DUBLIN II

national asylum procedure in Switzerland

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Swiss asylum procedure

Introduction

Switzerland is a small country in the center of Europe. It is not a member of the European Union (EU), but it is part of the Dublin system. The population is approximately 7.7 million people. The official languages are German, French, Italian and Rhaeto-Romanic.

Every foreigner has the right to apply for asylum in Switzerland, based on Swiss and international law. If you face persecution, torture or serious human rights violations in your home country, Swiss authorities cannot send you back there (Art. 5 Asylum Law, Art. 3 ECHR, Art. 33 Geneva Convention). You have to make plausible that you fear persecution in your home country. The authority responsible for assessing asylum applications is the Federal Office for Migration (BFM/ODM). It will register your asylum application, conduct the interview with you and decide whether or not to grant you asylum or subsidiary protection.

The cantonal authorities of the canton where you live are responsible for providing social aid, housing, schooling and work permits. If your asylum application is rejected and you have to leave Switzerland, the cantonal aliens' police is responsible for executing this decision. They will organize the journey back to your home country. In case you receive a negative decision, it is possible to make an appeal to the Federal Administrative Court. The decision of this court is final.

What are the different forms of protection in Switzerland?

Asylum
Refugees are normally granted asylum: Refugees are persons who in their country of origin or in the country in which they last lived, because of their race, religion, nationality, membership of a specific social group, or because of their political views are exposed to serious disadvantages or have justified fear of being exposed to such disadvantages. Regarded as serious disadvantages are in particular threat to life, limb or freedom, and measures which cause intolerable psychological pressure. Reasons for seeking refuge specific to women must be taken into account (Article 3 Asylum Law).

Temporary admission *(vorläufige Aufnahme / admission provisoire)*
Art. 44.2 Asylum Law, Art. 83 Aliens Law: If the deportation to your country of origin is not possible or unreasonable because of serious dangers, you will receive temporary acceptance. This is applicable for example in case of serious illness or a civil war situation. The permit can be withdrawn if the situation in your home country has improved.

Stateless persons can apply to the Federal Office for Migration for the recognition of their status as a stateless person. This is a separate procedure outside the asylum procedure. If the application is granted, you will receive a residence permit (B-Permit) in the canton of residence (Art. 31 Aliens Law).

Procedure for claiming asylum

1- Submission of the asylum application *(Art. 19 Asylum Law)*

You must submit your asylum application at the airport or in one of the reception and registration centers (*EVZ/CEP*) of the Federal Office for Migration (*BFM/ODM*) as soon as possible after arriving in Switzerland.
Those are situated at the borders in Basel, Chiasso, Vallorbe and Kreuzlingen:

— **Reception and registration center Basel**
Freiburgerstrasse 50
4057 Basel
Tel: 061 / 638 82 82

— **Reception and registration center Chiasso**
Centro di registrazione
Via 1° augosto
6830 Chiasso
Tel: 091 / 697 60 10

— **Reception and registration center Vallorbe**
Champs de la Croix 23
1337 Vallorbe
Tel: 021 / 843 98 98

— **Reception and registration center Kreuzlingen**
Döbelistrasse 13
8280 Kreuzlingen
Tel: 071 / 677 23 23

If you are in detention, you can ask for asylum there.

You can ask for asylum orally or in written form. You will have to fill out a form with your personal details. You also have to hand in your **identity and travelling documentation**.

Hand in any documents or pieces of evidence that you may have.

The officials at the reception and registration center will take your fingerprints and photograph.

2- How the application is considered

a) Procedures

— **Normal procedure**
You will first have a short interview about your identity and travel route. After this, you will have a second, longer interview about your reasons for seeking refuge in Switzerland.

— **Accelerated procedure**
You will be given only a short hearing concerning your identity and travel route if:

- you have deceived the authorities about your identity; or
- you violated your duty to cooperate with the authorities.

b) First interview on personal information and travel route

You will be interviewed by an official of the Federal Office for Migration. He or she will ask you questions about your identity and the identity of your family members, about your travel route and about the reasons for your escape. At this interview an official and if necessary a translator are present.

- It is important that you state all important reasons why you have left your country.
- Documents: Submit material which supports your case if you have any. Keep photocopies of all documents which you hand over.
- Tell the official if you have experienced something which you cannot speak about in the presence of a man or a woman.
- If you have not handed in your personal identification documents, explain the reasons.
- Tell the official if there is something you have not understood.

