

# Input by civil society to the EASO Annual Report 2019

Fields marked with \* are mandatory

The production of EASO's *2019 Annual Report on the Situation of Asylum in the European Union* is currently underway. The yearly [annual report](#) series present a comprehensive overview of developments in the field of asylum at the regional and national levels.

The report includes information and perspectives from various stakeholders, including experts from EU+ countries, civil society organizations, the UNHCR and researchers. To this end, we invite you to submit information on developments in asylum law, policy or practice in 2019 (and early 2020) by topic as presented in the online survey.

Please note that the EASO Annual Report does not seek to describe national systems in detail but rather to present key developments of the past year, including improvements and challenges which remain. Your input can cover practices of a specific EU+ country or the EU as a whole. You can complete all or only some of the sections. It is preferred to provide your submission in bullet points to facilitate drafting.

All submissions are publicly accessible. For transparency, 2019 contributions will be published on the EASO webpage. Contributions to the 2018 annual report by civil society organisations can be accessed [here](#). All contributions should be appropriately referenced. You may include links to supporting material, such as analytical studies, articles, reports, websites, press releases or position papers. If your organisation does not produce any publications, please make reference to other published materials, such as joint statements issued with other organisations. Some sources of information may be in a language other than English. In this case, please cite the original language and, if possible, provide one to two sentences describing the key messages in English.

The content of the EASO annual report is subject to terms of reference and volume limitations. Submissions may be edited for length and clarity or may not be included in the final report. Contributions from civil society organisations feed into EASO's work in multiple ways and inform reports and analyses beyond the annual report.

Please complete the online survey and submit your contribution to the 2019 annual report by **Thursday, 12 March 2020**

## Instructions

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

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

- ✓ New developments and improvements in 2019 and new or remaining challenges;
- ✓ Changes in policies or practices, transposition of legislation or institutional changes during 2019.

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

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## Contributions by topic

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### **1. Access to territory and access to asylum procedures (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)**

- *Controls at the Italian border remain a matter of concern and removals by border guards still take place. Lately, joint controls of Swiss and Italian border guards and police forces have taken place ([https://www.swissinfo.ch/eng/border-guard-cooperation\\_swiss-italian-border-patrols-target-illegal-immigration/44765542](https://www.swissinfo.ch/eng/border-guard-cooperation_swiss-italian-border-patrols-target-illegal-immigration/44765542))*
- *Germany also conducts strict controls at the Swiss border planning to make them tougher (<https://www.dw.com/en/germanys-seehofer-wants-tougher-checks-on-swiss-border/a-49871962>).*

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

- *According to the new accelerated procedure since March 2019, legal advice and representation are provided by the government from the beginning of the procedure, for every asylum seeker.*
- *Critical points that have not been improved since the establishment of the new procedure: the assigned legal counsel has the option not to lodge an appeal, if he/she considers that the case has no prospects of success. In this case, the asylum seeker wishing to make an appeal has to find other legal sources within the tight deadlines*
- *In our view, there is potential for improvement regarding independency and quality assurance of the provided legal services is to be monitored*
- *If the case is shifted to the expanded procedure because more clarifications are needed, the asylum seeker is no more assisted by the assigned legal counsel, but he/she can ask for assistance from the regional legal office of the region, where he/she has been transferred. It is unclear yet how such transfer of file will work in reality.*

- *The deadlines to appeal remain short or become even shorter (5 or 10 working days).*
- *People in detention do not have the right to a free lawyer.*

### **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)**

- *Several points still remain matters of concern (religious or political beliefs of the translators / translation not always conducted in the language of the Canton, which the asylum seeker may have learnt, but in another official language / focus on professional training and qualification of translators /absence of translation services in hospitals or for psychological treatments / differences in accents or dialects when the applicant's mother tongue was Tibetan, Kurdish of Syria or Dari, see e.g. <https://www.asylumineurope.org/reports/country/switzerland>).*
- *New asylum system does not provide guarantees or requirements against the above critical points.*

