



Input by civil society to the EASO Annual Report 2017

EASO has started the production of the 2017 Annual Report on the Situation of Asylum in the European Union, in line with Article 12 (1) of the EASO Regulation. The report aims to provide a comprehensive overview of important asylum-related developments at EU+ and national level, and the functioning of all key aspects of the Common European Asylum System (CEAS). While the final product comes out of an analytical and synthetic process that takes place in-house, a critical part of information is elicited through valuable contributions by a multiplicity of stakeholders from EU+ countries, civil society organizations, UNHCR, and other actors possessing in-depth knowledge on main developments in asylum policies and practices in EU+ countries. Previous reports are [available for review at EASO's website](#).

We would like to kindly invite you to take part in this process, by sharing your observations **on developments in asylum law, policy or practice in 2017 (and early 2018) in the areas listed on page 2**. The topics listed there reflect the structure of Chapter 4 of the EASO report, which focuses on the 'Functioning of the CEAS'. To this end, your observations may concern national practices of specific EU+ countries or the EU as a whole. Overall, the EASO Annual Report is not meant to describe the national asylum systems in detail, but present key developments in 2017, including **improvements and new/remaining concerns**. In terms of format, your contributions would be preferably offered in the form of bullet points, which would facilitate further processing of your input.

Please, bear in mind that the EASO Annual Report is a public document. Accordingly, it would be desirable that your contributions, whenever possible, be supported by references to relevant sources. Providing links to materials such as analytical studies, articles, reports, websites, press releases, position papers/statements, and press releases, would allow for maintaining transparency. For your reference, you may review the [contributions offered by civil society actors for the 2016 Annual Report](#). If you do not consent on EASO making your submission available, please inform us accordingly.

In our effort to provide an inclusive overview of all relevant developments, we strive to incorporate as many contributions as possible. At the same time, the final content of the EASO Annual Report is subject to its set terms of reference and volume limitations. To this end, your submissions, which are gratefully received and acknowledged, may be edited for length and clarity so that the final product concisely serves the objectives of the Annual Report: to improve the quality, consistency, and effectiveness of CEAS. From our side, we can assure you that the valuable insights you offer feed into EASO's work in multiple ways and inform reports and analyses beyond the production of the Annual Report.

Please, kindly provide your input by filling in this document (with attachments, if needed) and returning it to ids@easo.europa.eu **AND** consultative-forum@easo.europa.eu **by 16 February 2018**.

Within each area, please highlight the following **type of information**:

- NEW positive developments; improvements and NEW or remaining matters of concern;
- Changes in policies or practices; transposition of legislation; institutional changes; relevant national jurisprudence.

You are kindly requested to make sure that your input falls within each section's scope. Please, refrain from including information that goes beyond the thematic focus of each section or is not related to recent developments. Feel free to use Section 16 to share information on developments you consider important that may have not been covered in previous sections.

Name of the contributing stakeholder: AsyLex
[Contact details]

1) Access to territory and access to asylum procedure

- Problems at the Italian border identified, see e.g. report by Amnesty International at <https://www.amnesty.ch/fr/sur-amnesty/publications/rapport-amnesty/annee/2016/le-rapport-sur-la-suisse>, for an English summary see, e.g., <https://www.thelocal.ch/20170223/amnesty-slams-switzerlands-illegal-treatment-of-migrants-at-italian-border>.
- As a consequence, **people seeking asylum in Switzerland were returned to Italy without having the opportunity for their asylum request being assessed in Switzerland**. This also happened to underage asylum seekers. (see, e.g., <https://www.thelocal.ch/20160811/amnesty-concerned-over-child-migrants-at-swiss-italian-border>)

