die oben genannten Bedenken ernst genommen und umgesetzt werden. Insbesondere gilt es, dass Recht, jederzeit ein Asylgesuch zu stellen, zu respektieren. Massnahmen zugunsten der Asylsuchenden werden unterstützt und können erweitert werden.

Maxine: aktuell weggenommen:
Art. 26i Statistiken

…

2.4 Änderungen der ZEMIS-Verordnung

Art. 20 Abs. 2bis
Anhang 1 Datenkatalog ZEMIS

OHCHR: Call for inputs on Experiences and perspectives of victims and survivors of torture and other cruel, inhuman or degrading treatment or punishment

Commentary by AsyLex Regarding Switzerland

Date: **22 September 2025**

Contact: **international@asylex.ch**

Word Count: **2646**

A. About the Commenting Organisation

AsyLex is an independent Swiss NGO offering free online legal support to asylum seekers and refugees. Since 2017, it has supported over 16,000 individuals in navigating the Swiss asylum system, regardless of origin, religion, gender, age, family situation, financial means or prospect of success.

Around 150 trained volunteers, coordinated by a core office team of 16, provide specialised assistance in areas such as family reunification, detention, criminal law, social assistance and international litigation. Through its Rights in Exile platform, AsyLex also serves displaced persons globally by offering access to legal information, local legal practitioners, and a space for collaborative knowledge exchange. Internationally, AsyLex represents individuals before UN human rights bodies, including CCPR, CRC, CERD, CAT, and CEDAW.

We welcome the Special Rapporteur on Torture's call to receive relevant input for the upcoming report on the experiences and perspectives of victims and survivors of torture and other cruel, inhuman or degrading treatment or punishment. We thank the Special Rapporteur for the opportunity to contribute by sharing our observations from representing survivors of torture and other forms of cruel, inhuman and degrading treatment.

B. Responses to the Special Rapporteur's Questions

Throughout its day-to-day operations, Asylex regularly provides legal advice to asylum seekers who have been subjected to torture, and/or other cruel, inhuman, or degrading treatment prohibited by the Convention Against Torture (CAT) and other international human rights treaties. Moreover, persons with lived experience of displacement are part of AsyLex' volunteer team. This submission is based on the individual stories of our clients, direct inputs from volunteers, as well as structural short-comings we observe in our everyday work.

I. Experiences of Torture

AsyLex has represented numerous asylum seekers and refugees in Switzerland who have been denied asylum despite having been exposed to torture and/or other cruel, inhuman, or degrading treatment. Alarmingly, we witness that, rather than providing protection to survivors, Switzerland regularly fails to adequately assess such violations, and thus becomes a secondary perpetrator by deporting persons to countries in which survivors are exposed to renewed CAT violations or face conditions that prevent their rehabilitation. Especially with regards to deportations to Dublin-III member states and so-called 'Safe Third Countries' (STCs), Switzerland relies on the general assumption that these states comply with

international human rights standards, rather than individually assessing our clients' personal experiences or recognizing the structural shortcomings in many STCs or Dublin-III member states AsyLex and other civil society organizations consistently warn about.

a) CAT violations in country of origin

While the individual violations our clients and volunteers were subjected to in their country of origin are diverse, some significant groups who survived CAT violations include Kurdish persons from Türkiye, political opponents from Burundi, Afghans having fled the Taliban-regime, and Eritreans fleeing military prescription. Moreover, we receive numerous requests from Palestinians in Gaza and Afghans in Afghanistan, Pakistan, Iran and Türkiye who seek support in applying for a humanitarian visa to Switzerland. The latter include women who were exposed to SGBV at the hands of the Taliban, human and women's rights activists, and members of the previous government. We note that many of our clients report being subjected to systematic violence, arbitrary detention, forced conscription, or other forms of persecution in their countries of origin. Our clients frequently cite such experiences as the impetus for fleeing their countries of origin.

When collecting individual stories specifically for this submission, one volunteer shared the following:

"I survived a mass massacre in Syria in 2012, during which four of my relatives were killed while working on the farm. They were directly executed by Syrian regime forces who were present near that area."

Another person from Türkiye shared that they were targeted by "government and/or political groups; armed groups/non-governmental militants; community members/neighbours; religious authorities; and family, friends, media or social media groups (hate speech and lynch campaigns)". The violations both took place in government facilities, including in a vehicle belonging to authorities, and in private homes. Both respondents noted that they were exposed to verbal abuse, such as name-calling; the use of derogatory language; other acts of psychological torture, beatings with and without weapons and the purposeful withholding of food and/or water.

b) CAT violations enroute to Switzerland

AsyLex' clients often report being subjected to further CAT violations throughout their journey to Switzerland. The CAT violations include violent border pushbacks, police brutality, abuse by border officers, and degrading detention during transit.

We are particularly concerned about the treatment of our clients in Croatia. Together with the Centre for Peace Studies, an NGO present in Croatia, we have submitted a request for an inquiry into Croatia,[1] which is currently pending with the Committee against Torture. In essence, the communication entails first-hand testimonies of asylum seekers subjected to aggressive tactics by police, detention centre staff, and border security officers, which includes sexual assault; battery with weapons and/or unarmed beatings; the denial of medical care; deprivation of food and water in dentention facilities and transport vehicles; death threats; taking possessions and clothes and forcing asylum seekers to wander naked back

[1] AsyLex and Centre Peace for Studies, "Submission of Reliable Information Containing Well-Founded Indications That Torture is being Systematically Practised in the Republic of Croatia, in Violation of Art. 20 of the Convention Against Torture" (2025) para 35, available at: https://drive.google.com/file/d/1N-f3D6DMsIS0W-sbjTGTqDCo3pshN05y/view?usp=sharing.

to the border, without ample protection from the weather, or adequate directions; destroying identity documents vital to their future or current asylum claims; subjecting asylum seekers to purposeful humiliation or scare tactics, including tagging them with spray paint; throwing food and/or shooting bullets at them; and rubbing sand or culinary sauces into open wounds.

Similar patterns can be observed in other countries receiving Dublin transfers such as Romania, and STCs including Greece, where pushbacks, obstacles to basic services, and violence at the hands of authorities are systemic.[2] One volunteer reported that, upon arrival in Greece, they were subjected to a humiliating strip search, forced to remove all their clothing, which border guards then threw into a river, leaving them "exposed and vulnerable". After this degrading treatment, they were violently pushed back across the border into Türkiye.

c) CAT violations by Switzerland

Deportations in violation of the non-refoulement principle

AsyLex regularly represents asylum seekers whose experienced human rights abuses are assessed insufficiently at domestic level, and whose asylum request is consequently unjustly rejected. Deportation to countries in which persons have been or are at risk of being subjected to human rights abuses is in direct violation of the absolute and internationally binding *non-refoulement* principle. In such cases, AsyLex regularly approaches UN Treaty Bodies in the form of individual communications. In more than 75% of the cases submitted, the treaty bodies have issued interim measures, temporarily halting deportations. While the Committees do not substantiate interim decisions, the issuing of interim measures reflects that the Committees share the concern of potential Convention violations.

Concerningly, a significant number of our cases submitted at UN level concern persons who are to be removed to Dublin-member states or STCs where they have in the past experienced torture. In cases in which another state is already deemed responsible for an individual's asylum request, however, Switzerland does not individually assess their situation. Rather, Switzerland relies on the generalized assumptions that other Dublin-III member states and STCs do not engage in torture and ill-treatment and are capable of providing adequate medical treatment and rehabilitation (Art. 14 CAT). Even when AsyLex appeals non-entry decisions or submits reconsideration requests, they are almost always dismissed on the basis of generalized assumptions rather than the individual story at hand, and in denial of extensive documentation of systemic CAT violations in countries such as Greece, Romania or Croatia.

In doing so, Switzerland places these asylum seekers at a profound risk of being subjected to further CAT violations and thus functions as a secondary perpetrator by promoting their (re)victimisation.

Excessive Violence Used During Deportation Flights

AsyLex is highly concerned with the disproportionate violence asylum seekers experience at the hands of authorities carrying out forced deportations. Switzerland has previously been reprimanded by the Committee against Torture for these inhumane practices, which include "shackling, tying individuals to

[2] See for example AIDA Report 2025, available at: https://asylumineurope.org/reports/country/greece/.

wheelchairs with multiple restraints, or the case of a pregnant mother who had to breastfeed her child while handcuffed" (CAT/C/CHE/CO/8, 2023). Despite international reprimands, such practices persist.

Moreover, AsyLex has most recently been involved in cases where clients were removed directly from psychiatric clinics. One client deported from a clinic was tied with a cerberus belt throughout the deportation flight. Similarly, one client was deported in a wheelchair without the medication needed and after experiencing a mental breakdown on the way to the flight. In another case, a client was deported one day after experiencing a miscarriage. Alarmingly, these cases are not exceptional; AsyLex observes a general trend towards deporting persons directly from psychiatric clinics, disregarding their specific needs and vulnerabilities, and exposing them to unnecessary violence throughout expulsions.

Inhumane Detention Conditions

Lastly, AsyLex is alarmed that the Zurich Centre for Administrative Detention under Immigration Law (Zentrum für ausländerrechtliche Administrativhaft; ZAA)'s treatment of suicidal clients effectively amounts to violations of Art. 3 and Art. 16 CAT. Rather than providing suicidal detainees with the appropriate psychological care, the ZAA holds them in isolation in so-called 'security-cells'. Although the Administrative Court of Zurich has found such practice to be unlawful due to its disproportionality – given that alternatives, such as transferring them to a psychological clinic, exist –[3] such practice persists. In light of two most recent suicides and one suicide attempt in the ZAA, AsyLex considers it high time to halt this inhumane practice.

II. Impact on survivors

AsyLex notes that asylum seekers who are survivors of CAT violations suffer severe and long-lasting consequences. For this submission specifically, two AsyLex volunteers who have in the past been subjected to CAT violations shared that they suffer from "lasting psychological problems or disorders; difficulties continuing education or sustaining employment; a cultural identity crisis and damage to their sense of belonging; and a loss of trust and a state of fear" and that the violations experienced "impeded their social and/or family and home life". One respondent additionally answered that the violations they were subjected to generally "impacted their perspective on the future".

A strikingly high proportion of our clients present with post-traumatic stress disorder (PTSD), depression, and/or suicidality.[4] Alarmingly, this also concerns persons whose trauma is linked to the experiences they have been subjected to by authorities in the very STC or Dublin-member state they are to be removed to. To give an example, AsyLex has represented several children presenting with suicidality due to ill-treatment in these countries in front of the Committee on the Rights of the Child (CRC), which has subsequently issued interim measures to temporarily halt the deportation.[5]

III. Seeking justice and reparation

a) Obstacles to obtaining reparations for experienced ill-treatment on deportation flights

[3] Administrative Court Zurich, VB.2021.0061, 28 July 2022.

[4] AsyLex submission to the EUAA for the EUAA 2023 Annual Report, available at: https://euaa.europa.eu/sites/default/files/2023-02/asylex.pdf.

[5] Individual communications to the CRC No. 174/2022; No. 191/2022 ; No. 200/2022; No. 215/2023 ; No. 216/2023 ; No. 246/2024 ; No. 262/2025.

In order to monitor compliance with human rights standards throughout deportation flights, the National Commission for the Prevention of Torture (NCPT) documents the treatment of deportees by cantonal migration authorities. While AsyLex welcomes the presence of NCPT observers and the general reports publicly shared by the NCPT, we face significant obstacles to obtaining all relevant information regarding individual persons, as the NCPT as a rule only transmits minimalistic and highly censored reports. The censoring of files essentially prevents asylum seekers from seeking justice and reparation for violations experienced on deportation flights.

b) General obstacles to legal representation for survivors

Further aggravating inadequate access to justice for asylum seekers is the remuneration model for state-appointed legal representation. Lawyers are paid a lump sum per asylum seeker, irrespective of the complexity of individual cases and whether or not they file an appeal. These misaligned incentives frequently result in state-appointed legal representatives refraining from lodging appeals, even in cases where the Federal Administrative Court deems subsequent appeals filed by private legal representatives to be "not without merit" at least. A report from Pikett Asyl titled "Work of the service providers legal protection in the federal asylum centres – Based on a survey of asylum seekers" highlights that in the first half of 2024, 61.11% of successful appeals in the Zurich region were brought forward by privately appointed legal representatives or even as layperson appeals, rather than by state-appointed legal representatives.[4] Given that state-appointed legal representatives may only terminate their mandate if they see no chance of success (See Art.102h Asylum Act[5]), these findings are worrying.

Once state-appointed legal representatives decide to resign their mandates, asylum seekers may only refer to legal representation subject to costs or non-governmental organisations offering their services for free, such as AsyLex. Civil society organisations and independent legal aid providers such as AsyLex, however, operate under severe resource constraints and pressure, including strategic lawsuits against public participation.[6] Most recently, two lawyers at AsyLex have individually been imposed the court costs of 2000 CHF for defending a client in administrative detention, with the judge arguing that they have engaged in "unfaithful conduct of proceedings". While the Federal Court eventually overruled the administrative court's decision, stating that "the contested decision clearly contradicts the facts of the case and is based on general criticism of the activities of the Asylex organization that is unrelated to the case,"[7] this trend is highly worrying, as the unimpeded work of civil-society organisations providing legal representation remains directly linked to the possibility for survivors to effectively exercise their right to protection and reparation.

c) Best practice: Success with Individual Communications to UN Treaty Bodies

In the context of the persistent short-comings in ensuring survivors' rights at domestic level, AsyLex has relied on international human rights mechanisms to secure justice for survivors. Interim measures issued by UN Treaty Bodies have successfully halted several deportations, thereby safeguarding survivors' access to rehabilitation and preventing refoulement.

Most recently, AsyLex has, in collaboration with Stephanie Motz, obtained two final views adopted by the Committee on the Elimination of all Discrimination against Women,[8] which make the general

[6] ECCHR & AsyLex, *Submission to the UN Special Rapporteur on the situation of human rights defenders regarding SLAPPs in Switzerland*, 2023.

[7] *Read more on the processes here: https://www.republik.ch/2025/05/21/am-gericht-sie-vertraten-einen-haeftling-und-sollten-dafuer-bezahlen.*

[8] CEDAW/C/91/D/169/2021; CEDAW/C/91/D/171/2021.

recommendations that Switzerland must not return survivors of gender-based violence without first conducting an individualized, gender-sensitive, and trauma-informed risk assessment – which, to our knowledge, is the first time the Committee has explicitly referenced the need for a trauma-informed risk assessment. Moreover, Article 12 of CEDAW was found to have been violated due to Switzerland's failure to assess whether a survivor of SGBV would have access to essential medical and psychological treatment in the receiving country — establishing a crucial analogy to Article 14 CAT, guaranteeing the right to recovery from SGBV.

The Treaty Bodies are thus an essential mechanism in holding states accountable where they fail to safeguard survivors' rights. It is thus all the more concerning that the upcoming funding cuts at UN level may restrict the treaty body mechanisms, as the upcoming cut in the number of meetings held[9] may further prolong decision-making proceedings that already leave survivors in a legal limbo for up to several years.

C. Recommendations

On the basis of the observations shared with the Committee in this report, we suggest the Special Rapporteur highlight the following needs to safeguard survivors' rights in her report:

1) Individualised, trauma-informed asylum proceedings, so as to ensure that asylum seekers are not exposed to (renewed) forms of torture and other cruel, degrading and inhumane treatment both throughout the asylum proceeding or upon deportation
2) Unrestricted access of legal representatives to their clients and all relevant information regarding their cases, to ensure effective monitoring, complaint possibilities, and access to reparation
3) Comprehensive free legal aid, linked to the complex representation rather than lump-sum incentives, so as to ensure due duty representation of survivors
4) Safeguards against SLAPP proceedings against legal aid providers, *pro bono* representatives, and other legal support organisations that work with asylum seekers and survivors
5) Unhindered funding for regional and international human rights mechanisms so they may continue to both function as a crucial safeguard for survivors and monitor states' compliance with international law and treaty body decisions

[9] OHCHR. A/80/294: Report of the Chairs of the Human Rights Treaty Bodies on their thirty-seventh Annual Meeting. 31 July 2025, available at: https://www.ohchr.org/en/documents/reports/a80294-report-chairs-human-rights-treaty-bodies-their-thirty-seventh-annual.

OHCHR: Call for inputs "Raising their voices: Human Rights Defenders respond to the human rights crisis"

Commentary by AsyLex Regarding Switzerland

Date: **30 September 2025**

Contact: **international@asylex.ch**

Word Count: **1962 (excluding questions)**

A. About the Commenting Organisation

AsyLex is an independent Swiss NGO offering free online legal support to asylum seekers and refugees. Since 2017, it has supported over 17,000 individuals in navigating the Swiss asylum system, regardless of origin, religion, gender, age, family situation, financial means, or prospect of success.

Approximately 150 trained volunteers, coordinated by a core office team of 16, provide specialised legal assistance in areas such as family reunification, detention, criminal law, social assistance, and international litigation. Through its Rights in Exile platform, AsyLex also serves displaced persons globally by offering access to legal information, local legal practitioners, and a space for collaborative knowledge exchange. Internationally, AsyLex represents individuals before UN human rights bodies, including CCPR, CRC, CERD, CAT, and CEDAW.

We welcome the Special Rapporteur on Human Rights Defenders' call to receive relevant input for her thematic report to the 61st session of the Human Rights Council. We thank the Special Rapporteur for the opportunity to contribute by sharing our first-hand experience as a non-governmental organisation defending asylum seekers' rights through the provision of online legal representation and information.

B. Responses to the Special Rapporteur's Questions

1. What motivates you to uphold, protect or promote human rights? (This may include, for example, work promoting women's rights, LGBTI rights, rights of minorities, labour rights, environmental rights, children's rights, housing rights, migrants' rights, health rights, etc – this list is non-exhaustive). Please give examples.

AsyLex is committed to **enhancing access to justice for asylum seekers and refugees**. Asylum seekers face specific – and often intersecting – obstacles to accessing their fundamental rights following their displacement from their countries of ordinary residence. Subsequent to displacement, asylum seekers are confronted with dangerous migration routes; complex and restrictive asylum systems; language barriers; a lack of centralised and accessible information about the asylum process and their related rights; and an increasingly hostile global environment against asylum seekers. In this context, **organisations like AsyLex must continue to provide support to asylum seekers**, whether through: offering legal aid and information; promoting access to international and regional instruments when domestic frameworks fail to provide protection; or contributing to a more cohesive global support system between like-minded organisations.

2. Do you believe your work is contributing to the creation of a more equal, more just or fairer society in which you live? Please give examples for your answer.

AsyLex believes that **equal access to legal mechanisms and accurate legal information** is a **prerequisite for any just society**. Accordingly, we facilitate this through a range of services and projects. AsyLex has provided direct legal information and representation to over 17,000 asylum seekers since our foundation in 2017. We have also facilitated access to local legal representation and information about the asylum process in over 150 countries through our Rights in Exile Platform.[1] In Switzerland, we routinely: appeal unjust negative asylum decisions; ensure family reunification in Switzerland; and challenge disproportionately coercive measures against asylum seekers. Furthermore, we have secured interim measures from UN human rights treaty bodies in nearly 50 cases. We are currently engaging in collaborative projects beyond Swiss borders to test international human rights mechanisms in other countries with partners in South Africa, Italy, Sweden and more. We are convinced that **without the work of organisations like AsyLex, the barriers asylum seekers face in accessing justice would remain unchallenged**.

3. a) If you live in a country where there is some space to engage in human rights work, how do you believe your society would have developed differently if this work was not permitted?

If the provision of legal aid to asylum seekers by non-governmental organisations was criminalised, **asylum seekers in Switzerland would effectively lack legal pathways to challenge unjust asylum decisions** and/or hold Switzerland accountable for failing to uphold its international human rights law obligations to asylum seekers. Among other things, detention could be prolonged without adequate checks on proportionality, duration, and conditions, and many negative asylum decisions would not be appealed. Furthermore, asylum seekers would not receive support in accessing international human rights mechanisms when their planned deportation would effectively expose them to *refoulement*.