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

- *Switzerland remains still overly strict with Dublin returns. The humanitarian clause is invoked in very rare cases only (see, e.g. <https://www.dublin-appell.ch/de/>).*
- *In particular, the family criteria are generally applied narrowly and Amnesty International is seriously concerned about this practice (see e.g. <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>)*
- *In certain cantons, Dublin decisions are only handed out at the time of deportation. This fully prevents access to justice and stands in contradiction to the Dublin regulation.*
- *Returns to Italy are still taking place on a regular basis, even though it is public knowledge that the living conditions for asylum seekers in Italy are inhumane.*
- *Various cantons put persons with Dublin return decisions immediately into detention without any particular reason for such detention, which is clearly in violation of the Dublin Regulation. This practice seems to be supported by federal authorities who arrange for the transportation directly from the federal center to detention. This, again, prevents organizations like AsyLex to support returnees with the return to Italy since we are not able to stay in touch with such clients.*
- *Timeframe for appeal is very tight: only 5 working days.*

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

- *For border procedure, see comments on 1).*
- *Short deadlines for appeal in case of inadmissibility and accelerated procedures are very critical (5 or 10 working days).*

### **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 the federal centers, established last year to accommodate the asylum seekers, strict control and security rules apply (<https://www.amnesty.ch/fr/pays/europe-asie-centrale/suisse/docs/2020/un-regime-rigide-dans-les-centres-federaux-et-des-delaix-tres-courts>)*
- *Several critical points have still not been improved:*
- *(i) The **confiscation of the personal mobile phone** during the first few days prevents asylum seekers from contacting their friends and family and tell them about their safe arrival, to help with translation and to help to orient themselves. It is unclear what the upside of such a measure should be and to what extent it has still been the practice in the recent past.*
- *(ii) The **confiscation of assets** at time of entry is unnecessary and disrespectful. The argument, that the assets are an upfront payment for the social money to be received, is rather confusing, since exactly those people who have assets are not (to that extent) dependent on social support.*
- *(iii) **Daily structure (language classes, work) is insufficient.** (v) **Camp rules are often not respecting basic human rights**, e.g. prohibition to bring food inside, hours at which asylum seekers have to be present that amount to detention like environments.*
- *(iv) There is a **lack of medical and psychological support**. Especially people with trauma are for the most part left without any treatment for months or even years.*
- *We are critical towards the current system of allocating asylum seekers to cantons without considering their family / friend ties, language and other skills, etc.*

#### 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)

- *No considerable improvement due to the establishment of the new procedure.*
- *For detention like regimes in reception camps, see above at 6)*
- *There is **no actual free legal aid for people in detention** (except for some organizations which provide legal assistance, but no legally guaranteed access); access to legal aid is, therefore, oftentimes close to impossible.*
- *Various cantons put persons with **Dublin return decisions immediately into detention without any particular reason for such detention, which is clearly in violation of the Dublin Regulation. This practice seems to be supported by federal authorities who arrange for the transportation directly from the federal center to detention.***
- *In general, we strongly disagree with the detention practices where families are separated, mentally ill people are detained for months without any adequate treatment and detention can take up to 18 months even though the detainee has never done any criminal act (except for crossing the Swiss border without visa and / or, possibly, not leaving upon being asked to do so).*
- *Even though administrative detention for rejected asylum seekers is supposed to be separated from criminal detention, in many places there is no such separation.*
- *We are particularly sceptical towards detention of minor asylum seekers (see e.g. <https://www.tdh.ch/fr/mediatheque/documents/detention-administrative-mineurs-migrants-suisse>).*

