



## Input by civil society organisations to the Asylum Report 2024

Dear Colleagues,

The production of the *Asylum Report 2024* is currently underway. The annual [Asylum Report series](#) presents 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 organisations, researchers and UNHCR. To this end, we invite you, our partners from civil society, academia and research institutions, to share with us your reporting on developments in asylum law, policies or practices in 2023 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 2023 on issues related to asylum in EU+ countries. These may be reports, articles, recommendations to national authorities or EU institutions, open letters and analytical outputs (**'Part B' of the form**).

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. For reference, contributions to the 2023 Asylum Report by civil society organisations can be accessed [here](#), under 'Acknowledgements'. 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 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.

Your input matters to us and will be much appreciated!

\*Please submit your contribution to the Asylum Report 2024 by **Thursday, 30 November 2023**.\*





## Instructions

---

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

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

**Part A:**

- ✓ New developments and improvements in 2023 and new or remaining challenges;
- ✓ Changes in policies or practices, transposition of legislation or institutional changes during 2023;
- ✓ Across the different thematic sections feel free to make reference to issues related to the implementation of the Temporary Protection Directive at national level.

**Part B:**

- ✓ New publications your organisation produced in 2023

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.

## PART A: Contributions by topic

---

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)

The Swiss border patrol persists in returning asylum seekers to neighboring countries without giving them the opportunity to claim asylum, an issue we have repeatedly flagged over the past years ([AsyLex Input on Asylum Report, 2023](#)). In 2021, our central concern was the southern Swiss border with Italy. In 2022, the focus shifted to the northern Swiss border with Germany and Austria. This is because in November 2022, the Swiss government was accused of permitting the passage of thousands of migrants without proper documentation through Switzerland. These asylum seekers, especially those entering through St. Gallen, often opt to continue their journey to countries like Germany or France rather than formally applying for asylum in Switzerland. This ongoing practice has continuously been considered a violation of the Dublin III Agreement by the German Federal Office for Migration ([SRF News, 2022](#)). This practice further underscores the continued disregard by Swiss authorities of a person's right to seek asylum, offering asylum seekers mere train tickets to other countries in lieu of processing their asylum requests ([AsyLex Input on Asylum Report, 2023](#))

In this context, **several European countries have recently opted to reintroduce temporary border controls within the Schengen zone**, signalling a departure from the traditional open-border approach of Schengen and presenting significant challenges for asylum seekers.



Slovenia and Italy are the latest to adopt such measures, bringing the total number of controlled borders within the Schengen area to 12 ([European Commission, 2023](#); [Trans.Info, 2023](#)). In addition, **Switzerland and France have announced closer collaboration to combat secondary migration and human trafficking**. Federal Councillor Elisabeth Baume-Schneider and French Interior Minister Gérald Darmanin agreed on a joint action plan on October 27, 2023 in Thônex. This initiative primarily targets criminal smuggling networks and people allegedly not eligible for asylum, while ensuring the protection of refugees. The plan also calls for joint border patrols and enhanced communication between the two nations, with the Federal Office of Customs and Border Security (FOCBS) playing a central role in this regard ([SEM, 2023](#)).

Regarding the **Swiss-Italian border**, AsyLex has taken legal actions against border guards for an illegal push-back of one of our clients in 2021. As of now, the court proceedings are still in progress.

Furthermore, as outlined in the [AsyLex Input on Asylum Report, 2023](#), the national law passed in 2022, which permits **short-term detention without judicial review**, continues to be a significant concern. Specifically, under Art. 73 para. 1 lit. c of the Federal Act on Foreign Nationals and Integration (FNIA), individuals can be detained at the border for up to three days without judicial review, and even in the absence of a written order ([Parliament, 2022](#)). While the law is not in force yet, this development is of great concern to AsyLex.

Persistent concerns surround the **non-refoulement principle** since we continue to observe that asylum seekers previously registered in Dublin countries like Croatia, Romania or Bulgaria are frequently returned without Switzerland conducting a comprehensive assessment of the human rights situations in these countries. Switzerland issues inadmissibility decisions by merely relying on formal legal obligations of these countries (such as the European Convention on Human Rights, the European Charter of Fundamental Rights, the EU Reception Conditions Directive, etc.), which are in reality not (sufficiently) fulfilled; instead of truly conducting an individual assessment on the potential risks the rejected asylum seekers would face upon return to these countries (**Appendix 1, Rapport alternatif Concernant la torture et les peines ou traitements cruels, inhumains ou dégradants en Suisse (huitième rapport périodique de la Suisse 2019)**). The ambiguity regarding the actual conditions awaiting Dublin returnees in these countries persists. While comprehensive reports are scarce, the prevalence of push-backs, chain-refoulement, and grave human rights abuses cannot be understated. It is distressing to note that almost every one of our clients who transited through these countries faced severe human rights violations. The perilous reception conditions in these Dublin nations are further emphasized in several media accounts ([WOZ Croatia, 2022](#); [LighthouseReport, 2022](#)). To illustrate, asylum seekers in **Bulgaria** face systematic detention in undisclosed cage-like facilities, followed by illicit deportations ([LighthouseReport, 2022](#)). **Croatia's** treatment of asylum seekers has been persistently alarming, with numerous accounts of excessive violence, pushbacks, and other abuses ([Centre for Peace Studies & PRO ASYL, 2022](#)). Romania's treatment of returned asylum seekers is no less concerning, with many facing torture, illegal pushbacks, and other cruel treatments ([klikAktiv, 2023](#)). These ongoing challenges prompted the **Swiss Refugee Council to advocate for a comprehensive deportation suspension to Croatia and Bulgaria** ([Swiss Refugee Council, 2022](#)). However,



within Switzerland, the prospects of successfully appealing such inadmissibility decisions remain extremely low. This is particularly concerning since AsyLex has learned that in Croatia, Médecins du Monde ceased its activities in the asylum centre in Zagreb from 22 May 2023 until the end of August 2023 (**Appendix 2: Médecins du Monde confirms the suspension and resumption of activities**). This leads to countless asylum seekers being subjected to repeated ill-treatment and being at risk of suffering diverse human rights violations upon return, with a lack of access to necessary medical treatment. Despite this, in a precedent decision, the Swiss Federal Administrative Court (FAC) concluded that no systematic deficiencies can be detected in the Croatian asylum system [[see FAC E-1488/2020, 22 March 2023](#)].

In light of these insufficient assessments, along with well-documented pushback practices at the EU's external borders and deplorable reception conditions resulting in numerous asylum seekers enduring continuous maltreatment and a range of human rights abuses, AsyLex has filed various complaints before the UN human rights treaty bodies (Committee against Torture ("CAT"), Committee on the Rights of the Child ("CRC") and Committee on the Elimination of Discrimination against Women ("CEDAW")) to prevent such removals. Notably, in 2023, **interim measures** were granted in six cases. These developments underscore Switzerland's shortcomings in fully enacting the human rights treaties, leaving alleged victims of mistreatment or sexual and gender-based violence (SGBV) vulnerable. In every situation where interim measures were approved, Switzerland was previously poised to proceed with expulsions, overlooking the palpable risk of infringing human rights.

Moreover, in scope of the Swiss eighth periodic report ([CAT, 2023](#)), the Committee against Torture (CAT) has raised **serious concerns about the Swiss accelerated refusal procedure** at airports lacking a suspensive effect, which compromises the thorough examination of asylum applications. This underscores the need for improved access and adherence to the non-refoulement principle upon first arrival and registration, ensuring that applicants receive the necessary initial support and that border guards are adequately trained to handle such cases.