At the end of the interview, the interpreter will translate the written record back to you. You are required to sign this record. Check carefully whether your answers have been noted down correctly, and whether everything you have said has been written down.

c) Second, substantial interview on the reasons for seeking asylum *(Art. 29 Asylum Law)*

In the normal procedure, you will be interviewed again, this time with more questions regarding the reasons why you are seeking refuge in Switzerland. The authorities will assess your asylum application on the basis of the interviews and the records of all interviews. Family members are questioned individually. When an adult family member is questioned, the others must wait in another room. Normally, children will be questioned in the presence of their parents, unless there is a special situation.

Who takes part?

- An official of the Federal Office for Migration conducts the interview.
- A translator translates the questions and your answers. He/she is neutral and cannot ask you questions of his/her own or influence the decision on your application. The person can remain anonymous. You can be accompanied by a translator of your choice, but he must not himself be an asylum seeker.
- A neutral observer of a relief organization (a person belonging to a non-governmental organization) observes the procedure. This person is neutral. He/she can ask further questions and will submit a report of the interview to their relief organization (Art. 30 Asylum Law).
- You can arrange to be accompanied by an adult person of your choice (but not an asylum seeker), or by a legal representative whom you have mandated yourself.

What happens during the interview?

All the persons present are introduced to you. Then the official informs you about the proceeding and your rights and duties. After that he/she asks you brief questions about your personal situation: identity and documents which prove your identity; family and relatives; job; military service; travel route; previous stays abroad; legal representation.

After that you have the possibility to explain why you are seeking protection in Switzerland. You must outline all the reasons why you have fled and wish to be granted asylum. You can speak freely and without fear. All those present are subject to a strict duty of secrecy and may not pass on what you say to anyone. This part of the interview is very important.

- Your answer must set forth all the facts truthfully. Explain also the details.
- Speak about your emotions. Tell the official if you have experienced something which you cannot speak about in the presence of a man or a woman.
- If you have any documents which relate to your persecution, bring them to the interview. Keep photocopies of all the documents you hand in.

Maybe you will be asked questions to clarify a misunderstanding, or a contradiction or an issue that is not clear yet. The interview will be recorded and translated back to you. You will be asked to sign each page. Make a comment if there is something you have not understood. Make corrections if the record does not correspond exactly to what you wished to say. Make sure that errors are corrected and unclear points clarified.

d) Additional clarifications (Art. 41 Asylum Law)

In some cases the authorities need to undertake additional clarifications. These clarifications can be made after the first or second interview.

- If doubts exist about your origin, you can be questioned by a language expert and your knowledge of your country of origin is checked.
- If doubts exist about your age, you might have to take a medical exam (x-ray of the hand).

3- Rights of the asylum seeker

a) Legal aid

There are non-governmental organizations that provide free legal advice. Their legal advice offices are close to the reception centers:

- **Basel**

Opening hours: Mon, Tue, Thu, Fri 9-11h, Wed 14-16h

ESBAS, Freiburgerstrasse 66
4057 Basel
Tel. 061 631 30 58

- **Kreuzlingen**

Opening hours: Tue, Wed, Thu 10-12h, 14-16.30

RBS Thurgau
Bahnhofstr. 2
8280 Kreuzlingen
Tel. 071 622 42 41

- **Chiasso**

Opening hours: Mon, Wed, Fri 14-17h

SOS Antenna Profughi
Via Bossi 11
6830 Chiasso
Tel. 091 682 67 85

- **Vallorbe**

Opening hours : Mon, Tue, Thu, Fri 9.30-11h

SAJE Service d'Aide juridique aux Exilés
Place de la Gare
1337 Vallorbe
Tel. 021 843 21 25

It is possible that during your procedure you will be transferred to an accommodation center in one of the cantons. After a transfer, you will need to contact a legal advice office in the canton of residence. For the addresses see: http://www.fluechtlingshilfe.ch/aide/adresses-utiles

You can also contact a private lawyer, but this is very expensive, as free legal aid is rarely granted by the state during the asylum procedure.

b) Language

One of the official languages of Switzerland will be used during the procedure: German, French or Italian. For the interviews, you have the right to an interpreter who translates everything into a language that you can understand. For meetings with your legal advisor at the legal advice office, there is no interpreter present. It is best if somebody can accompany you and translate for you. Sometimes the legal advice offices can organize translation over the phone.

c) How long does it take on average to process an asylum application

According to the law, inadmissibility decisions should be taken within 10 days, negative decisions within 20 days or 3 months if additional clarifications are necessary. However, in practice it usually takes much longer to receive a decision. The length of the asylum procedure can vary widely. Most asylum seekers receive a decision within 6 months.