2) Access to information and legal assistance

- Free legal assistance at first instance is only provided in so called “test centers”. **As of 2019, it is foreseen that legal advice is provided by the government as of the beginning of the procedure for every asylum seeker**. It is unclear today how the resources necessary for this will be provided within such a short time at the quality and quantity needed.
- Asylum seekers (except for those in test centers) are not (systematically) provided with any information about the asylum procedure.
- **In particular in case of Dublin decision, no information about free legal aid is provided**, since the information sheet listing free legal aid centers is handed out at the second interview only (and Dublin cases do only have a first interview but no second interview).
- Free legal aid centers are overwhelmed with work and can, therefore, only take the “good” cases.
- People pretending to be lawyers use the helplessness of asylum seekers with a negative decision by offering their help at horrendous rates. Since there is no requirement to be a registered lawyer to represent clients in asylum law, there are hardly any legal remedies against such behavior.
- In general, there is not enough free legal aid available, be it preventive (i.e. preparation for the interviews) or reactive (i.e. appeals).

3) Providing interpretation services

- Interpretation at interviews conducted by the authorities is regularly subject of criticism, see e.g. <https://www.nzz.ch/schweiz/mangel-an-uebersetzungspersonal-die-grosse-macht-der-asyl-dolmetscher-ld.146734> (in German).
- We regularly hear from our clients that **translators were e.g. very religious and therefore did not even want to translate certain issues (such as homosexuality, atheism) or were close to the government of the home country** and therefore blamed the asylum seeker for any statements against the home country government.
- Obviously, the translation of questions around reasons for fleeing a country is very delicate and the vocabulary is very specific (e.g., in Tigrinya there is no literal translation of the word “torture”). It is crucial that more consideration is given to these problems and more focus is put on proper education of translators.
- We suggest solving this problem by having two translators per interview, one which translates during the interview and another one who translates for the proofreading of the transcript.
- The problem becomes worse due to the fact that the interview is not always held in the language of the canton the asylum seeker is allocated to. By way of example, if the asylum seeker is in a French speaking area and therefore he already learned some French in the ~ 2 years waiting for his or her second interview, s/he would be able to check the translation. But if the interview is then conducted in German or Italian, no such possibility for double-checks is given. We therefore suggest, that interviews are held in the language of the canton, to which the asylum seeker is allocated.
- **Translation services are particularly critical in hospitals or for psychological treatments.** Oftentimes, their services are not covered by the health insurance. In particular for psychological treatments, translation is absolutely crucial though.

4) Dublin procedure

- **Switzerland is overly strict with Dublin returns.** The humanitarian clause is invoked in very rare cases only (see, e.g. <https://www.dublin-appell.ch/de/>).
- In certain cantons, **Dublin decisions are only handed out at the time of deportation.** This fully prevents access to justice and stands in contradiction to the Dublin regulation.
- Returns to Italy are still taking place on a regular basis, even though it is public knowledge that the living conditions for asylum seekers in Italy are inhumane.
- **Legal remedies against Dublin returns are hard to take since (i) no information is provided about free legal aid centers** and (ii) an appeal has to be filed within 5 working days. In practice, therefore, even if a Dublin decision is not in line with the legal provisions, it is close to impossible to take legal action (see comment on access to legal aid above).
- **In the beginning of 2018, the Federal Administrative Court followed the Court of Justice of the European Union and declared that an asylum seeker can challenge the incorrect application of responsibility criteria under Dublin III before court.** We consider this to be a positive development. https://www.bvqer.ch/dam/bvqer/en/dokumente/2018/01/E-1998-2016%20Dublin-III-Verordnung%20St%C3%A4rkerer%20Rechtsschutz%20f%C3%BCr%20Asylsuchende.pdf.download.pdf/MM_E-1998-2016_En_ohne-Embargo.pdf

5) Specific procedures (border, accelerated, admissibility)

- For border procedure, see comments on 1).
- From the standpoint of a legal representative, the short deadlines for appeal in case of admissibility and accelerated procedures are very critical (5 working days).

