

**Unofficial English Version**

of 26<sup>th</sup> June 1998

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*The Federal Assembly of the Swiss Confederation,*

based on Article 69<sup>ter</sup> of the Federal Constitution<sup>1</sup>,  
after inspection of the Federal Council 'Message' of 4<sup>th</sup> December 1995<sup>2</sup>,

*has concluded:*

**1<sup>st</sup> Chapter: Principles**

**Art. 1** Subject matter

This Act regulates:

- a. the granting of asylum and the legal status of refugees in Switzerland;
- b. the temporary protection granted in Switzerland to persons in need of protection and their return.

**Art. 2** Asylum

<sup>1</sup> Switzerland grants asylum to refugees on application in accordance with the provisions of the present Act.

<sup>2</sup> Asylum comprises the protection and legal status granted in Switzerland to persons on the basis of their refugee status. It includes the right to stay in Switzerland.

**Art. 3** Definition of the term refugee

<sup>1</sup> Refugees are persons who in their native country or in the country of last residence are subject to serious disadvantages or have a well-founded fear of being exposed to such disadvantages for reasons of race, religion, nationality, membership of a particular social group or political opinion.

<sup>2</sup> Considered as serious disadvantages are viz. a threat to life, physical integrity or freedom as well as measures exerting an unbearable psychical pressure. Flight motives specific to women are to be taken into account.

**Art. 4** Granting of temporary protection

Switzerland may grant temporary refuge to persons in need of protection as long as they are exposed to a severe general danger, in particular during a war or civil war as well as in situations of general violence.

AS 1999 2262

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<sup>1</sup> SR 101

<sup>2</sup> BBI 1996 II I

**Art. 5** Ban on refoulement

<sup>1</sup> No person may be forced in any way to leave for a country in which his life, physical integrity or freedom are threatened for one of the reasons listed in Article 3 para 1 or where he would be at risk of being forced to return to such a country.

<sup>2</sup> A person cannot invoke the ban on refoulement if there are substantial grounds for the assumption that he constitutes a threat to the national security of Switzerland or if he is considered a general danger to public order due to a final conviction of a particularly serious crime.

**Art. 6** Procedural principles

The procedures foreseen by this Act are regulated by the Administrative Procedure Act of 20<sup>th</sup> Dec. 1968<sup>3</sup> (Administrative Procedure Act) and the Federal Organization of Justice Act of 16<sup>th</sup> Dec. 1943<sup>4</sup> (Federal Organization of Justice Act), provided the present Act does not rule otherwise.

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<sup>3</sup> SR 172.021

<sup>4</sup> SR 173.110

## **2<sup>nd</sup> Chapter: Asylum seekers**

### **1<sup>st</sup> Section: General provisions**

#### **Art. 7** Proof of refugee status

<sup>1</sup> Whosoever seeks asylum must prove or at least make credible that he is a refugee.

<sup>2</sup> Refugee status has been made credible if the authority considers its existence to be given with overwhelming probability.

<sup>3</sup> Not credible are, in particular, claims that are unfounded in essential points or are inherently contradictory, do not correspond to the facts or are substantially based on forged or falsified evidence.

#### **Art. 8** Duty to co-operate

<sup>1</sup> Asylum seekers have a duty to co-operate in establishing the facts. They must, in particular:

- a. reveal their identity;
- b. submit their travel documents and identity papers at the reception centre;
- c. state at the hearing why they are claiming asylum;
- d. completely name and submit all evidence without delay or, as far as this seems reasonable, endeavour to acquire evidence within an appropriate time limit.

<sup>2</sup> Asylum seekers may be required to arrange for the translation of foreign-language documents into one of Switzerland's official languages.

<sup>3</sup> Asylum seekers waiting for a decision in Switzerland are obliged to remain at the disposal of the federal and cantonal authorities during proceedings. They must immediately inform the competent cantonal or communal authorities according to cantonal legislation (cantonal authority) of their address and any change thereof.

<sup>4</sup> If there is an enforceable removal order, the persons concerned are obliged to co-operate in the acquisition of valid travel documents.

#### **Art. 9** Official search

<sup>1</sup> The competent authority may search asylum seekers who are accommodated in a reception centre or in collective housing and the possessions they have with them for their travel and identity documents as well as for dangerous objects.

<sup>2</sup> Asylum seekers may only be searched by members of the same sex.

#### **Art. 10** Seizure and confiscation of documents

<sup>1</sup> The Federal Office for Refugees (Federal Office) places travel documents and identity papers on file.

<sup>2</sup> Authorities and government offices seize and pass on to the Federal Office travel documents, identity papers or other documents which could give indications as to the identity of a person seeking asylum.