Although asylum seekers in Switzerland receive state-paid legal aid throughout the asylum procedure, state-mandated legal representatives are disincentivised from appealing against a negative asylum decision, as they are paid a lump sum per case. Practice shows that state-paid legal representatives often terminate representation even when there are sufficient grounds to appeal. A recent report by Pikett Asyl, found that 61.11% of successful appeals in the Zurich region in the first half of 2024 were brought forward by privately appointed legal representatives or laypersons, rather than by state-appointed legal representatives.[4]

4. Please describe what piece of human rights work you have carried out or contributed to that you are most proud of over the past five years.

In the last five years alone, AsyLex has advised and represented approximately 15'000 asylum seekers and refugees. We are **particularly proud of our high degree of adaptability**, which is essential in the human rights and asylum context, as legal frameworks and political trends shaping (the lack of) access to justice for asylum seekers are ever changing. Some examples of **dynamic solutions** from AsyLex include the setting up of **legal chatbots** to provide accurate, free, low-threshold information for asylum

[1] https://rightsinexile.org/.

seekers from Ukraine after Russia's invasion, and for Afghans seeking to evacuate after the Taliban takeover.[2] Further notable projects include **cross-border collaborations securing interim measures from UN treaty bodies**, preventing deportation in cases where there is high risk that the concerned persons' removal would constitute a violation of the *non-refoulement* principle; and our recent takeover and ongoing development of the **Rights in Exile Platform**,[3] which provides access to legal information and local representation worldwide. Notably, all of these activities are **only possible because of the support of over 150 volunteers** who dedicate their free time to our vision of a world where everyone has access to justice. We are **proud to witness their commitment and willingness** to acquire knowledge on human rights and asylum related issues, and knowing that they will translate the experiences made with AsyLex to other fields.

5. Has your work been impacted by funding cuts in the past 12 months? If so, please describe what these cuts have prevented you from being able to do.

While not directly affected by notable funding cuts, AsyLex has so far received **40% fewer donations** compared to our last fiscal year. We understand this development to be part of a global trend of questioning the unconditionality of human rights, and an increasingly hostile environment for asylum seekers. The restrictions in funding are a **serious threat** to our activities, as the **sustainability of our services** cannot be guaranteed.

6. If your work has been impacted by funding cuts, please describe how you are attempting to mitigate the impact of the cuts.

To mitigate the above, we are continuously exploring ways to improve our efficiency through the utilisation of **digital tools**, both in order to make **legal information and processes directly accessible to asylum seekers**, and to **train and assist our volunteers**. This includes providing templates for legal documents required for the Swiss asylum process; expanding our Rights in Exile platform, which details asylum procedures and resources across the world online; and integrating AI into our website to help asylum seekers navigate their individual cases. Moreover, we mitigate resource restrictions by keeping a relatively small team of paid staff members and **relying on an extensive volunteer network**, which is vital to the operational success of nearly all aspects of AsyLex's work. Lastly, we are putting an emphasis on pursuing **strategic cases**, which we hope to have a ripple effect on persons in similar situations, and sharing our learnings with likeminded organisations.

We believe that a focus on strategic activities, the use of digital tools and reliance on volunteering work are indispensable to stay afloat in the current sociopolitical context.

7. What is the single biggest risk you face in your work? This could be, for example, financial sustainability, restrictive legislation, a hostile public, physical attack, legal action, criminalisation, unsupportive community/family, media or social media smear campaigns or gendered discrimination (this list is non-exhaustive).

[2] https://globalcompactrefugees.org/good-practices/emergency-response-chatbots.

[3] https://rightsinexile.org/.

AsyLex is facing both **financial difficulties** and an increasingly hostile environment towards both asylum seekers and their legal representatives. The latter includes **Strategic Litigation Against Public Participation procedures**, in which our lawyers have been accused of "facilitating illegal stay" simply for providing legal assistance to clients without residence permits. In one case, the relevant judge even stated on record that she intended her decision to produce a chilling effect on AsyLex's work in future detention cases. These practices undermine asylum seekers' right to legal counsel and place undue personal and professional risks on our team. Financial difficulties emerge both from decreasing funding options and courts refusing to reimburse AsyLex for legal services - even in successful cases. In some instances, judges have attempted to impose court costs on our lawyers and our president personally.

8. Do you think international standards on human rights (as contained in Universal Declaration on Human Rights, ICCPR, ICESCR, HRD Declaration, etc.) are still relevant? Please give a reason for your answer.

International **human rights standards remain vital to our work**, particularly as a method of last resort for asylum seekers whose urgent need for protection has been dismissed by Swiss migration and court officials in such a way that breaches Switzerland's international human rights law obligations. In doing so, organisations such as AsyLex **highlight enduring inconsistencies** between international human rights law standards and domestic asylum frameworks, both in appeals at a national level, and when bringing individual cases to UN human rights treaty bodies' attention. This also exposes flaws in the practical implementation of asylum procedures, particularly when reviewing justifications by government migration authorities and/or courts that fail to adequately consider Switzerland's obligations under such instruments.

9. Do you think the international human rights mechanisms (for example, UN Treaty Bodies, UN Special Procedures, the UN Human Rights Council, the UPR, the Inter-American Commission and Court on Human Rights, the European Court on Human Rights, the African Commission and Court on Human and Peoples' Rights) are effective in protecting the work of human rights defenders? If yes, please explain why. If no, please state what you believe may be a more effective way to protect human rights defenders?

AsyLex **systematically approaches UN treaty bodies** to prevent the deportation of clients whose experienced human rights abuses and/or risk of future human rights violations have been insufficiently considered at domestic level, leading to unjust removal decisions that risk exposing them to irreparable harm. Our **success rate of over 80%** in obtaining interim measures suspending such removals, as well as the most recent final views adopted by the Committee for the Elimination of Discrimination Against Women which urged Switzerland to refrain from deportations without first conducting an "individualised, trauma-informed and gender-sensitive assessment",[4] show that **international human rights mechanisms are a vital tool for human rights defenders** to carry out their work. Furthermore, we hope that final views by the Committees may eventually create precedents that can be used to protect human rights defenders from deportation if they are faced with a real risk of irreparable harm upon removal due to their activism.

[4] CEDAW/C/91/D/169/2021; CEDAW/C/91/D/171/2021.

Due to the **current underutilisation of international human rights mechanisms in the *non-refoulement* context** – despite their demonstrated value – AsyLex is engaged in **spreading awareness** and establishing **collaborations with partners all over the world** through our AsyLex Global project.[5] Another goal of these collaborative projects is to allow the legal community to jointly understand the prospective usefulness of these mechanisms if applied against the actions of other States.

However, we are concerned that funding cuts may impact access to such mechanisms. In particular, we believe that the upcoming cut in the number of treaty body meetings and the suspension of the inquiry mechanism[6] may further prolong decision-making proceedings, the duration of which already currently subjects survivors to a legal limbo that can endure for several years.

10. Do you find the international human rights mechanisms, as outlined above, easy to access? Please give reasons for your answers.

While AsyLex is well-practiced in utilising UN treaty body mechanisms, we believe that they could **become more accessible** for other human rights organisations, as well as for individuals directly impacted by human rights violations. From our perspective, one challenge is the **rapid turnaround time** in which we must produce an individual communication after receiving a negative decision for a client in the national asylum proceeding. We also note that the **strict formal requirements** for individual communications may be exceedingly difficult for affected persons to complete on their own.

11. a) Do you believe communications sent by the Special Rapporteur to governments which are alleged to have violated the rights of human rights defenders are an effective means of protection? Please give examples for your answer.

AsyLex sees **significant value** in communications by Special Rapporteurs to States, having previously worked directly with Special Rapporteurs. Even in cases where a direct plea to a State does not immediately lead to government action, we are convinced that such communications serve as an **important basis for advocacy**, help **raise awareness** on concerning developments, and **amplify civil society action**. AsyLex is convinced that the more like-minded actors work together towards the same vision, the more credible and meaningful each individual contribution becomes.

12. What is the most important message that you would like the Special Rapporteur to bring to the international community about human rights and human rights defenders?

We would highly value the Special Rapporteur to stress the crucial importance of **cross-border collaboration** between human rights defenders and organisations to **mutually learn** from one another and **identify strategic gaps** for collective action. When addressing States, we suggest a strong emphasis on the importance of **sustainable funding for international human rights mechanisms**, which we believe to be a cornerstone to ensuring international human rights commitments are upheld. Moreover, States should be reminded that **legal assistance** and increased **access to justice** are not existential

[5] https://asylex.org/about-asylex-global/#AsyLexGlobal.

[6] OHCHR. A/80/294: Report of the Chairs of the Human Rights Treaty Bodies on their thirty-seventh Annual Meeting. 31 July 2025, available at: https://www.ohchr.org/en/documents/reports/a80294-report-chairs-human-rights-treaty-bodies-their-thirty-seventh-annual.

threats, but must rather be understood as a **fundamental element** of any State aspiring to maintain a robust **rule of law**.

Joint Shadow Report on GREVIO Baseline Evaluation Procedure for the EU

November 2025

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Introduction

This joint shadow report aims to provide input to the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) for its first baseline evaluation of the European Union. The report focuses specifically on the situation of the survivors of GBV, in particular self-identified women and girls, in the asylum context (Chapter VII: Migration and Asylum – Articles 60 and 61).

The report is submitted at a pivotal moment, as the EU undertakes a comprehensive reform of the Common European Asylum System (CEAS). The Pact on Migration and Asylum, adopted in 2024 and expected to enter into force in mid-2026, introduces a series of new instruments - including the Asylum Procedures Regulation, the recast Reception Conditions Directive, and the Asylum and Migration Management Regulation - currently under transposition by Member States. In parallel, the recast Anti-Trafficking Directive, agreed in 2024, will replace the 2011 Directive and take effect in mid-2026. A new EU Directive on combating violence against women and domestic violence, also adopted in 2024, will apply from mid-2027.

This submission assesses the updated rules introduced through the Pact and other relevant EU legislation insofar as they fall within GREVIO's mandate. The legal analysis reviews applicable standards, while the case law section focuses on the interpretation of current obligations. The report also examines EU-level practical and policy measures, including training programmes, guidelines, and data collection systems, and offers tailored recommendations addressed to EU institutions and GREVIO.

The report has been prepared by the European Council on Refugees and Exiles (ECRE) within the framework of the AMAL project, with contributions from its member organisations.

European Council on Refugees and Exiles (ECRE) is an alliance of 127 NGOs based in 40 European countries. ECRE's mission is to protect and advance the rights of refugees, asylum-seekers and other forcibly displaced persons in Europe and in Europe's external policies. Its work includes legal support and strategic litigation to help refugees access their rights and effect broader legal change, advocacy to influence government policies and EU external actions affecting refugee rights, and communication to translate expertise into clear public messages. An important tool in ECRE's work is the Asylum Information Database (AIDA), which provides detailed, country-specific information on asylum procedures, reception conditions, and detention practices across 23 countries, including 19 EU Member States and 4 non-EU countries, helping practitioners, policymakers, and researchers understand and compare asylum systems.

AMAL is a three-year project (2023–2025) led by France terre d'asile in partnership with the European Council on Refugees and Exiles (ECRE). Titled "Empowerment and Protection of Migrant Women," the project seeks to strengthen the protection and fulfilment of migrant women's rights through a broad set of activities. These include advocacy at both the French and EU levels, as well as protection initiatives, empowerment programmes, and capacity-building actions.

AsyLex is a Swiss non-profit organization dedicated to providing online legal assistance to asylum seekers in Switzerland and worldwide. Since 2021, AsyLex has consistently presented individual cases to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), concerning women whose gender-specific risks of refoulement upon deportation have been inadequately assessed at the domestic level. Notably, most of the cases brought by AsyLex to CEDAW

involve deportations under the Dublin III Agreement or a return to an EU member state, where they have previously been recognized as refugees, classified as so-called Safe Third Countries.

Passerell has been working in Luxembourg with vulnerable people, particularly applicants and beneficiaries of international, subsidiary, or temporary protection since 2016. As part of their free legal aid service, Passerell listens and informs people on a daily basis about their fundamental rights and supports them in exercising them. Recognized as public utility since September 2023, Passerell is accredited by the Luxembourg Bar Association and the Ministry of Education, Children, and Youth.

HIAS is a non-profit organisation that provides humanitarian aid and assistance to refugees**. HIAS Greece** provides free legal assistance throughout the asylum procedure, family reunification processes, and for asylum seekers in administrative detention. HIAS' legal services also include undertaking cases to combat hate crime, as well as cases to ensure refugees access to legal, social, and economic rights in Greece.

I. Intersectional Challenges: The Absence of Effective Gender Mainstreaming in EU Migration and Asylum Governance

Despite repeated commitments to gender equality at the EU level, including the Commission's previous Gender Equality Strategy and statements by senior officials, gender mainstreaming remains largely absent, particularly in the legislative and policy outputs of DG HOME.

A clear example of this gap is the EU's New Pact on Migration and Asylum- which will come into effect in June 2026- where gender considerations are largely absent. This is reflected both in the limited attention to gender in key legislative proposals -such as those on asylum procedures, reception conditions, and returns - and in the lack of concrete mechanisms to ensure that implementation at the national level takes into account the specific needs and vulnerabilities of GBV survivors particularly self-identified women and girls. In addition to the Pact, new EU legislation - such as the EU Directive on combating violence against women and domestic violence and the Recast Anti-Trafficking Directive- includes certain provisions relevant to these groups. However, an intersectional approach that addresses the specific needs of GBV survivors in the asylum and migration context, is still lacking. It is therefore crucial for GREVIO to monitor the implementation of the Pact and other relevant EU legislation in EU institutions, agencies, and Member States in line with Articles 60 and 61 of the Istanbul Convention.

In addition, although the EU has not formally acceded to the ECHR, its case law -including rulings relevant to GBV survivors in asylum and migration contexts- is highly instructive. Similarly, the CJEU has developed jurisprudence on fundamental rights under the Charter of Fundamental Rights of the EU, often reflecting ECHR standards. There is a pressing need to systematically mainstream both ECHR and CJEU standards within EU law and practice, particularly in asylum and migration procedures, to ensure that protections for vulnerable groups such as GBV survivors are effectively operationalized. The upcoming MFF proposal raises significant concern regarding the EU's commitment to gender equality, as no dedicated budget lines are foreseen and gender equality is addressed solely through a general reference to "mainstreaming." In practice, without clear earmarked funding, measurable indicators, and accountability mechanisms, mainstreaming becomes largely symbolic and ineffective. This comes at a time when many organisations - especially women's rights organisations - are already struggling with severe budget cuts, jeopardising essential services for GBV survivors. Combined with increasing challenges at the local level, including inadequate reception capacity, overstretched staff, and limited specialised support, any requirement to promote gender equality or protect GBV survivors is often wrongly perceived as an "extra" rather than a core obligation. For this

reason, tailored, ring-fenced EU funding is urgently needed to ensure that gender-sensitive measures and GBV protection are not only political commitments, but practical realities sustained by adequate resources.

AI is increasingly used across EU asylum and border procedures, from biometric checks and document verification to automated profiling and case-matching. Although presented as efficiency tools, they carry serious risks: biased or inaccurate outputs can distort credibility assessments, misidentify origins, and lead to unfair refusals. These dangers are heightened for GBV survivors, whose trauma-affected and sensitive testimonies are especially vulnerable to misinterpretation, increasing their risk of denial of protection, refoulement, and retraumatisation.

Recommendations

- **Integration of Istanbul Convention obligations:** GREVIO should monitor whether the Commission systematically incorporates Istanbul Convention standards in impact assessments, funding programmes, and migration/asylum proposals, requesting evidence of gender-sensitive analysis.
- **Development of indicators and evaluation tools:** GREVIO should encourage the Commission to create gender-responsive indicators and evaluation tools, in collaboration with all relevant EU agencies including EIGE, EUAA, Frontex, FRA, EU-LISA, EU Ombudsperson; units including DG HOME, DG JUST, and Member States, to track progress in asylum and migration policies.
- **Mainstream in all EU agencies**: GREVIO should call on the EU to mainstream gender-sensitive and trauma-informed asylum procedures across all EU agencies involved in asylum and migration.
- **Gender focal point within DG HOME:** GREVIO should encourage designating a gender focal point in DG HOME to liaise with DG JUST and coordinate with the Inter-Service Group on Gender Equality.
- **Structured consultation with civil society:** GREVIO should encourage formal consultation mechanisms to engage women's organisations in monitoring and assessing the Commission's implementation of gender-sensitive asylum policies.
- **Mainstreaming of ECHR case law:** GREVIO should actively integrate ECHR and CJEU case law on GBV survivors into its monitoring and reporting processes, promoting a more consistent application of human-rights protections across EU member states.
- **Monitoring the EU legislation:** GREVIO should systematically monitor the implementation of the EU Pact on Migration and Asylum and related EU legislation - including the Directive on combating violence against women and domestic violence and the Recast Anti-Trafficking Directive- in line with Articles 60 and 61 of the Istanbul Convention. This monitoring should specifically assess whether EU institutions, agencies, and Member States address the intersectional needs of GBV survivors, particularly self-identified women and girls in asylum and migration procedures, and ensure that protection, support, and non-refoulement obligations are fully upheld.
- **Gender-sensitive budgeting**: GREVIO should call on the EU to establish dedicated, clear budget lines for gender equality and GBV prevention and protection within the MFF, rather than relying solely on gender mainstreaming without resources or indicators.
- **Safeguards for using of AI:** GREVIO should urge GREVIO to establish strict human-rights and gender-sensitive safeguards around any use of AI in asylum and border procedures. This includes prohibiting AI-based credibility assessments in GBV-related claims; guaranteeing trauma-informed, human-led interviews; ensuring transparency about when AI is used; and creating accessible mechanisms for survivors to challenge AI-influenced decisions.

II. Article 60 para 1 (recognise gender-based violence against women as a form of persecution for asylum claims) and para 2 (Gender-sensitive Interpretation of persecution grounds)

i. Legal basis

A. GBV as persecution and/or serious harm in the Qualification Regulation

Within EU asylum law - particularly in the Qualification Regulation (EU) 2024/1347, which will replace the Qualification Directive and apply from June 2026 - the recitals make increased reference to gender, comparing to the Qualification Directive although they stop short of establishing binding gender-specific provisions.

Recital 37 of the QR : "*Depending on the circumstances, acts of persecution of a gender-specific or child-specific nature might include, inter alia, under-age recruitment, genital mutilation, forced marriage, child trafficking and child labour, and trafficking for sexual exploitation."*

Recital 40 of the QR: *"It is equally necessary to introduce a common concept of the persecution ground 'membership of a particular social group'. For the purpose of defining a particular social group, issues arising from an applicant's sexual orientation or gender, including gender identity and gender expression, which could be related to certain legal traditions and customs, resulting in, for example, genital mutilation, forced sterilisation or forced abortion, should be given due consideration in so far as they are related to the applicant's well-founded fear of being persecuted."*

Recital 41 of the QR: *"The circumstances in the country of origin, including, for example, the existence and application of criminal laws which specifically target lesbian, gay, bisexual, transgender and intersex persons, can mean that those persons are to be regarded as forming a particular social group."*

Recital 42 of the QR: "*When assessing an application for international protection, the competent authorities of the Member States should use methods for the assessment of an applicant's credibility in a manner that respects that applicant's rights as guaranteed by the Charter and the ECHR, in particular the right to human dignity and respect for private and family life. Specifically as regards sexual orientation and gender identity, applicants should not be submitted to detailed questioning or tests as to their sexual practices."*

Article 9 (2) of the QR: "*Acts of persecution as qualified in paragraph 1 may, inter alia, take the form of:*

*(a) acts of physical or mental violence, including acts of **sexual violence;***
*(b) legal, administrative, police or judicial measures which are in themselves **discriminatory** or which are implemented in a discriminatory manner;*
*(c) prosecution or punishment which is disproportionate or **discriminatory;***
*(d) denial of judicial redress resulting in a disproportionate or **discriminatory** punishment;*
(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 12(2);
(f) *acts of a **gender-specific** or child-specific nature."*

Implementation considerations for the Article 9(2): It is strong from a gender perspective as it explicitly acknowledges acts of sexual violence and other gender-specific harms, ensuring that persecution

experienced uniquely by women, girls, and gender minorities is recognized. It also covers discriminatory legal or administrative measures that may disproportionately affect women. However, while gender-specific acts are mentioned, the provision does not elaborate on the full range of gendered vulnerabilities or intersectional factors, leaving some gaps in guidance for authorities on how to assess harm that is subtle, systemic, or tied to societal gender norms.