6) Reception of applicants for international protection

- *The current regimes in reception centers are insufficient and against human dignity regarding various aspects:*
 - (i) *The **confiscation of the personal mobile phone** during the first few days prevents asylum seekers from contacting their friends and family and tell them about their safe arrival, to help with translation and to help to orient themselves. It is unclear what the upside of such a measure should be.*
 - (ii) *The **confiscation of assets** at time of entry is unnecessary and disrespectful. The argument, that the assets are an upfront payment for the social money to be received, is rather confusing, since exactly those people who have assets are not (to that extent) dependent on social support.*
 - (iii) ***Daily structure (language classes, work) is insufficient.***
 - (iv) *There is a lack of information about the procedure and legal aid (see above).*
 - (v) ***Camp rules are often not respecting basic human rights**, e.g. prohibition to bring food inside, hours at which asylum seekers have to be present that amount to detention like environments.*
 - (vi) *There is a **lack of medical and psychological support**. Especially people with trauma are for the most part left without any treatment for months or even years.*
- *We are critical towards the current system of allocating asylum seekers to cantons without considering their family / friend ties, language and other skills, etc.*

7) Detention of applicants for international protection

- *For detention like regimes in reception camps, see above at 6)*
- *There is **no actual free legal aid for people in detention** (except for some organizations which provide legal assistance, but no legally guaranteed access); access to legal aid is, therefore, oftentimes close to impossible.*
- *In general, we strongly disagree with the detention practices where families are separated, mentally ill people are detained for months without any adequate treatment and detention can take up to 18 months even though the detainee has never done any criminal act (except for crossing the Swiss border without visa and / or, possibly, not leaving upon being asked to do so).*
- *Even though administrative detention for rejected asylum seekers is supposed to be separated from criminal detention, in many places there is no such separation.*
- *We are particularly skeptical towards detention of minor asylum seekers.*

8) Procedures at First instance

- **We strongly criticize the extremely long duration of first instance procedures** (i.e. procedures before the State Secretariat for Migration, SEM) in recent times. Currently, hardly any decision is taken within two years upon arrival.
- Especially due to the fact that working is not permitted, social support is very limited, housing is often times in remote camps, access to health services is limited and no claim for free language courses is given, **such a waiting period** is way too long. Moreover, it **prevents (social and economic) integration and it is detrimental for people with special needs, such as traumatized asylum seekers.**
- First instance interviews are generally conducted in a good atmosphere and the interviewers are well prepared. However, we also experience very difficult situations: (i) not accurate translation (see issues mentioned above); (ii) **interviewers** not showing any interest or understanding and **being very harsh with traumatized asylum seekers**; (iii) **time pressure** not allowing for a proper conduct of the interview, e.g. no breaks, interrupting the interviewee; (iv) **non-verbal communication**, such as gestures, facial expressions but also intonation are **not being documented** and therefore are not being considered in the decision-making process. But exactly this documentation would be important for both sides, the interviewee and the interviewers, as it gives a more detailed insight of the whole interview and shows potential animosity towards the interviewee.
- For issues regarding legal aid, see above.
- Further, we consider it as critical if the interview is not conducted in the language which the asylum seeker is about to learn. Like this, the asylum seeker has no chance to detect mistakes in the translation (see comment above).

9) Procedures at Second Instance

- We would welcome a more liberal approach towards access to free legal aid which allows more asylum seekers with negative decisions to appeal the decision in an effective manner.

10) Availability and use of Country of Origin Information

- The documentation provided by EASO in this regard is helpful for our work as a legal aid NGO. However, for certain countries or regions it is difficult to get the information required. Moreover, sometimes certain reports seem to have a certain political background which renders them less helpful.

11) Vulnerable applicants

- Especially **traumatized asylum seekers do not receive the treatment necessary**, see, e.g., <https://www.thelocal.ch/20180108/refugees-in-switzerland-lack-the-psychological-care-they-need>.
- **Similar problems appear with regard to female asylum seekers**, especially if they are victim of **domestic violence**. The current structures in Switzerland are not able to deal with such cases (lack of funding, lack of translators, etc.) and due to language barriers women concerned are not even able to reach existing support programs (if any).
- One of our main concerns is the inappropriate **handling of cases of unaccompanied (potentially) minor asylum seekers**. Oftentimes, there is **no person of trust** allocated in the very beginning (and if, they do not have enough resources). The **determination of age** is made by methods criticized by pediatrics (see http://www.swiss-paediatrics.org/sites/default/files/3-4_2.pdf, in German) and **legal remedies against the determination are very limited**, including denial of inspection of files by the person concerned or his/her legal representative. The latter aspect, in combination with the fact that in many cases no formal order (“Verfügung”) is issued by the authorities, prevent the taking of legal remedies. Accordingly, **many young asylum seekers who are possibly underage are being treated like adults**, including housing with other adults, no access to education, no person of trust, etc.