<sup>3</sup> If the authority or government office seizing documents as stipulated in para 2 examine these with regard to their genuineness, the Federal Office is to be notified of the results of this examination.

<sup>4</sup> Forged and falsified documents as well as genuine documents which have been used abusively may be confiscated by the Federal Office or by the appeals instance or placed in safekeeping in behalf of the rightful owner.

**Art. 11** Procedure for taking evidence

If, to establish the facts of the case, the authority orders the taking of evidence, the asylum seeker may not express his opinion prior to this order.

**Art. 12** Address for service

<sup>1</sup> Service or notification to the last known address of asylum seekers or of those empowered by the latter becomes legally binding on expiry of the statutory seven-day time-limit for collection, even if the persons concerned do not learn of the service until a later date due to a special arrangement with the Swiss Post or if the correspondence is returned as undeliverable.

<sup>2</sup> If the person seeking asylum is represented by several empowered persons and if these do not indicate a joint address for service, the authority addresses its communications to the person first empowered by the person seeking asylum.

**Art. 13** Delivery and substantiation of orders and decisions

<sup>1</sup> In suitable cases, the delivery of orders and decisions may be given orally and substantiated summarily.

<sup>2</sup> Oral delivery is to be recorded in a protocol together with the grounds. The asylum seeker is to be given an excerpt from the protocol.

<sup>3</sup> The competent authorities may also deliver signed orders and decisions transmitted to them by telefax to persons applying for asylum at the border or at the border control of a Swiss airport (Art. 21-23). The persons concerned must acknowledge receipt in writing of the order or decision; if there is no acknowledgement, the competent authority records the receipt in the files. Article 11 para 3 of the Administrative Procedure Act<sup>5</sup> is not applicable. Delivery is made to the empowered person.

<sup>4</sup> In other urgent cases, the Federal Office may authorize a cantonal authority, a Swiss diplomatic mission or a consular representation abroad (Swiss representation) to deliver signed orders or decisions transmitted by telefax.

**Art. 14** Relation to aliens police procedure

<sup>1</sup> If no right to the granting of an aliens police residence permit exists, an asylum seeker may not initiate proceedings for the granting of such a permit from the moment of filing an asylum application until departure following final rejection or, if the execution of removal cannot be enforced, until the order of a substitute measure.

<sup>2</sup> Pending proceedings regarding the granting of a residence permit become null and void with the filing of an asylum application.

<sup>3</sup> Residence permits issued remain valid and can be extended in accordance with aliens police provisions.

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<sup>5</sup> SR 172.021

**Art. 15** Intercantonal offices

The cantons may establish intercantonal offices charged with the fulfilment of the duties imposed on them by this Act, in particular for the hearing, the preparation of the decision and the execution of removal.

**Art. 16** Procedural language

<sup>1</sup> Applications to federal government offices may be submitted in any official language.

<sup>2</sup> As a rule, proceedings before the Federal Office are conducted in the official language in which the cantonal hearing took place or in the official language of the asylum seeker's place of stay.

<sup>3</sup> As a rule, proceedings before the Swiss Asylum Appeals Commission (Appeals Commission) are held in the language in which the decision under appeal was written. If the appellant has written the appeal in another official language, proceedings may be held in this language.

**Art. 17** Special procedural provisions

<sup>1</sup> The provision of the Administrative Procedure Act<sup>6</sup> on the suspension of a time-limit does not apply in asylum proceedings.

<sup>2</sup> The Federal Council issues supplementary provisions with regard to asylum proceedings, in particular, to ensure just treatment of the special situation of women and minors.

<sup>3</sup> If an unaccompanied minor is allocated to a canton, it appoints without delay and for the duration of proceedings a confidential person who safeguards the minor's interests. The Federal Council decides on exceptions.

**2<sup>nd</sup> Section: Asylum application and entry**

**Art. 18** Asylum application

Any utterance with which a person indicates that he is requesting protection from persecution in Switzerland is considered to be an asylum application.

**Art. 19** Filing an application

<sup>1</sup> The asylum application is to be filed at a Swiss representation, on entry at an open border crossing or at a reception centre.

<sup>2</sup> Whosoever has been given permission to stay in Switzerland by a canton must file the asylum application with the authorities of that canton.

<sup>3</sup> On filing their application, asylum seekers are informed of their rights and duties during asylum proceedings.

**Art. 20** Asylum applications from abroad and permission to enter Switzerland

<sup>1</sup> The Swiss representation transmits the asylum application together with a report to the Federal Office.

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<sup>6</sup> SR 172.01

<sup>2</sup> In order to establish the facts of the case, the Federal Office authorizes the entry of asylum seekers if they cannot reasonably be expected to remain in the country of residence or abode or to travel to another country.