**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)**

- *New rules on asylum procedures have come into force across Switzerland, providing for faster decisions and free legal advice for asylum seekers.*
- *The procedure begins in a federal reception centre with a preparatory phase of a maximum of 21 days, during which various matters are clarified and the first interview takes place. If then the authority decides to examine the application for asylum, there is an accelerated asylum procedure. It lasts 8-10 work days and ends either with a decision regarding asylum or with the case being shifted to the expanded procedure, where further clarifications can be made. In that case, the asylum seeker will be transferred to a canton and the application will be processed in the regular procedure as we know it today. If the authority decides to reject the application in the accelerated procedure, the appeal period is 10 days only.*
- *In the course of the procedure, the legal counsel receives a draft of the intended asylum decision in advance. He or she then has the right to respond within 24 hours.*
- *The assigned legal counsel's role ends with the decision in the accelerated procedure and in the Dublin procedure obtaining legal force "or with the decision to conduct a procedure outside the test phases", or if the asylum seeker's legal counsel states that he or she does not want to lodge an appeal because the case has no prospects of success.*
- *Regarding first instance interviews, they are generally conducted in a good atmosphere and the interviewers are well prepared. However, we also experience very difficult situations: (i) not accurate translation (see issues mentioned above); (ii) interviewers not showing any interest or understanding and being very harsh with traumatized asylum seekers; (iii) time pressure not allowing for a proper conduct of the interview, e.g. no breaks, interrupting the interviewee; (iv) non-verbal communication, such as gestures, facial expressions but also intonation are not being documented and therefore are not being considered in the decision-making process; (v) language of the interview, which is not always the one that the asylum seeker is about to learn; (vi) transcript of the interview not available.*
- *Critical points for Asylex with view to the new procedure are: i) increasing speed comes at the expense of quality and fairness, since it is no longer possible to examine an asylum request in depth under such an accelerated rhythm, ii) low protection level of the free legal aid available to asylum applicants, iii) deadlines are too strict, iv) several legal aspects are not covered at all (e.g. detention), v) living conditions in the national accommodation centres suffer many restrictions, while they are located in isolated regions, vi) limited access to healthcare. (<https://www.osar.ch/medias/communiqués-de-presse/2020/lacceleration-ne-doit-pas-preteriter-lequite-et-la-qualite.html>, <https://www.amnesty.ch/fr/pays/europe-asie-centrale/suisse/docs/2020/un-regime-rigide-dans-les-centres-federaux-et-des-delaits-tres-courts>). *Jurisprudence of the Federal Administrative Tribunal of Switzerland against decisions of the asylum authorities and increasing number of annulling decisions express this concern: Before the reform was introduced, just 4.8% of appeals had been sent by the court back for further review, while in the first six months of the new system, the figure rose to 16.8% (<https://www.osar.ch/assets/medien/2020/200129-nouvelle-procedure-dasile-bilan-de-losar.pdf>, [https://www.swissinfo.ch/eng/immigration\\_refugee-council-head-criticizes-hasty-swiss-asylum-procedures/45537946](https://www.swissinfo.ch/eng/immigration_refugee-council-head-criticizes-hasty-swiss-asylum-procedures/45537946)).**

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

- Since March 2019, free legal aid has been provided to asylum applicants in accordance with new asylum policy.
- In appeals against inadmissibility decisions (including Dublin), against decisions made at the airport or if the person comes from a safe country of origin, the time limit for an appeal is 5 working days only.
- The time limit for appeals against substantive decisions is 10 days (except for Dublin), but as described before, a free legal representative will support the asylum seeker with the appeal if they think there is a prospect of success. The legal representative has to inform the asylum seeker within a short period of time if he or she will make an appeal or not. In case of denial, the asylum seeker wishing to make an appeal has to find other legal sources within the tight deadlines
- If the case is shifted to the expanded procedure because more clarifications are needed, the asylum seeker is no more assisted by the assigned legal counsel, but he/she can ask for assistance from the regional legal office of the region, where he/she has been transferred. It is unclear yet how such transfer of file will work in reality.

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

- The documentation provided by EASO in this regard is helpful for our work as a legal aid NGO. However, for certain countries or regions it is difficult to get the information required. Moreover, sometimes certain reports seem to have a certain political background, which renders them less helpful.

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

- Various matters about vulnerable applicants remain alarming: i) traumatized and/or tortured asylum seekers do not receive the treatment necessary, ii) similar problems appear with regard to female asylum seekers, especially if they are victim of domestic violence, iii) inappropriate handling of cases of unaccompanied (potentially) minor asylum seekers: Oftentimes, there is no person of trust allocated in the very beginning (and if, they do not have enough resources). The determination of age is made by methods criticized by pediatrics (see [http://www.swiss-paediatrics.org/sites/default/files/3-4\\_2.pdf](http://www.swiss-paediatrics.org/sites/default/files/3-4_2.pdf), in German) and legal remedies against the determination are very limited, including denial of inspection of files by the person concerned or his/her legal representative. The latter aspect, in combination with the fact that in many cases no formal order (“Verfügung”) is issued by the authorities, prevent the taking of legal remedies. Accordingly, many young asylum seekers who are possibly underage are being treated like adults, including housing with other adults, no access to education, no person of trust etc.
- On 4 March 2019 the Federal Administrative Court overturned a decision (Cour V E-7333/2018) on an asylum request due to lack of proper reasoning and evidentiary assessment of the applicant’s age claim.
- On 10 October 2019 the Swiss Federal Administrative Court published its ruling in the case E-6932/2017, concerning the expulsion of a family of international protection applicants: execution of removal order was deemed unreasonable on grounds of mental health and family rights.