Rights of the asylum seekers

1- Issuance of a temporary stay permit

You are given an N-permit (*N-Ausweis/permis N*). With this permit you are allowed to stay in Switzerland for the duration of your asylum procedure. You are not allowed to leave Switzerland during the asylum procedure or to contact the consulate or the authorities of your country of origin.

2- Accommodation

During the asylum procedure (maybe only the first weeks) you are accommodated in the reception and registration center. It is possible that you will be transferred to a different accommodation center in one of the cantons after a while. A change of canton is usually only possible to unite a family.

3- Social aid

If you are unable to pay for your basic needs, you are entitled to social aid money for the duration of the asylum procedure. The amount of money you receive depends on the canton. The money is usually distributed once a week. Part of the social aid can also be given in kind (food, clothes etc.).

4- Access to medical care services

You are entitled to receive the necessary medical care. If you need medical assistance, talk to the responsible person at your reception center. They will arrange for you to see a doctor. The state pays for health insurance during the asylum procedure.

5- Issuance of a work permit

For the first three months of the asylum procedure, you are not allowed to work. If the Federal Office for Migration takes a negative decision during this time, the period during which you are not allowed to work can be extended for another three months. After that, the cantonal authorities can give you a work permit, but only in certain sectors. Swiss people and other foreigners have priority on the labor market. In order to receive a work permit, the employer who wants to give you a job has to make a request with the cantonal authorities. If you work, you have to pay the usual taxes plus an extraordinary tax of 10% of your income.

6- Education

All children living in Switzerland are entitled to free primary education, regardless of their status. Thus, children up to 16 years of age will attend school either in the reception center or in a regular public school. The cantonal authorities are responsible for matters concerning primary education.

7- Family reunion

During the asylum procedure, you have no right to have members of your family follow you from your home country.

8- Detention *(Art. 73-81 Aliens Law)*

You can be arrested if:

- your request for asylum is rejected with an inadmissibility decision
- you refused to cooperate with the authorities
- your asylum application is considered abusive
- you have committed a criminal offence
- there is definite evidence that you will refuse to comply with being returned to your home country.

Outcomes and consequences

The asylum procedure has various possible outcomes:

1- The asylum status is granted

a) Asylum *(B-Permit, B-Ausweis, permis B)* *Art. 49 Asylum Law*

Someone who is granted asylum is given a B-Permit (residence permit) and a travel document for refugees. He/she can arrange for a husband or wife and children under the age of 18 to follow them to Switzerland. After a stay of five years, refugees are entitled to a C-Permit (permanent residence permit).

b) Temporary Admission *(F-Permit, F-Ausweis, permis F)* *Art. 44.2 Asylum Law, Art. 83 Aliens Law*

You can remain here with an F-Permit if the deportation to your country of origin is unlawful, impossible or unreasonable because of serious dangers. This is for example applicable in the case of serious illness or a civil war situation. The F-Permit is given for one year and can be prolonged. It can be withdrawn at any time if the situation in your home country improves. After a stay for five years, you can make a request for a B-Permit. This request will be examined according to your integration in Switzerland. However, the authorities are not obliged to give you the B-Permit.