Finally, the State Secretary for Migration (SEM) implemented a **pilot project for a 24-hour asylum procedure**, scheduled to run from mid-November 2023 to February 2024. The primary objective of this pilot is to expedite the processing of asylum applications, specifically targeting individuals from North African countries such as Morocco, Algeria, Tunisia, and Libya. While the recognition rates for asylum seekers from Morocco, Algeria, and Tunisia is notably low, it is important to highlight that a substantial 10% of individuals from Libya have been recognized as refugees in Switzerland. The combination of the already swift nature of the accelerated asylum procedure introduced in 2019, coupled with the inherent challenges faced by individuals in accessing legal representation for appeals once state-paid representation concludes (see more below, Q2), leads AsyLex to be concerned about the potential consequences of this pilot project. The accelerated processing timeline raises the risk of further compromising the due process rights of asylum seekers, potentially leaving them vulnerable to refoulement if their individual circumstances are not adequately assessed (see: [Tagesanzeiger Report, 2023](#)).

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



The **general right to legal representation** in the Swiss asylum procedure is commendable. However, as we mentioned in the 2023 Report ([AsyLex Input on Asylum Report, 2023](#)), AsyLex continues to have significant concerns about its practical implementation. The compensation model for state-appointed legal representation remains questionable as it operates on a **lump-sum basis**, regardless of the amount of work a case entails, potentially leaving several asylum seekers without representation during crucial times (see [Art. 102I Asylum Act \(AsylA\)](#)). A published [article](#) by Prof. Dr. Helmut Dietl and Dr. Christian Jaag highlights the issue of the lump-sum compensation system, namely, that it provides a lack of incentive for legal representatives in asylum proceedings. The article points out that legal representatives receive around CHF 2'000 per asylum seeker, regardless of whether they write an appeal against a negative or an inadmissibility decision. As a result, these representatives are not motivated to file appeals, as this is seen as an additional cost and burden that is not compensated through additional financial remuneration. Furthermore, as asylum seekers cannot choose their legal representatives, these representatives do not benefit from a possible increase in their reputation as a result of successful appeals. As a result, the number of appeals is low, even in cases with a high likelihood of success. The article suggests that a reform of the asylum system, where remuneration is linked to performance or where asylum seekers can choose their legal representatives, would potentially address this current issue (see **Appendix 3: “Incentive effects of the flat-rate compensation for legal representation in the asylum proceedings”**).

Based on these observations, **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 pressing considering the exceedingly 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.

Another worrying development is that state-paid legal representatives **no longer systematically accompany their clients to the Dublin interview.** Although asylum seekers have the right to be accompanied to the interview by a legal representative, in some asylum regions they were denied this right in 449 out of 499 cases (see: [NZZ newspaper article, 2023](#)).

Moreover, there remains a significant ambiguity regarding the role of state-paid legal representation in cases involving refugees escaping the Russian war in **Ukraine** and seeking the "S permit" in Switzerland. Current documentation on the S permits predominantly details the associated rights but notably omits guidance on the course of action when an S permit is declined (see: e.g., [Kanton Zürich, 2023](#)). As a direct consequence, **state-paid legal representatives frequently refrain from taking on these mandates. This has necessitated NGOs, including AsyLex, to intervene promptly to ensure that appeals against such denials are lodged in due course.**



Regarding **Afghan asylum seekers**, the SEM maintains its ban on deportations to Afghanistan, a decision that was promptly made prior to the Taliban's takeover in August 2021. According to guidelines from the SEM on Afghanistan in 2022, rejected Afghan asylum seekers can submit a reconsideration request based on the evolving circumstances ([SEM on Afghanistan, 2023](#)). Successful reconsiderations would lead to the issuance of provisional admission, commonly known as the “F permit”. It is crucial to understand, however, that this reconsideration is not automatically initiated. Furthermore, the task of filing such a request falls outside the scope of the state-sponsored legal representation. This necessitates Afghan asylum seekers to seek guidance and representation from other legal entities, both to gain awareness of this avenue and for the actual submission of the request.

In addition, Switzerland introduced a new legal practice for women from Afghanistan in July 2023, which outlines that **female asylum seekers from Afghanistan can be recognised as potential victims of both discriminatory legislation and religiously motivated persecution**. As a result, the SEM may grant refugee status to female asylum seekers from Afghanistan on the basis of an individual assessment ([SEM on Women from Afghanistan, 2023](#)). However, the same problem described above remains. Approximately 3'100 women from Afghanistan are living in Switzerland under the temporary admission status ("F permit"), which does not grant the same rights as a recognised refugee. A request for reconsideration that would lead to a refugee status, based on the change in practice by the SEM, is not automatically initiated. Therefore, women from Afghanistan who could potentially qualify for refugee status must find a legal representative to request reconsideration on their behalf (see **Appendix 4: AsyLex Submission on Afghanistan**).

Finally, **the lack of systematic access to legal representation for administrative detainees in Switzerland** has been recognized as a significant problem by the CAT in the Swiss eighth periodic report ([CAT, 2023](#)). The responsibility for granting legal aid lies with regional authorities, leading to vast disparities. Few detainees receive free legal representation, except in cantons like Aargau and Vaud, where an attorney is allocated to the case by the court, but often without the detainees' knowledge. Moreover, AsyLex is aware of numerous cases where the attorney allocated to the case has no knowledge or experience in administrative detention and was, therefore, not in a position to properly represent the client. In most other cantons, there is no such mandate, exacerbating detainees' unawareness of their rights. **Administrative detention can last up to 18 months**, and without legal aid, detainees struggle to challenge it effectively. Detention cases under the Dublin procedure may not even see judicial review, and detainees are often uninformed or intimidated to request one. Legal representation, when available, is often too late due to quick deportation processes or language barriers, undermining the fairness of legal proceedings. Acknowledging these issues, the CAT recommended Switzerland to "[g]uarantee administrative detainees access to legal representatives in detention" (see: [CAT, 2023](#)).



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)

Even though we acknowledge that most translators are qualified and trustworthy, we see significant deficiencies on a regular basis. For example, certain Eritrean translators working for the SEM are suspected of working as spies for the Eritrean regime, which significantly threatens the safety of asylum seekers and undermines the trust in the authorities and the system ([20min, 2023](#)).

Similar to last years, we therefore highly recommend that **asylum interviews are to be audio recorded**, in order to be able to double-check statements and to have evidence (on both sides) for any statements made ([AsyLex Input on Asylum Report, 2023](#)).

Since audio recordings are common in other fields, such as criminal proceedings, and they also reduce the work required to re-translate a word protocol after each hearing, we do not see any major obstacles to their introduction in asylum proceedings ([AsyLex Input on Asylum Report, 2023](#)).

Regarding criminal orders (namely for “illegal” stay or entry), AsyLex is concerned that, although the Federal Supreme Court has ruled that the summary criminal order and the information on legal remedies must be translated ([BGE 145 IV 197](#)), this is often not done by the public prosecutor's office.

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

Drawing from our 2023 Report, the lack of consideration by the Swiss authorities and courts for each individual case during the Dublin procedure remains a pressing concern. The procedures are still executed at a fast pace, making it challenging to identify highly vulnerable asylum seekers, particularly those grappling with serious mental health issues.

In our previous report, we also highlighted several critical issues concerning asylum systems in various European countries. As the year draws to a close, it is as worrying as ever that these problems remain unresolved. Asylum seekers **continue to be subjected to harsh living conditions and face threats of torture, as well as episodes of police and sexual violence** (see above Q1). Our previous concerns about the inadequate assessment of these urgent issues by the SEM have unfortunately been reaffirmed. This constant inadequacy has forced AsyLex to continually appeal to the FAC. Moreover, the appeal launched by the Swiss Refugee Council ([Swiss Refugee Council, 2022](#)) at the beginning of 2022 for a general suspension of deportations to Croatia and Bulgaria, due to the high risk of human rights violations, has not lost its urgency. Despite the strict application of the Dublin III regulation, our ongoing efforts to appeal against decisions to refuse entry into the matter (“inadmissibility decisions”) have been hampered by numerous obstacles (see Q2 above).