<sup>3</sup> The Federal Department of Justice and Police (Department) may authorize Swiss representations to permit the entry of asylum seekers who credibly claim that there is an immediate threat to their life, physical integrity or freedom for one of the reasons as stipulated in Article 3 para 1.

**Art. 21** Asylum applications at the border and entry permits

<sup>1</sup> The Federal Office authorizes the entry to Switzerland of persons applying for asylum at the border or at the border control of a Swiss airport if no other country is bound by an international agreement to process their asylum application and they:

- a. are in possession of the identity paper or visa required for entry; or
- b. seem to be at risk for one of the reasons as stipulated in Art. 3 para 1 or to be threatened with inhuman treatment in the country from which they have directly arrived.

<sup>2</sup> the Federal Office further authorizes entry if:

- a. the asylum seekers make credible that the country from which they have directly arrived would force them, in violation of the ban on refoulement, to leave for a country in which they appear to be at risk; or
- b. Switzerland is bound by an international agreement to deal with their application asylum.

<sup>3</sup> The Federal Council decides in which further cases entry to Switzerland is authorized.

**Art. 22** Procedure at the airport

<sup>1</sup> Persons applying for asylum at a Swiss airport and in whose case it cannot immediately be determined whether the conditions are fulfilled for an entry permit under Article 21 are temporarily refused entry.

<sup>2</sup> At the same time as temporarily refusing entry to Switzerland, the Federal Office allocates the asylum seekers to a place where they may wait at the airport for the anticipated duration of proceedings, but not exceeding 15 days, and it provides appropriate accommodation.

<sup>3</sup> The order on the temporary refusal to grant entry and the allocation to a place where he may wait at the airport are to be delivered to the asylum seeker within 48 hours of filing the application; instructions on the right of appeal are to be given to him at the same time. Prior to this, the asylum seeker has the right to be heard and is given the opportunity to appoint legal counsel.

**Art. 23** Removal at the airport as a precautionary measure

<sup>1</sup> If entry is not authorized at the airport, the Federal Office may remove the asylum seeker as a precautionary measure if his further journey to a third country is admissible, reasonable and possible, viz. if:

- a. this country is bound by a treaty for the processing of his asylum application;
- b. he had stayed there before and can return there and apply for protection;
- c. he is in possession of a visa for this third country; or
- d. near relatives or other persons with whom he has a close relationship live there.

<sup>2</sup> Removal as a precautionary measure is immediately enforceable, provided the Federal Office does not order otherwise.

<sup>3</sup> If entry is not authorized at the airport and if the person seeking asylum cannot be sent back to a third country, the immediate execution of removal to the native country or country of origin may be ordered if the Federal Office and the United Nations High Commissioner for Refugees both consider that there is no obvious threat of persecution.

<sup>4</sup> The decision taken in accordance with paras 1 or 3 is to be delivered within 15 days of filing the application. Should proceedings take longer, the Federal Office authorizes entry. If the asylum seeker is ordered to be removed, he may not be held at the airport longer than until the next regular flight connection to the native country, country of origin or third country, but not longer than seven days. Article 112 is reserved

#### **Art. 24** Arrest in the vicinity of the border in the event of illegal entry

<sup>1</sup> If, in the vicinity of the border, the cantonal police authorities arrest persons who have entered Switzerland illegally in order to apply for asylum, they inform the latter where an application can be filed and hand over the arrested persons to the competent authorities of the neighbouring country.

<sup>2</sup> Should it be impossible to hand such persons over to a neighbouring country or if it must be assumed that they are in danger there for one of the reasons mentioned in Article 3 para 1, or if they are at risk of inhuman treatment, they are allocated to a reception centre.

### **3<sup>rd</sup> Section: First instance proceedings**

#### **Art. 25** Competent authority

The Federal Office decides on the granting or rejection of asylum as well as on the removal of the asylum seeker from Switzerland.

#### **Art. 26** Reception centres

<sup>1</sup> The Federal Government sets up reception centres which are run by the Federal Office.

<sup>2</sup> The reception centre collects the personal details of the asylum seekers and as a rule it takes their fingerprints and photographs. It may question the asylum seekers summarily on their travel route and on their reasons for leaving their country.

<sup>3</sup> The Department issues provisions relative to the reception centres to ensure swift proceedings and an orderly operation.

#### **Art. 27** Allocation to the cantons

<sup>1</sup> The cantons agree upon the allocation of asylum seekers.

<sup>2</sup> If the cantons cannot come to an agreement, the Federal Council hears them and lays down the criteria for allocation in an order.