2- The asylum application is rejected

a) Negative decision *Art. 44.1 Asylum Law*

Your application is rejected and you will have to leave Switzerland within a fixed date. Such a decision is taken if according of the authorities you are not in need of protection because your reasons for the flight are judged to be not sufficient or if you could not substantiate or prove them.

b) Inadmissibility decision *Art. 32-36, Art. 44.1 Asylum Law*

Your application is rejected based on formal grounds. This means that your reasons for fleeing your country will not be examined in detail. You must leave Switzerland immediately. This is possible if:

- You have concealed your true identity (false statement of your name, date of birth etc);
- You are in breach of your duty to cooperate with the Swiss authorities (e.g. if you do not appear for the interview);
- You have no identity papers, could not obtain any within 48 hours, and have no convincing excuse for this and your reasons for seeking refuge seem completely implausible to the authorities;
- You come from a state considered safe by the Swiss government and your reasons for seeking refuge seem completely implausible to the authorities;

CAUTION: If you do not appeal against an inadmissibility decision you can be returned immediately. Depending on the reason of the rejection, the Foreigners Police can detain you immediately after you received the decision!
If you register an appeal to the Federal Administrative Court, you are normally allowed to remain in Switzerland until a decision has been taken. However, this is not the case with Dublin decisions.

c) Appeal *Art. 105-108 Asylum Law*

If you do not agree with the decision of the Federal Office for Migration, you may submit a written appeal to the Federal Administrative Court:
Bundesverwaltungsgericht
Postfach
CH-3000 Bern 14
Phone: +41 (0)58 705 26 26
Fax: +41 (0) 58 705 29 80

— **Negative decision:** you have to hand in the appeal within 30 days.
— **Inadmissibility decision:** you have to hand in the appeal within 5 working days.

At the end of the decision you received, you find the deadline which applies to your case (*Rechtsmittelbelehrung / Voie de droit*). It is very important that you hand in your appeal within this deadline!

The appeal has to be written in German, French or Italian. You have to sign it and send two copies of it, along with a copy of the decision of the Federal Office for Migration, **by registered mail** to the Federal Administrative Court (*Bundesverwaltungsgericht)*. In the appeal, you should say clearly what the goal of the appeal is (asylum or temporary acceptance). You have to give reasons why you do not agree with the decision of the Federal Office for Migration and why you need protection in Switzerland. If possible, add any pieces of evidence that you may have.

The legal advice offices can assist you in writing the appeal. Legal advice offices close to the reception and registration centers:

— **Basel**
ESBAS
Opening hours: Mon, Tue, Thu, Fri 9-11h, Wed 14-16h

Freiburgerstrasse 66
4057 Basel
Tel. 061 631 30 58

— **Kreuzlingen**
RBS Thurgau
Opening hours: Tue, Wed, Thu 10-12h, 14-16.30

Bahnhofstr. 2
8280 Kreuzlingen
Tel. 071 622 42 41

— **Chiasso**
SOS Antenna Profughi
Opening hours: Mon, Wed, Fri 14-17h

Via Bossi 11
6830 Chiasso
Tel. 091 682 67 85

— **Vallorbe**
SAJE Service d'Aide juridique aux Exilés
Opening hours: Mon, Tue, Thu, Fri 9.30-11h

Place de la Gare
1337 Vallorbe
Tel. 021 843 21 25

Addresses of the legal advice offices in the different cantons:
http://www.fluechtlingshilfe.ch/aide/adresses-utiles

Guidelines on how to write an appeal:
http://www.fluechtlingshilfe.ch/aide/fiches-d-information/english-anglais/important-information-concerning-the-refugee-asylum-practice?set_language=fr

The appeal procedure can take a long time, several months or even years. At the end of the appeal procedure the Federal Administrative Court can take 3 different decisions:

- Reject your appeal. In this case, you have to leave Switzerland.
- Accept your appeal and return the case to the Federal Office for Migration. In this case, you will receive a new decision from the Federal Office for Migration. You can make another appeal against this new decision if you are still not satisfied with it.
- Accept your appeal and grant you asylum or temporary acceptance.

The decision of The Federal Administrative Court is final. It is not possible to appeal to the Federal Court. A motion for reconsideration is rarely possible. Please ask for legal help at one of the legal advice office (see the addresses above).

d) Return

If your asylum application was rejected, you are expected to leave Switzerland voluntarily. The Federal Office for Migration offers return assistance.
For more information see:
http://www.bfm.admin.ch/bfm/en/home/themen/rueckkehr/rueckkehrfoerderung.html

If you do not leave Switzerland voluntarily, the cantonal migration authorities can extradite you by force. It is also possible to arrest and detain you for this purpose.