However, we have had some successes, sometimes pushing the Swiss authorities to process asylum applications within their jurisdiction (e.g. case [E-1302/2023](#), concerning an unaccompanied minor who had been wrongly aged as an adult by five months and was facing deportation to Croatia; case [F-4296/2023](#), concerning a person who was to be returned to Croatia yet was in the process of marrying a person with a B permit in Switzerland; case [D-4140/2023](#) concerning a woman who was born in Switzerland and spent most of her childhood here and later became the victim of an international child abduction, before returning to Switzerland via Croatia). In all cases, the court found that SEM did not adequately assess all the facts at hand and had therefore not correctly applied the responsibility criteria of the Dublin III Regulation.

Due to the failure of conducting an individual assessment on a general basis, the necessity to provide asylum seekers under the Dublin III Regulation access to legal representation proved to be crucial even after the initial procedure had been completed. In 2023, SEM accepted reconsideration requests of women who had endured sexual violence in Croatia and were hospitalised in psychiatric clinics in Switzerland. Furthermore, AsyLex supported several severely traumatised persons and families who returned to Switzerland after being deported to a Dublin member state (e.g. France, Slovenia) where they previously suffered human rights violations and thus suffered severe psychological distress upon return. After conducting an individual assessment, SEM accepted the multiple asylum requests and terminated the Dublin procedure.

Although in the individual cases mentioned above the individual situation of the person concerned was sufficiently analysed in the end, it is concerning that such individual assessment is not conducted on a general basis. An individual assessment is required in every case to make a well-founded decision and to act in accordance with the Dublin III regulation.

Furthermore, building on the concerns outlined in our 2023 Report, the shortcomings of the Dublin procedure, in particular the **inadequacy of summary transcripts at Dublin interviews**, continue to come to the fore. Unfortunately, these transcripts continue to frequently omit essential details, particularly when asylum seekers share their experiences of human rights abuses in Dublin countries. The tendency of investigators not to delve deeply enough into these crucial testimonies has not changed, resulting in the continued loss of key information and a lasting breach of SEM's investigative duties. The **persistent resistance to the adoption of comprehensive interrogation methods such as video/audio recording**, a concern we have expressed previously, only exacerbates this problem. This situation is particularly problematic when children are being interrogated. Renowned organizations such as the Swiss Refugee Organization, UNICEF, the International Institute for the Rights of the Child (IDE) and International Social Service Switzerland (ISS) have consistently advocated the incorporation of these methods. Their advocacy is mainly aimed at eliminating the redundancy of interviews with children and promoting alternative child-friendly techniques, such as drawings or role-playing. Unfortunately, our current observations highlight a blatant reluctance to adopt these suggested alternative methods (see: [AsyLex Input on Asylum Report, 2023](#)). Furthermore, **the need for the SEM's staff to undergo comprehensive child-sensitive training, as mandated by regulations, remains pressing**. The gap between prescribed training and its real-world application is obvious, particularly when decisions appear to





misinterpret children's best interests, aligning them incorrectly with parental interests. Once again, we find ourselves highlighting the **alarming and repeated disregard for children's inherent right to be heard**.

Moreover, our earlier observations, concerning **the dangers faced by our clients upon return due to potential severe human rights violations, remain alarmingly pertinent**. The SEM and the FAC's pattern of inadequately assessing these cases continues unabated (see Q2 above). We reiterate our deep concerns regarding the stringent application of the "Safe Third Country Concept" by the SEM and the FAC [**Appendix 1, Rapport alternatif Concernant la torture et les peines ou traitements cruels, inhumains ou dégradants en Suisse (huitième rapport périodique de la Suisse 2019)**]. While they consistently emphasise the binding nature of international obligations on Dublin member states, **the SEM and the FAC simultaneously overlook the nuances of individual applicants' circumstances, including their medical, mental health, and familial conditions**.

Therefore, in 2023, AsyLex had no choice but to approach UN human rights treaty bodies, resulting in **interim measures granted in three of our Dublin cases**. Such outcomes accentuate the fact that Switzerland's commitment to international human rights conventions remains questionable, particularly concerning safeguarding potential victims from abuse and gender-based violence.

Following our 2023 Report, concerns about the treatment of asylum seekers returned under the Dublin system, especially regarding **detention and the systematic extension of return deadlines**, remain distressingly relevant. In cantons such as Fribourg and Lucerne, the practice of systematically detaining rejected asylum seekers, often a few days or even weeks prior to their scheduled departure, not only constitutes a violation of their human rights but also deprives them of the option of voluntary return. What is equally alarming is the continued difficulty these asylum seekers face when trying to challenge the legality of their detention before deportation. This already grave situation is further exacerbated by the **absence of psychological support** in these detention centers. The **ongoing practice of isolating individuals who have attempted suicide** is contrary to fundamental human rights principles, as underscored by prior court rulings [see Q7 below, **Appendix 4: AsyLex Submission to the Special Rapporteur on torture, 2023, and Special Rapporteur on Torture on the current issues and good practices in prison management**]. For example, very recently, **Swiss immigration authorities have been criticised for deporting seriously ill people from psychiatric clinics**, as demonstrated by the case in the canton of Berne where Mursal Haidari, a patient suffering from severe post-traumatic stress disorder, was deported by the police. Despite a psychiatrist's warning to the migration authority about her fragile mental state, Mursal Haidari, along with her children and ailing mother, was deported to Spain under the Dublin Regulation. This alarming practice often fails to take into account the serious state of health of detainees and has led to suicides, highlighting systemic problems with the asylum procedure. AsyLex has publicly denounced this approach, pointing out that such **expulsions from psychiatric facilities occur regularly**, while the canton of Berne applies this practice particularly often ([WOZ Article, 2023](#) / [NZZ Article, 2023](#)).



Furthermore, a recent judgement by the Federal Supreme Court litigated by AsyLex has shed light on the gravity of procedural violations during the detention of a Dublin detainee. In the case adjudicated in Lausanne on September 15, 2023, the court recognized that while procedural irregularities do not always warrant release, **the violation of core procedural guarantees—such as the failure to conduct a detention review** in accordance with article 80a al. 3 FNIA—**necessitates the detainee's immediate release** unless there is clear evidence of a serious threat to public safety and order. The person's immediate release was ordered, highlighting the importance of safeguarding procedural rights within the context of the Dublin Regulation ([Federal Supreme Court Decision, Lausanne, September 15th, 2023](#)). Further information on the situation of administrative detainees will be provided under Q7.

In addition, the CAT recently deplored **Switzerland's use of detention, particularly to speed up expulsions under the Dublin III regulation**, calling for a review of organizational frameworks and practical developments ([CAT, 2023](#)).

Finally, the **recurrent extension of return deadlines** (article 29 (2) Dublin III Regulation) beyond the prescribed period remains a major concern. In various cases, **the transfer period has been unjustly extended from six to 18 months**, even when the individuals have not absconded and have remained in contact with the migration authorities. In one case, [E-5250/2023](#), the FAC even reprimanded the SEM's duty to maintain files, as the SEM claimed, after the transfer deadline had expired, that the person had previously absconded when it attempted to return them to Croatia. However, this alleged absconding was only subsequently documented in the files when the regular transfer deadline had already expired. The FAC upheld the AsyLex appeal and sent it back to the SEM for reconsideration.

Such extensions, based on brief absences or failure to appear for scheduled deportation flights, clearly depart from European law and the case law of the Court of Justice of the European Union. However, there are many cases pending in court in this regard, some for almost a year and a leading decision is awaited.

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

For **concerns related to the northern and southern borders of Switzerland**, please refer to the responses provided for in Q1.

To AsyLex's knowledge, the COVID-19 Asylum Ordinance is to be repealed as early as 15 December 2023 instead of the previously specified extension date of 30 June 2024 ([Ordonnance sur les mesures prises dans le domaine de l'asile en raison du coronavirus, 2023](#)). As a result, the appeal deadlines in the accelerated procedure will be curtailed again from 30 days to 7 working days ([Ibid](#)). In order to ensure consistent access to justice, AsyLex is concerned about this early termination and consequent short appeal deadlines.

