

SWITZERLAND

Switzerland is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights, and its Second, but not First, Optional Protocol. During 2000, 17,611 people applied for asylum; at the end of the year, first-time decisions were outstanding on 15,137 applications.¹ 20,633 asylum applications were lodged in 2001; at the end of the year, first-time decisions were outstanding on 14,603 applications.² In the first quarter of 2002, 5,612 applications were filed.³ No information was available on the number of asylum seekers detained.

Asylum seekers may be detained at the airport for up to 22 days while awaiting a decision on granting entry or expulsion to the home or a third country by the Swiss Federal Office for Refugees. During this period, asylum seekers must stay in the airport transit zone, where accommodation, food and emergency health care are available. If no decision is taken in this period, asylum seekers must be granted entry.⁴ Several asylum seekers have claimed that they were not provided the opportunity by authorities at the airport to file their asylum claims in 2001.⁵

¹ U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2001 at 260, *available at* <http://preview.refuges.org/world/worldmain.htm> (Immigration and Refugee Services of America 2001) [hereinafter USCR WORLD REFUGEE SURVEY 2001].

² *Id.*, at 202.

³ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, ASYLUM TRENDS IN 28 INDUSTRIAL COUNTRIES: JANUARY TO MARCH 2001—JANUARY TO MARCH 2002, *available at* <http://www.unhcr.ch/cgi-bin/taxis/vtx/home/+2wwBmelFXx8wwwwwwwwwhFqAIRERfIRfgItFqA5BwBo5Boq5AFqAIRERfIRfgIcFqF+8afDm15BGowcoSnmagd1DBGon5Dzmxwwwwww/opendoc.pdf> (June 13, 2002) (last accessed Aug. 29, 2002) [hereinafter *Asylum Trends in 28 Industrialized Countries*].

⁴ DANISH REFUGEE COUNCIL, LEGAL AND SOCIAL CONDITIONS FOR ASYLUM SEEKERS AND REFUGEES IN WESTERN EUROPEAN COUNTRIES at 294, *available at* <http://www.english.drc.dk/publications/> (May 2000) [hereinafter DRC W. EUR. REPORT 2000]; USCR WORLD REFUGEE SURVEY 2002, *supra* note 5, at 203; E-mail from Jürg Schertenleib, Organisation Suisse d'Aide aux Réfugiés, to Emily O'Connor, Debevoise & Plimpton (Sept. 10, 2001, 08:46 EST) (on file with Debevoise & Plimpton) [hereinafter OSAR Correspondence (Sept. 10, 2001)]; E-mail from Jürg Schertenleib, Organisation Suisse d'Aide aux Réfugiés, to Emily O'Connor, Debevoise & Plimpton (Nov. 30, 2001, 06:38 EST) (on file with Debevoise & Plimpton) [hereinafter OSAR Correspondence (Nov. 30, 2001)].

⁵ OSAR Correspondence (Sept. 10, 2001), *supra* note 4; U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2002 at 203, *available at*

If a negative decision is taken within the 15 days, asylum seekers may be detained in the airport transit zone awaiting the next regularly scheduled flight for up to another 7 days. Asylum seekers may ask for the restitution of suspensive effect with an appeal within 24 hours of notification of the decision; during that initial 24-hour period, and until a decision on the request for restitution of suspensive effect is taken, expulsion may not be carried out. Asylum seekers may be detained for another 3 days if they have introduced a petition on restitution of suspensive effect. Consequently, the total initial period of an asylum seeker's detention may be 25 days: 15 days awaiting the initial decision, 3 days during the procedure on restitution of suspensive effect and 7 days awaiting a flight connection.⁶

In-country admissibility procedures, which are often processed in the reception centers, may apply in the following situations: failure of an asylum seeker to establish identity or nationality; unwillingness to cooperate with authorities; presentation of a false identity; filing an asylum claim in the context of a criminal proceeding; arrival from a "safe third country" or "safe" country of origin; or having been subject to a prior order of removal from Switzerland.⁷

Pursuant to the in-country admissibility procedure, asylum seekers may be detained for 72 hours if immediate removal is ordered contemporaneously with notification of a negative decision. Asylum seekers in this instance have 24 hours to request restitution of suspensive effect and may be expelled subsequently if they do not ask for the restitution or if the restitution is rejected.⁸

Asylum seekers awaiting a first instance decision under any procedure may be held in preparatory detention for a maximum of 3 months if they have: refused to reveal their real identity or applied for asylum using different identities; repeatedly and without cause missed asylum interviews; left an assigned area or entered a restricted area; applied for asylum only after a decision to expel or a sentence for a criminal conviction; or been prosecuted for crimes such as threat to life or freedom.⁹

<http://www.refugees.org/WRS2002>. (Immigration and Refugee Services of America 2002) [hereinafter USCR WORLD REFUGEE SURVEY 2002].

⁶ OSAR Correspondence (Nov. 30, 2001), *supra* note 4.

⁷ E-mail from Jürg Schertenleib, Organisation Suisse d'Aide aux Réfugiés, to Emily O'Connor, Debevoise & Plimpton (Feb. 20, 2002) (on file with Debevoise & Plimpton) [hereinafter OSAR Correspondence (Feb. 20, 2002)].

⁸ OSAR Correspondence (Nov. 30, 2001), *supra* note 4, OSAR Correspondence (Feb. 20, 2002), *supra* note 7.