<sup>3</sup> The Federal Office allocates the asylum seekers to the cantons. In doing so, it takes account of the legitimate interests of the cantons and of the asylum seekers. Asylum seekers may only appeal against the decision on allocation if it violates the principle of family unity.

#### **Art. 28** Allocation of a place to stay and accommodation

<sup>1</sup> The Federal Office or the cantonal authorities may allocate asylum seekers to a place to stay.

<sup>2</sup> They may allocate asylum seekers to accommodation, in particular, to collective housing.

**Art. 29**           Hearing on the grounds for asylum

<sup>1</sup> The cantonal authority interviews the asylum seekers on the grounds for seeking asylum within 20 working days after the decision made by the Federal Office allocating them to a canton. If necessary, it calls in an interpreter.

<sup>2</sup> The asylum seekers may be accompanied by counsel and an interpreter of their choice, who are not themselves asylum seekers.

<sup>3</sup> A protocol of the hearing is drawn up. This is signed by those participating in the hearing, with the exception of the representative of the relief organizations.

<sup>4</sup> The Federal Office may directly interview asylum seekers if this leads to a substantial acceleration of proceedings. The hearing is conducted according to paras 1-3.

**Art. 30**           Representation of the relief organizations

<sup>1</sup> Recognized relief organizations send a representative to the hearing on the grounds for seeking asylum as stipulated in Article 29, provided the person seeking asylum does not reject this.

<sup>2</sup> The Federal Council defines the requirements for the recognition of the relief organizations. The Department is competent for recognition. The relief organizations are responsible for the co-ordination of their presence at the hearings.

<sup>3</sup> The authorities inform the relief organizations in good time. If the representative of the relief organizations does not respond to the invitation, the hearings nevertheless develop full legal effect.

<sup>4</sup> The representative of the relief organization observes the hearing, but has no party rights. He confirms his participation with his signature and is subject to professional secrecy towards third parties. He may ask questions aimed at clarifying the facts of the case, suggest further clarification and raise objections to the protocol.

**Art. 31**           Preparation of decisions by the cantons

The Department may, with the consent of the cantons, order the preparation of decisions according to Articles 32-35 as well as 38-40 by cantonal officials under the supervision and on behalf of the Federal Office.

**Art. 32**           Grounds for dismissal of the application without entering into the substance of the case

<sup>1</sup> Applications not fulfilling the requirements of Article 18 are dismissed without entering into the substance of the case.

<sup>2</sup> Asylum applications are dismissed without entering into the substance of the case if asylum seekers:

- a. do not, within 48 hours of filing their application, submit to the authorities travel documents or other papers which make their identification possible; this provision does not apply if asylum seekers can make credible that, for excusable reasons, they are not able to do so nor if there are indications of persecution which are not shown to be manifestly untenable;
- b. deceive the authorities about their identity and this deception is established on the basis of the fingerprint comparison or other evidence;
- c. deliberately and grossly violate their duty to co-operate;
- d. can travel on to a country in which an asylum application is already pending or which is responsible under an international agreement to carry out asylum and removal proceedings



and which does not force them to leave for a country in which they would be persecuted or exposed to inhuman treatment;

- e. have already been refused asylum in a previous case in Switzerland, have withdrawn their application or have returned to their native country or country of origin during pending asylum proceedings, unless the hearing provides indications that, in the meantime, events have occurred which support the substantiation of refugee status or which are relevant for the granting of temporary protection.

**Art. 33** Dismissal of an application in the event of abusive later submission

<sup>1</sup> The asylum application of a person illegally staying in Switzerland is dismissed without entering into the substance of the case if it is manifestly aimed at avoiding the imminent execution of removal or expulsion.

<sup>2</sup> Such an intent is to be assumed if the application is filed shortly before or after an arrest, criminal proceedings, the execution of a sentence or the issue of a removal order.

<sup>3</sup> Para 1 is not applicable if:

- a. an earlier filing of the application was not possible or not reasonable; or
- b. there are indications of persecution.

**Art. 34** Dismissal of asylum applications from safe countries

<sup>1</sup> The Federal Council may designate countries in which, according to its findings, there is safety from persecution; it periodically reviews decisions taken on this subject.

<sup>2</sup> Applications or appeals of asylum seekers from safe countries are dismissed without entering into the substance of the case unless there are indications of persecution.

**Art. 35** Dismissal after cessation of temporary protection

If temporary protection is withdrawn and there are no indications of persecution after the asylum seeker is given the right to be heard, an asylum application is dismissed.

**Art. 36** Procedure before taking a decision to dismiss an application without entering into the substance of the case

<sup>1</sup> In cases under Articles 32 para 1, para 2a, 33 and 34, a cantonal hearing according to Articles 29 and 30 is conducted. The same applies to cases under Article 32 para 2e if the person seeking asylum has returned to Switzerland from his native country or country of origin.