Following on from our comments of 2023, we recognize 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. As soon as they apply, S permit holders are immediately covered by **health insurance** and have the **autonomy to choose their living conditions** - either in asylum centers or in private homes. This contrasts sharply with asylum seekers from other nations who are confined to asylum centers. Once an S permit has been granted, beneficiaries are assigned to a canton where they receive **social assistance**. In addition, the S permit, although temporary, has an advantage over the temporary protection status ("F permit"): Permit S holders may **immediately reunite with their family with no waiting period**, whereas permit F holders must wait three years. In addition, unlike F permit holders, **S permit holders enjoy freedom of international movement and immediate access to the Swiss labor market**.

On November 1, 2023, the Swiss Federal Council decided to **extend the S status protection for Ukrainian individuals seeking refuge in Switzerland until March 4, 2025**. This decision aligns with the protective measures of the EU member states, reaffirming Switzerland's commitment to the Schengen area. By the end of October 2023, around 66'000 Ukrainians in Switzerland had an active S status. Recognizing the need for better professional integration, the Federal Council has set a target: by the end of 2024, 40% of S status holders should be employed. To achieve this, collaborative efforts will be intensified between various federal departments, and cantons will follow stricter guidelines for the use of federal contributions, including specific integration measures ([The Federal Council, 2023](#)).

While AsyLex welcomes the extensive rights that accompany the S permit, the striking difference in rights when juxtaposed with those of asylum seekers from other regions, and the dichotomy between S and F permit holders, remain evident. Based on this observation, AsyLex firmly reiterates its position: **we advocate that rights equivalent to those enjoyed by Ukrainian asylum seekers and S permit holders be uniformly extended to all individuals granted temporary admission**.

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)

**The influx of asylum seekers is still comparatively high**, causing the capacity of existing accommodation to become increasingly scarce. In 2021, the SEM recorded nearly 14'928 asylum claims, which spiked to approximately 24'511 in 2022 ([SEM statistics 2021/SEM statistics 2022](#)). When combined with the 80'000 **S permits granted to Ukrainian refugees**, the total number of asylum claims for 2022 exceeded 100'000. This influx strained the available accommodation facilities, leading to their operation beyond the intended capacity. A consequence was the reintroduction of **civil protection bunkers** for housing asylum seekers. However, marking a first, those who fled the **Ukraine** war were offered **private housing options**. Since the beginning of 2023, there have been **20'155 asylum claims** and **19'284 request for an S permit** (see: SEM Statistics [Asylum Claims](#) and [S-permit](#), 01.01.2023 - 31.10.2023).



To ease the pressure on existing accommodation, Federal Councillor Elisabeth Baume-Schneider and Head of the Federal Department of Justice and Police proposed that asylum seekers be temporarily housed in containers on army grounds. The Federal Council initially requested 132.9 million francs to create an additional 3'000 places in anticipation of a heavy increase in the number of people seeking protection, earmarking locations in Bière (VD), Tourtemagne (VS), and Bure (JU). However, **Baume-Schneider's proposal was ultimately dismissed**. The Parliament refused to allocate the needed funds for the project, effectively terminating the container accommodation initiative ([Le Temps, 2023](#)). Yet, recently, in response to the challenges faced by the Swiss asylum system due to the influx of seekers, **the Swiss cantons have stepped up, providing about 1'800 additional accommodation places**. While 600 of these can be used immediately, clarifications are underway for the remaining 1'200 ([SEM, 2023](#)).

A ripple effect of the increased numbers of asylum seekers was **the pause in the resettlement program for 2022/2023**. Announced on November 30, 2022, this decision left many refugees in precarious situations in third countries. Those who had been approved for resettlement before this date were resettled to Switzerland by March 2023 ([SEM, Resettlement, 2023](#)). However, **Switzerland's Federal Council has approved the continuation of the refugee resettlement program for 2024-2025**, aiming to welcome up to 1'600 vulnerable refugees, provided that the asylum situation stabilizes to accommodate them. Despite a temporary suspension, future admissions will depend on improved accommodation and support capacity. The program will focus on the reception of women, children, and vulnerable families in crisis zones, contingent on UNHCR refugee status, increased protection needs, readiness to integrate, and security checks ([Le Temps, 2023](#)).

More generally, observed **systems challenges** encompass limited support for access to the Swiss labor market, opaque practices regarding social aid (especially concerning financial assistance for asylum seekers and provisionally admitted foreigners), and scant information available to asylum seekers regarding their rights outside of the standard procedure. Additionally, a notable shortage of social workers in the asylum sector persists. Amongst these challenges, there remains a vast disparity in practices across regions.

Finally, **the varying standards of asylum seeker reception in Swiss cantons**, as noted by the CAT and the United Nations High Commissioner for Refugees, point to the need for a uniform approach to ensure that all applicants receive adequate shelter, food, and medical care as well as legal representation irrespective of their location ([CAT, 2023](#)).

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)

Issues of access to (free) legal assistance and mental health treatment for persons in administrative detention as well as a lack of assessment of alternative measures to administrative detention persist (see Q2 above and **Appendix 4: AsyLex Submission to the Special Rapporteur on torture, 2023**).



In addition, there has been a relatively recent trend, where courts and cantonal authorities increasingly try and find new ways to hinder the work of non-governmental organizations which represent clients in administrative detention. For example, some cantonal migration offices take a long time (up to and over a week) to respond to file inspection requests. In cases of administrative detention, especially Dublin detention, this is incredibly negligent, mainly for two reasons. Firstly, **Dublin detention can be ordered without judicial review**, and thus without the case files an appeal or a detention review request cannot adequately be submitted, meaning that persons in Dublin detention may be detained arbitrarily. Secondly, due to the short timeframe between entering Dublin detention and deportation, **the files sometimes arrive after the person has already been deported**. Hence, such delayed access to files hinders the effective representation of clients in their legal process and effectively prevents a fair trial. Another example is the increased hurdles for access to legal representation by courts. Recently, AsyLex has noticed a **stark increase and spread of cantonal courts no longer or only minimally compensating legal representatives who offer legal counsel**. Organizations that offer legal representation, which are not state-funded, are reliant on the compensation of the courts. If the courts continue to minimize or strike financial compensation, such organizations will eventually cease to exist and access to legal representation for persons in detention will become even more difficult. This “SLAPP”-issue hinders not only the access to but also the effective legal representation.

Finally, **the CAT’s concerns regarding the prevalent use of detention, especially of minors between 15 and 18, for immigration purposes**, indicate a pressing need to reevaluate detention practices, explore alternatives, and strictly adhere to the time limits set for detention ([CAT, 2023](#)).

Despite these recent worrying developments, AsyLex was able to achieve important victories significantly advancing legal precedents in 2023 in front of the Federal Supreme Court:

- In August 2023, AsyLex managed to win a case [[BGE 2C 142/2023 verdict from 03. August 2023](#)] in front of the Federal Supreme Court regarding police detention in a Dublin detention case (Art. 76a FNIA). The ruling by the Federal Supreme Court made it very clear that there is no room for police detention in the context of Dublin transfers. The judgement established that **the Dublin-III-Regulation has to be applied to administrative detention according to Art. 76a FNIA and that other forms of administrative detention, which are not foreseen in the Dublin-III-Regulation, cannot be applied**. Specifically, the order of police detention, which is governed by cantonal law, was unlawful because the only purpose of the detention was to transfer the client to Malta, thus the Dublin-III-Regulation clearly applied.
- In September 2023 AsyLex won another case [[BGE 2C 457/2023 verdict from 15. September 2023](#)] in front of the Federal Supreme Court regarding the impact of a waiver of detention review in a Dublin detention proceeding (Art. 80a para. 3 FNIA). AsyLex appealed the decision by the Court of Appeal of the Canton of Basel, which ruled that the detention review request from our client was inadmissible as the client previously ticked a box to waive judicial review (“Verzicht auf gerichtliche



Überprüfung” / “Renonciation au contrôle juridictionnel”) on the protocol from a legal hearing at the cantonal migration office. The Federal Tribunal, however, clearly states that **every person detained has the right to be heard by a court at any time and thus can determine the time of the review themselves**. This is because the judicial review of detention according to Art. 80a para. 3 FNIA constitutes a procedural provision that cannot be renounced. The procedural guarantee to review the legality and appropriateness of the Dublin detention was therefore seriously violated. As a result of the verdict by the Federal Tribunal, the client was released from detention.

