

# The Situation for Asylum Seekers and Refugees in Switzerland

## Summary of Key Issues from Previous UPR Cycles

Although Switzerland accepted most recommendations, they were at best *partially* implemented

### 1. Accelerated Asylum Procedure

#### 1.1. National Framework

With the asylum reform approved by the Swiss population in 2016, the accelerated asylum procedure was introduced in March 2019. Switzerland is thus implementing Recommendation No. 146.119 of the 3rd UPR cycle. Under the accelerated asylum procedure, the asylum process is completed within 140 days directly in the national asylum centers. During this time, asylum seekers have access to state-paid legal representatives.

#### 1.2. Key Issues

- The mandate of the state-paid legal representatives is compensated by a lump sum payment which creates wrong incentives.
- The Secretariat for Migration frequently violates its duty to investigate in the accelerated procedure. This is of particular concern when the case involves children, vulnerable persons such as victims of SGBV, victims of torture or sick individuals. The lack of an individual assessment appears often in the context of returns to so-called “safe third countries”<sup>1</sup> or Dublin member states<sup>2</sup>. Thus, recommendation No. 146.117 is not yet fully implemented.

#### 1.3. Recommendations

- ⇒ *Abolish lump sum payment for legal representation and establish a compensation system in line with the individualized mandate*
- ⇒ *Take all necessary measures to ensure a proper and individualized assessment of the potential risk of human rights violations rejected asylum seekers may face, particularly if vulnerable asylum seekers are concerned*
- ⇒ *Ensure admissibility of asylum request of highly vulnerable asylum seekers in Dublin cases, particularly if children, severely ill persons, victims of human trafficking, SGBV, torture or LGBTIQ+ people are concerned*

<sup>1</sup> The list of safe third countries is drawn up on the basis of a bi-annual assessment and comprises about 45 countries, namely the EU/EFTA member states as well as further countries such as Albania, North Macedonia, Bosnia and Herzegovina, Senegal, Georgia, Ghana, India, Kosovo, Moldova, Mongolia or Montenegro.

<sup>2</sup> <https://www.sem.admin.ch/sem/en/home/asyl/dublin.html>

## 2. Administrative Detention

### 2.2. Key Issues

- The responsibility to provide legal representation in administrative detention lies with the individual regions.
- Few foreigners have access to legal representation in administrative detention. Thus, recommendation No. 122.11 is not yet fully implemented.
- Foreigners can be detained up to 18 months.
- Vulnerable people can be placed in detention.

### 2.3. Recommendations

- ⇒ *Ensure nationwide free legal aid in administrative detention*
- ⇒ *Adopt legislation, in particular Art. 73 para. 5, Art. 80a para. 3 and 80 para. 2<sup>bis</sup> FNIA to systematically review detention by a court and refrain from introducing further detention forms without judicial review*
- ⇒ *Ensure that administrative detention is used only as a last resort and that the principle of proportionality is upheld in line with 2008/115/EG*
- ⇒ *Include further categories in Art. 80 para. 4 FNIA to ensure that administrative detention is not imposed on vulnerable persons such as children, pregnant women, ill persons, single mothers, families and victims of human trafficking, torture or SGBV*

## 3. Application of the Refugee Convention

### 3.1. Key Issues

- Switzerland applies the Refugee Convention very strictly. Thus, recommendation No. 146.118 is not yet fully implemented.
- People from war-torn countries are often granted temporary admission instead of refugee status. However, the temporary nature of the status is highly contradictory, since most of those affected stay permanently.
- The rights of temporarily admitted persons are severely restricted:
  - They must wait three years before they can apply for family reunification.
  - They receive less social assistance than people with refugee status.
  - They are practically prohibited from traveling abroad. This practice has become even stricter since the last UPR cycle, since Switzerland imposed a travel ban for temporarily admitted people in violation of the right to free movement and family life.
  - Additionally, individuals with temporary admission have difficulty finding employment since employers are deterred by the misleading term “temporary”.

### 3.2. Recommendations

- ⇒ *Undertake to rename the term "temporary admission" to "subsidiary protection status", following the example of Switzerland's neighbouring countries*
- ⇒ *Take all appropriate measures to grant temporarily admitted persons the same rights as persons who have been granted refugee status and, in particular, not to violate the right to family life and freedom of movement*