<sup>2</sup> In the other cases under Article 32, the asylum seeker is granted the right to be heard.

**Art. 37** Decision to dismiss an application without entering into the substance of the case

As a rule, decisions to dismiss an application without entering into the substance of a case are to be made and summarily substantiated within 20 working days after the filing of the application.

**Art. 38** Granting of asylum without further investigations

If, on the basis of the cantonal hearing, asylum seekers are able to prove or make refugee status credible and if there is no reason for the exclusion of asylum as provided in Articles 52-54, they are granted asylum without further investigations

**Art. 39** Granting of temporary protection without further investigations

If, on the basis of the cantonal hearing in the reception centre or of the hearing before the cantonal authorities, it becomes obvious that asylum seekers belong to a group of persons in need of protection under Article 66, they are granted protection without further investigations.

**Art. 40** Rejection without further investigations

<sup>1</sup> If, on the basis of the cantonal hearing, it becomes obvious that asylum seekers can neither prove nor make refugee status credible and there are no reasons against their removal, the application is rejected without further investigations.

<sup>2</sup> As a rule, the decision must be made within 20 working days after the date of the hearing; it must be at least summarily substantiated.

**Art. 41** Further investigations

<sup>1</sup> If it is not possible to decide on the application pursuant to Articles 38-40, the Federal Office orders further investigations. It may obtain information from the Swiss representations. It may also hear asylum seekers further or have additional questions asked by the cantonal authorities. The procedure is regulated according to Articles 29 and 30.

<sup>2</sup> In the case of asylum seekers who await the decision on proceedings abroad, the Federal Office investigates the facts through the mediation of the competent Swiss representation.

**4<sup>th</sup> Section: Status of asylum seekers during proceedings**

**Art. 42** Stay and removal as a precautionary measure

<sup>1</sup> Whosoever has filed an asylum application in Switzerland may, with reservation of Article 112, stay in Switzerland until the conclusion of proceedings.

<sup>2</sup> The Federal Office may, however, remove asylum seekers as a precautionary measure if their further journey to a third country is admissible, reasonable and possible, viz. if:

- a. this country is bound by a treaty for the processing of the asylum application;
- b. they had stayed there for some time before; or
- c. near relatives or other persons with whom they have a close relationship live there.

<sup>3</sup> Removal as a precautionary measure is immediately enforceable unless the Federal Office rules otherwise.

**Art. 43** Permission to pursue gainful employment

<sup>1</sup> During the first three months after filing an asylum application, asylum seekers are not permitted to pursue gainful employment. If a negative decision is taken at first instance within this time-limit, the canton may withhold the permission to pursue gainful employment for a period of three further months.

<sup>2</sup> Permission to pursue gainful employment expires after the deadline for departure specified in the final (absolute) rejection of the asylum application, even if an extraordinary redress or remedy has been lodged and the execution of removal proceedings suspended. If the Federal Office extends the deadline for departure during ordinary proceedings, the pursuance of gainful employment may still be permitted.

<sup>3</sup> The Department may, in agreement with the Federal Department of Economic Affairs, authorize the cantons to extend permits for the pursuance of gainful employment for certain categories of persons beyond the deadline for departure, provided special circumstances justify this.

<sup>4</sup> Asylum seekers who are entitled to pursue gainful employment in accordance with aliens police provisions or who are participating in charitable occupational programs are not subject to a ban on employment.

## **5<sup>th</sup> Section: Removal**

### **Art. 44**            Removal and temporary admission

<sup>1</sup> As a rule, if it rejects the asylum application or does not enter into the substance of the case, the Federal Office orders removal from Switzerland and subsequent execution; in doing so, it takes account of the principle of family unity.

<sup>2</sup> If the execution of removal is not admissible, not reasonable or not possible, the Federal Office regulates the conditions of stay in accordance with the legal provisions of the Swiss Aliens Act of 26<sup>th</sup> March 1931<sup>7</sup> pertaining to temporary admission.

<sup>3</sup> Temporary admission may furthermore be ordered in cases of grave personal distress, provided no final decision has yet been taken four years after filing an asylum application.

<sup>4</sup> Taken into account in the assessment of grave personal distress are, in particular, integration in Switzerland, family circumstances and the children's school situation.

<sup>5</sup> Before rejecting the asylum application, the Federal Office or the Appeals Commission give the canton an opportunity to request, within a reasonable period of time, temporary admission or the execution of removal.