Evidence from Member States:

In Greece, despite clear provisions in international and national law, survivors of GBV are not consistently granted international protection. Greek authorities assess such claims on a case-by-case basis and often require additional elements to justify refugee status - such as proof that the violence occurred in the applicant's country of origin rather than during transit or in Greece, or evidence that they would face continued violence or discrimination if returned.

Article 8 of the QR (Assessing internal flight alternative): "*Where the State or agents of the State are not the actors of persecution or serious harm, the determining authority shall examine, as part of the assessment of the application for international protection, whether an applicant is not in need of international protection because the applicant can safely and legally travel to and gain admittance to a part of the country of origin. (...) For this purpose, the determining authority shall take into account the personal circumstances of the applicant in relation to factors such as health, age,* ***gender, including gender identity,*** *sexual orientation, ethnic origin and membership of a national minority.*"

Implementation considerations for the Article 8: It is positive that Article 8 explicitly lists gender, gender identity, and other personal circumstances that must be considered when assessing internal flight alternatives. This helps ensure that GBV survivors in particular self-identified women and girls are not presumed able to relocate safely without examining real risks they may face. However, the provision stops short of recognising the gender-specific barriers and harms - such as social norms restricting movement, heightened exposure to sexual and gender-based violence, or lack of protection mechanisms - that often make relocation unsafe or impossible for GBV survivors. Including explicit reference to these gendered risks would strengthen the provision's protection.

Evidence from Member States:

In Luxembourg (Administrative Court ruling, 23 juillet 2025, n°52722C): a Guinean woman and her daughter fled their country due to domestic violence and the risk of female genital mutilation (FGM). The Minister, the Tribunal, and subsequently the Court all concluded that, because the applicant is an adult, she could internally relocate within Guinea. This reasoning fails to take into account the extremely high prevalence of FGM in Guinea and relies solely on the existence of legal provisions prohibiting FGM, without examining actual conditions and the persistent realities on the ground.

Art 15 of the QR (Serious harm- Subsidiary protection): "*Serious harm consists of:*

(g) the death penalty or execution;
(h) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
(i) a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict."

Implementation considerations for Article 15: While the provision could theoretically be interpreted in a way that covers gender-specific forms of violence - such as rape, sexual torture, forced marriage, and other forms of GBV commonly experienced by particularly self-identified women and girls - this outcome is far from guaranteed. The article is entirely gender-neutral and does not explicitly recognise gender-

specific acts or patterns of harm, despite their prevalence in conflict and persecution contexts. The absence of explicit references to sexual violence, gender-based persecution, or the structural vulnerabilities and discrimination faced by GBV survivors in particular self-identified women and girls may lead to inconsistent interpretation or inadequate recognition of these harms by decision-makers.

B. Gender sensitive interpretation of persecution grounds

Art. 10 (1) (d) of the QR: *"Depending on the circumstances in the country of origin, the concept of membership of a particular social group as referred to in point (d) of the first subparagraph shall include membership of a group based on a common characteristic of sexual orientation.* ***Gender related aspects, including gender identity and gender expression, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group****."*

Implementation considerations for Article 10(1)(d): It is positive from a gender perspective as it explicitly requires that gender, gender identity, and gender expression be considered when assessing membership of a particular social group. It also recognizes sexual orientation as a potential characteristic of such groups, which strengthens protection for LGBTQ+ individuals. However, other grounds under Article 10(1) do not explicitly reference gender, leaving gaps in recognizing gendered persecution. For example, religion or political opinion may be grounds for restricting women's rights, and failure to comply with dress codes or adopting "westernized" behaviour can be perceived as evidence of unacceptable beliefs. Additionally, sexual violence during armed conflict may be targeted primarily based on ethnicity, race, or political reasons, showing that gendered harms can intersect with other grounds of persecution.

ii. Case law

Recent CJEU case law that interprets the Qualification Directive:

16/01/2024 - *Intervyuirasht organ na DAB pri MS (Women domestic violence victims)* Case C-621/21-Bulgaria

In this case concerning Bulgaria, the Court finds that the Directive must be interpreted consistently with the Istanbul Convention, which is binding on the European Union and recognises gender-based violence against women as a form of persecution. Furthermore, the Court states that women, as a whole, may be regarded as belonging to a social group within the meaning of Directive 2011/95. Consequently, they may qualify for refugee status where, in their country of origin, they are exposed, on account of their gender, to physical or mental violence, including sexual violence and domestic violence. If those conditions are not met, must at least be considered for subsidiary protection where there is a real risk of killing or serious violence by family or community members.

In its judgment in Case C-621/21, the CJEU also states that, in light of Article 15(a) of Directive 2011/95 - which seeks to protect individuals whose right to life would be endangered upon return within the scope of subsidiary protection- the term "execution" cannot be limited to killings carried out by State actors. Therefore, when a woman faces a real risk of being killed by family or community members for allegedly violating cultural, religious, or traditional norms, such harm qualifies as "execution" within the meaning of that provision.

11/06/2024 – K and L against *Staatssecretaris van Justitie en Veiligheid (Women who identify with the value of gender equality)* Case C-646/21-Netherlands

In this case concerning the Netherlands, the CJEU ruled that women and girls who, during their stay in an EU Member State, genuinely come to embrace the fundamental value of gender equality may, depending on the conditions in their country of origin, be treated as belonging to a *"particular social group"* under Directive 2011/95. This identity can therefore constitute a valid reason for persecution and justify the granting of refugee status.

It also notes that, under UNHCR guidelines and EU Member State case law, gender-related factors are relevant not only to determining membership of a particular social group, but also to evaluating other persecution grounds, including political opinion and religion.

04/10/2024 - *Bundesamt für Fremdenwesen und Asyl and Others (Afghan women)* Joined Cases AH (C-608/22), FN (C-609/22) - Austria

In these joined cases concerning Austria, the CJEU held that the cumulative discriminatory measures imposed on Afghan women by the Taliban - such as restrictions on education, employment, healthcare, and freedom of movement - constitute acts of persecution under Directive 2011/95/EU. The CJEU confirmed that, given the systemic and severe gender-based oppression faced by women under the Taliban - as documented by EUAA and UNHCR - Member States may grant refugee status to Afghan women without requiring proof of an individualised risk. For the asylum assessment, it is sufficient to rely on the applicant's gender and Afghan nationality alone, given that all women in Afghanistan are exposed to acts of persecution.

National case law:

DE, DK, FR, LU - Women as a social group: Courts in Denmark, Germany and Luxembourg applied the latest CJEU reasoning after hearing appeals on negative decisions from Afghan women who, were then, granted refugee status.

In decisions nos. 24014128 and 24024165 dated 11 July 2024 and 3 April 2025, the French Administrative Court (Cour nationale du droit d'asile-CNDA) ruled that women as a whole constituted a social group in Afghanistan and Iran.

In decision no. 24015934 handed down on 16 October 2025 by a full panel, the CNDA noted that Somalia had not signed or ratified any international legal instruments designed to combat gender-based discrimination and that, beyond general constitutional principles, no legislation had been developed in this area in a context of civil war and the breakdown of public institutions. It also notes that public sources highlight the discrimination suffered by Somali women in their participation in public life and their access to justice, healthcare, education and employment, as well as the widespread practice of genital mutilation, forced marriages under customary law, and sexual and gender-based violence, particularly by the Al-Shabaab militia.

FR- FGM : The CNDA held that in countries with a high prevalence of FGM, such as Nigeria, girls who have not undergone the procedure may have a well-founded fear of persecution as members of a particular social group (France, CNDA, Mme E., No. 16029780, 2017). It also recognized Somali children and adolescent girls who have not been subjected to FGM as constituting a social group under the 1951 Convention (France, CNDA, No. 18053674, 2020)

BE-Sexual violence: In X. v Commissioner General for Refugees and Stateless Persons (CGRS) 34, 19 March 2021, CALL held that sexual abuse occurring outside the country of origin must be considered in asylum assessments, particularly where returning women may face stigma. The case involved a Congolese woman abused by a priest in Spain, and the court emphasized that sexually abused religious women in Africa often remain silent due to marginalization, meaning the abuse should be assessed even if the applicant did not explicitly raise it during interviews.

BE-FGM: The Immigration Appeals Board grants refugee status to an unaccompanied Somali minor. After reiterating the importance of the best interests of the child in assessing the need for international protection and examining the general situation in Somalia with regard to the risk of FGM, the Board concluded that the applicant had legitimate fears of undergoing further infibulation if she returned, due to her membership of the social group of women. The Council took into account the best interests of the child, including her experiences, in reaching its conclusion on the need for international protection. (Belgium, C.C.E., 25 juin 2024, n° 308 758)

FR-Forced marriage: The French National Court of Asylum granted international protection to a woman, holding that she belonged to the particular social groups of Ethiopian women and girls having escaped forced marriage and Ethiopian women, adolescent and children of Amhara ethnicity at risk of FGM, persons that shared a common history and a specific identity perceived as being different by the surrounding society (CNDA, No. 21038022 C, 2022).

DE-Non-conforming to norms: A German court found that the applicant had developed a 'westernized identity' over the past few years, which is central to her sense of self and cannot be relinquished if she were to return to Iraq. The court noted that the applicant's 'western lifestyle' forms a significant and enduring part of her inner convictions (Regional Administrative Court of Hannover, No. 3 A 1652/19, 2023).

iii. Practical and Policy Actions

EUAA compilation of case law: EUAA published an analysis of case law from 2020 to 2024 that examines court decisions related to gender-based violence, following three landmark rulings by the CJEU providing clearer legal grounds to grant international protection due to persecution or serious harm based on gender.

EUAA Quarterly Overview of Asylum Case Law: A compilation of cases related to international protection are published quarterly by the EUAA.

EUAA Practical guide on qualification on international protection: This guide intends to assist case officers and decision-makers in the examination of applications for international protection and application of the legal criteria on who qualifies for international protection, referring to both refugee status and subsidiary protection. The guide includes checklists, guidance and references to legislation and case law in order to support the case officer in assessing whether the individual applicant qualifies for international protection.

Recommendations

- **Consistent interpretation with CEDAW and Istanbul Convention as well as European and International case law:** GREVIO should monitor the application of the Qualification Regulation as well as European and International case law is in full consistency with CEDAW and the Istanbul Convention.
- **Recognition of GBV as persecution:** GREVIO should call on the EU to guarantee consistent recognition of GBV as persecution under refugee law, in line with UNHCR Guidelines and the Istanbul Convention.
    - **Refugee vs. subsidiary protection:** GREVIO should urge Member States to avoid defaulting to subsidiary protection where refugee status is legally justified.
    - **Particular social group (PSG) interpretation:** GREVIO should encourage harmonised application of the PSG definition, reflecting recent CJEU jurisprudence and Article 10(1)(d) QR.
    - **Alternative grounds:** GREVIO should promote training on political opinion and religion as complementary grounds to avoid an overly narrow PSG focus.
- **Expression of gender-equality beliefs:** GREVIO should recommend that the EU affirm women must never be expected to hide or restrain gender-equality beliefs to avoid persecution, and ensure asylum procedures contain explicit safeguards to uphold this principle.
- **State protection cannot be replaced by private actors:** GREVIO should emphasise that private support networks cannot substitute for State protection in GBV claims and should urge uniform application of CJEU case law requiring protection to be effective, accessible, and durable.
- **Gender-sensitive COI on GBV**:GREVIO should call for systematic production, sharing, and use of gender-sensitive COI on GBV by the EUAA risks across the EU.
    - Minimum standards: GREVIO should recommend EU-wide standards for collecting COI on State protection gaps, prevalence of GBV, harmful norms, and non-State actor violence.
- **EU-wide data collection on GBV-related asylum outcomes:** GREVIO should encourage the EU to introduce systematic data collection on protection types, grounds invoked, and decision outcomes, and support the creation of an EU-level monitoring mechanism on women seeking international protection.

III. Article 60 para 3 (gender-sensitive asylum procedures and reception conditions)

A. Gender sensitive asylum procedures

i. Legal basis

Under the Asylum Procedures Regulation (APR), adopted in 2024 as part of the new EU Pact on Migration and Asylum and set to apply from June 2026, new legal requirements have been introduced to ensure gender-sensitive asylum procedures:

Article 8 of the APR (Provision of information on the right to apply for international protection): *"The determining authority or, where applicable, other competent authorities or organisations tasked by Member States for that purpose shall inform applicants, in a language which they understand or are reasonably supposed to understand, of the right to lodge an individual international protection application."*

Implementation considerations for Article 8: The absence of specific provisions on sharing gender-sensitive information - such as the fact that various forms of GBV can constitute grounds for asylum, and that individuals can apply independently of their partners - creates practical barriers for GBV survivors in particular self-identified women and girls in accessing this information.

Evidence from Member States indicates that:

- Self-identified women and girls are often unaware that various forms of GBV can be considered grounds for asylum and that they can apply independently of their partners due to a lack of information from authorities (CY, DE, NL).
- Complex and frequently changing procedures, along with reliance on basic informational materials and the absence of specific guidance on GBV, hinder many women from understanding and asserting their rights during the asylum process (for example EL).
- In some cases, NGOs provide only basic information on asylum procedures to those rescued at sea, leaving many women unaware of their rights and the possibility of claiming asylum based on experiences of GBV (MT).

Article 8 of the APR & Article 35 of the APR (Training requirements): Article 8 of the APR broadens the scope of training required for personnel of competent authorities. In addition to the training mandated by the Asylum Procedures Directive (2013/32/EU), it introduces new content covering applicants in need of special procedural guarantees, those with specific reception needs, and other vulnerable persons, with particular focus on survivors of torture, survivors of human trafficking, and related gender-sensitive issues.

Article 35 provides that personnel responsible for examining applications and making decisions should have access to expert advice on specialized matters - such as medical, cultural, religious, mental health, child-related, and gender issues - whenever necessary.

Implementation considerations: These provisions are positive from a gender perspective as they expand mandatory training. However, their impact will depend on whether MS have the capacity and resources to provide this training consistently and ensure that all relevant staff - not only specialised units - receive it in practice. Evidence from Member States underlines:

- Inconsistent training for interpreters on trauma, stigma, shame and gender-based violence (IE, RS), unprofessional conduct by interpreters (EL), and inadequate awareness and lack of mandatory training on GBV and gender-based discrimination for staff (BE, EE, FR, LU).
- Lack of well-trained personnel in the Asylum service that are able to incorporate a gender-sensitive approach when interviewing asylum seekers. There are also problems in understanding issues relating to LGBTQI+ and in particular to transgender asylum seekers, which can cause great distress to individuals during the interview and ultimately lead to a negative outcome for their application (EL).
- Lack of specialised units for assessing claims related to sexual and gender-based violence (NO). High staff turnover, unsustainable employment practices (CY), and insufficient training for police (ES), legal aid lawyers (MT) and judges (IS, RO) further complicate the process. These gaps lead to difficulties in early detection, secondary victimisation, and hinder disclosure of GBV by asylum seekers.
- Additionally, the lack of gender-sensitive interviewing techniques (RO), training or guidelines on how to apply the Geneva Convention in a gender-sensitive manner (NL) and inadequate recording practices (PL) negatively impact the credibility and appeals of applicants. Concerns have also been raised about the impact of training on staff and the need to monitor and evaluate its effectiveness (HR, CH).
- A recent case from Luxembourg illustrates the consequences of insufficient gender-sensitive training on credibility assessments. Jugement du Tribunal administratif, 4 juin 2025, n°52828 : The case concerned a young Cameroonian woman and her minor son who applied for international protection due to domestic violence and sexual abuse in their country of origin. The Court found her account not credible on the grounds that she had not disclosed key elements of her experience - namely that she had been sold to a man as a minor and subjected to constant domination and violence - during her initial application or interviews with the police and Ministry officials. The Court held that her silence "cast considerable doubt on her credibility" and upheld the Ministry's refusal. This case demonstrates how the absence of trauma-informed, gender-sensitive interviewing and credibility assessment practices can penalise applicants, particularly survivors of sexual and gender-based violence, who may be unable to disclose their experiences at early stages of the procedure.

Article 12 of the APR (Substantive personal interviews): "*Before a decision is taken by the determining authority on the merits of an application for international protection, the applicant shall be given the opportunity of a personal interview on the substance of his or her application (the 'substantive interview').*"

Implementation considerations: The previous explicit provision in the Asylum Procedures Directive requiring that family members not be present during interviews has been removed in the Asylum Procedures Regulation. This legislative gap may create practical risks for asylum-seeking GBV survivors, in particular self-identified women and girls, as being interviewed in the presence of husbands or male family members - who could be the source of their complaints - may compromise confidentiality and prevent them from sharing experiences that could form the basis of their asylum claims.

Article 13 (3) of the APR (Privacy and confidentiality in the personal interviews): "*The personal interviews shall be conducted under conditions which ensure appropriate privacy and confidentiality, and which allow applicants to present the grounds for their applications in a comprehensive manner.*"

Implementation considerations: Even though there is a similar provision in the Asylum Procedures Directive, practical challenges have arisen in overcrowded spaces and those lacking private areas, where women may need help to divulge sensitive or traumatic reasons for fleeing their countries, thus

jeopardising their access to international protection. As these are questions of implementation, the problem will continue in practice unless it is properly monitored, and measures are taken.

Article 13 (9) of the APR (Same gender interviewer and interpreters): *"Where requested by the applicant and where possible, the determining authority shall ensure that the interviewers and interpreters are of the sex that the applicant prefers, unless it has reasons to consider that such a request does not relate to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner."*

Implementation considerations: As with the APD, the APR retains the "where possible" clause and does not explicitly require that applicants be informed of this right. In practice, this is likely to continue limiting access for these groups to same-sex interpreters and interviewers.

Evidence from Member States shows that:

- While female asylum applicants are entitled to request interviewers and interpreters of the same sex, this provision is frequently unmet due to shortages of female caseworkers and interpreters (DE, EL, EE, ES, FR, IT, MT, RO, RS, SI).
- Insufficient information sharing about this option (CY, IS, MD).

Article 20 of the APR (Assessment of the need for special procedural guarantees): Article 20 of the APR provides different provisions regarding the assessment of the need for special procedural guarantees:

Article 20 (1): *"The competent authorities shall individually assess whether the applicant is in need of special procedural guarantees, with the assistance of an interpreter, where needed."*
Article 20(2): "*The assessment referred to in paragraph 1 shall be initiated as early as possible after an application is made by identifying whether an applicant presents first indications that he or she might require special procedural guarantees. That identification shall be based on visible signs, the applicant's statements or behaviour, or any relevant documents."*
Article 20(3): *"The assessment shall be concluded as soon as possible and, in any event, within 30 days."*
Article 20(4): "*The competent authority may refer the applicant, subject to his or her prior consent, to the appropriate medical practitioner or psychologist or to another professional for advice on the applicant's need for special procedural guarantees, prioritising cases where there are indications that applicants might have been victims of torture, rape or another serious form of psychological, physical, sexual or gender-based violence and that that could adversely affect their ability to participate effectively in the procedure."*

Implementation considerations for Article 20: The APR outlines that identifying special procedural needs will be based on "visible signs, the applicant's statements or behaviour, or any relevant documents." This approach promotes a comprehensive view of the applicant's situation rather than depending solely on self-reported information. For women who have experienced trauma – such as gender-based violence, rape, or trafficking - behavioural cues or physical indicators might initially signal a need for extra support. However, this reliance on visible signs can be problematic, as trauma is not always externally evident, and some women may be reluctant to disclose such experiences openly due to stigma, cultural barriers, or fear of re-traumatisation.

The regulation allows authorities to refer applicants to medical or psychological professionals to assess special procedural needs, prioritising cases involving signs of torture, rape, or GBV. This could significantly benefit women who need mental health or medical support due to trauma, helping address

issues that may hinder their participation in the asylum process. However, its effectiveness depends on certain factors such as informed consent, as some women might feel pressured to agree without fully understanding the implications; and access to gender-sensitive, trauma-informed professionals who are equipped to address the specific needs of women who have experienced violence.