While the previous practice of the Federal Supreme Court granted reasonable relief in cases of unlawful or unreasonable administrative detention, over the last months we have seen a significant change in the case law by the Federal Supreme Court to a much stricter practice, deviating to a large extent to previous case law [[BGE 2C\\_37/2023 verdict from 16. February 2023](#) | [BGE 2C\\_387/2023 verdict from 07. August 2023](#) | [BGE 2C\\_793\\_2022 verdict from 09. October 2023](#) | [BGE 2C\\_562/2023 verdict from 28. November 2023](#)]. This tendency is reason for serious concern, noting that foreigners - including asylum seekers - may be detained for up to 18 months for administrative reasons.

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)

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

Regarding the inadequate interviewing methods used with **children** by the SEM and the right of children to be heard, see our comments to Q4.

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

The insights from our initial 2023 Report largely remain relevant and indicative of the persistent challenges within the asylum process (for further details: [AsyLex Input on Asylum Report, 2023](#)).

**The discrepancy between asylum regions in terms of appealing by state-paid legal representation against negative decisions continues**, as previously outlined in our response to Q2.

Furthermore, as seen in Q5, it has been officially declared that the **COVID-19 ordinance will be seized by December 15, 2023** (see: [announcement Federal Council, 2023](#)), which will likely make the situation regarding accessing a legal representation in case the state-paid representatives terminate their mandate even more problematic, as lifting the COVID-19 ordinance will shorten the appeal period for material decisions from 30 days to seven working days and for interim measures from ten working days to seven working days. Shortening the time period for appeals will likely also have the effect of enlarging the discrepancy further



between asylum regions in terms of appealing by state-paid legal representation against negative decisions.

**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.** AsyLex continues to encounter individuals attempting to lodge appeals on their own, often resulting in incomplete submissions. Despite our attempts to file supplementary appeals and requests for deadline extensions, the FAC has frequently denied these on the basis that asylum seekers had their initial chance to appeal, disregarding the absence of legal representation at that critical first step (see: [AsyLex Input on Asylum Report, 2023](#)).

In addition, **the FAC's approach to evidence in cases of Dublin returns or transfers to "safe third countries" has not seen significant evolution.** As stated in the response to Q1 and Q4, the court tends to default to the legal obligations of the states involved rather than conducting an in-depth individual risk assessment, which is alarming as it can lead to the deportation of those needing protection to places where they may face (repeated) human rights violations.

Finally, 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.

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

Limited information is available regarding the reception conditions of returnees under the Dublin III Regulation in specific countries, such as Croatia, Bulgaria, and Romania. However, both the SEM and the FAC, relying on a debatable evaluation from Swiss embassies in those countries, contend that the reception conditions, access to the asylum procedure, and medical treatment would be sufficient. This assertion persists despite the fact that **nearly all of AsyLex' clients who transited through bordering European countries like Bulgaria, Hungary, and Croatia reported severe human rights violations**, including illicit pushbacks and systematic detention in undisclosed cage-like facilities before their unlawful deportation. These experiences are also documented in various media reports (see: Q1 and [Lighthouse report, 2023](#)).

Moreover, it is disconcerting that the **appraisals by Swiss embassies in these countries often diverge significantly from assessments conducted by organizations active in the asylum field**, such as local entities operating on the ground. A particular example thereof is the situation in **Croatia** where returnees under the Dublin III Regulation suffer from various human rights violations. It is highly concerning that the **Swiss embassy report outlines that there are no systematic deficiencies in the Croatian asylum system** when this directly conflicts with numerous reports issued from organizations working in the asylum field (see above Q1). The embassy report specifically claims that Dublin returnees are not systematically subject to pushbacks and human rights violations, that returnees are generally not hindered from



receiving assistance and that they have the possibility to report abuses committed against them by authorities. Additionally, the sources used to create the report claim to be unaware of any specific cases in which Dublin returnees to Croatia were subjected to abuse or pushbacks. Accordingly, in **numerous cases of Dublin III Returns to Croatia, Switzerland lacked an individualised assessment and decided on the reasonability of return**. AsyLex, however, brought several cases before UN Committees where we obtained interim measures as the conditions for returnees evidently differ from the conclusions made by the Swiss Embassy.

In support of this, the [Human Rights Watch Report \(2023\)](#) has documented various cases of **police refusing individuals in Croatia to apply for asylum, inhumane cases of push backs and a failure to screen for individual protection needs** (p. 53). These violations are so numerous that the Human Rights Watch urges all Dublin countries to suspend the return of asylum seekers to Croatia under the Dublin III Regulation (p. 9). Similarly, an [Amnesty International Report \(2023\)](#) highlights that not only are asylum seekers arriving at Croatia's borders subject to push-backs, but also returnees who are handed to Croatian police are subject to collective expulsions (p. 6). The frequent documentation of such cases has led Amnesty International to describe this situation as a "potentially **systematic and deliberate policy of Croatian authorities**" (p. 15). These conclusions are also in line with investigations conducted by ProAsyl which found that **asylum seekers located in the center of Croatia are subjected to push-backs** ([PRO ASYL, 2022](#)).

Furthermore, the Supreme Administrative Court of the Netherlands 2022 concluded that due to the frequent occurrence of push-backs against asylum seekers in Croatia, Dublin III returnees are also at risk of this and therefore should not be returned from the Netherlands without further investigation ([Raad van State Decision 202102939/1/V3 from 13 April 2022](#)). Similarly, the Administrative Court of Braunschweig 2A 269/22 concluded on May 8, 2023, that **deportations of Dublin III returnees to Croatia are unlawful** due to the risk of push-backs that the asylum seekers will face once in Croatia ([VG Braunschweig 2 A 269/22 from 8 May 2023](#)).

Considering the information provided from these various sources, it is **concerning that the Swiss Embassy in Croatia as well as the SEM and FAC refrain from acknowledging the systemic deficiencies** in the Croatian asylum system. It is also further **concerning that there were countless cases where Switzerland did not conduct an individualised assessment and decided to return** to Croatia under the Dublin Regulation III in 2023 as seen above under Q1.

11. Issues of statelessness in the context of asylum (including identification and registration) (new)

In Switzerland the SEM is responsible for conducting procedures to recognise statelessness based on [Article 14 of the Organisation Regulation for the Federal Department of Justice and Police \(OV-EJPD\)](#). To seek stateless recognition, an application must be submitted to the SEM, stating grounds for recognition and providing evidence. SEM assesses each application based on the Federal Act on Administrative Procedure, international rules in the Convention, and legal precedents.





**However, the Administrative Procedure Act inadequately addresses the needs of stateless individuals in Switzerland.** It was reiterated in the [2023 UNHCR Switzerland Fact Sheet](#) that **the applicable standard and burden of proof do not adequately consider the applicants' specific situation.** To be recognized as stateless, applicants must fully prove their statelessness. Unlike asylum-seekers, the burden of proof is solely on the applicants, and the standard of "credibly demonstrating" statelessness is not applied. In our daily practice, we notice that decisions by the SEM that reject applications for statelessness recognition often inadequately, inaccurately, or arbitrarily determine crucial facts, possibly leading to violations of federal law or directly applicable international law. Moreover, it is asserted that, consistent with recent practices observed in the European Court of Human Rights (ECtHR), denying individuals access to the statelessness recognition procedure without apparent nationality should not be imposed arbitrarily.