### **Art. 45**            Contents of the removal order

<sup>1</sup> The removal order includes:

- a. the obligation of the person seeking asylum to leave Switzerland;
- b. the time by which he has to have left Switzerland; if temporary admission is granted, the deadline for departure is only set together with the decision to withdraw temporary protection;
- c. the threat of coercive measures in the event of non-compliance;
- d. if appropriate, the designation of countries to which the person seeking asylum may not be returned;
- e. if appropriate, the measure replacing the execution of return;
- f. the designation of the canton responsible for the execution of removal or the measure replacing this.

<sup>2</sup> The immediate execution of removal may be ordered for decisions taken under Articles 32-34.

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<sup>7</sup> SR 142.20

**Art. 46** Execution by the cantons

<sup>1</sup> The cantons have a duty to execute removal orders.

<sup>2</sup> If execution proves to be impossible, the canton requests the Federal Office to grant temporary admission.

**Art. 47** Measures in the event of unknown whereabouts

If rejected asylum seekers avoid execution by concealing their whereabouts, the canton or the Federal Office may have them searched for by police.

**Art. 48** Cantonal co-operation

If rejected asylum seekers are not located in the canton charged with the execution of removal, the canton in which they are staying provides official assistance on request. Official assistance comprises in particular, handing over the person concerned to the competent canton or executing removal directly.

### **3<sup>rd</sup> Chapter: Granting of asylum and legal status of refugees**

#### **1<sup>st</sup> Section: Granting of asylum**

##### **Art. 49** Principle

Asylum is granted to persons if they have refugee status and there are no grounds for excluding asylum.

##### **Art. 50** Country of second asylum

Refugees who have been admitted to another country may be granted asylum if they have stayed lawfully and without interruption in Switzerland for at least two years.

##### **Art. 51** Family asylum

<sup>1</sup> Spouses of refugees and their minor children are recognized as refugees and are granted asylum provided no particular circumstances speak against a recognition.

<sup>2</sup> Other near relatives of refugees living in Switzerland may be included in family asylum if there are special grounds in favour of family reunion.

<sup>3</sup> Children born in Switzerland to refugees are also recognized as refugees.

<sup>4</sup> If the persons entitled under paras 1 and 2 were separated during flight and are now abroad, their entry is to be authorized on request.

<sup>5</sup> The Federal Council defines the requirements for family reunion in Switzerland in the case of temporarily admitted refugees.

##### **Art. 52** Admission to a third country

<sup>1</sup> As a rule, a person who has entered Switzerland is not granted asylum if:

- a. some time before his entry to Switzerland, he lived in a third country to which he can return;
- b. he can travel on to a third country in which his near relatives live;

<sup>2</sup> A person who is abroad may be refused asylum if he can reasonably be expected to apply for admission to another country.

##### **Art. 53** Unworthiness of asylum

Refugees are not granted asylum if they are unworthy of such due to reprehensible acts or if they have violated or endanger Switzerland's internal or external security.

##### **Art. 54** Subjective post-flight reasons

Refugees are not granted asylum if they became refugees as defined in Article 3 only through their departure from their native country or country of origin or due to their behaviour after departure.

**Art. 55** Exceptional situations

<sup>1</sup> In times of increased international tensions, on the outbreak of armed conflicts in which Switzerland is not involved, or in the event of an exceptionally large influx of asylum seekers in times of peace, Switzerland grants asylum to refugees, as far as the circumstances permit.

<sup>2</sup> The Federal Council orders the necessary measures. It may, in deviation from the law, restrict the requirements for the granting of asylum and the legal status of refugees and issue special procedural provisions. It immediately gives an account hereof to the Federal Assembly.

<sup>3</sup> If the long-term accommodation of refugees exceeds Switzerland's capacity, asylum may also be granted temporarily until those admitted can continue their journey.

<sup>4</sup> If a considerable number of refugees approaching Switzerland is imminent, the Federal Council searches for a means of swift and effective international co-operation to allow their distribution.

**2<sup>nd</sup> Section: Asylum for groups**

**Art. 56** Decision

<sup>1</sup> Large groups of refugees are granted asylum on the basis of a Federal Council decision. The Department decides in the case of smaller groups

<sup>2</sup> The Federal Office decides who belongs to such a group.

**Art. 57** Distribution and initial integration

<sup>1</sup> Article 27 regulates the distribution of refugees to the cantons.

<sup>2</sup> The Federal Government may, within the scope of initial integration, temporarily allocate groups of refugees to housing and, in particular, accommodate them in an integration centre.

**3<sup>rd</sup> Section: Legal status of refugees**

**Art. 58** Principle

The legal status of refugees in Switzerland is governed by the existing law applicable to aliens, provided no special provisions, viz. of this Act and of the Convention relating to the Legal Status of Refugees of 28<sup>th</sup> July 1951<sup>8</sup> are applicable.