Evidence from Member States:

In Greece, despite Article 72(1) of the Asylum Code requiring authorities to identify applicants needing special procedural guarantees - including those affected by gender-based violence - Greek law and practice do not consistently recognise GBV as a vulnerability. Current vulnerability categories exclude gender-based and domestic violence, and while RIS Vulnerability Focal Points exist, their capacity and expertise vary. As a result, many vulnerabilities go unnoticed, with authorities typically identifying only the most visible cases, leaving many survivors of GBV without the protections they are entitled to. Although Greece recorded 297 women in 2023 who received international protection with noted vulnerabilities, the latest data show that these vulnerabilities—particularly those linked to gender-based violence—are rarely the determinative basis for granting refugee or subsidiary protection. Given the limited and incomplete recording practices of the Asylum Service, the number of women formally recognised as refugees due to GBV-related vulnerability remains extremely small compared to the overall number of female asylum applicants, highlighting a systemic gap between legal protections and their practical implementation.

Article 23 of the APR (Special guarantees for unaccompanied minors):

Article 23(2): "*Where an application is made by a person who claims to be a minor, or in relation to whom there are objective grounds to believe that he or she is a minor, who is unaccompanied, the competent authorities shall:*

(a) designate as soon as possible a person with the necessary skills and expertise to provisionally assist the minor in order to safeguard his or her best interests and general well-being which enables the minor to benefit from the rights and, where applicable, act as a representative until a representative has been appointed;

(b) appoint a representative as soon as possible and no later than 15 working days from the date on which the application is made."

Article 23(3): "*In the event of a disproportionate number of applications made by unaccompanied minors or in other exceptional situations, the time limit for appointing a representative may be extended by ten working days."*

Article 20(5) (a): *"The competent authority shall immediately inform the unaccompanied minor, in a child-friendly manner and in a language he or she can understand, of the designation of the person, and of his or her representative and about how to lodge a complaint against the person in confidence and safety."*

Article 23 (10): *"The competent authorities shall place a natural person acting as representative or a person suitable to provisionally act as a representative in charge of a proportionate and limited number of unaccompanied minors, and under normal circumstances, of no more than 30 unaccompanied minors at the same time, in order to ensure that he or she is able to perform his or her tasks effectively.*

In the event of a disproportionate number of applications made by unaccompanied minors or in other exceptional situations, the number of unaccompanied minors per representative may be increased up to a maximum of 50 unaccompanied minors.

Member States shall ensure that there are administrative or judicial authorities or other entities responsible to supervise, on a regular basis, the proper performance of tasks by the representatives and persons designated including by reviewing the criminal records of those appointed representatives and designated persons at regular intervals in order to identify potential incompatibilities with their role. Those administrative or judicial authorities or other entities shall review complaints lodged by unaccompanied minors against appointed representatives or persons designated under paragraph 2, first subparagraph, point (a).”

Implementation considerations for Article 23: While the APR introduces positive provisions for unaccompanied children, there are concerns about the implementation of these measures. Specifically, ensuring adequate capacity with the new amendments is a concern, as many countries already face issues such as a shortage of representatives and insufficient training for them.

Delays in appointing representatives hinder the timely identification of girls in vulnerable situations, leading in some cases to their re-victimisation.

Evidence from Member States:

- In particular, children disappear before their interviews due to the lack of timely, early and effective identification, lack of outreach work (SI), delays in appointing representatives promptly, inadequate resourcing of the guardianship system, and lack of appropriately trained supervisors (FR), especially for girls, all of which heightens the risk of falling victims to human trafficking and various forms of violence (SE).
- the high number of children for whom the representatives are responsible at the same time, the fact that a single representative is responsible for all children and there is no other person to fulfil his/her duty in case he/she is on medical leave or vacation, and delays in the appointment of representatives due to the low number of representatives, which prevent the correct follow-up of children’s processes and the provision of guidance to children (BG, BE, CY, DE NL, RO).

Article 25 (1) of the APR (age assessment): “*Where, as a result of statements by the applicant, available documentary evidence or other relevant indications, there are doubts as to whether or not an applicant is a minor, the determining authority may undertake a multi-disciplinary assessment, including a psychosocial assessment, which shall be carried out by qualified professionals, to determine the applicant’s age within the framework of the examination of an application. The assessment of the age shall not be based solely on the applicant’s physical appearance or behaviour.”*

Implementation considerations for Article 25 (1): This multi-disciplinary approach to age assessment in the APR represents a positive advancement, particularly considering the potential misleading consequences associated with relying solely on medical examinations. However, in many MS, this multi-disciplinary approach has not been applied, and it requires specific preparations and trainings for professionals. Implementing this approach requires more resource, staffing, training and preparation than many systems currently have.

Evidence from Member States:

The method of age assessment, especially those involving nudity or the examination, observation, or measurement of genitals or intimate areas, can be particularly traumatic for children, particularly girls, who have experienced abuse either as part of persecution in their country of origin or during their migration. In this context, the Committee on the Rights of the Child (CRC) decision highlights the inappropriateness of practices like nudity or genital examinations during age assessment for children.

In the 2021 decision, the CRC reviewed R.Y.S. v Spain, involving a Cameroonian child subjected to invasive age determination tests, including a genital examination, despite showing signs of physical and sexual abuse. The Committee concluded that such examinations, involving nudity or genital examination, infringe on a child's dignity, privacy, and bodily integrity and should not be used for age assessment. The process, conducted without informed consent or a legal representative, violated her rights under the CRC.

Article 42 of the APR (Accelerated examination procedure): Article 42 of the APR makes the accelerated examination procedure mandatory in certain cases. Mandatory acceleration applies to applicants from third countries with a protection rate of 20% or below, unless there has been a significant change in conditions or the applicant is not representative of the low protection rate.

The article also expands the conditions under which the accelerated procedure may apply to unaccompanied children. In addition to previous conditions, such as coming from a safe country of origin or posing a danger to national security, the APR adds:

- Misleading authorities by providing false information or withholding relevant documents;
- Belonging to a nationality with a recognition rate of 20% or less, unless a significant change in conditions or non-representativeness is determined.

Implementation considerations for Article 42: The accelerated examination procedure has been reported to prevent GBV survivors in particular self-identified women and girls in particular from disclosing the violence they have experienced and gathering evidence. Without an assessment of gender related difference, the application of the 20% protection rule will not recognise the specific situation of GBV survivors in particular self-identified women and girls. For example, it would require self-identified women and girls from Pakistan, where the recognition rate is 12% in 2023, to go through the accelerated procedure. However, the latest national report on the status of women in Pakistan shows that a deeply patriarchal society, coupled with regressive social norms and entrenched gender stereotypes, fuels discrimination and violence against self-identified women and girls. Additionally, Pakistan performs poorly in global rankings, placing 145 of 146 countries in the 2022 Global Gender Gap Report, just above Afghanistan. The report also underlines that after experiencing any form of violence, survivors often find that services for seeking redress, support, and justice are either inaccessible or insufficient.

Article 45 of the APR (border procedures): Article 45 of the APR specifies situations in which the asylum border procedure is mandatory for Member States:

- *"the applicant is considered to have intentionally misled the authorities by presenting false information or documents or by withholding relevant information or documents;*
- *The applicant is considered a danger to national security or public order, or has been forcibly expelled for serious reasons under national law;*
- *The applicant comes from a third country with a protection rate of 20% or below, unless there has been a significant change in conditions or the applicant's specific circumstances warrant a different assessment of protection needs."*

Implementation considerations for Article 45: Considering that some countries already apply optional border procedures in practice and the risks identified, the obligation imposed by the APR on the mandatory application of this procedure will cause a regression in terms of access to the right to asylum. This will particularly affect countries that do not currently apply border procedures (BG, CY, DK, EE, FI, HU, MT, NO, PL, SK and SE) or that exclude or provide additional safeguards for some groups in

this procedure. In particular, as mentioned above, the application of the 20% protection rate criterion poses a great risk for GBV survivors in particular self-identified women and girls who have been subjected to GBV, and their access to the right to asylum will be hampered.

Article 53 of the APR (Exceptions for border procedures): Article 53 of the APR restricts the application of the border procedure for unaccompanied children, allowing it only where there are reasonable grounds to consider the child a danger to national security or public order, or in cases of forcible expulsion for serious reasons under national law.

The article also limits the border procedure for vulnerable persons, specifying that it should not be applied or must be halted if necessary support for applicants with special procedural guarantees cannot be provided. Additional exceptions include:

- Inability to provide required support to applicants with special reception needs, including minors, in accordance with Chapter IV of the recast RCD;
- Relevant medical reasons, including mental health concerns;

Implementation considerations for Article 53: There are concerns about whether applicants with special reception needs, those requiring special procedural guarantees, and those with health problems can be effectively identified due to the lack of legal provisions on identification. Applying the border procedure to these groups may put their access to asylum at risk, making it essential for Member States to provide necessary support. In hotspot areas, the procedure may be applied despite insufficient support, particularly affecting GBV survivors in particular self-identified women and girls

Article 54 of the APR (Locations for carrying out the asylum border procedure): Member States must ensure that families with children reside in reception facilities suited to their needs, based on the best interests of the child, and provide a standard of living supporting their physical, mental, moral, spiritual, and social development, in line with Chapter IV of the recast RCD. However, residence in such facilities does not constitute authorisation to enter or stay in the Member State, and transfers for court procedures or medical treatment are not considered entry.

Unlike families with children, Article 54 does not explicitly require appropriate facilities for applicants with special needs. Nevertheless, Article 53 mandates that applicants with special reception needs, including children, and those requiring special procedural guarantees, receive necessary support. The border procedure must not be applied or must be halted if such support is not provided.

Implementation considerations: While it is positive that Chapter IV of the rRCD applies to families with children and applicants with special reception needs, there is a risk that the specific needs of GBV survivors in particular self-identified women and girls are not addressed. Features such as single-sex rooms, separate bathrooms, female staff, and safe common areas may be overlooked, increasing the risk of exposure to violence.

Article 43(4) and Article 45(4) (Monitoring mechanisms for border procedures):

Articles 43(4) and 45(4) establish monitoring mechanisms for the border procedure. Article 43(4) requires Member States to set up an independent mechanism to monitor fundamental rights at the border, in line with Union and international law. National ombudspersons, human rights institutions, and optionally international or non-governmental organisations may participate. The mechanism must have adequate resources, carry out on-the-spot and unannounced checks, and have access to relevant locations, individuals, and documents.

Article 45(4) provides for specific monitoring of obligations towards families with children. If the Commission finds a Member State is not meeting requirements, it may publicly recommend suspending the border procedure for families with children. The Member State must address identified issues and inform the Commission of the measures taken.

Implementation considerations for Article 43 (4) and Article 45 (4): It is important that the monitoring mechanism is broad, gender-sensitive, independent, accountable, and accessible to applicants, including GBV survivors in particular self-identified women and girls. While involving national human rights institutions and ombudspersons is positive, it is not sufficient, as not all are fully accredited. Inclusion of independent international or non-governmental organisations should be encouraged but is not mandatory.

Accessibility should include gender-sensitive information, safe reporting channels, trained staff, collaboration with NGOs, and the involvement of self-identified women and girls in design and evaluation. Accountability requires public reporting on progress to ensure transparency and effectiveness. While monitoring of families with children is welcome, the scope should be broader to cover all persons with special reception needs, particularly GBV survivors in particular self-identified women and girls in emergency reception centres. Gender-sensitive data collection is also crucial for identifying the specific challenges faced by these groups and for taking tailored action.

Article 21 of the APR: also stipulates that if adequate support cannot be provided within the accelerated and border procedures, particularly when EUMS acknowledge the necessity for special procedural protections due to severe experiences like torture, rape, or other forms of psychological, physical, or sexual violence, EUMS shall refrain from applying or shall cease to apply border procedures.

Implementation considerations for Article 21: To apply these exemptions, individuals requiring special procedural protections from accelerated and border procedures must be identified and supported effectively in border and transit areas. EU Member States therefore need to establish robust identification and monitoring mechanisms and train staff to recognize applicants eligible for special procedural guarantees. However, the APR does not include provisions for these elements. Even if such mechanisms were implemented, practical application would remain challenging due to the very short assessment periods involved.

Evidence from MS on accelerated and border procedures show that:

- In practice, the reports assessing practice show that the accelerated and/or border examination procedure hinder GBV survivors in particular self-identified women and girls from having their specific protection needs addressed and limits their access to procedural guarantees, including legal aid. Rapid processing of asylum applications of self-identified women and girls who are subject to border and/or accelerated procedures may limit their ability to disclose violence and collate evidence (BE, DE, NO, PL). The lack of gender-sensitive guidelines and reliance on individual officers' discretion exacerbates these issues (BE). In hotspot areas like EL, asylum authorities often assume sufficient support is available, even if it is not the case. In some cases, some applicants in vulnerable situations, including unaccompanied children and pregnant women, are also subjected to fast-track border procedures, lacking sufficient time to present their claims and remaining in transit zones despite reported vulnerable situations (FR). There are also obstacles at international airports where asylum claims, even from pregnant women or those with small children, are not registered by border police, and NGOs are denied access (MD). Additionally, inconsistencies in

assessing individual circumstances and procedural guarantees, particularly at borders, further impede access to necessary protections and fair treatment in the asylum process (HR).

- A similar pattern is observed in Luxembourg: Administrative Court ruling, 15 mai 2025, n°52725: A young Cameroonian woman and her minor daughter, born in Greece, sought international protection due to domestic violence perpetrated by her ex-husband. The Court held that it could not establish a general failure by the Cameroonian State to protect women from domestic violence, criticising the applicant for not having filed a complaint against her ex-husband. It concluded that she could not hold the Cameroonian authorities responsible for failing to protect her. As a result, the Tribunal upheld the Ministry's decision to process the application under an accelerated procedure, considering that the applicant had not presented sufficiently relevant facts to justify international protection. This approach illustrates how accelerated procedures can overlook gender-specific barriers to protection and reporting, reinforcing the need for gender-sensitive assessment frameworks.

ii. Case law

CJEU case law

CJEU ruling C-283/24 B.F. v Kypriaki Dimokratia (Barouk), 3 April 2025-Belgium: In the Barouk ruling, the Court of Justice of the European Union clarifies the powers of national courts with regard to medical examinations of asylum seekers. It stated that, in order to ensure an effective remedy within the meaning of Article 47 of the Charter of Fundamental Rights of the European Union and Article 46(3) of the Procedures Directive, the court must be able to order such an examination, even in the absence of a provision providing for this power in national law. This ruling calls into question Belgian practices: the Council for Alien Law Litigation cannot currently order a medical examination or require the CGRA to organize one. It implies a necessary adaptation of national rules. The ruling also highlights the shortage of doctors available to carry out these examinations, particularly for the preparation of medical reports in accordance with the Istanbul Protocol.

ECtHR case law

F.B. v. Belgium, March 2025: concerns the Belgian authorities' decision to withdraw the protections owed to an unaccompanied minor after a medical age assessment concluded that the applicant - who claimed to be 16 and had submitted supporting documents - was an adult. The ECtHR found a violation of Article 8 ECHR because the age assessment process lacked essential safeguards: F.B. was neither clearly informed of the need for free and informed consent to the medical tests nor assisted by a representative, and the authorities used intrusive medical examinations as a first rather than a last resort, interviewing her only afterwards. While building on earlier case law requiring procedural guarantees in age assessment, the Court avoided addressing the reliability of bone testing, the effectiveness of available remedies, or the potential discriminatory impact of such methods. It rejected the Article 13 complaints (on effective remedy) and dismissed the Article 14 discrimination claim as manifestly ill-founded, ultimately illustrating a broader shift in Strasbourg case law toward prioritising migration control over children's rights.

National case law

Certain national case law also rules that same-sex interpreters and interviewers should be provided during asylum interviews and appeal procedures.

In FI, a Somali woman's asylum application was rejected after an interview conducted by male personnel. The Supreme Administrative Court (**A. (Somalia) v Finnish Immigration Service**) annulled

this decision, ruling that she should have been interviewed by an officer and interpreter of the same sex, given her vulnerable situation and the sensitivity of her claims.

In Greece, **a penal case handled by HIAS Greece in July 2025. I**n October 2022 a 40-year old female from Cameroon, survivor of GBV and human trafficking, and infected with HIV, was arrested at the airport and charged with possession and use of forged travel documents, as well as attempt of illegal exit from the country. She had arrived in Greece in January 2022 through Turkey and made many attempts to submit an application for international protection. However, due to well documented structural issues with access to asylum procedure at the time, she did not manage to book an appointment for many months. At the same time, having no legal documents at all, she was not entitled to free medical care and her disease remained untreated. In October 2022, feeling desperate and fearing for her life, she bought a forged passport and attempted to leave Greece, in order to travel to another European country where she would have faster access to asylum procedures. Her trial took place in July 2025 before the Single-member Misdemeanor Court of Lefkada, where she was represented by a defense attorney from HIAS Greece. The Court acquitted her, accepting that the offenses could not be imputed to her, as she acted under a state of emergency.

iii. Practical and Policy Actions

In addition to the legal developments, there are some additional practical and policy actions in terms of gender-sensitive asylum procedures:

EU-level activities, training programmes, toolkits:

The EUAA supports EU and associated countries in identifying and addressing the needs of vulnerable applicants for international protection. It promotes cooperation and information sharing, and develops operational standards, guidance, best practices, and practical tools to assist Member States in providing appropriate support within asylum and reception systems.

EUAA's Vulnerability Experts Network

The EUAA Vulnerability Experts Network (VEN), launched in 2018, aims to improve the identification and support of vulnerable applicants for international protection and promote convergence with EU standards. Its structure includes a multidisciplinary steering group, with representatives from Member State authorities, the UN, the EU Commission, and the Fundamental Rights Agency, and an advisory group comprising civil society, international organisations, and academia. The VEN facilitates cooperation among EU and associated countries through the discussion of challenges, exchange of good practices, and collection and analysis of information on vulnerable persons.

Tool for Identification of Persons with Special Needs (IPSN)

The IPSN Tool is an interactive online resource designed to help officials identify potential special needs of applicants in the asylum procedure and reception. It covers 14 categories, including children, elderly, disabled persons, pregnant women, single parents, survivors of trafficking, persons with serious illnesses or mental disorders, survivors of torture or other severe violence, and LGBTI individuals. The tool provides guidance on special guarantees across five areas: first contact, reception support, lodging the application, personal interview, and the end of the first-instance procedure. Its users include officials and other actors interacting with applicants for international protection.

Special Needs and Vulnerability Assessment Tool (SNVA)

The SNVA tool helps Member State authorities assess the special needs of vulnerable persons in a structured way, supporting specialised staff in identifying appropriate actions and ensuring timely

access to services. Its users are professionals responsible for assessing needs and providing an adequate and prompt response to vulnerable applicants.

Referral toolkit

This tool supports authorities in improving referral mechanisms for vulnerable persons seeking international protection. It provides a structured referral system, including regional and local perspectives, and offers guidance through a standard referral form, a service provider mapping tool, and instructions on conducting referrals. Its users are officials and other actors in contact with applicants.

Advanced training module on GBV for case workers

This training module equips learners with the knowledge and skills to handle asylum cases involving gender-based violence. It covers conducting sensitive interviews, assessing evidence and risks, and determining refugee status under the Qualifications Regulation. The online component includes four sub-modules on case challenges, interview techniques, evidence and risk assessment, and refugee qualification, reinforced by case studies. The module concludes with a 16-hour face-to-face session for practical exercises in interviewing, evidence evaluation, and decision-making.

Training module on victims of gender-based violence

This module equips learners with the knowledge and skills to identify GBV in asylum contexts and assess the needs of GBV victims in line with CEAS. It addresses how GBV, rooted in gender power inequalities, disproportionately affects women while also impacting men. The module provides an understanding of gender and GBV, their effects on asylum seekers, and practical guidance for asylum and reception officials when interacting with victims.