LINGUA, a specialised unit within the SEM, conducts origin analyses for asylum seekers and other foreigners. These analyses may be considered necessary and can be ordered by the SEM when individuals do not have valid identification documents and there are doubts about their claims regarding their region of origin. LINGUA collaborates with external experts who assess conversations with the subjects and provide analysis reports. **However, the LINGUA expert's opinion is neither subject to review nor made available to the person concerned. Consequently, not only are the qualifications of the LINGUA expert undisclosed, but the entire process lacks transparency.**

In a case [FAC D-2337/2021 of July 5, 2023](#) involving an asylum seeker's claim of Tibetan origin, the LINGUA analysis, conducted by the "expert" with the pseudonym AS19, suggested the asylum seeker might not be from the claimed region in Tibet but from an exile Tibetan community outside of China. Due to a mistake by SEM, the asylum seeker received the entire documentation of the analysis and subsequently requested a counter-opinion from Tibetologists. **The counter-analysis raised serious objections against the SEM Lingua office's methods and AS19's expertise. However, the FAC found the LINGUA analysis to be fundamentally unobjectionable,** as AS19 demonstrated professional qualifications, diligence, and neutrality, despite some doubts about its accuracy. In addition, concerning the right to a fair hearing, the FAC found that the question of whether the undisclosed LINGUA summary prepared by the SEM is flawed was irrelevant, as in this specific case the LINGUA summary was unintentionally revealed to the complainant, giving him the opportunity to comment on the analysis.

12. 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)

Our observations from previous years continue to apply ([AsyLex Input on Asylum Report, 2023](#)):

- There are still **no special accommodations for vulnerable persons, families or women.** There is a **lack of places in the asylum shelters where asylum seekers can**



**stay in privacy.** It is not even possible to lock the doors of their rooms. Therefore, asylum seekers are confronted with police entering their rooms - even at night while they are sleeping - to forcibly deport (rejected) asylum seekers. These incidents are traumatizing for the asylum seekers. In addition, AsyLex is aware of asylum centres that do not even provide a door in the restroom, thus limiting the privacy of asylum seekers.

- There is also a **lack of referrals to medical professionals, including psychologists.** This is especially true for asylum seekers in the Dublin procedure. This is of particular concern when dealing with victims of torture, racial discrimination, trafficking, or sexual and gender-based violence. Even when a particular vulnerability has been identified on paper, referral to specialized mental health or other support services is very limited or non-existent.
- In addition, such vulnerabilities are generally inadequately assessed and addressed by migration authorities during the asylum process (see responses to Q1, 4, 9, and 10). Even when asylum seekers state that they have suffered human rights violations or have been victims of torture, trafficking or sexual and gender-based violence, no further questions are asked in this context and no action is taken on their behalf. Persons who have been trafficked in Switzerland are supposed to be referred to the Federal Office of Police (fedpol). However, AsyLex has no knowledge of any continuing investigative proceedings, as these are usually discontinued after a short period of time. **If the trafficking did not take place in connection to Switzerland, no measures are taken at all.**
- With reference to Q4, AsyLex would again like to point out our concern about **individuals being forcibly deported directly from psychiatric clinics.** On March 21, 2023, in the Canton of Bern, a young woman from Afghanistan, suffering from unprocessed post-traumatic stress disorder, severe depression, anxiety, and social withdrawal, was arrested at a mental health clinic after over three months of treatment and sent back to Spain in application of the Dublin Agreement with her children and her sick mother. She had attempted suicide before, and her doctor had warned of the risk of self-harm due to additional psychological stress. However, the SEM's "medical service provider" deemed her "fit to travel as prescribed." In October 2023, it was revealed she had made another suicide attempt in Spain. Tragically, other cases in the canton of Bern documented individuals being repatriated directly from psychiatric clinics, resulting in devastating outcomes, including a reported suicide by an Afghan man ([WOZ, 2023](#), [NZZ Article, 2023](#)).
- On the basis of a **generalized examination**, Swiss authorities frequently issue inadmissibility decisions or negative asylum decisions, even where victims of mistreatment or sexual and gender-based violence are concerned. Often, Swiss authorities subsequently also order **administrative detention** in order to ensure enforcement of the deportation order. In administrative detention, however, alleged **victims of mistreatment or sexual and gender-based violence are regularly denied the possibility of psychological treatment**, which, for traumatized persons, amounts to



inhuman treatment and regularly leads to suicidal attempts. Subsequently, these persons are returned to countries where they face renewed exposure to mistreatment or sexual and gender-based violence. Such returns mostly occur in the context of the Dublin III Regulation or to so-called “safe third countries” (**Appendix 4: AsyLex Submission to the Special Rapporteur on Torture, 2023**).

- As stated in Q4, AsyLex has observed that, in general, the **vulnerability of children is not sufficiently addressed in the Swiss asylum system**. Particularly for accompanied children the dangers specific to the deportation of children are not sufficiently addressed during their asylum procedure. As a result, their asylum applications are rejected even though they suffered serious human rights violations or have already integrated in Switzerland, which results in the children being uprooted from their familiar environment. In various cases led by AsyLex, **neither the SEM nor the courts took the affected children’s best interest properly into account**. Quite frequently, the children involved were not even heard. Deportations of families with rejected asylum applications are ordered (e.g. to Sri Lanka), even though the children were born and raised in Switzerland. Moreover, the SEM and the courts regularly consider asylum applications as inadmissible where applicants are already registered in another European country (namely based on the Dublin III Regulation). **In such inadmissibility decisions, the specific risks for the children involved are generally not considered and it is simply referred to the theoretical legal obligations the country of return has**. Such inadmissibility decisions are even taken in situations where the children are severely traumatized and urgently need mental health support, where the child or the family suffered severe human rights violations in the country of return, and even where there is a high risk of further human rights violations upon return. In various situations like these, AsyLex brought the case to the attention of the Committee on the Rights of the Child, and for all such communications, interim measures were granted (No. 215/2023, No. 216/2023, No. 223/2023, No. 236/2023). In some cases, the Swiss authorities subsequently reconsidered their decision and refrained from deportation. These constellations reveal that the Swiss authorities and courts do (or at least did initially, before the Committee intervened) not properly consider relevant rights of the child.

13. 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 seen under the response to Q5, the introduction of the protection status (“S permit”) for people fleeing the war in Ukraine brought many **advantages compared to the regular asylum procedure and the existing temporary protection status** (“F permit”). Although the asylum seekers from Ukraine still have to apply in the federal asylum centers, they do not have to live there, but can **choose between this accommodation and private accommodation**. In many cases, S permits are **granted after only three days of application**. With the S permit, people **can work**, even self-employed, and **children can attend public schools**. Furthermore, with the S permit, **travel is allowed immediately**, this includes even short trips to Ukraine. Finally,



people with an S permit can **immediately apply for family reunification**. Thus, in many ways, people who have fled the war in Ukraine have more rights than people with temporary admission (F permit) from other countries. These temporary admission holders and asylum seekers are, for example, housed in (federal) asylum centers and are not entitled to private housing. Also, despite the introduction of the accelerated asylum procedure, which requires completion of the asylum process within 140 days, the process for obtaining an S permit is much faster. In addition, people granted an F permit must wait three years to apply for family reunification with their family and also are not allowed to travel abroad.

A further issue in this context is that **not all people fleeing the war in Ukraine are eligible for the S permit**. Only Ukrainian nationals and third-country nationals with a permanent residence permit in Ukraine or with a temporary residence permit who cannot return to their country of origin are eligible for the S permit. Other third-country nationals who do not have a legal residence permit in Ukraine (e.g., asylum seekers who were still in the asylum process) are excluded.

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**.

#### 14. Return of former applicants for international protection

Our observations from the previous years continue to apply ([AsyLex Input on Asylum Report, 2023](#)):

We are still highly concerned about the procedures of forced returns as well as about the threats returnees may face upon arrival in the other country (be it returns to other Dublin member states, a “safe” third country or the country of origin).