**Art. 59** Effect

Persons to whom Switzerland has granted asylum or who have been temporarily admitted as refugees are considered to be refugees within the meaning of this Act as well as the Convention relating to the Legal Status of Refugees of 28<sup>th</sup> July 1951<sup>9</sup> with regard to all federal and cantonal authorities.

**Art. 60** Regulation of stay

<sup>1</sup> Persons to whom asylum has been granted have a right to an annual residence permit in the canton in which they are lawfully staying.

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<sup>8</sup> SR 0.142.30

<sup>9</sup> SR 0.142.30

<sup>2</sup> Persons to whom Switzerland has granted asylum and who have lawfully been staying in Switzerland for at least five years have a right to a permanent residence permit if there is no reason for their removal under Article 10 para 1a or b of the Swiss Aliens Act<sup>10</sup>.

**Art. 61**            Gainful employment

Persons to whom Switzerland has granted asylum or who have been temporarily admitted as refugees are permitted to pursue gainful employment as well as to change jobs and professions.

**Art. 62**            Medical examinations

Persons to whom Switzerland has granted asylum are admitted to federal medical examinations; the Federal Department of Home Affairs defines the conditions for admission.

**4<sup>th</sup> Section: Cessation of asylum**

**Art. 63**            Revocation

<sup>1</sup> The Federal Office revokes asylum or deprives persons of refugee status:

- a. if the alien has surreptitiously obtained asylum or refugee status by false information or by the concealment of essential facts;
- b. for reasons falling under Section 1C subparas 1-6 of the Convention relating to the Legal Status of Refugees of 28<sup>th</sup> July 1951<sup>11</sup>.

<sup>2</sup> The Federal Office revokes asylum if refugees have violated Switzerland's internal or external security or have committed particularly reprehensible acts.

<sup>3</sup> The revocation of asylum or the deprivation of refugee status applies with regard to all federal and cantonal authorities.

<sup>4</sup> The revocation or the deprivation of refugee status does not apply to the spouse and the children.

**Art. 64.**            Expiry

<sup>1</sup> Asylum expires in Switzerland if:

- a. refugees have lived abroad longer than three years;
- b. refugees have been granted asylum or permission to stay permanently in another country;
- c. the refugees renounce it;
- d. expulsion or judicial banishment has been executed.

<sup>2</sup> The Federal Office may extend the deadline under para 1a if there are special circumstances.

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<sup>10</sup> SR 142.20

<sup>11</sup> SR 0.142.30

**Art. 65**      Expulsion

Refugees may only be expelled if they endanger Switzerland's internal or external security or have violated public order in a grave manner. Article 5 is reserved.



## **4<sup>th</sup> Chapter: Granting of temporary protection and the legal status of persons in need of protection**

### **1<sup>st</sup> Section: General provisions**

#### **Art. 66**            Fundamental decision of the Federal Council

<sup>1</sup> The Federal Council decides if and according to which criteria Switzerland grants temporary protection to groups of persons in need of protection in accordance with Article 4.

<sup>2</sup> Before doing so, it consults representatives of the cantons, the relief organizations and possibly further non-governmental organizations as well as the United Nations High Commissioner for Refugees.

#### **Art. 67**            Foreign policy measures

<sup>1</sup> The granting of temporary protection as well as measures and assistance effected in the native country, country of origin or region of origin of persons in need of protection should supplement each other as far as possible.

<sup>2</sup> The Federal Government works together with the native country or country of origin, other host countries and international organizations in order to create the conditions for the safe return of persons in need of protection.

### **2<sup>nd</sup> Section: Procedure**

#### **Art. 68**            Persons in need of protection abroad

<sup>1</sup> The Federal Office defines more precisely the group of persons in need of protection and decides to whom temporary protection in Switzerland is granted. In doing so, it takes account of the principle of family unity.

<sup>2</sup> The decision on the granting of temporary protection is only appealable on the grounds that it violates the principle of family unity.

<sup>3</sup> Article 20 applies analogously to individual applications filed abroad.

#### **Art. 69**            Persons in need of protection at the border or within Switzerland

<sup>1</sup> Articles 18 and 19 as well as 21-24 apply analogously to applications filed by persons in need of protection at the border or within Switzerland.

<sup>2</sup> If no persecution as defined in Article 3 is evident, the Federal Office decides, following the hearing in the reception centre under Article 26, which persons belong to a group in need of temporary protection and who is to be granted temporary protection in Switzerland. The decision on the granting of temporary protection is not appealable.

<sup>3</sup> If a person is granted temporary protection, there is a stay of proceedings on a possible application for the determination of refugee status.