EUAA Practical Guide on age assessment

The guide is intended to support EU+ countries in the implementation of the principle of the best interests of the child when assessing the need for age examination and when designing and undertaking age assessment. It is structured around five interlinked pillars and offers analysis of the impact of age assessment on other rights of the applicant. It also provides guidance on the application of the necessary principles and safeguards in the assessment process; on implementing the assessment

process using a holistic and multidisciplinary approach; an overview of age assessment methods conducted by EU+ countries; and key recommendations to address practical challenges. [1]

B. Gender sensitive reception conditions

i. Legal basis

Under the recast Reception Conditions Directive (rRCD) (EU 2024/1346), adopted in 2024 as part of the new EU Pact on Migration and Asylum and set to apply from June 2026, new legal requirements have been introduced to ensure gender-sensitive reception conditions:

Recital 38 of the rRCD: "*Member States should seek to ensure full respect, where applicable, for the principles of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.*"

[1] *The third edition of the guide will be published in December 2025.*

Implementation considerations for Recital 38: It is a positive development that the rRCD explicitly references the Istanbul Convention. However, since this reference appears only in a recital and is not legally binding, there is a risk that Member States - particularly those that have not ratified the Convention - may not fully implement the relevant principles on reception conditions.

Article 19 (2) of the rRCD (General rules on material reception conditions and health care): ***"****Member States shall ensure that material reception conditions and health care received in accordance with Article 22 provide an adequate standard of living for applicants, which guarantees their subsistence, protects their physical and mental health and respects their rights under the Charter. Member States shall ensure that the adequate standard of living referred to in the first subparagraph is met in the specific situation of applicants with special reception needs as well as in relation to the situation of persons who are in detention."*

Article 20 of the rRCD (Arrangements for material reception conditions):

Article 20 (3) "*Member States shall take into consideration gender and age-specific concerns and the situation of applicants with special reception needs when providing material reception conditions."*
Article 20 (4): "*When providing housing, Member States shall take appropriate measures to ensure, as far as possible, the prevention of assault and violence, including violence committed with a sexual, gender, racist or religious motive."*
Article 20 (5): *"Where female applicants are placed in accommodation centres, Member States shall provide separate sanitary facilities and a safe place in those centres for them and their minor children."*

Implementation considerations for Article 20: These provisions are positive from a gender perspective as they explicitly require MS to consider gender-specific and age-specific needs, ensure protection from sexual and gender-motivated violence, and provide separate sanitary facilities and safe spaces for women and their children. This reflects an understanding that GBV survivors, in particular self-identified women and girls in reception facilities face particular risks and require tailored safeguards. However, implementation depends heavily on MS' capacity and resources, and it is unclear whether all facilities will consistently provide adequate infrastructure, staffing, and monitoring to ensure these gender-sensitive standards are met in practice.

When reception conditions fall below required standards, violations of reception rights create a ripple effect that limits access to other fundamental rights. Unsafe or inadequate facilities deter survivors from seeking essential services, hinder access to education and information, and deepen existing vulnerabilities and discrimination. For GBV survivors, the absence of safe, gender-responsive support undermines both their protection and their ability to participate meaningfully in asylum procedures, ultimately creating long-term barriers to exercising their rights.

Evidence from Member States :

- While reception centres in many MS (AT, BG, CY, DK, EE, FI, FR, HR, LT, LU, NL, PL, RO, SE) offer single-sex rooms, Greece, Ireland, and Cyprus lack adequate women-only accommodation, with overcrowded mixed-gender facilities posing safety risks. Belgium, Luxembourg, Norway, Romania, and Poland have limited dedicated and well-adapted spaces for the specific needs of these groups. Persistent issues include violence risks in Germany and Spain due to mixed-sex dorms, and inadequate lighting and facilities in Malta, Italy, Romania and Sweden.
- In Luxembourg, shelters for survivors of violence, such as Femmes en Détresse, can only provide accommodation to women holding a residence permit. Undocumented women are excluded from these shelters and therefore lack access to safe accommodation, although they may still access certain services, such as psychological support.

- Besides, due to the lack of safe reception for LBQ+ women and girls and the existing centres organised on a binary understanding of gender, it is crucial to establish specialised and secure reception facilities to prevent exposure to GBV-based or sexual orientation, gender identity or expression, and sex characteristics (SOGIESC)-based violence or hate crimes. Promising practices include France's opening of 200 places for LGBTIQ+ asylum seekers and the provision of a

  reception centre in Austria and Sweden. However, concerns arise from reported incidents in Germany where LGBTIQ applicants faced harassment in collective reception centres, and in Greece, where accommodation shortages hindered access to confidential LGBTQI+ housing

Article 22 of the rRCD (Health care): ***"****Member States shall ensure that applicants receive the necessary health care, whether provided by generalists or, where needed, specialist practitioners. Such necessary health care shall be of adequate quality and include, at least, emergency care, essential treatment of illnesses, including of serious mental disorders, and sexual and reproductive health care which is essential in addressing a serious physical condition."*

Article 28 of the rRCD (Victims of torture and violence): "*Member States shall ensure that persons who have been subjected to trafficking in human beings, torture, rape or other serious acts of psychological, physical or sexual violence, including violence committed with a sexual, gender, racist or religious motive, are provided with necessary medical and psychological treatment and care, including rehabilitation services and counselling where necessary, for the damage caused by such acts. Those persons shall be provided, where needed, with an oral translation. Access to such treatment and care shall be provided as early as possible after those persons' needs have been identified.*
Those working with the persons referred to in paragraph 1, including health professionals, shall be appropriately trained and continue to receive appropriate training concerning those persons' needs and appropriate treatments, including necessary rehabilitation services. They shall also be bound by the confidentiality rules provided for in national law and applicable professional ethics codes in relation to any information they obtain in the course of their work."

Article 31 of the rRCD (Guidance, monitoring and control system): "*Member States shall take into account available, non-binding operational standards, indicators, guidelines or best practices on reception conditions developed by the Asylum Agency."*

Implementation considerations for Article 31: It is a positive step because it encourages MS to align with EUAA standards, but it is not sufficient on its own: many countries still lack basic gender-sensitive and violence-prevention protocols, apply Standard Operating Procedures (SOPs) inconsistently, or exclude entire parts of their reception system- such as emergency housing - from these standards. Because the article only requires MS to *"take into account"* EUAA guidance, without mandating compliance or setting minimum operational requirements, existing gaps are likely to persist. Without clear legal obligations, enforcement mechanisms, and mandatory staff training across all reception facilities, the provision risks maintaining the current patchwork of uneven, ad-hoc practices rather than guaranteeing coherent and safe reception conditions across the EU.

Evidence from Member States:

- While some countries (BE,DE, ES, HU, MT, PL) have developed SOPs or GBV prevention guidelines, their application remains inconsistent and ad-hoc.

- Gaps persist across EU reception centres, with Greece lacking gender-specific protocols, Germany missing federal violence prevention standards, and Ireland excluding such guidelines in emergency and temporary housing.
- Many countries (BE, GR, IT, FR, PO, RO) still need comprehensive mandatory training on GBV.

In addition to the recast RCD, other relevant EU legislation also includes new provisions addressing gender-sensitive reception conditions:

EU Directive on combating violence against women and domestic violence -EU 2024/1385 (the Directive on VAW)

Article 33 (3) of the Directive on VAW (Targeted support for victims with intersectional needs and groups at risk): *"Member States shall ensure that victims who so request can be kept separate from persons of the other sex in detention facilities for third-country nationals subject to return procedures or accommodated separately in reception centres for applicants for international protection."*

Article 33 (4) of the Directive on VAW (Targeted support for victims with intersectional needs and groups at risk): "*Member States shall ensure that persons can report occurrences of violence against women or domestic violence in institutions and reception and detention centres to the relevant staff and that procedures are in place to ensure that those staff or the competent authorities adequately and swiftly address such reports."*

Implementation considerations for Article 33 (4): It is important that this provision was specifically highlighted in the Directive on VAW. However, because the recast RCD does not contain a direct provision on the issue, there is a risk of weak coordination between different EU legislations on cross-cutting matters.

Evidence from Member States:

- Self-identified women and girls often experience various forms of violence and harassment in reception centres, as reported (CY, DE, EL) by male residents or sometimes by security staff. Addressing this issue requires providing safe areas, employing female guards, and ensuring effective reporting mechanisms, especially to female staff where relevant.

Article 44 of the Directive on VAW (Data collection and research): Requires that MS shall have a system in place for the collection, development, production and dissemination of statistics on violence against women or domestic violence. The statistics shall, as a minimum, include the following existing data, available at a central level, disaggregated by sex, age group (child/adult) of the victim and of the offender and, where possible and relevant, relationship between the victim and the offender and type of offence:

(a) "the annual number of reported offences and of convictions of violence against women or domestic violence, obtained from national administrative sources;
(b) the number of victims who have been killed due to violence against women or domestic violence;
(c) the number and capacity of shelters per Member State; and
(d) the number of calls to national helplines."

"*In order to ensure the comparability and standardisation of administrative data across the Union, Member States shall endeavour to collect administrative data on the basis of common disaggregation developed in cooperation with and in accordance with the standards developed by the European Institute for Gender Equality (EIGE). They shall transmit those data to the EIGE on a yearly basis. The transmitted data shall not contain personal data.*

The EIGE shall support Member States in the data-gathering referred to in paragraph 2, including by establishing common standards taking into account the requirements set out in that paragraph."

Implementation considerations for Article 44: It is a positive development that the EU Directive on VAW requires Member States to collect data on gender-based and domestic violence. However, it remains unclear which institutions in MS are responsible for collecting this data and in which locations. Given the lack of information on incidents in reception and detention centers in particular, there is a clear practical need for such data collection.

Evidence from Member States:

In Cyprus: In 2021, in collaboration with the Mediterranean Institute of Gender Studies (MIGS), UNHCR Cyprus conducted a study mapping the experiences and impact of sexual and gender-based violence (SGBV) among female and male asylum applicants at the Pournara First Reception Centre. The study found that 49% of the women assessed had experienced sexual or gender-based violence. The organisations noted that this high proportion should be considered in the context of the larger number of male arrivals and assessments included in the mapping. The study also highlighted a general lack of data on SGBV among asylum-seeking and refugee women and provided targeted recommendations to improve data collection, reception conditions, specialised support services, access to information, housing and accommodation, as well as employment and training opportunities. The findings and the majority of the recommendations remained relevant in 2024.

ii. Case law

ECtHR judgments underscore the importance of providing adequate safeguards for women and girls in vulnerable situations within reception centers.

M.A. v Italy: The ECtHR found that Italy violated Article 3 because an unaccompanied minor from Ghana, was placed for eight months in an adult reception centre where she suffered sexual abuse, despite repeatedly alerting authorities and her guardians to her vulnerability and need for transfer. The authorities failed to separate minors from adults, did not provide appropriate safeguards or psychological support, and ignored multiple requests for her relocation, only acting after an interim measure was issued. This systemic inaction and lack of protection rendered her reception conditions inhuman and degrading.

A.D. v Greece: The ECtHR assessed the case of a pregnant Ghanaian woman who arrived in Samos in 2019 and was forced to live for months in overcrowded, unsafe tents with inadequate sanitation, medical care and protection despite her high-risk pregnancy. After fires and violence in the camp, the Court granted interim measures before she gave birth and was later transferred to the mainland. Supported by UNHCR and Defence for Children International's descriptions of extreme overcrowding and the lack of facilities for vulnerable groups, she complained that these reception conditions violated Articles 3 and 8.

M.L. v Greece: The ECtHR found that a pregnant Sierra Leonean asylum seeker who lived for over three months in the severely overcrowded and unsanitary Samos RIC - despite being classified as vulnerable and in need of specialised care - was subjected to inhuman treatment in violation of Article 3. Relying on reports from the Council of Europe Commissioner for Human Rights, the Greek National Commission for Human Rights, UNHCR, and Defence for Children International, the Court highlighted the extreme conditions in Samos but found no Article 3 violation regarding her later stay in the Kleidi camp.

P.S. and A.M. v Hungary **:** The ECtHR found that a mother and her minor child from Iraq suffered inhuman treatment in the Tompa transit zone, where conditions mirrored those previously condemned in Röszke, and that the mother—considered at risk of suicide—did not receive adequate psychological care. The Court also ruled that their detention in the transit zone was unlawful, violating Articles 5(1) and (4), and that the lack of an effective remedy to challenge these conditions breached Article 3.

E.F. v Greece : The ECtHR found that a Cameroonian asylum seeker in Greece, who was HIV-positive and later diagnosed with non-Hodgkin lymphoma, was subjected to inhuman treatment in violation of Article 3 due to the authorities' six-month delay in providing medical care after her registration at the Moria RIC. Despite being informed of her condition upon arrival, she only received treatment after severe symptoms developed, and the Court held that the authorities failed to take reasonable measures to protect her health. The lack of an effective remedy to address these failures also violated Article 13.

Camara v. Belgium: The case concerned an asylum seeker who was left without accommodation for several months in Belgium despite a final court order requiring the State to provide him with material assistance. The authorities failed to act on the order until the European Court of Human Rights imposed an interim measure. The Court found that this was not an isolated incident but part of a broader systemic failure by Belgian authorities to enforce judicial decisions on reception conditions for asylum applicants. While acknowledging the pressures on the Belgian system, the Court held that the delay amounted to a refusal to comply with domestic court orders, undermining human dignity and violating the essence of the right to a fair hearing under Article 6 of the Convention.

M.S.S. v. Belgium and Greece: In M.S.S. v. Belgium and Greece, the ECtHR found that Greece subjected the applicant to inhuman and degrading treatment through substandard detention and destitute living conditions, and that its asylum system lacked effective remedies. Belgium was also held liable for transferring him to Greece despite knowing of these systemic deficiencies. The judgment clarified that States cannot rely blindly on the Dublin system's presumption of mutual trust and must assess actual reception and asylum conditions before carrying out transfers.

iii. Practical and Policy Actions

Database: EIGE is compiling a comprehensive set of migration- and asylum-and-gender-related statistical datasets based on the existing EUROSTAT data that capture the demographic and procedural profiles of third-country nationals across the EU. These include detailed annual and quarterly data on asylum applicants and decisions - covering first-instance, appeal, and accelerated procedures - as well as information on unaccompanied minors. The collection also encompasses statistics on orders to leave and returns, temporary protection decisions (both quarterly and annually), and resettlement outcomes by age, sex, citizenship, and related characteristics. In addition, EIGE compiles data on residence permits, including first permits, valid permits, long-term residence, and changes in immigration status. Together, these datasets provide a robust gender- and age-disaggregated evidence base that supports the monitoring of migration flows, protection needs, and integration pathways within the EU.

EIGE Call Tender on Research Study : European Institute for Gender Equality is planning to award the contract(s) for its call for tender on "Gender-Based Violence in EU Reception Centres: An Analysis of Screening, Referral, and Protection Measures"

This study falls within the area of research on gender-based violence (GBV) in crisis contexts, with a particular focus on GBV identification, referral, and protection practices in EU asylum reception systems. It aims to strengthen the identification and support of GBVsurvivors among asylum seekers and other displaced populations in the EU. The study focuses on both national-level legal and policy frameworks and local practices within reception centres.

Recommendations

Asylum Procedures

- **Information provision on GBV and independent applications:** GREVIO should assess whether the EU provides clear, accessible, and gender-sensitive guidance and frameworks to ensure that asylum applicants across MS, particularly through EUAA guidance and trainings, are informed of their rights, including that gender-based violence can constitute grounds for protection and that individuals can apply independently of partners."
- **Training of personnel:** GREVIO should monitor whether authorities, interpreters, judges, and legal aid staff receive mandatory, ongoing training on trauma-informed, gender-sensitive interviewing, credibility assessment, and GBV-related claims, and whether training is systematically evaluated for effectiveness.
- **Substantive interviews:** GREVIO should ensure personal interviews are conducted confidentially, with appropriate privacy, and that the applicants can request same-gender interviewers and interpreters without barriers or shortages impeding this right.
- **Assessment of special procedural needs:** GREVIO should review whether authorities identify applicants in need of special procedural guarantees early, including survivors of GBV, trafficking, torture, or sexual violence, and whether referrals to gender-sensitive medical or psychological professionals are effectively provided.
- **Protections for unaccompanied minors:** GREVIO should monitor whether unaccompanied children, particularly girls, have timely appointment of trained representatives, child-friendly information, and access to proper supervision, ensuring delays and overload of representatives do not compromise their rights.
- **Age assessments:** GREVIO should monitor whether multi-disciplinary, trauma-informed age assessments are conducted without invasive or harmful practices, respecting the dignity, privacy, and bodily integrity of children.
- **Accelerated and border procedures:** GREVIO should examine whether mandatory accelerated or border procedures respect gender-specific protection needs, allow sufficient time for disclosure and evidence collection, and do not disproportionately affect GBV survivors in particular self-identified women and girls from low-recognition countries.
- **Monitoring and accountability at borders:** GREVIO should recommend broad, independent, and gender-sensitive monitoring mechanisms at borders, including participation of accredited NGOs, human rights institutions, and ombudspersons, with safe reporting channels, public accountability, and oversight of GBV survivors in particular self-identified women and girls. This mechanism should include international independent monitoring bodies such as GREVIO and CEDAW, which carry out gender-specific monitoring
- **Access to procedural safeguards:** GREVIO should evaluate whether all applicants, including survivors of GBV, can access legal aid, protection, and special procedural guarantees during asylum procedures, without being excluded by accelerated or border procedures.
- **Data collection and evaluation:** GREVIO should encourage systematic collection of disaggregated data on asylum procedures, gender-specific barriers, and outcomes to inform policy and ensure accountability in the treatment of GBV survivors in particular self-identified women and girls seeking international protection.

Reception Conditions

- **Reference to Istanbul Convention in rRCD:** GREVIO should monitor whether the EU ensures that its directives, policies, and guidance lead to reception conditions across Member States that

fully comply with the Istanbul Convention, translating recital references into concrete, enforceable measures

- **Gender- and age-sensitive accommodation:** GREVIO should monitor whether the EU ensures that its policies and guidance require Member States to provide GBV survivors -particularly self-identified women and girls - with safe, separate housing, adequate sanitary facilities, and child-friendly spaces, and that issues such as overcrowding or mixed-gender dormitories are effectively addressed.
- **Protection from violence in reception centres:** GREVIO should examine whether the EU ensures that its policies and guidance lead to effective measures in Member States to prevent sexual, gender-, racial-, or religion-motivated violence, including adequate staffing, monitoring, and implementation of standard operating procedures.
- **Health care provision:** GREVIO should monitor that the EU promotes policies and guidance requiring Member States to provide timely and adequate general and specialist health care for GBV survivors - particularly self-identified women and girls - including sexual and reproductive health, mental health, and trauma-informed services..
- **Support for survivors of GBV:** GREVIO should verify that the EU's policies and guidance ensure Member States consistently provide rehabilitation, counselling, translation, and confidentiality services, and that staff receive appropriate training to support GBV survivors effectively.
- **Monitoring, guidance, and EUAA standards:** GREVIO should assess whether the EU ensures that its policies, including EUAA operational standards, indicators, and best practices, are effectively implemented in Member States' reception facilities, and that gaps are addressed where guidance is non-binding.
- **Data collection and reporting on GBV:** GREVIO should encourage systematic, disaggregated data collection on incidents of GBV in reception centres, shelter capacity, helpline usage, and outcomes, aligned with EIGE standards.
- **Training and capacity building:** GREVIO should assess whether the EU ensures that Member States provide all reception staff with mandatory, ongoing training on GBV risks, trauma-informed care, and gender-sensitive treatment of GBV survivors, particularly self-identified women and girls.

IV. Article 61 (Non refoulement)

i. Legal basis

A. Prevention of access to state's territory and pushbacks

The changes introduced by the EU New Pact on Migration and Asylum are likely to restrict access to territory and increase the risk of pushbacks.

The Pact channels far more asylum seekers into accelerated border-procedures (please see previous section on Article 42 of the APR on accelerated examination procedures and Article 45 of the APR on border procedures) rather than regular asylum processing, meaning many will face "de facto detention" at EU borders without the standard safeguards and legal protections. Exemptions for survivors of gender-based violence (GBV) from accelerated and border procedures are only possible if it is determined that adequate support is not being provided to them. However, the definition of "adequate support" is ambiguous and open to interpretation. Combined with the lack of effective identification and monitoring mechanisms and insufficient staff training, this creates a high risk that many GBV survivors will still be subjected to these procedures, thereby hindering their access to territory.