The policy of “**surprise returns**” continues to be conducted. Thereby, neither the applicants - including families with children - nor we as legal representatives are informed upfront about the date of return. This happens especially in cases of Dublin returns. This is particularly concerning in the context of returns to countries where the human rights situation is critical as expelled asylum seekers face (renewed) exposure to mistreatment or sexual and gender-based violence. Previous knowledge about these returns would enable us to arrange for a humane welcoming situation upon arrival. Particularly the situation in the Canton of Fribourg is highly concerning in this regard, where also the inspection of the complete files regarding the return flight, even after the deportation, is rejected.

An issue of concern in this context is the institutionalization of **inhuman treatment during forced deportations** as outlined in **the [AsyLex Input on Asylum Report, 2023](#)**: The decisions on the legal stay of a person based on the AsyIA or the FNIA are enforced by administrative law enforcement measures. One of these measures is forced deportation, which occurs when the person concerned, who has received a deportation order, does not leave the country voluntarily within a predefined time frame. Depending on how willing the person concerned is to cooperate with a forced deportation, the deportation is carried out according to different



levels, level 4 being the most restrictive one. Level 4 deportations are applied if a person is considered so recalcitrant that they are unable to travel on an ordinary scheduled flight, even if handcuffed. In this case, a special flight with increased restraint is carried out for this person. It should be noted that the **authorities define the term “recalcitrant” very broadly: Anyone who has refused to take a flight once can be considered recalcitrant.** In the case of level 4 deportations, the person concerned is tied to a wheelchair with up to eight cable ties, where a helmet is put on their head. **AsyLex also has knowledge of cases where families were deported under the level 4 regime.** Parents were treated in the manner explained above, while the children were separated from them and handed over to the police during the flight. Thereby, the usually already **highly traumatized children become re-traumatized and the dignity and personal integrity of the parents concerned is systematically violated.** Level 4 deportations systematically use methods that fall under the category of internationally condemned inhuman treatment. Even though level 4 deportations are (at least supposed to be) always accompanied by the National Commission for the Prevention of Torture (NCPT, [Report, 2023](#)), the information about the exact situation is limited due to significant redaction (blacking out) of their reports on individual cases. Even more concerning, also in cases of level 2 or 3 flights, **coercive measures are applied, namely against vulnerable people,** and in these constellations no independent monitoring takes place at all, leaving the persons concerned fully exposed to the police and security staff involved. It is of particular concern to AsyLex that to our knowledge **currently all returns to Croatia are in fact special flights (level 4),** even in cases of full cooperation with the authorities and also in cases of families and other vulnerable applicants. In our view, this is a clear violation of the Dublin-III-Regulation and of the principle of proportionality in general.

Another concerning aspect is the medical assessment made by the private company OSEARA which gives approval to (forcibly) remove people with medical issues. In our perspective, the assessments are not sufficient and oftentimes biased - namely when severely ill people's condition is being assessed based on existing medical certificates only, without even talking to the person concerned. We are particularly concerned about the situation of people with severe mental health issues, children and victims of sexual and gender-based violence. It should be noted that all OSEARA reports are signed by one single doctor, rendering it factually impossible for this doctor to indeed examine each individual case properly (for further critical points, see [Le Temps, 2023](#)). In this regard it might be noteworthy also that there are significant conflicts of interest, since OSEARA is directly mandated and paid by those exact authorities who strive to return the persons concerned.

When it comes to the countries to which returns took place in the year 2023, we are particularly concerned about the **returns to Ethiopia, Sri Lanka, Democratic Republic of Congo and Turkey,** where it is well known that returnees face a significant risk of persecution, as well as **Dublin returns to Croatia, Bulgaria and Romania,** where almost all people concerned had previously suffered police violence and further human rights abuses. Furthermore, we are still concerned about **Dublin returns to France,** where returnees in most cases do not have access to shelter and other basic needs upon return. We, therefore, generally ask for a more prudent and forward-looking approach when deciding whether a return can take place or not.



AsyLex is also alarmed by the fact that two people were **forcibly returned to Iraq in 2023**. It is generally recognized that the return of persons to Iraq is only possible on a voluntary basis or in case of delinquency, therefore the deportation of persons to Iraq has so far been considered impossible except for criminals. Recently, however, we have witnessed a forced return to Iraq, even though the person had no criminal record.

Where it was not yet too late, AsyLex filed **various complaints before the UN human rights treaty bodies**, as can be seen under response to question No. 1 and 4, and - in the vast majority of cases - **interim measures were granted**.

15. 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)

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 \(OEV\)](#). Although Swiss law provides for this possibility, the issuance of such visas is **highly stringent**. However, due to the very challenging situation in Afghanistan, there appears to be a certain evolution in this regard, especially for applicants of Afghanistan, as indicated by recent decisions of the FAC. **AsyLex supports the change of legal doctrine which emphasises the recognition of Switzerland regarding the severity of the situation in Afghanistan concerning the practice of granting humanitarian visas.**

In a series of decisive judgments, the FAC has repeatedly condemned the SEM for failing to carry out a thorough assessment of the credible threats faced by applicants facing possible deportation from neighbouring countries to Afghanistan. For example, in FAC Decision [F-3406/2022 of August 24, 2023](#), the Court upheld an appeal against the SEM's decision, highlighting the imminent danger faced by a former prosecutor of Afghanistan and his family members who were at risk of forcible return from Pakistan to Afghanistan, endangering their lives. Similarly, in FAC decision [F-4138/2022 of August 10, 2023](#), the SEM's assessment of the dangers faced by the applicant, a journalist, writer and activist who actively opposes Islamist extremism, was inadequate, particularly in the context of possible deportation from Iran to Afghanistan. The Court also drew attention to credible sources pointing to the risk of refugees in Iran being forcibly returned to Afghanistan (For a more in-depth report on the asylum practice of Switzerland regarding people of Afghanistan see: **Appendix 5: [AsyLex and Center for Human Rights Advocacy Submission for Afghanistan's Universal Periodic Review \(Fourth Cycle\), 2023](#)**)

In the context of humanitarian visa applications, AsyLex is very concerned about the inability of the severely threatened persons themselves to reach the relevant Swiss embassies (especially those in Pakistan, Iran and Turkey) to make an appointment to apply for a humanitarian visa to Switzerland. However, through the intervention of legal representatives such as AsyLex, interview appointments were granted to the humanitarian visa applicants. This



suggests a **discriminatory practice between requests from legal representatives and those from private individuals**, which is unacceptable.

Finally, as seen under Q6, the **resettlement program for 2022/2023** was paused by decision of November 30, 2022, allegedly because of the lacking capacities, leaving refugees stranded in particularly vulnerable conditions in third countries. As of April 1, 2023, the FDJP, on the recommendation of the Special Asylum Task Force (SONAS) and in consultation with the cantons, has suspended the admission of groups of resettlement refugees in order to take into account the pressure on the Swiss asylum system ([SEM Press Release Resettlement, 2023](#)). In its session on June 16, 2023, the Federal Council approved the **resettlement program for 2024/2025**. Within this timeframe, Switzerland has the capacity to welcome up to 1'600 refugees requiring special protection, particularly those facing vulnerable conditions in countries of initial asylum. The geographical priorities remain consistent with the 2022/23 program. However, the activation of the program is contingent upon consultations with cantons and municipalities and is subject to the significant improvement of conditions for housing and caring for individuals within the asylum sector ([SEM Press Release Resettlement, 2023](#)).

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

There has been no update since our report from 2019. We therefore refer to our comments from three years ago.

We regret that **Switzerland is not actively involved in any relocation schemes**. It would be appreciated if Switzerland accepts applicants who currently stay in other countries, be it within or outside Europe - noting that in fact it is impossible for (hardly) any asylum seeker to arrive in Switzerland by legal ways.