⁹ OSAR Correspondence (Nov. 30, 2001), *supra* note 4; OSAR Correspondence (Feb. 20, 2002), *supra* note 7; USCR WORLD REFUGEE SURVEY 2002, *supra* note 5, at 203.

Asylum seekers whose claims have been denied may be detained for up to nine months¹⁰ if a ground for detention is given. The possible grounds for such detention are the same as those for preparatory detention, including a concrete indication that a person is willing to abscond to avoid expulsion. Detention can be ordered for up to an initial 3 months, and renewed for another 6 months if special conditions prevent the expulsion.¹¹ Such detention may also apply after an airport procedure.¹²

NGOs have alleged that in 2001, asylum seekers were subject to arbitrary arrest and detention on unsubstantiated charges. Many administrative detention decisions were reportedly overturned by the federal court during 2001.¹³

NGOs have also criticized detention conditions and procedures. In September, a rejected Algerian asylum seeker, confined for two months in a detention center, hanged himself in his cell on the day of his scheduled deportation.¹⁴

Asylum seekers are referred initially to reception centers and then dispersed among individual Cantons, where they are typically housed in collective centers. Cooking facilities are often available and families are sometimes housed separately. Asylum seekers are entitled to medical care, arrangements for which vary among Cantons. Where asylum seekers can be provided for financially by friends or family, they may stay elsewhere than the state-run centers.¹⁵ Asylum seekers may be directed to remain in a specified area, or not to enter specified areas if they have been disturbing public order.¹⁶

Is there independent review of the detention decision? Yes.

There is automatic judicial review of initial detention and detention pending expulsion after 96 hours, with appeal of the review decision possible. Asylum seekers can ask for judicial review of the initial 15-day detention at the airport. No judicial review is available for the additional 7 to 10 days when asylum seekers may be detained in the transit zone after a first instance airport decision. In addition, no judicial review is

¹⁰ DRC W. EUR. REPORT 2000; OSAR Correspondence (Feb. 20, 2002), *supra* note 7.

¹¹ OSAR Correspondence (Nov. 30, 2001), *supra* note 4.

¹² OSAR Correspondence (Feb. 20, 2002), *supra* note 7.

¹³ USCR WORLD REFUGEE SURVEY 2002, *supra* note 5, at 203.

¹⁴ *Id.*

¹⁵ DRC W. EUROPEAN REPORT 2000, *supra* note 4, at 297.

¹⁶ OSAR Correspondence (Feb. 20, 2002), *supra* note 7.

contemplated for the detention of up to 72 hours pending decision on restitution of the suspensive effect.¹⁷

Detained asylum seekers may submit petitions for release to the local judicial authority in the Canton where they are detained one month after the initial review of detention. Where continued detention is ordered, asylum seekers in preparatory detention may file subsequent petitions for release every month thereafter. Many administrative detention decisions to detain asylum seekers were reportedly overturned by the federal court during 2001.¹⁸

Are there limits on the period of detention? Yes; 72 hours to nine months.

The limit for detention while awaiting a decision on a request for restitution of a suspensive effect is 72 hours. Asylum applicants at the airport may be held for a maximum of 25 days: 15 days for the initial decision, 3 days awaiting the decision on an appeal and 7 days awaiting the next flight connection. The limit for preparatory detention is 3 months and for detention pending expulsion is 9 months.¹⁹

Is there periodic review of detention? Yes; every month.

Detained asylum seekers may submit a petition for release to the local judicial authority in the Canton where they are detained one month after the initial review of detention. Appeal may be taken of the decision on the petition. Where continued detention is ordered, asylum seekers in preparatory detention may file subsequent petitions for release every month thereafter, and those awaiting expulsion may file such petitions every two months.²⁰

Is there access to government-funded legal aid? Limited.

Indigent asylum seekers generally have access to the state-funded legal aid system during the asylum procedure only if their cases involve complex legal issues or have a high chance of success on appeal. Under these restrictions, asylum seekers are rarely granted state-funded attorneys, according to a 2000 report.²¹ Pursuant to a High Court decision,

¹⁷ *Id.*; OSAR Correspondence (Sept. 10, 2001), *supra* note 4; OSAR Correspondence (Nov. 30, 2001), *supra* note 4.

¹⁸ USCR WORLD REFUGEE SURVEY 2002, *supra* note 5, at 203.

¹⁹ DRC W. EUROPEAN REPORT 2000, *supra* note 4, at 294, OSAR Correspondence (Nov. 30, 2001), *supra* note 4; OSAR Correspondence (Feb. 20, 2002), *supra* note 7.

²⁰ OSAR Correspondence (Sept. 10, 2001), *supra* note 4.

²¹ DRC W. EUROPEAN REPORT 2000, *supra* note 4, at 293.

legal aid must be granted to detainees awaiting deportation upon request three months into the extension of detention proceedings.²²

Vulnerable groups: A “person of confidence” must be nominated to accompany unaccompanied minors at their interviews. It is a controversial question whether such persons must have legal knowledge and provide legal defense for the minors.²³

²² EUROPEAN COUNCIL ON REFUGEES AND EXILES, STUDY ON THE AVAILABILITY OF FREE AND LOW-COST LEGAL ASSISTANCE FOR ASYLUM SEEKERS IN EUROPEAN STATES at 293, *available at* <http://www.ecre.org/research/legalassistance/index.shtml> (November 2001) [hereinafter ECRE EUR. STUDY 2001].

²³ OSAR Correspondence (Nov. 30, 2001), *supra* note 4.