In addition, several new elements under the APR further restrict applicants' access to territory and increase the risk of pushbacks:

Article 43 of the APR (Conditions for applying the asylum border procedure): Article 43 maintains the fiction of non-entry by stating that applicants subject to the border procedure shall not be authorised to enter the territory of a Member State.

Article 54 of the APR (Locations for carrying out the asylum border procedure): stipulates that Member States must provide families with children reception facilities suited to their needs, ensuring an adequate standard of living that supports the child's overall development in line with Articles 24–28 of the recast RCD. However, residing in such facilities does not constitute authorization to enter or stay in the territory, and transfers for legal or medical purposes likewise do not count as entry, meaning the legal fiction of non-entry remains in place.

Implementation considerations for Article 43 and Article 54: While it is positive that Chapter IV (Articles 24–28) of the recast RCD applies to families with children and applicants with special reception needs, including in cases where the fiction of non-entry applies, there is a risk that the specific needs of GBV survivors in particular self-identified women and girls may not be adequately addressed. For example, provisions such as single-sex rooms, specialized facilities, separate bathrooms, female staff, and sufficient lighting in common areas may be overlooked due to the lack of explicit legislative requirements. This absence of clear guidance for gender-sensitive accommodation risks exposing GBV survivors to various forms of violence in practice.

Article 30 of the APR (Access to the procedure at border crossing points): "Where there are indications that third-country nationals or stateless persons present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, the competent authorities under Article 4 shall provide them with information on the possibility to do so."

Implementation considerations for Article 30: The requirement to provide accurate and timely information is essential for effective access to the examination procedure under the APR. However, it is unclear and sets an ambiguous standard for Member States. It leaves border guards at border crossing points to subjectively interpret vague "indications" that someone may seek international protection, which risks arbitrariness in practice.

This ambiguity can have serious consequences for survivors of GBV. GBV survivors may be reluctant or unable to openly signal their intention to seek protection due to trauma, fear of stigma, or risk of further violence. As a result, the reliance on officials' subjective interpretation of "indications" may prevent GBV survivors from receiving timely information and accessing protection procedures, leaving them particularly vulnerable.

Article 50 of the APR (Notification by a Member State where the annual maximum number of applications is reached): "*Where the number of applications that have been examined in the border procedure in a Member State within one calendar year is equal to or exceeds the maximum number of applications set out in respect of that Member State (...)the Commission shall authorise, by means of an implementing act, the Member State concerned to not examine in the border procedure applications made by applicants."*

Implementation considerations for Article 50: The formula for calculating "adequate capacity" may incentivize Member States at external borders to informally deny entry to reduce the number of applications they must process in future years. While formal refusals count toward capacity, informal or unlawful pushbacks do not, encouraging practices that circumvent access to protection. This can disproportionately affect survivors of gender-based violence (GBV), who may be especially vulnerable

during border crossings. Informal denials or pushbacks could prevent them from accessing protection procedures, leaving them at heightened risk of further harm or exploitation.

Additionally, the **Crisis and Force Majeure Regulation (EU 2024/1359)** enables Member States to trigger exceptional procedures during mass arrivals, normalizing rapid expulsions or collective pushbacks. Taken together, these measures create multiple structural pressures that limit entry,

heighten detention risks, and increase the likelihood that asylum seekers will be returned without adequate assessment or protection.

Evidence from Member States:

In Greece, according to CEDAW (20 February 2024), refugee, asylum-seeking, and migrant women and girls in Greece experience intersecting discrimination and disproportionately high levels of gender-based violence, particularly in border areas, while undocumented migrant women face heightened risks of sexual exploitation, forced labour, and trafficking. CEDAW also noted reports that many third-country nationals, including women and girls, have been subjected to pushbacks or forcibly returned to Türkiye without effective access to asylum procedures, raising serious concerns of refoulement.

B. Safe country concepts

Safe Country of Origin

Article 61 of the APR: *"A third country may only be designated as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is no persecution as defined in Article 9 of the Qualification Regulation and no real risk of serious harm as defined in Article 15 of that Regulation."*

Same article explicitly states that the definition of a safe country of origin may include exceptions for certain parts of a country's territory or for clearly identifiable categories of persons.
It states that the assessment of a country's status as a safe country of origin should take into account various sources of information, including data from EUMS, the EUAA, UNHCR and other relevant international organisations.
It introduces new factors to be considered, such as the country's legal framework, adherence to human rights treaties like the ECHR, the International Covenant on Civil and Political Rights, or the United Nations Convention against Torture, provisions for protection against deportation to third countries, and the existence of effective remedies for rights violations

Safe Third Country

Article 57 of the APR: A third country is considered to provide effective protection if:

It has ratified and respects the Geneva Convention, within any lawful derogations or geographical limitations it has made.

- If the country applies geographical limits to the Convention, protection for those outside those limits must be assessed under the criteria below.

If the above condition is not met, the country must at minimum ensure that the individuals concerned:
(a) are permitted to stay on its territory,
(b) have sufficient means of subsistence for an adequate standard of living,
(c) have access to healthcare and essential medical treatment,
(d) have access to education on the same general terms as others in that country, and

(e) continue to receive protection until a durable solution is found.

Article 59(1) of the APR: it is no longer required for the applicant to have the possibility to request refugee status and receive protection in accordance with the Geneva Convention. The APR introduces the concept of "effective protection", which can be met in two ways. Either a state has ratified and respects the Convention or the set of four conditions listed in Article 57 are met.

Article 59(2) of the APR: It introduces a new provision allowing a country to be classified as safe "*with exceptions for specific parts of its territory or clearly identifiable categories of persons*." This measure aims to expand the application of the concept of safety by allowing for a country to be deemed safe even if there are regions or groups that lack safety. This means, for instance, that conflict in one area or repression against a particular group should not prevent the country from being classified as safe.

Implementation considerations:

- *For the safe country of origin concept*

Failing to gather information on the specific situations of GBV survivors in particular self-identified women and girls when evaluating a country's status as a safe country of origin increases the practical risk of returning these groups to countries where they may face inhumane treatment. Likewise, while adding a country's adherence to human rights treaties as new factors is beneficial, the omission of treaties like CEDAW or the Istanbul Convention poses a risk of neglecting the specific issues and needs of these groups in practice.

Certain MS define exceptions for specific geographical areas or profiles of asylum seekers within a country of origin. For instance, in the Netherlands, some specific groups, such as women and or LBGTQI+ individuals or some specific areas, such as the union territory of Jammu and Kashmir in India, are excluded from the safe country of origin designation. Norway provides exceptions for girls under the age of 18 from Ghana and Tanzania, single women from India, and applicants who have faced forced marriage in Ghana and Tanzania. In Spain, although Morocco is designated as a safe country of origin, in recent years Moroccan nationals in specific cases are granted protection by Spain, such as when political grounds (i.e. those coming from the Rif region), LGBTIQ+, and GBV grounds of persecution apply.

Evidence from Member States:

Problems arise when gender-specific risks - such as GBV in the country of origin - are not properly assessed. These issues are compounded by outdated country-of-origin information and limited cooperation with international bodies and independent organisations that document the situation of GBV survivors in particular self-identified women and girls Is.

Self-identified women seeking asylum often struggle to report violence, particularly when they come from countries labelled as "safe," as current legislation lacks adequate safeguards for GBV survivors in particular self-identified women and girls. Their claims -including those involving domestic violence or honour-based violence - are frequently dismissed on the assumption that their countries of origin can protect them, sometimes merely because those countries have ratified the Istanbul Convention, without concrete evidence or reference to GREVIO evaluations. This raises serious concerns about the quality of protection and the treatment of GBV cases in asylum procedures. Moreover, some countries where harmful practices like female genital mutilation remain widespread are still classified as "safe" (e.g., Gambia, Ghana, and Senegal in the EL), further undermining protection and support for affected self-identified women and girls.

- *For the safe third-country concept*

Article 57 sets a low threshold for a country to be considered as offering effective protection, and undermines the Refugee Convention by suggesting that effective protection could be provided outside its scope. Examples from practice show that just because a country is a signatory to the Convention or has the right to remain in the territory without refugee status does not mean that self-identified women and girls can effectively access protection. For example, in Hungary, inadmissibility decisions have been issued based on Serbia being deemed a safe third country, even for applicants in vulnerable situations such as transgender persons, disabled individuals, and single women survivors of sexual and gender-based violence.

By designating a country as safe despite unsafe regions or groups, self-identified women and girls may be exposed to heightened risks of gender-based violence, including domestic violence and sexual assault, especially in areas where conflict or repression is prevalent. It may also overlook the specific vulnerabilities of minority communities, including self-identified women and girls from these groups, who may face systemic discrimination or targeted violence. This could lead to insufficient protection for those who require asylum due to persecution based on gender or ethnicity.

MS specify exceptions for particular geographical areas or profiles of asylum seekers. For example, the Netherlands exempts Dalit women and girls from India, while Norway exempts girls under 18 from Ghana and Tanzania, single women from India, and applicants who have faced forced marriage in Ghana and Tanzania.

However, in practice, the safe third-country concept is often applied automatically and without individual assessment in many countries, contrary to the case-by-case approach.

For example, in EL, the Joint Ministerial Decision (JMD) designating Turkey as a "safe third country" has led to a surge in inadmissibility decisions for asylum seekers from Syria, Afghanistan, Somalia, Pakistan and Bangladesh. GREVIO has raised concerns about the risks this poses to women and girls who are survivors or at risk of sexual and gender-based persecution, as they are often denied access to asylum procedures in Greece. The JMD lacks a regular review mechanism for the "safe" status of countries and does not account for significant human rights changes, such as Türkiye's withdrawal from the Istanbul Convention. Consequently, many women and girls are left in precarious situations in Greece, unable to access reception facilities or support, while being at risk of GBV and human trafficking, exacerbated by the suspension of returns to Türkiye since 2020.

APR amendments on Safe Country Concepts

In 2025, the European Commission proposed amendments to the APR regarding the safe country concept. The APR amendments represent a significant downgrade from previous EU asylum frameworks, weakening procedural safeguards and increasing the likelihood of inadmissibility or pushbacks. The SCO provisions would establish a presumption that certain countries are safe, based on opaque assessment criteria, and create a list of other safe countries, potentially limiting individualized assessment. The frontloading of Pact provisions risks adding complexity to the common asylum system and encourages inconsistent implementation by Member States.

The proposed changes to the STC concept are particularly concerning. They would allow Member States to eliminate the requirement for a connection between the applicant and the third country, enabling returns to countries where the individual has no prior ties. Additionally, the amendments would remove the automatic suspensive effect of appeals, undermining the right to an effective remedy and increasing the risk of deportation before a full assessment of protection needs.

These structural changes have serious implications for GBV survivors, who are particularly vulnerable in border and accelerated procedures. Self-identified women and girls fleeing gender-based violence may be returned to unsafe countries without adequate assessment of their risk, potentially exposing them to further harm, including sexual violence, domestic abuse, honor-based violence, and other forms of persecution. The removal of appeal suspensive effects further exacerbates these risks, as survivors may be expelled before their claims are properly examined.

C. Transfers under Asylum and Migration Management Regulation (AMMR) (Dublin Transfers)

Relevant articles of the AMMR

Article 8 of the AMMR: requires that MS must not transfer asylum applicants to a country where they face a real risk of inhuman or degrading treatment, which would violate their fundamental rights.

Article 16 of the AMMR: The default principle of "the first point of entry" is maintained. Article 16 (2) of the AMMR mandates that "where no MS can be determined responsible for examining the application for international protection , the first MS in which the application for international protection was registered shall be responsible for examining it". However, this does not mean that this principle is only applicable in circumstances where international protection is applied. A person crossing into another country without registering or applying for international protection in the first country is still subject to the AMMR

Article 16 (3) of the AMMR: amends the substantive grounds for the impossibility of transferring an applicant to the Member State designated as primarily responsible. Accordingly, in order for the MS to stop the transfer, "substantial grounds for believing that the applicant would face a real risk of a violation of the applicant's fundamental rights, amounting to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union". Unlike Dublin III, "systematic flaws in the asylum procedure and reception conditions have been removed from the condition.

Implementation considerations:

Article 16 maintains the "first point of entry" principle, which can disproportionately affect GBV survivors in particular self-identified women and girls who may be more vulnerable during initial border encounters, including risks of gender-based violence, trafficking, or limited access to services. This principle also reflects the continuation of the dysfunctional Dublin system, which ties applicants to the Member State of first entry and contributes to uneven responsibilities across EU countries, often compounding risks for vulnerable groups at external borders.In addition, removing the requirement to assess systematic flaws in asylum procedures and reception conditions, and limiting evaluations to violations of Article 4 of the EU Charter, poses serious risks for self-identified women and girls. It may overlook inhuman or degrading treatment arising from procedural barriers, inadequate legal support, untrained staff, lack of gender-sensitive interviews, and insufficient reception facilities. Other factors, such as medical vulnerabilities or risks of trafficking, can also influence exposure to harm. Also, interpreting Article 4 from a male-centric perspective further neglects women's experiences of non-state torture and gender-based violence, including domestic abuse, trafficking, and FGM. Case law (e.g., *Opuz v. Turkey*, C-621/21) and UNCAT guidance emphasize that these forms of violence constitute ill-treatment or torture. Therefore, Member States should apply Article 4 broadly, considering systemic and gender-specific risks, to ensure adequate protection for self-identified women and girls.

The recast Anti-trafficking Directive (EU 2024/1712)

Recital 20 of the recast ATD: To prevent survivors from being re-trafficked within the Union, it is important that, when survivors are transferred under Regulation (EU) 2024/1351 of the European Parliament and of the Council, Member States do not transfer survivors to a Member State where there are substantial grounds for believing that the survivors, because of the transfer to that Member State, would face a real risk of violation of their fundamental rights that amounts to inhuman or degrading treatment within the meaning of Article 4 of the Charter.

Implementation considerations: The obligation to prevent the transfer of trafficking survivors to unsafe conditions directly responds to critical gaps in protection. However, its effectiveness depends on whether Member States' authorities are equipped to assess gender-specific risks and vulnerabilities, and whether all staff have the capacity and guidance to identify such risks in practice.

Asylum-seeking trafficking survivors, especially self-identified women and girls, may be transferred to another country under the Dublin Regulation or AMMR in the future without proper risk assessment. This can expose them to dangers such as re-trafficking, retaliation from traffickers, and inadequate support. Evidence from the MS shows that the strict application of these rules often denies them a necessary reflection and recovery period, increasing their vulnerability. (AT, BE, CH, ES, LU, IE NO, SE).

ii. Case law

Pushbacks

A.R.E. v. Greece **- ECtHR judgment:** The European Court of Human Rights held Greece responsible for the unlawful deportation (pushback) of a woman, recognising evidence of "systematic" pushback practices. This case is particularly important for highlighting the risks faced by women at Greece's borders and the persistent denial of effective access to asylum procedures.

Dublin transfers

Different case law on women shows that risks such as medical conditions (CJEU - Judgment Case C-578/16; Germany – Augsburg Administrative Court) or risk of human trafficking (Federal Office for Immigration and Asylum v Applicant; Applicant (Uganda) v State Secretary for Justice and Security) can also influence transfer decisions.

CJEU cases like O.T.E. v State Secretary for Justice and Security, Joined cases of N.S. v United Kingdom and M.E. v Ireland, and several national case law (Austrian Federal Office for Aliens and Asylum (BFA) v Applicant, Applicant v CGRS, Uganda) v State Secretary for Justice) support suspending Dublin Regulation procedures when human trafficking risks are present.

Safe country concepts

Safe country origin

Case law in which the national courts found the rejection of a woman's application on the safe country grounds unlawful can be useful and instructive even if they are not binding on other member states:

- In the Czech Republic, the Regional Court of Brno ruled the rejection of a women's application unlawful due to insufficient and outdated COI, highlighting human rights violations, violence against women and risk of refoulement and contradicting India's designation as a safe country of origin.
- In Ireland, a Georgian national's application for international protection, citing fear of domestic violence, was initially rejected due to credibility issues and Georgia being deemed a safe

country. The High Court overturned the decision to uphold the rejection without a hearing, ordering reconsideration due to improperly assessed credibility concerns.

- In the Netherlands, an Armenian national's credible claim of rape and police threats was rejected by the State Secretary, who deemed Armenia a safe country of origin. On appeal, the

  Court of The Hague overturned the decision, finding the assessment insufficient and ordering a re-examination to further investigate her protection needs.

Safe third country

Recent CEDAW case law:

The CEDAW may issue interim measures when it considers that a woman faces an imminent risk of irreparable harm and thus, implying a potential risk of violations of the Convention on the Elimination of Discrimination of Violence Against Women. In practice, this mechanism has increasingly been used in the non-refoulement context, where individuals submit communications to the CEDAW and request interim measures to halt deportation. In two precedent cases from July 2025 (K.J. v. Switzerland, CEDAW Communication No. 169/2021, and Z.E. and A.E. v. Switzerland, CEDAW Communication No. 171/2021), the CEDAW issued final recommendations which confirmed that Switzerland's decision to remove these women to Greece, where they have been granted protection status, would constitute a violation of Articles 2(c)–(d) and 3 of CEDAW, in conjunction with the principle of non-refoulement (substantively equal to Art. 61 Istanbul Convention).

Furthermore, the CEDAW Committee - besides the recognition in General Recommendation No. 35, § 33(a) - for the first time in a decision concerning a removal also found a violation of the right to health care under Article 12 CEDAW. The Committee held that Switzerland had insufficiently examined whether the complainants would have access to adequate measures for physical and psychological recovery after experiencing sexualized violence in Greece.

In case K.J. v. Switzerland, the Committee also considered it insufficient for Switzerland to dismiss the complainant's account of SGBV in Greece simply because it was disclosed later, noting that survivors often require time before they can speak about such violence (essentially implying a violation of Art. 60 Istanbul Convention).

Crucially, the CEDAW issued final recommendations in both cases which stipulate that States must take:

"*all necessary measures to ensure that refugees who are victims of gender-based violence and in need of protection are* ***not returned to the country of first entry*** *[...]* ***without an individualized, trauma-informed, and gender-sensitive assessment of the real risk of irreparable harm****"*

The precedent cases before the CEDAW Committee illustrate the systemic failures States exhibit when assessing women's protection claims within the Safe Third Country framework. Instead of conducting a gender-sensitive hearing and applying a gender-sensitive interpretation of the grounds for protection and the assessment of removal-related risks, as they are obligated to do under Art. 60 and 61 of the Istanbul Convention, deportations are carried out under generalized assumptions that other EU countries comply with their international and regional women's rights obligations. These assumptions are in stark contrast to the Committee's decisions, as well as to numerous reports by civil society organizations warning about structural violence women asylum seekers are exposed to in countries such as Croatia, Greece, or Bulgaria. This trend is highly alarming, as it effectively subordinates international human rights obligations to national asylum priorities.

National case law:

Decision IP/96007/2024, 19th Appeals Committee, summary [in Greek] in RSA et al, Greek Asylum Case Law Report Issue 1/2024-Greece: In February 2024, the 19th Appeals Committee accepted the appeal of a single Somali woman, whose application had been found inadmissible at first instance based on the safe third country concept and particularly the time spent in Türkiye. The Appeals Committee took into consideration that: (i) the applicant is a single woman, without a supportive family or family environment in Türkiye, which makes it particularly difficult, if not practically impossible, for her to establish social and employment ties in that country, where, moreover, the problems of women's access to services and legal protection, gender discrimination and women's living and working conditions are real and the Turkish authorities do not take sufficient measures to ensure that women's access to services and legal protection is not restricted. Given that each of the criteria laid down in the law must be satisfied cumulatively, Türkiye cannot be regarded as a safe third country for the applicant, in accordance with the plea in law put forward in that regard.

