

## Statement delivered by AsyLex

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Your Excellencies, distinguished Delegates, dear Colleagues,

I am addressing you today in the name of AsyLex, an online legal advisory for refugees and asylum seekers.

In the context of the preparation for the national report, Switzerland organized a consultation, in which AsyLex was honored to participate.

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I will address the following issues: The examination of human rights violations during the asylum procedure, administrative detention and the application of the Refugee Convention.

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In the previous UPR cycle Switzerland was recommended to significantly accelerate the asylum procedures, to ensure compliance with the rule of law and to continue assessing all potential risks of human rights violations of rejected asylum seekers, especially children. Switzerland accepted the recommendations.

Since the last UPR cycle, Switzerland has indeed introduced an accelerated asylum procedure with state-paid legal representatives.

Although these developments indicate that Switzerland implemented the recommendation, serious problems emerged: The representatives receive a lump sum payment per asylum seeker, regardless of how long they represent the person and regardless of whether they write an appeal or not. Clearly, this sets incentives to write as few appeals as possible, leaving thousands of asylum seekers without legal representation at the stage of appeal.

The accelerated procedure has also led to the State Secretariat for Migration's frequent failure to assess an applicant's individual situation in detail, often in the context of returns to so-called "safe third countries" or Dublin states. This is particularly concerning when minors or other vulnerable persons are involved.

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Therefore, we recommend the following:

- 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 or safe third country cases, particularly if children, severely ill persons, victims of human trafficking or LGBTIQ+ people are concerned

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Concerning administrative detention, in a previous UPR cycle Switzerland was advised to provide access to attorneys for all asylum detainees. Although Switzerland accepted this recommendation, access to legal representation for asylum seekers in detention varies widely by region. Still today, only the minority of detained asylum seekers has access to free legal representation.

Administrative detention is different from criminal detention. It's not about punishment, but about enforcing deportation. Still, foreigners can be detained up to 18 months. Moreover, certain types of detention are not automatically judicially reviewed. Initiatives to introduce further non-judicially reviewed detention are ongoing. Finally, vulnerable persons are detained, including children.

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In light of this context, we urge the recommending states to consider the following recommendations to Switzerland:

- Ensure free legal aid in administrative detention
- Adopt legislation, in particular Art. 73 para. 5, Art. 80a para. 3 and 80 para. 2bis 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

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Finally, although Switzerland accepted the recommendation to ensure the full application of the Refugee Convention, it is applied extremely restrictively. People fleeing from war-torn countries and persecution mostly receive temporary admission only, instead of refugee status.

In fact, however, in most cases these people stay not temporarily, but permanently in Switzerland, making the temporary nature of the status highly contradictory. Also, this status does not grant the person the same rights as the refugee status does, as they must wait three years before they can apply for family reunification, they receive less social assistance and are prohibited from traveling abroad.

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Because of these constraints the recommending states are urged to make the following recommendations to Switzerland:

- 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

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Finally, I would like to draw your attention to our factsheet available at the entrance.

Thank you for your attention and I am gladly remaining at your disposal for any questions you may have.

### **Concluding remark (1 minute)**

Your Excellencies, distinguished Delegates, dear Colleagues,

To conclude, Switzerland has yet to fully implement all mentioned recommendations in the asylum context. AsyLex is highly concerned about the wrongly set incentives regarding the lump sum payment of state-paid legal representation and the insufficient individualized assessment of human rights violations during the asylum procedure. Furthermore, full access to legal representation in administrative detention is not yet implemented, nor are all forms of detention judicially reviewed. Also, vulnerable persons including children are detained and can remain in prison up to 18 months. Switzerland's very strict application of the Refugee Convention is of further concern as people from war torn countries are only granted temporary admission, restricting rights such as family reunification and travels. Therefore, AsyLex urges the recommending states to consider our previously mentioned recommendations. Thank you for your attention and for considering our fact sheet for further details!