Special provisions for unaccompanied minors and vulnerable persons

Unaccompanied minors *(Art. 17.3 Asylum Law)*
If you are an unaccompanied minor, and the Federal Office for Migration does not have any doubts about that, a person of trust will be appointed to defend your rights and interests during the asylum procedure. This person must have some basic legal knowledge about the asylum procedure, but he/she is not a lawyer. The person of trust should attend your interviews with you. You can contact this person if you have any questions or problems during your procedure.

Vulnerable persons
If you have any physical or psychological problems and you need assistance, talk to the responsible person at your reception center. They will arrange for you to see a doctor.

Implementation of the Dublin regulation

The Dublin regulation determines which European country is responsible for treating your asylum application. According to the Dublin regulation, the country where you made your first asylum application, or where you first entered or stayed illegally, or the country which gave you a visa is responsible for dealing with your application. If your husband, wife or child is recognized as a refugee or is in a pending asylum procedure in a certain European country, that country is responsible for your asylum procedure. If you are an unaccompanied minor, the European country where your parent is staying is responsible for your procedure. Upon arrival in a European country, your fingerprints are taken and registered in a database called Eurodac. With this database, the authorities in the different Dublin member states can compare your fingerprints and find out if you have been registered in another country before.

1- Situation n°1: Out-procedure
When the asylum seeker falls within the scope of the Dublin regulation while he/she has lodged his/her asylum application in Switzerland

a) Which procedure is applied?

The Dublin procedure in Switzerland is an inadmissibility procedure. You will only receive a short interview about your identity, travel route and the possibility that you may be sent to another European state. The Swiss authorities will ask the authorities of the responsible Dublin member state to take you back. If those authorities agree or do not answer within a certain time, the Swiss authorities will give you an inadmissibility decision based on Art. 34.2 d Asylum Law and send you back to that country.

b) Which are the competent authorities?

The Federal Office for Migration is responsible for the Dublin procedure. The cantonal migration authorities are responsible for carrying out the decision to send you back to the responsible European country.

c) May the asylum seeker be detained during the decision-making process?

The authorities may detain you only

- for the purpose of disclosing the inadmissibility decision to you; or
- if you received the inadmissibility decision at a reception center and the extradition to the responsible European country is foreseeable.

In practice, asylum seekers are sometimes detained just before or after receiving a Dublin-inadmissibility decision.

d) Does your national legislation allow for suspending the implementation of the decision in an individual case? If yes, is it implemented in practice?

Yes, according to the Swiss Law on Asylum, you can ask the court to grant the appeal suspensive effect if there are well-founded indications for a violation of the European Convention on Human Rights by the responsible European country. At the same time, you should ask the court to stop the implementation of the decision until a decision on the granting of suspensive effect is reached. This is implemented frequently in practice, especially when the responsible Dublin state is Greece or in the case of vulnerable persons.

Until February 2010, there has been the problem that the asylum seekers were usually detained and transferred to the responsible European country immediately after receiving the decision from the Federal Office for Migration. So it was often difficult to contact a legal advice office, hand in an appeal and get a decision from the court granting suspensive effect in time.

Since the leading case decision of the Federal Administrative Tribunal of 2 February 2010, there is a new practice: the authorities now wait for 10 days before executing the transfer (5 days for the

asylum seeker to lodge an appeal and another 5 days for the court to decide on the suspensive effect). So there is now sufficient time to make an appeal and ask for suspensive effect.

e) May a vulnerable person or a person affected by a psychological or a physical disease be transferred? Are there any protective provisions in your legislation?

A person is not transferred if it is not reasonable for him/her to go to the country in question (Art. 44.2 Asylum Law and Art. 83 Aliens Law). So it depends on the individual case and the situation in the responsible country if the asylum seeker is transferred. In practice at the moment no vulnerable persons (families with small children, old and sick people) are transferred to Greece because of the insufficient reception conditions there.

2- Situation n°2: in-procedure
When the asylum seeker is transferred to Switzerland (responsible state for examining the asylum application):

You will be sent to Switzerland if Switzerland is considered responsible for your asylum procedure.