Recommendations

- **Affirm primacy of IC obligations:** GREVIO should underline that EU asylum arrangements cannot override Istanbul Convention duties and that trauma-informed, gender-sensitive non-refoulement assessments must be applied in all cases.
- **Monitor Art. 60–61 compliance:** GREVIO should call for EU-wide monitoring of gender-sensitive hearings and risk assessments, especially in all cases concerning deportations in the Safe Third Country context.
- **Border access and pushbacks:** GREVIO should assess whether border practices, including pushbacks, prevent GBV survivors in particular self-identified women and girls from accessing asylum and individual assessment
- **Safe country designations:** GREVIO should examine whether safe-country lists integrate gender-specific risks, GBV-focused COI, and reflect GREVIO's own findings on protection in practice.
- **Review of country designations:** GREVIO should call for mandatory, frequent reviews of safe-country designations reflecting real-time changes in women's rights protection, including treaty withdrawals.
- **Individualised risk assessments:** GREVIO should review whether the EU ensures that Member States implement trauma-informed, gender-sensitive risk assessments and appropriately accommodate late disclosures of GBV.
- **Effective protection standard:** GREVIO should evaluate whether the "effective protection" test genuinely safeguards GBV survivors in particular self-identified women and girls, including against non-State GBV and harmful practices.
- **Exemptions for high-risk groups:** GREVIO should assess whether States correctly exempt high-risk GBV survivors in particular self-identified women and girls from safe-country designations based on reliable, gender-specific COI.
- **Inadmissibility decisions:** GREVIO should examine whether States misuse automatic safe-third-country inadmissibility findings without gender-sensitive access to asylum or updated rights assessments.
- **AMMR transfers:** GREVIO should verify whether transfer decisions consider gender-specific risks such as trafficking, SGBV, mental-health needs, and reception gaps in the receiving State.
- **Definition of serious harm:** GREVIO should emphasise that "inhuman or degrading treatment" assessments must explicitly include GBV, domestic violence, trafficking, and harmful practices, not only male-centred forms of harm.

AMAL
autonomisation & protection des femmes migrantes
A project led by the association
France terre d'asile

ecre
European Council
on Refugees and Exiles

A project led by the association France terre d'asile AMAL: Empowerment and Protection of Migrant Women" is a three-year project (2023-2025) implemented by France terre d'asile in partnership with the European Council on Refugees and Exiles (ECRE). The Project aims to improve the realisation of migrant women's rights through a wide range of activities, including advocacy at both the French and the EU level, protection, empowerment and capacity-building activities.

ASYLEX
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Zürich, 10. Dezember 2025

Vernehmlassung zur Änderung der Verordnung des EJPD vom 4. Dezember 2018 über den Betrieb von Zentren des Bundes und Unterkünften an den Flughäfen (Sicherheit und Betrieb in den Zentren des Bundes)

Sehr geehrter Herr Bundesrat Jans
Sehr geehrte Damen und Herren

Im Namen des Vereins AsyLex bedanken wir uns für die Gelegenheit zur Stellungnahme zu den geplanten Änderungen der Verordnung über den Betrieb von Zentren des Bundes und Unterkünften an den Flughäfen (Sicherheit und Betrieb in den Zentren des Bundes). Wir verweisen im Allgemeinen und wo nicht anders erwähnt zustimmend auf die Vernehmlassungsantwort der Schweizerischen Flüchtlingshilfe (SFH), die eine fundierte Analyse und zahlreiche wichtige Verbesserungsvorschläge enthält. Nachfolgend finden Sie ergänzend unsere Vernehmlassungsantwort.

Mit freundlichen Grüssen

Lea Hungerbühler
Rechtsanwältin AsyLex

1. Allgemeine Vorbemerkungen

AsyLex begrüsst grundsätzlich die gesetzliche Regelung bzw. der Umsetzung auf Verordnungsebene der Bedingungen, unter welchen Disziplinarmassnahmen gegen Personen in den Zentren des Bundes (BAZ) verhängt werden dürfen. Wenngleich gewisse Aspekte u.E. auf Gesetzesebene hätten geregelt werden sollen, unterstützen wir die Bestrebungen zu vermehrter Rechtssicherheit auf Verordnungsebene.

Wie aus dem Erläuternden Bericht hervorgeht, dient die Verordnung der Konkretisierung der neu geschaffenen gesetzlichen Bestimmungen (insb. Art. 25a–25c nAsylG; Art. 25b nAsylG). Gerade wenn das Gesetz erhebliche Eingriffsbefugnisse vorsieht, kommt der Verordnung eine zentrale rechtsstaatliche Schutzfunktion zu. Aus unserer Sicht bestehen weiterhin wesentliche Präzisierungsbedarfe, insbesondere in Bezug auf:

- den Verfahrensschutz bei Disziplinarmassnahmen;
- die Definition der sanktionierbaren Verhaltensweisen;
- die Begrenzung des räumlichen Anwendungsbereichs («Umgebung»);
- Transparenz- und Dokumentationspflichten;
- Ausgestaltung und Kontrolle von Festhaltungssituationen;
- Kontrolle privater Sicherheitsakteure.

Diese Aspekte können und sollten auf Verordnungsstufe geregelt werden, auch wenn die grundsätzlichen Kompetenzen gesetzlich vorgegeben sind.

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2. Einleitung und Vorbemerkungen

AsyLex ist als Rechtsvertreterin zahlreicher geflüchteter Menschen regelmässig mit den Themen konfrontiert, welche im Bericht von alt-Bundesrichter Niklaus Oberholzer (fortan Bericht Oberholzer) vom 30. September 2021 aufgeworfen werden. Die Anzahl und das Ausmass der Vorfälle erachten wir als besorgniserregend und befürworten daher die Bestrebungen des Bundes, diesbezüglich Massnahmen zu ergreifen. Zentral wäre aus unserer Sicht über die vorliegende Vernehmlassungsantwort hinaus der niederschwellige Zugang zu Rechtsvertretung im Fall von Gewalt im Bundesasylzentrum[1], eine unabhängige und niederschwellige Meldestelle (auch bzw. gerade für Bundesasylzentren ohne Verfahrensfunktion), die Abkehr der Auslagerung von Sicherheitsdienstleistungen an Private sowie die Einführung und Durchsetzung von klaren Weisungen für das Sicherheitspersonal, mit entsprechenden (greifenden) Disziplinarmassnahmen.

Nachfolgend wird auf die vorgeschlagenen Gesetzesbestimmungen im Detail eingegangen.

3. Zu den einzelnen Bestimmungen

a) Art. 4

Wir nehmen zur Kenntnis, dass Art. 9 nAsylG die Durchsuchungsbefugnis bereits definiert. Dennoch bestehen substanzielle Spielräume zur verordnungsmässigen Ausgestaltung:

Dokumentationspflicht

Die Verordnung sollte zwingend festlegen:

- dass jede Durchsuchung protokolliert wird (Datum, Anlass, Gegenstände, beteiligte Personen);

[1] Die Rechtsvertretung im Asylverfahren hat hierzu kein Mandat und berät bzw. vertritt daher nicht in diesen Angelegenheiten. Gemäss unserer Erfahrung wird überdies eine Anzeige wegen Gewalt durch Mitarbeitende der Sicherheitsdienste im Bundesasylzentrum von den nahegelegenen Polizeistationen nur bzw. erst entgegen genommen, wenn diese durch eine Rechtsanwältin bzw. einen Rechtsanwalt eingereicht wird, nicht aber bei einer Meldung durch die betroffene Person selber.

- dass das Protokoll der betroffenen Person in verständlicher Sprache (zumindest auf Nachfrage hin) ausgehändigt wird;
- dass Sicherstellungen mit Verfügung zu eröffnen sind.

Dies ergibt sich bereits aus rechtsstaatlichen Mindestanforderungen, ist aber in der Vorlage nicht umgesetzt.

Begrenzung der Sicherstellung

Die Verordnung kann – trotz Gesetzesbestimmung – und sollte klarstellen, dass Sicherstellungen:

- nur bei Gefährdung zulässig sind,
- nicht als Mitwirkungszwang eingesetzt werden dürfen,
- zu dokumentieren und anfechtbar sein müssen.

Schutz besonders vulnerabler Personen

Die Verordnung sollte vorsehen, dass:

- körperliche Durchsuchungen personen- und geschlechtssensibel erfolgen;
- Schutzbedürfnisse von Frauen und Kindern ausdrücklich zu beachten sind;
- Durchsuchungen bei Minderjährigen nur unter engen Voraussetzungen erfolgen dürfen.

b) Art. 5

Die Ergänzung ist inhaltlich sinnvoll, bleibt aber zu unbestimmt. Die Verordnung sollte konkretisieren:

- Mindeststandards für Privatsphäre, Sicherheit und Ruhe;
- Schutzmechanismen bei Konfliktsituationen;
- Anforderungen an das Sicherheitspersonal (z.B. gendersensitive Einsatzzuteilung).

c) Art. 24 ff.

Das Asylgesetz verlangt ausdrücklich, dass die Verordnung bestimmt, welche **Verhaltensweisen** zu Disziplinarmassnahmen führen. Der vorliegende Entwurf enthält keine solche Konkretisierung. Dies ist angesichts der so drohenden Willkür und Rechtsunsicherheit problematisch, gerade da in der bisherigen Praxis regelmässig Bagatellen sanktioniert wurden, Missbrauchsrisiken bestehen und Asylsuchende kaum vorhersehbar abschätzen können, was sanktioniert wird - womit auch dem Bestimmtheitsgebot nicht genüge getan wird.

Wir fordern daher:

- eine klare, abschliessende Liste der Verhaltensweisen;
- Ausschluss von Bagatellfällen (z.B. leichte Verspätungen, nicht erledigte Hausarbeiten);
- Unterscheidung zwischen schlichtem Fehlverhalten und schwerer Störung.

Diese Präzisierungen müssen auf Verordnungsstufe erfolgen.

Das Gesetz verwendet den unbestimmten Begriff der "**Umgebung**", doch die Verordnung muss ihn konkretisieren.

Wir empfehlen:

- Begrenzung auf einen eng definierten Perimeter,
- klare Kriterien (z. B. unmittelbare Zentrumsnähe),
- Ausschluss des allgemeinen öffentlichen Raums (z. B. Dorfzentrum, ÖV).

Dies ist zentral, um Sonderrechtsräume und diskriminierende Praxis zu verhindern.

Im Hinblick auf die völkerrechtlichen Verpflichtungen zum Umgang mit Kindern und Jugendlichen, namentlich im Rahmen der UNO-Kinderrechtskonvention, ist die Formulierung von Art. 24 Abs. 4 dahingehend anzupassen, dass der **Ausschluss von Disziplinarmassnahmen gegenüber Kindern und Jugendlichen** nicht als kann-Formulierung ausgestaltet ist, sondern **zwingend** zu erfolgen hat.

Die Verordnung sollte sodann hinsichtlich der **Verfahrensgarantien** klar regeln:

- mündliche Erläuterung der Massnahme in verständlicher Sprache;
- Modalitäten der Aushändigung der Verfügung (auch wenn als "Formular" bezeichnet, handelt es sich rechtlich selbstredend um eine Verfügung);
- Zugang zu effektiver Rechtsvertretung und Beschwerdeinformationen (wobei die mandatierte Rechtsvertretung über sämtliche Disziplinarmassnahmen umgehend zu informieren ist, Art. 26);
- Ausweitung des Mandats der Rechtsvertretung i.Z.m. Disziplinarmassnahmen;
- angemessene Beschwerdefrist.

Wenngleich der Gesetzesrahmen der Ausgestaltung Grenzen setzt, sind diese Aspekte angesichts des *fair trial* Anspruchs bei der Umsetzung auf Verordnungsebene zu berücksichtigen, was bisher noch ungenügend erfolgte. In diesem Sinne wird die Einführung eines Beschwerdeformulars ausdrücklich begrüsst. Für die konkrete Ausformulierung der angepassten Verordnungsbestimmungen wird auf den Vorschlag der SFH verwiesen.

d) Art. 25b (neu)

Damit die **vorübergehende Festhaltung** mit den menschenrechtlichen Vorgaben (so insb. Art. 5 EMRK) zu vereinbaren ist, sind entsprechende Schutzstandards zu definieren. So sollte die Verordnung **klare Kriterien für die Ultima-Ratio Prüfung** vorsehen, inkl. obligatorische Dokumentation weshalb mildere Mittel nicht ausreichen. Bei vulnerablen Personen ist eine besondere Prüfung vorzusehen, und in jedem Fall sind alternative Vorgehensweisen wie Mediation, psychologische Krisenintervention und engmaschige Betreuung vorzuziehen.

Auch die **Ausgestaltung der Festhalteräume** sollte auf Verordnungsebene definiert werden, so insbesondere das Vorhandensein von Sitz- und Liegemöglichkeiten, Tageslicht, Beleuchtung, Notrufsystem, keine Videoüberwachung in intimen Bereichen, Zugang zu Wasser und Toiletten.

Wenngleich dies gesetzlich nicht explizit vorgeschrieben ist, gebietet Art. 5 EMRK die Möglichkeit einer **richterlichen Überprüfung** der Festhaltung. In der Verordnung ist festzuhalten, dass dies den Betroffenen in einer ihr verständlichen Sprache und

schriftlich mitzuteilen ist, inkl. Angaben dazu, wie sie an den Richter bzw. die Richterin gelangen können. Für die konkrete Ausformulierung wird auf die Vorschläge der SFH verwiesen, welche bzgl. richterlicher Überprüfung zu ergänzen sind.

e) Ergänzungsvorschläge

Die kritische, jedoch auf gesetzesebene verankerte Möglichkeit der **Delegation an Private** ist auf Verordnungsebene zumindest dahingehend einzugrenzen, dass die delegierbaren Aufgaben klar abgegrenzt werden, Mindeststandards für private Anbieter definiert werden und ein verbindlicher Controlling- und Sanktionsmechanismus festgelegt wird. Für die konkrete Ausformulierung wird auf den Vorschlag der SFH verwiesen.

Um dem Sinn und Zweck dieser Neuerungen gerecht zu werden, ist u.E. eine systematische Erfassung und Publikation von Disziplinarmassnahmen und Festhaltungen vorzunehmen, ebenso seien die Controlling-Ergebnisse im Zusammenhang mit den ausgelagerten Tätigkeiten zu publizieren und regelmässig auszuwerten, um Lücken zu erkennen und rasch zu schliessen. In diesem Zusammenhang seien sämtliche Bundesasylzentren zu verpflichten, Missbrauchs- und Gewaltmeldungen angemessen zu dokumentieren. Ebenso drängt sich diesbezüglich (erneut) die Etablierung einer unabhängigen Melde- bzw. Whistleblowingstelle auf, welche die Opfer allfälliger Übergriffe angemessen zu schützen und unterstützen vermag. Unabdingbar sind schliesslich regelmässige externe Audits, um den im Bericht Oberholzer erwähnten Probleme Einhalt zu gebieten und zur Prävention von Missständen beizutragen.

OHCHR: Call for input - Draft General Comment No. 38 on Article 22 (Freedom of Association) of the International Covenant on Civil and Political Rights

Commentary by AsyLex Regarding Switzerland

Date: **19 December 2025**

Contact: **international@asylex.ch**

A. About the Commenting Organization

AsyLex is an independent Swiss NGO offering free online legal support to asylum seekers and refugees. Since 2017, it has supported over 17 '000 individuals in navigating the Swiss asylum system, regardless of origin, religion, gender, age, family situation, financial means or prospect of success.

Around 150 trained volunteers, coordinated by a core office team of 16, provide specialized assistance in areas such as family reunification, detention, criminal law, social assistance and international litigation. Through its Rights in Exile platform, AsyLex also serves displaced persons globally by offering access to legal information and local legal practitioners, and contributes to a more cohesive legal community through the provision of a space for collaborative knowledge exchange. Internationally, AsyLex represents individuals before UN human rights bodies including the the Committee on the Rights of the Child (CRC), the Committee on the Elimination of Racial Discrimination (CERD), the Committee against Torture (CAT) the Committee on the Elimination of Discrimination against Women (CEDAW), and the Committee against Enforced Disappearance (CED).

AsyLex therefore comments on Draft General Comment No. 38 both as a human rights NGO and as a practitioner using international human rights mechanisms to protect asylum seekers, migrants and refugees, in an increasingly hostile environment towards both these groups and those who support them.

B. General observations on the Draft General Comment / Concept Note

We strongly welcome the Committee's decision to adopt a General Comment on Article 22 ICCPR and the emphasis, in the Concept Note, on the role of freedom of association (FoA) in protecting an open, pluralistic and inclusive civic space (para. 1).

We particularly welcome:

- the recognition that FoA is closely linked with other related rights under the ICCPR, specifically the right to privacy and data protection of the association and its members, freedom of movement and the right to a fair trial (para. 15(a));
- the acknowledgement of hostile discourse and authoritarian trends undermining civic space (paras. 8–9);
- the intention to address digitalisation, surveillance and the role of private actors, including platforms and AI (paras. 14–15(g)); and

- the explicit focus on non-discrimination and intersectionality, including for migrants, refugees and displaced persons (paras. 9, 15(i)).

At the same time, we see an important opportunity for the General Comment to:

- spell out more clearly the protection of human rights NGOs, legal aid providers and lawyers as associations under Article 22, in particular when they support migrants and asylum seekers;
- clarify that criminalisation, smear campaigns and strategic lawsuits against public participation (SLAPP) targeting NGOs and their staff can amount to unlawful restrictions on FoA;
- address the financial dimension of FoA more explicitly, including denial of funding, discriminatory reimbursement practices from the judiciary and the underfunding of international human rights mechanisms; and
- recognize the specific chilling effect of the criminalisation of solidarity, including criminal proceedings against those providing legal assistance or humanitarian support to asylum seekers.

Our submission therefore (i) proposes concrete additions to the Concept Note (Section I) and (ii) highlights some key challenges faced by NGOs working in the field of human rights, drawing on AsyLex's experience in Switzerland (Section II).

I. Suggested textual additions and clarifications (by paragraph)

Below we propose specific additions to the current Concept Note paragraphs (1–16). The quotations from the Concept Note are followed by our suggested wording.

Paragraph 2 – Definition and role of associations

> *"2. Associations can be understood as organized, independent, non-profit entities that bring people together to voluntarily pursue common goals, interests, or activities. They may include political parties, non-governmental organizations, religious organizations, human rights defenders, environmental defenders, or trade unions (…)"*

First, we suggest adding, after "*non-governmental organizations*":

> *"including organizations and groups providing legal assistance, documentation and representation to individuals or communities, such as migrants, asylum seekers, refugees and other persons in vulnerable situations,"*

to reflect the central role of legal aid NGOs and collectives, which are often targeted (for example, accused of "facilitating illegal stay" when providing legal advice to undocumented persons (see Section II-A), yet are indispensable for the practical enjoyment of FoA.

Secondly, we suggest adding after "(…) they enable the exercise of other freedoms such as religious freedom,":

> "*they play a vital role in upholding fundamental rights and access to justice, protecting the rule of law and contributing to a vibrating democracy"*

to explicitly stress associations' crucial contribution to not only the protection of freedoms, but also their invaluable contribution to upholding fundamental rights, the rule of law and democracy in general.

Paragraph 5 – Restrictions and proportionality

> *"5. Like freedom of religion, freedom of expression and freedom of peaceful assembly, freedom of association is not absolute (...)"*

We suggest clarifying that mere disagreement with the aims of an association or with the groups it supports can never constitute such a legitimate interest. We therefore suggest adding a short sentence after the reference to "other legitimate interests necessary in a democratic society", such as:

> *"Disagreement with the aims of an association, or with the fact that it supports stigmatized or politically unpopular groups, such as migrants, asylum seekers and refugees, does not in itself constitute a legitimate aim justifying restrictions on freedom of association."*

While we see high value in the clarifications paragraph 5 makes with regards to the need for certain restrictions to FoA, this addition would ensure that paragraph 5 cannot be read separately to paragraph 6, and can thus not be used to restrict the activities of organizations merely on the basis of political disagreement with an association's activities.

Paragraph 8 – Global trends of repression and hostile discourse

> *"8. Freedom of association is enshrined in universal and regional human rights conventions (...) This 'hostile discourse' against associations portrayed as 'enemies or threats to security or values' constitutes 'one of the global trends that are fuelling the rise of authoritarianism and the closure of civic space'."*

We suggest three additions to this paragraph.

First, adding "or impeding" in the third sentence, so that it reads as follows:

> *"Whether by preventing the registration of associations; by making the applicable administrative, legal or tax procedures excessively complex and burdensome; by prohibiting **or impeding** access to certain sources of fundings (...)"*

Secondly, we suggest adding to the existing list of forms of interference ("preventing registration (…) making procedures burdensome (…) prohibiting access to certain sources of funding (…) etc.")