17. National jurisprudence on international protection in 2023 (please include a link to the relevant case law and/or submit cases to the EUAA Case Law Database)

Unfortunately, there were countless decisions by the Swiss courts which are detrimental to human rights of asylum seekers. The most prominent example is the decision regarding returns to Croatia ([E-1488/2020](#)). As highlighted in this report, we are concerned about the lacking individual assessment of the case by Swiss authorities and courts. However, thanks to civil society organizations such as AsyLex, in certain individual cases a positive outcome could be achieved through (strategic) human rights litigation, as the following examples show (cases mentioned within the response to Q1-15):

- **Decision [2C\\_142/2023](#), of August 3, 2023:** AsyLex managed to win a case in front of the Federal Supreme Court regarding police detention in a Dublin detention case (Art. 76a FNIA). The ruling by the Federal Supreme Court made it very clear that **there is no room for police detention in the context of Dublin transfers**. The judgement established that the Dublin-III-Regulation has to be applied to administrative detention according to Art. 76a FNIA and that **other forms of administrative detention, which**



are not foreseen in the Dublin-III-Regulation, cannot be applied. Specifically, the order of police detention, which is governed by cantonal law, was unlawful because the only purpose of the detention was to transfer the client to Malta, thus the Dublin-III-Regulation clearly applied.

- **Decision [F-4138/2022](#) of August 10, 2023:** It was found that the **SEM's assessment** of the dangers faced by the applicant, a journalist, writer and activist who actively opposes Islamist extremism, was **inadequate**, particularly in the context of possible deportation from Iran to Afghanistan. The FAC also drew attention to credible sources pointing to the risk of refugees in Iran being forcibly returned to Afghanistan
- **Decision [F-3406/2022](#) of August 24, 2023:** The FAC upheld an appeal against the SEM's decision, highlighting the **imminent danger** faced by a former prosecutor of Afghanistan and his family members who were at risk of forcible return from Pakistan to Afghanistan, endangering their lives.
- **Decision [2C\\_457/2023](#) of September 15, 2023:** AsyLex won this case in front of the FAC regarding the unlawful waiver of detention review (Art. 80a para. 3 FNIA). AsyLex appealed the decision by the Court of Appeal of the Canton of Basel, which ruled that the detention review request from our client did not need to be considered as the client previously ticked a box to waive judicial review (“Verzicht auf gerichtliche Überprüfung”) on the protocol from a legal hearing at the cantonal migration office. The Federal Tribunal, however, clearly states that **every person detained has the right to appeal to a court at any time and thus can determine the time of the review themselves**. This is because the judicial review of detention according to Art. 80a para. 3 FNIA constitutes a procedural provision that cannot be renounced. The procedural guarantee to review the legality and appropriateness of the Dublin detention was therefore seriously violated. As a result of the verdict by the Federal Tribunal the client was released from detention.
- **Decision [E-1302/2023](#):** AsyLex was successful in a case, where an unaccompanied minor who had been wrongly aged as an adult by five months and was facing deportation to Croatia. The FAC ruled that Art. 8 of the Dublin III Regulation on the protection of minors had not been sufficiently taken into account by the SEM. It therefore remitted the case to the SEM, which eventually entered into the minor's asylum application.
- **Decision [F-4296/2023](#):** AsyLex won the case before the FAC, which concerned a person who was to be returned to Croatia yet was in the process of marrying a person with a B permit in Switzerland. The Court found that the SEM had not correctly applied Art. 9 of the Dublin III Regulation. It therefore ordered the SEM to reconsider the case following which the person's asylum application was processed in Switzerland.
- **Decision [D-4140/2023](#):** AsyLex achieved another notable success before the FAC concerning a person born in Switzerland but who became the victim of an international child abduction that had not been prosecuted at the time. When the person tried to





flee to Switzerland again, the person's fingerprints were registered in Croatia. The SEM therefore decided to send the person back to Croatia. However, the court considered the discretionary clauses of Art. 17 Dublin III Regulation as relevant and sent the case back to the SEM for reconsideration. The case is currently being examined by the SEM.

- **Decision [III 2023 106 verdict of August 25, 2023](#)**: AsyLex was able to win a case in front of the Administrative Court in the canton of Schwyz. The Administrative Court of the Canton of Schwyz recognized that, contrary to the legal obligation (Art. 80 para. 4 FNIA), the circumstances of the detention remained unconsidered by the Coercive Measures Court. This would have been required, because our client was in a non-specialized detention facility (Cantonal Prison Schwyz SSB).
- **Decision [E-5250/2023](#)**: AsyLex achieved another success, where the FAC reprimanded the SEM's duty to maintain files, as the SEM claimed, after the transfer deadline had expired, that the person had previously absconded when it attempted to return them to Croatia. However, this alleged absconding was only subsequently documented in the files when the regular transfer deadline had already expired. The FAC upheld the AsyLex appeal and sent it back to the SEM for reconsideration.
- **Decision [FAC-Decision F-2067/2022 of July 3, 2023](#)**: Given the current situation in Afghanistan, the FAC established that Afghan nationals residing in Switzerland without documents cannot be compelled to return to Afghanistan to obtain a passport. It stated that while renewing existing documents remains possible, the issuance of new passports is currently unavailable. Therefore, the court has classified an applicant without valid documents as "undocumented" and directed the SEM to explore the prerequisites for issuing a travel document.

## 18. Other important developments in 2023

As seen in Q2, the SEM introduced a **change in practice for women and girls from Afghanistan on July 17, 2023**. Since the Taliban's rise to power, women and girls in Afghanistan have faced deteriorating conditions in various aspects of life, leading to severe restrictions on their fundamental and basic rights. Female asylum seekers from Afghanistan can be seen as victims of both discriminatory laws (as part of a specific social group) and religiously motivated persecution, warranting refugee status, provided that other relevant refugee law persecution motives are not applicable ([SEM Assessment of asylum applications from Afghan nationals](#)). The SEM assesses their cases individually. **Afghans with prior rejected asylum applications, temporary admission, or derivative refugee status can request the SEM to consider them for original refugee status and asylum due to the practice change.** Afghan applicants who haven't yet undergone the asylum process must follow the standard procedure at a Federal Asylum Centre ([SEM Asylum statistics September 2023](#)). (see: **Appendix 5: [AsyLex and Center for Human Rights Advocacy Submission for Afghanistan's Universal Periodic Review \(Fourth Cycle\), 2023](#)**).

Finally, the inability of Afghan nationals to acquire an Afghan passport, which has led to numerous difficulties such as applying for family reunification or a humanitarian visa was



recognized by the FAC, which determined that **nationals of Afghanistan residing in Switzerland without documents cannot be compelled to return to Afghanistan to obtain a passport**, as stated in [FAC-Decision F-2067/2022 of July 3, 2023](#). While renewing existing documents remains possible, the issuance of new passports is currently unavailable. The court, in response, classified an applicant without valid documents as "undocumented" and directed the SEM to explore the prerequisites for issuing a travel document.

## Part B: Publications

---

1. If available online, please provide links to relevant publications produced by your organisation in 2023

[https://www.acat.ch/\\_\\_/frontend/handler/document/42/2153/20230612\\_CAT\\_rapport%20alternatif\\_Plateforme%20ONG\\_FR.pdf](https://www.acat.ch/__/frontend/handler/document/42/2153/20230612_CAT_rapport%20alternatif_Plateforme%20ONG_FR.pdf)

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

Appendix 1: CAT Shadow Report

Appendix 2: Médecins du Monde confirms the suspension and resumption of activities

Appendix 3: "Incentive effects of the flat-rate compensation for legal representation in the asylum proceedings

Appendix 4: AsyLex Submission to the Special Rapporteur on torture, 2023

Appendix 5: AsyLex and Center for Human Rights Advocacy Submission for Afghanistan's Universal Periodic Review (Fourth Cycle), 2023

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 |                      |                |           |      |
| 4 |                      |                |           |      |
| 5 |                      |                |           |      |

## Contact details

---

Name of organisation: AsyLex



Name and title of contact person: Joëlle Spahni, Head AsyLex Global, Jana Walder, Co-Head International Cooperations AsyLex

Email: [international@asylex.ch](mailto:international@asylex.ch), [joelle.spahni@asylex.ch](mailto:joelle.spahni@asylex.ch)

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