## 12. Content of protection (including access to social security, social assistance, healthcare, 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)

- *No improvement since last year – many severe restrictions still remain:*
  - *The current political environment leads to the fact that especially people with temporary protection (“Vorläufige Aufnahme”) are more and more levied with restrictions. E.g., the canton of Zurich just decided to reduce social support for this group significantly.*
  - *Further restrictions on traveling for recognized refugees were voted by the Swiss Parliament (e.g. [https://www.swissinfo.ch/eng/politics/migration\\_swiss-change-policy-for-returning-refugees/44613688](https://www.swissinfo.ch/eng/politics/migration_swiss-change-policy-for-returning-refugees/44613688)). For foreigners with temporary protection, any travelling outside Switzerland is practically impossible for the first three years and also afterwards close to impossible in many cases.*
  - *Access to health care is an issue for many people also after receiving a positive decision. In particular, **dental treatments and mental health care are restricted to an absolute minimum.***
  - ***Integration in the labour market is challenging** due to the two years period of the asylum procedure, during which neither working is permitted (some very restrictive exemptions apply) nor free language classes are mandatorily provided (there are, of course, language classes given by volunteers / communities or even some cantons / towns).*
  - *In general, **social integration is not easy** due to the oftentimes **remote areas where people with protection are supposed to live** in many cantons. The change of canton is for people with temporary protection very challenging.*
  - ***Family reunification is heavily restricted** for people with temporary protection (only after 3 years and only in case of sufficient financial resources). This leads to very unsatisfying situations and the separation of families for years. On 9 April 2019, the European Court of Human Rights (ECtHR) delivered its judgment in the case IM v. Switzerland (23887/18), regarding the return of a Kosovan national ruling that applicant’s removal would constitute a violation of the right to respect family life under Article 8 of the Convention.*

## 13. Return of former applicants for international protection

- N/A

## 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)

- *The government decided in November 2018 to continue Switzerland’s participation in the UNHCR resettlement programme planning to adopt a programme every two years for the resettlement of 1,500 to 2,000 refugees. We welcome this decision, however we consider this number, given the record number of refugees worldwide and the Swiss capacity, very limited ([https://www.swissinfo.ch/eng/resettlement\\_-\\_switzerland-urged-to-take-in-more-vulnerable-refugees-/44997594](https://www.swissinfo.ch/eng/resettlement_-_switzerland-urged-to-take-in-more-vulnerable-refugees-/44997594)).*

- *The granting of humanitarian visa is way too restrictive since chances of obtaining such a visa are slim, while risks associated with an application are high.*

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

- *Currently, no relocation programmes with Swiss participation.*

**16. National jurisprudence on international protection in 2019 (please include a link to the relevant case law and/or submit cases to the [EASO Case Law Database](#))**

**17. Other important developments in 2019**

- *The ‘solidarity crime’ remains a crime in Switzerland: In March 2020, the House of Representatives rejected a parliamentary initiative that sought to add an exception to Article 116 of the Foreign Nationals and Integration Act which would have ensured that people who aid illegal migrants for ‘honourable reasons’ would not be convicted of a crime ([https://www.swissinfo.ch/eng/migration-policy\\_aiding-illegal-immigrants-remains-a-crime-in-switzerland/45607238](https://www.swissinfo.ch/eng/migration-policy_aiding-illegal-immigrants-remains-a-crime-in-switzerland/45607238))*

## References and sources

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

Links to references and sources can be found at the relevant sections.

**19. Feedback or suggestions about the process or format for submissions to the EASO Annual Report**



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**I accept the provisions of the EASO [Legal and Privacy Statements](#)**