> *"by introducing or pursuing administrative or judicial proceedings whose apparent purpose or effect is to create a chilling effect on associations and their members"*

Lastly, we suggest adding a reference to court practice that deter NGOs:

> *"Courts and administrative authorities may also contribute to shrinking civic space where procedural or cost-related decisions, taken without reasonable justification, have the effect of*

> *discouraging the legitimate activities of associations and their members by creating or reinforcing a chilling effect on their work"*

In our experience, this may include, for example, refusing without reasonable justification to reimburse legal costs incurred by associations, preventing or unduly limiting access to files or clients, or seeking to impose personal costs, sanctions or disciplinary measures on staff or volunteers. In many contexts, including Switzerland, legal aid NGOs and human rights defenders face criminal charges and civil proceedings that are explicitly intended to have a chilling effect on their work (see Section II-A). Addressing this issue explicitly would significantly strengthen the General Comment.

Paragraph 9 – Equality and non-discrimination

> *"9. Read in the light of Articles 2(1), 3 and 26 (…) certain groups, such as women, young people, elderly persons, human rights defenders, environmental, climate and land defenders, political opponents, trade union members and representatives, people living in poverty, members of Indigenous Peoples, displaced persons, persons with disabilities, migrants, and persons living in certain rural or remote areas of urban centres, do not always have equal and effective access to associations (…)"*

We suggest explicitly including after *"migrants"*:

> *"(…) asylum seekers, refugees, stateless persons (…)"*

In addition, we suggest adding a sentence to clarify States' obligations towards persons in legally vulnerable situations:

> *"States parties should remove legal and practical barriers that prevent persons in legally vulnerable positions, such as asylum seekers and refugees, from forming or joining associations, including restrictions linked to residence status, documentation requirements, or fear of retaliation connected to migration control policies."*

We also consider it important to reflect the ability of associations to actually reach the persons they serve and obtain the information needed to support them. In practice, this may be impeded, for example, by restrictions on access to asylum centres or by difficulties accessing administrative and judicial files. To address this, we propose adding:

> *"States parties should also ensure that associations working with these groups can effectively reach them and obtain the information necessary to carry out their mandate, including by guaranteeing access to the places where they are accommodated, detained or otherwise housed, and to relevant administrative and judicial files."*

Many asylum seekers cannot safely join or lead associations because of their precarious legal status, and organizations working with them often face obstacles in accessing both persons and files. We deem it crucial that the General Comment addresses these issues explicitly.

Paragraph 12 – Scope of freedom of association

We suggest explicitly mentioning professional associations and legal aid structures in the contextual dimension, so that the text reads:

> *"(...) contextual (formal/informal associations; offline and online associations;* ***including those providing legal aid and representation****)."*

This would recognize that legal aid organizations and lawyers' collectives are part of the associative landscape protected by Article 22.

Paragraph 13 – Positive obligations and resources

Under the description of States' positive procedural and substantive obligations, we suggest adding:

> *"Such obligations include ensuring an enabling environment in which associations can access resources, including public and private funding, on a non-discriminatory basis, and in which they are protected against vexatious legal action and smear campaigns."*

This would reflect the financial and reputational pressures faced by many human rights NGOs, including those working with asylum seekers and refugees.

In the General Comment itself, we would encourage the Committee to elaborate in particular on States' duties to:

> *"ensure that associations can seek, receive and use funds without discrimination, including from foreign sources; protect associations and their members from vexatious proceedings and smear campaigns that create a chilling effect on their legitimate activities; and provide effective remedies where such financial or reputational attacks occur, including the withdrawal of abusive claims or measures and, where appropriate, compensation."*

Paragraphs 14–15 – Digital space

In paragraph 14, after the reference to AI as a potential support or obstacle, we suggest adding:

> *"States parties must ensure that technologies, including artificial intelligence tools, are not used to monitor, profile or retaliate against members of associations, particularly those working with or belonging to marginalized groups, such as migrants and asylum seekers."*

In paragraph 15(g), we suggest specifying:

> *"(...) preventing unlawful surveillance, censorship and shutdowns, and by ensuring accessible, secure and affordable online communication and activities for associations and their members."*

For NGOs like AsyLex, digital tools (chatbots, online platforms, AI-based support) are essential to reach asylum seekers. At the same time, digital data collection creates new avenues for surveillance and control (see Section II-D); while non-interference with one's privacy, family, home and correspondence

is safeguarded under Art. 17 of the ICCPR, the General Comment is well placed to address both aspects, as violations of Art. 17 directly infringe on the FoA of associations and the persons they serve.

Paragraph 15 (e)(h)–(i) – Remedies and marginalized groups

For paragraph 15(e), we suggest adding at the end:

> *"and by refraining from misusing administrative or criminal proceedings against associations defending human rights or representing marginalized communities and persons in vulnerable situations."*

For paragraph 15(h) on remedies, we suggest adding at the end of the sentence:

> *"(…) that are incompatible with the Covenant, and ensure that such mechanisms provide effective protection against financial and reputational harm, including the reimbursement of legal costs where appropriate."*

For paragraph 15(i) on marginalized groups, where the Concept Note lists "refugees, migrants, persons with disabilities (…) displaced persons (…)", we suggest adding:

> *"Particular attention should be paid to the situation of organizations led by or working with migrants, asylum seekers and refugees, which often face heightened stigmatisation, criminalisation and funding restrictions despite playing a key role in ensuring access to justice and the rule of law."*

II. Challenges for NGOs and human rights defenders working with migrants and asylum seekers – AsyLex case study

Our experience as an NGO providing legal assistance to asylum seekers in Switzerland may be useful to illustrate some of the concerns identified above.

A. SLAPP and chilling effects on legal aid organizations

Already in January 2023, the Swiss human rights NGO platform humanrights.ch reported that the **existing legal framework in Switzerland does not sufficiently protect against SLAPP**.[1] In consequence, a parliamentary initiative was brought forward in 2022 proposing the establishment of a legal framework regulating SLAPPs and enhancing the protection of the work of journalists and human rights defenders, following the example of the EU Anti-SLAPP Directive Proposal.[2] On 7 March 2023, Swiss legislators decided not to proceed with the initiative.[3] Our practical work, however, shows the

[1] Humanrights.ch (12 January 2023). "Missbräuchliche Klagen gegen Journalist*innen und NGOs im Aufwind", https://www.humanrights.ch/de/news/missbrauchliche-klagen-journalist-ngos-aufwind.

[2] European Commission, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"), COM/2022/177, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0177>.

[3] Parliamentary Initiative 22.429, available at: <https://www.parlament.ch/de/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=59917>.

persistent need for protections from SLAPP, which constitute a serious threat to NGOs' enjoyment of FoA.

AsyLex has observed a **worrying trend where lawyers and NGOs providing legal assistance to asylum seekers and migrants are portrayed as "facilitators of illegal stay"**,[4] simply for representing clients without residence permits or challenging coercive measures such as detention and deportation.[5] In some cases, criminal proceedings or disciplinary measures have been initiated against AsyLex. In one recent detention case, a judge of a cantonal compulsory measures court argued that Asylex "abused the proceedings by filing an obviously futile application for release from custody" and would generally "exploit and instrumentalize foreigners for its own purposes by conducting 'mass business' with them, which does not focus on protecting individual interests, but rather serves the political purposes and financial interests of AsyLex". While the Federal Supreme Court dismissed these claims clearly, stressing that the "contested decision stands in stark contradiction to the facts of the case and is based on general criticism of the activities of Asylex", the case illustrates judicial attempts to **undermine asylum seekers' right to legal counsel and place undue personal and professional risks** on our staff and volunteers.[6]

Such measures amount to ***de facto* restrictions on freedom of association**: they target individuals because of their membership in, or leadership of, a particular organization and seek to deter others from joining or supporting it. They are rarely based on legitimate aims under Article 22(2), and, in any event, are neither necessary in a democratic society nor proportionate.

B. Funding cuts due to political hostility and Court attempts to constrain AsyLex financially

Even where formal funding cuts have not been announced, many NGOs, including AsyLex, have experienced **significant drops in donations and grant opportunities, often in a context of increasingly hostile public and political discourse** questioning the universality of human rights and the legitimacy of NGOs supporting asylum seekers.[7]

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[4] *To give an example, such allegations were made by migration authorities when AsLex represented a family in a reconsideration request procedure after they had been deported to Croatia. The family fled to Switzerland again due to the traumatic experiences they had made in Croatia, leaving various family members – including children – presenting with suicidality and post-traumatic stress disorder.*

[5] *For an overview of the legal provisions in Swiss law which have been used in Court to criminalize AsyLex' work, see our submission to the Council of Europe's Expert Council on NGO Law made in December 2023, available at:* <*https://docs.google.com/document/d/1sB6VdzbIAqyMhsZ_yw5kGrIa4dSlz4Vi/edit?usp=sharing&ouid=107502942583370345175&rtpof=true&sd=true*>.

[6] Federal Supreme Court Ruling 2_C_109/2025, available at: <http://relevancy.bger.ch/php/aza/http/index.php?highlight_docid=aza%3A%2F%2F20-03-2025-2C_109-2025&lang=de&type=show_document>. For further reference also see J. Schmid (21 May 2025), "Sie vertraten einen Häftlking und sollten dafür bezahlen", *die Republik*, available at: <https://www.republik.ch/2025/05/21/am-gericht-sie-vertraten-einen-haeftling-und-sollten-dafuer-bezahlen?trialSignup=true>.

[7] *Exemplarily, an article published in June 2025 claimed the 'NGO-complex' in Switzerland was a 'shadow state that undermines democracy', and concretely blamed Asylex for positioning itself as a 'counterforce to state asylum policy, but without democratic legitimacy (although being) partially financed by public funds' – in total misrepresentation of the fact that AsyLex does not receive public funds.* H. Gautschin (11 June 2025), "Der NGO-Komplex – Wie der Schattenstaat die Demokratie unterwandert", *Inside Paradeplatz*, available at: <https://insideparadeplatz.ch/2025/06/11/der-ngo-komplex-wie-schattenstaat-die-demokratie-unterwandert/>.

At the same time, **courts regularly refuse to reimburse legal costs to NGOs, even in successful cases**. In the case of AsyLex, this is often justified by alleging that AsyLex provides pro bono services or claim that the legal matter is of such simplicity that a legal representation is not required. While this wrong assumption has been corrected with the decision F-7948/2024 of 15 of April 2025, as the simple fact that the work for a legal representative remains the same whether or not a client had to pay for the legal services, the total compensation towards AsyLex as an NGO remains low, which has serious implications for our financial stability.

Alarmingly, courts have threatened or actually made notifications to the bar association against AsyLex lawyers for purported reasons such as non-prudent conduct.[8] We view these actions as intimidation tactics to hinder our legal support to asylum seekers. In the case in front of the Federal Supreme Court mentioned above, a cantonal compulsory measures court has even **imposed court costs on individual lawyers and our president** personally – which the Federal Supreme Court found to be arbitrary, lifting the decision made at cantonal level.[9]

The cumulative effect is to **jeopardize the financial sustainability of associations and to restrict, in practice, their ability to carry out associative activities**.

Similarly, we fear that the **global funding landscape and political climate severely threaten the efficiency of alternative international human rights mechanisms** where domestic remedies fail – highly relevant to both associations' work and their protection. AsyLex systematically approaches UN Treaty Bodies to protect clients from deportation where domestic courts insufficiently consider human rights violations, ordering deportations despite a real risk of *refoulement* Our experience shows that **these mechanisms are highly effective**: we have obtained interim measures halting removal in over 75% of the cases we have brought to the CRC, CEDAW, CAT, CED and CERD. In July 2025, we also received two final decisions by CEDAW in our favor which have the potential to meaningfully contribute to gender-sensitive protection standards.[10] However, we are concerned that **budgetary cuts and reduced meeting time for treaty bodies**, as well as any suspension of inquiry procedures, will further prolong proceedings that are already lengthy.[11] **This places individuals–and the NGOs supporting them–in a state of legal limbo, can undermine confidence in international mechanisms, and severely threatens NGOs' work**.

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[8] *For the legal reasoning utilized to introduce these claims, see our submission to the Council of Europe's Expert Council on NGO Law made in December 2023, available at:* <*https://docs.google.com/document/d/1sB6VdzbIAqyMhsZ_vw5kGrIa4dSlz4Vi/edit?usp=sharing&ouid=107502942583370345175&rtpof=true&sd=true*>.

[9] Federal Supreme Court Ruling 2_C_109/2025, available at: <http://relevancy.bger.ch/php/aza/http/index.php?highlight_docid=aza%3A%2F%2F20-03-2025-2C_109-2025&lang=de&type=show_document>. *For further reference also see* J. Schmid (21 May 2025), "Sie vertraten einen Häftlking und sollten dafür bezahlen", *die Republik*, available at: <https://www.republik.ch/2025/05/21/am-gericht-sie-vertraten-einen-haeftling-und-sollten-dafuer-bezahlen?trialSignup=true>.

[10] CEDAW/C/91/D/169/2021; CEDAW/C/91/D/171/2021, available at <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2F91%2FD%2F169%2F2021&Lang=en> and <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2F91%2FD%2F171%2F2021&Lang=en> respectively.

[11] *See* OHCHR. A/80/294: Report of the Chairs of the Human Rights Treaty Bodies on their thirty-seventh Annual Meeting. 31 July 2025, available at: <https://www.ohchr.org/en/documents/reports/a80294-report-chairs-human-rights-treaty-bodies-their-thirty-seventh-annual>.

C. Practical Barriers to our NGOs providing legal assistance in Switzerland

AsyLex is **denied access to asylum centers** in Switzerland, even though there is a legal basis foreseeing access for legal representatives.[12] This limitation prevents us from meeting clients in these centers and verifying or supporting claims about living conditions, and thus constitutes a direct impediment to AsyLex' work of providing informed legal representation. Moreover, we witness attempts by different cantonal bodies to **prevent AsyLex from accessing client files**, such as by introducing unnecessary requirements in some cantons to submit the original Power of Attorney (PoA) for a file request; the **refusal to share files on the basis that files had been shared with a client directly**; or the continuous **censorship by the National Commission for the Prevention of Torture of files documenting forced deportations**, despite AsyLex' mandate for the concerned persons.

These impediments to our work constitute *de facto* and *de jure* interferences with our associations' work, exemplary for restrictions as referred to in para. 8 of the Concept Note.

D. Digital Surveillance, AI and data storage

The digital age provides new opportunities for NGOs and associations in general to increase effectiveness, efficiency and reach of their work. Some best practice examples by AsyLex entail the development of **legal chatbots** for people fleeing Ukraine after Russia's invasion and for Afghans seeking to evacuate after the Taliban takeover[13], **digital tools** for our volunteers and clients to draft **legal submissions**, and our take-over and expansion of the **Rights in Exile Platform**[14], a digital hub that centralizes legal information on over 150 countries and best practice guides for legal advisors, making access to legal information and representation more accessible to persons on the move. Digital tools significantly facilitate the exchange and accessibility of relevant information for persons on the move and enable cross-border collaborations between different NGOs, associations, and other stakeholders.

Simultaneously, however, the **rapid development of digital tools and AI also exposes associations and the persons they serve to new risks, including surveillance, data breaches, profiling and online harassment**. A concrete example is the reform of **EURODAC**[15] – the central database used by EU

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[12] Art. 3 para. 2 e) Regulation of the Federal Department of Justice and Police, available at: <https://fedlex.data.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/2019/1/20230126/de/pdf-a/fedlex-data-admin-ch-eli-cc-2019-1-20230126-de-pdf-a.pdf>.

[13] *For concrete information, see* <https://globalcompactrefugees.org/good-practices/emergency-response-chatbots>.

[14] *Access the Rights in Exile Platform here*: <https://rightsinexile.org/>.

[15] Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL_202401358. *Replacing*: European Union: Council of the European Union, Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast), OJ L. 180/1-180/30; 29.6.2013, (EU)2003/86, 29 June 2013, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0603.

Member States and associated Schengen States under the new European Union Pact on Asylum and Migration – which foresees a substantial expansion of the categories of data collected (including from children), longer retention periods and wider access for migration and law enforcement authorities.[16]

Such **large-scale data collection and interconnection of databases can have a chilling effect on the exercise of FoA** by asylum seekers and refugees, who may fear that contact with NGOs or participation in associative activities will be monitored or used against them, and on the work of organizations supporting them. We therefore consider it important that the General Comment explicitly addresses the impact of digital surveillance and data practices on freedom of association, particularly for migrants and other groups in vulnerable situations.

At the national level, we also observe **attempts to enhance data collection from asylum seekers in ways that risk breaching the confidentiality of their contacts with NGOs and legal representatives**. This confidentiality is a precondition for the effective exercise of freedom of association. As of April 2025, a new provision in the Swiss Asylum Act[17] authorizes the Swiss Secretariat for Migration (SEM) to inspect and analyse data from asylum seekers' electronic devices-such as mobile phones and laptops-where identity, nationality or travel route cannot be established by other means. The SEM may extract and retain personal data, including contact lists, messages, photographs, location data and social media profiles, for up to one year.[18] While Swiss law protects legal secrecy, there are **no effective safeguards to prevent the SEM from accessing confidential communications with lawyers or NGOs** during such inspections, despite the enhanced protection recognized, inter alia, under Article 8 ECHR.[19]

From a FoA perspective, the risk that interactions with NGOs and legal representatives are scrutinized or recorded can deter asylum seekers from contacting associations, participating in their activities, or sharing information necessary for representation. It also undermines the ability of organizations like AsyLex to communicate securely with the persons they support. We therefore consider it important that the General Comment explicitly address how invasive digital searches and broad access to communications data, particularly where they capture contacts with associations and their members, may amount to unlawful interferences with freedom of association and must be subject to strict necessity, proportionality and robust safeguards, including respect for lawyer–client confidentiality.

III. Concluding recommendations

In light of the above, we respectfully invite the Committee, in its General Comment on Article 22, to:

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[16] *For a detailed discussion on the content and legal and fundamental rights concerns regarding the EURODAC reform, please see AsyLex' submission to inform the High Commissioner's report the right to privacy in the digital age presented at the Human Rights Council's 60th Session (28 May 2025), available at:* <https://www.ohchr.org/sites/default/files/documents/cfi-subm/privacy-digital-age/subm-privacy-digital-age-cso-29-asylex.pdf>.

[17] Asylverordnung 3 über die Bearbeitung von Personendaten vom 1. Mai 2024, AS 2024 208 (SR 142.314). https://www.fedlex.admin.ch/eli/oc/2024/208/de. [accessed 28 May 2025]

[18] Swissinfo, *How Switzerland and Europe use AI tech for migration control*, 04.02.2025, available at: https://www.swissinfo.ch/eng/foreign-affairs/how-switzerland-and-europe-use-ai-tech-for-migration-control/88822424#.

[19] Council of Europe, European Convention on Human Rights, as amended by Protocols Nos. 11, 14 and 15, ETS No. 005, 4 November 1950, https://www.echr.coe.int/documents/d/echr/convention_ENG. [accessed 28 May 2025]

- explicitly recognize human rights NGOs, legal aid organizations and lawyers' collectives – especially those supporting migrants, asylum seekers and refugees – as associations protected under Article 22 ICCPR;
- clarify that the criminalisation of solidarity and legal aid, as well as hostile judicial rhetoric aimed at producing a chilling effect, constitute serious interferences with freedom of association and will rarely, if ever, satisfy the requirements of Article 22(2);
- address the financial dimension of freedom of association, including access to funding, non-discriminatory reimbursement of legal costs and the duty of States not to use financial tools to punish or deter associative activity;
- emphasize the central role of international human rights mechanisms for the protection of associations and human rights defenders, and call on States to ensure they are adequately resourced and accessible;
- develop clear guidance on digital civic space, affirming the right of associations to use digital tools and requiring robust safeguards against surveillance and online harassment; and
- highlight the importance of cross-border collaboration and networks of associations, and caution against restrictions justified solely by migration control or broad national security narratives.

We thank the Committee for the opportunity to provide input and remain available to share additional information, including case examples from our work, that may assist in the drafting of General Comment No. 38.