You will arrive by airplane at Zurich-Kloten or by country way at the Swiss border. There, you will be received by an official of the airport police or the aliens' police. The official will tell you where to go and will give you a train ticket.

a) Take charge

If you have never been in an asylum procedure in Switzerland before, the official will send you to one of the reception and registration centers of the Federal Office for Migration. You have to make your asylum application there. You are accommodated there, and you can contact a legal advice office close to your reception center. You also have the right to social and medical assistance, just like every other asylum seeker. You will receive a normal asylum procedure in Switzerland with the Federal Office for Migration as the responsible authority.

b) Take back

If you have previously been in an asylum procedure in Switzerland and you have already been assigned to one of the cantons, you are sent to a reception center in that canton. You are accommodated there, and you can contact a legal advice office situated in your canton. If you have previously been in an asylum procedure in Switzerland but have not been assigned to a canton yet, you are sent to one of the reception and registration centers. You are accommodated there, and you can contact a legal advice office close to your reception center. You have the right to social and medical assistance, just like every other asylum seeker. Your asylum procedure will continue automatically with the Federal Office for Migration as the responsible authority.

If a person needs immediate **medical assistance** after arrival in Switzerland, the authorities of the other Dublin member state should normally inform the Swiss authorities. The Swiss authorities do not systematically order the asylum seeker's file from the other Dublin member state. Tell the responsible person at your reception center if you need medical assistance.

Contact information

1- Partner organization activities and contact details

Swiss Refugee Council OSAR

Weyermannsstrasse 10
3001 Bern
🌍 www.osar.ch
☏ +41 31 370 75 75
@ info@osar.ch

Activities:
OSAR advocates the compliance of Switzerland with the right of refugees to protection against persecution according to the 1951 Geneva Convention. As an umbrella organization, OSAR coordinates the monitoring of asylum hearings through neutral representatives of NGOs. It is also provides support to the various NGOs who provide legal support to asylum seekers in the different cantons. Twice a week, OSAR also provides advice over the phone concerning asylum and foreigners' law.

2- Support organizations for asylum seekers

NGOs providing legal advice close to the reception centers:

— **Basel**
ESBAS
Opening hours: Mon, Tue, Thu, Fri 9-11h, Wed 14-16h

Freiburgerstrasse 66
4057 Basel
☏ +41 61 631 30 58

— **Kreuzlingen**
RBS Thurgau
Opening hours: Tue, Wed, Thu 10-12h, 14-16.30

Bahnhofstr. 2
8280 Kreuzlingen
☏ +41 71 622 42 41

— **Chiasso**
SOS Antenna Profughi
Opening hours: Mon, Wed, Fri 14-17h

Via Bossi 11
6830 Chiasso
☏ +41 91 682 67 85

— **Vallorbe**
SAJE Service d'Aide juridique aux Exilés
Opening hours: Mon, Tue, Thu, Fri 9.30-11h

Place de la Gare
1337 Vallorbe
☏ +41 21 843 21 25

List of NGOs providing legal advice in the different cantons:
http://www.fluechtlingshilfe.ch/hilfe/nuetzliche-adressen/rechtsberatungsstellen-fuer-asylsuchende

3- Administrations

Federal Office for Migration
(*Bundesamt für Migration, BFM, Office Fédéral des migrations, ODM*)

Quellenweg 6
3003 Bern-Wabern
🌍 www.bfm.admin.ch
☏ +41 31 325 11 11

Activities:
The Federal Office for Migration is the responsible authority for conducting the asylum procedure in the first instance, i.e. registering asylum applications, conducting asylum hearings, making further inquiries and taking the decision on the asylum application. It also offers return assistance programs for asylum seekers whose claim was rejected and who have to return to their home country.

Federal Administrative Tribunal
(*Bundesverwaltungsgericht, Tribunal Administratif Fédéral*)

Postfach
CH-3000 Bern 14
🌍 www.bvger.ch
☏ +41 58 705 26 26
🖷 +41 58 705 29 80
@ info@bvger.admin.ch

Activities:
The Federal Administrative Tribunal is the court responsible for deciding on appeals against asylum decisions by the Federal Office for Migration. The court's decision is final.

Cantonal authorities
They are responsible for providing social aid, housing, schooling and work permits. They are also responsible for executing the asylum decisions made by the Federal Office for Migration, i.e. for organizing the return of rejected asylum seekers to their home country if they refuse to do so voluntarily.
For a list of the asylum coordinators in each canton, see:
http://www.bfm.admin.ch/etc/medialib/data/migration/asyl_schutz_vor_verfolgung.Par.0001.File.tmp/h101-0390_adr-asylkoordinatoren-df.pdf