

The Human Rights Situation of Asylum Seekers and Refugees in Switzerland





UPR Info Pre-Session

AsyLex – Joëlle Spahni – Geneva – 1 December 2022

Outline of the Presentation

- 1. Accelerated Asylum Procedure**
- 2. Administrative Detention**
- 3. Application of the Refugee Convention**

I. Accelerated Asylum Procedure


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| Recommendation Cycle 3 (2017 - 2021) | 146.119  <i>Accelerate asylum procedures & ensure respect of rule of law principle</i> | Nr. 146.117  <i>Continue to examine all potential risks of human rights violations of rejected asylum seekers, particularly if including children</i> |
| Relevant development | <ul style="list-style-type: none"> ● Accelerated asylum procedure introduced in 2019 (max. 140 days) ● State paid legal representation | <ul style="list-style-type: none"> ● Lack of individual assessment due to acceleration of the asylum procedure |
| Current context | <ul style="list-style-type: none"> ● Lump sum payment creates wrong incentives | <ul style="list-style-type: none"> ● Duty to investigate often violated |

I. Accelerated Asylum Procedure

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 seeker 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*

II. Administrative Detention


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| Recommendation Cycle 2 (2012 - 2016) | 122.11  <i>Provide access for all asylum & repatriation detainees to attorneys, as well as consular notification</i> |
| Relevant development | <ul style="list-style-type: none"> ● Regional responsibility to decide whether a detainee will be granted legal assistance ● Major differences between regions are visible |
| Current context | Only very few persons in administrative detention have access to free legal representation |
| New context of concern | <ul style="list-style-type: none"> ● Detention can last up to 18 months (≠ criminal detention) ● Certain types of administrative detention are not judicially reviewed ● Vulnerable people can be placed in detention |

II. Administrative Detention

Recommendations

- *Ensure free legal aid in administrative detention*
- *Adopt legislation, in particular Art. 73 para. 5, Art. 80a para. 3 and 80 para. 2^{bis} 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, victims of trafficking, torture or SGBV and families*

III. Application of the Refugee Convention

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| Recommendation Cycle 3 (2017 - 2021) | 146.118  <i>Ensure full application of the Refugee Convention</i> |
| Current context | <ul style="list-style-type: none">● Extremely strict adoption of Refugee Convention● Temporary admission instead of refugee status granted |

III. Application of the Refugee Convention

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*

Thank you for your attention!



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