12) Content of protection – situation of beneficiaries of protection

- *The current political environment leads to the fact that especially people with temporary protection (“Vorläufige Aufnahme”) are more and more levied with restrictions. E.g., the canton of Zurich just decided to reduce social support for this group significantly. On the other hand, however, as of 1 January 2018 the special tax levied on the income of people with temporary protection has been abolished in order to promote labour market integration.*
- *Access to health care is an issue for many people also after receiving a positive decision. In particular, **dental treatments and mental health care are restricted to an absolute minimum.***
- ***Integration in the labour market is challenging** due to the two years period of the asylum procedure, during which neither working is permitted (some very restrictive exemptions apply) nor free language classes are mandatorily provided (there are, of course, language classes given by volunteers / communities or even some cantons / towns).*
- *In general, **social integration is not easy** due to the oftentimes **remote areas where people with protection are supposed to live** in many cantons. The change of canton is for people with temporary protection very challenging.*
- ***Family reunification is heavily restricted** for people with temporary protection (only after 3 years and only in case of sufficient financial resources). This leads to very unsatisfying situations and the separation of families for years.*

13) Return of former applicants for international protection

- N/A

14) Resettlement and humanitarian admission programmes

- *We would be very much in favour of a sponsorship program similar to the one in Canada. In the current system, no such possibility is given.*
- *The numbers of people coming to Switzerland under resettlement are very low (2017: 590 from Syria and neighboring countries who received refugee status by UNHCR) compared to the need and the Swiss capacity. (see <https://www.sem.admin.ch/sem/de/home/aktuell/news/2018/2018-01-22.html>)*
- *The **granting of humanitarian visa is way too restrictive** and does not provide protection to those people who really need it, since oftentimes a request is denied based on the fact that a return within the time foreseen is not ensured – which is obvious if someone is actually threatened.*

15) Relocation

- *As part of the European Union's relocation program of asylum seekers, Switzerland has received a total of 1,476 people by the end of 2017. At the beginning of 2018, the rest of the people will follow. Switzerland has thus fulfilled its commitment to accommodate 1,500 people and the program will be completed. (see <https://www.sem.admin.ch/sem/de/home/aktuell/news/2018/2018-01-22.html>)*
- *We regret that at the moment there is no follow-up for the current relocation program which would be highly needed in terms of solidarity among the Dublin member states.*

16) Other relevant developments

- *In general, in our view, the main problems in Switzerland are*
 - (i) long duration of the procedures;*
 - (ii) lack of access to legal aid;*
 - (iii) prohibition to work during the procedure;*
 - (iv) lack of systematic language courses during the asylum procedure.*
- *Eritrea: Rejected asylum seekers from Eritrea cannot be returned forcibly. The situation for rejected asylum seekers without temporary protection is very critical as a consequence, since they stay in Switzerland “illegally”, meaning without any title of permit. Especially before this background and considering the contrary developments of policies in other European countries, it is hard to understand why the Swiss authorities become more and more strict against Eritrean asylum seekers.*
- *Afghanistan: We are very critical towards any deportations to Afghanistan, notably in the current situation. Such deportations are in fact executed by Swiss authorities, bringing the people concerned back in a country of war and terrorism without any functioning governmental structure or authority.*
- *Turkey: Despite of the current difficult situation and ethnic conflicts (especially for Kurds) in Turkey, forced returns do take place and negative decisions for Kurds are frequent. We are clearly of the view that this is not in line with international commitments.*