<sup>4</sup> If the Federal Office intends to refuse temporary protection, it continues proceedings on the determination of refugee status or removal proceedings without delay.

**Art. 70** Resumption of proceedings on determination of refugee status

Persons in need of protection who have filed an application for determination of refugee status may request the resumption of these proceedings at the earliest five years after the stay of proceedings under Article 69 para 3. On resumption of these proceedings, temporary protection is revoked.

**Art. 71** Granting of temporary protection to families

<sup>1</sup> Spouses of persons in need of protection and their minor children are likewise granted temporary protection if:

- a. they apply for protection together and there are no exclusion grounds as defined in Article 73;
- b. the family was separated by events mentioned under Art. 4, wishes to be reunited in Switzerland and no special circumstances speak against the granting of temporary protection.

<sup>2</sup> Children born in Switzerland to persons in need of protection are likewise granted temporary protection.

<sup>3</sup> If the persons entitled to protection are abroad, their entry is to be authorized.

<sup>4</sup> The Federal Council defines the conditions for family reunion in Switzerland in further cases.

**Art. 72** Procedure

For the rest, the provisions of the 1<sup>st</sup> and 3<sup>rd</sup> Sections of the 2<sup>nd</sup> Chapter find analogous application to proceedings under Articles 68, 69 and 71<sup>12</sup>.

**Art. 73** Exclusion grounds

Temporary protection is not granted if the person in need of protection falls under Article 53, has violated or gravely endangers public law and order.

**3<sup>rd</sup> Section: Legal status**

**Art. 74** Regulation of stay

<sup>1</sup> Persons in need of protection stay in the canton to which they have been allocated.

<sup>2</sup> If, after five years, the Federal Council has not yet revoked temporary protection, the persons in need of protection receive from this canton an annual residence permit which is limited until the cessation of temporary protection.

<sup>3</sup> Ten years after the granting of temporary protection, the canton may grant persons in need of protection a permanent residence permit.

**Art. 75** Permission to pursue gainful employment

<sup>1</sup> During the first three months after entering Switzerland, persons in need of protection may not pursue gainful employment. Subsequently, the cantonal authorities allow these persons to pursue gainful employment, the labour market and economic situation permitting.

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<sup>12</sup> Corrected by the Editorial Commission of the Fed. Ass. (Art. 33 GVG).

<sup>2</sup> The Federal Council may issue more favourable conditions for gainful employment.

<sup>3</sup> Work permits already issued remain in force.

<sup>4</sup> Persons in need of protection who are permitted to pursue gainful employment under aliens police provisions or who participate in charitable occupational programs are not subject to the ban on employment.

#### **4<sup>th</sup> Section: Cessation of temporary protection and return**

##### **Art. 76**            Withdrawal of temporary protection and removal

<sup>1</sup> After consultations with representatives of the cantons, the relief organizations and possibly further non-governmental organizations, the United Nations High Commissioner for Refugees as well as with international organizations, the Federal Council determines the time when the temporary protection for certain groups of persons in need of protection is to be withdrawn; it makes the decision in a universal order.

<sup>2</sup> The Federal Office grants persons affected by the decision taken under para 1 the right to be heard.

<sup>3</sup> If the exercise of the right to be heard reveals indications of persecution, a hearing according to Articles 29 and 30 is conducted. If there are no indications of persecution, the Federal Office decides in accordance with Article 35.

<sup>4</sup> If the person concerned does not exercise his right to be heard and express his views, the Federal Office orders his removal. For the execution of removal, Articles 10 para 4 and 46-48 of this Act as well as Article 22a of the Swiss Aliens Act<sup>13</sup> apply analogously.

##### **Art. 77**            Return

The Federal Government supports international efforts to organize the return of persons in need of protection.

##### **Art. 78**            Revocation

<sup>1</sup> The Federal Office may revoke temporary protection if:

- a. it has been surreptitiously obtained by false information or by the concealment of essential facts;
- b. the person in need of protection has violated or endangers Switzerland's internal or external security or has committed reprehensible acts;
- c. since the granting of temporary protection, the person in need of protection has stayed for quite a long time or repeatedly in the native country or country of origin;
- d. the person in need of protection has a legal right to stay in a third country to which he can return.

<sup>2</sup> Temporary protection is not revoked if the person in need of protection travels to his native country or country of origin with the consent of the competent authorities.

<sup>3</sup> Revocation of temporary protection does not apply to the spouse or the children, unless it is shown that these are not in need of protection.

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<sup>13</sup> SR 142.20

<sup>4</sup> If temporary protection is to be revoked, as a rule, a hearing according to Articles 29 and 30 is conducted.

**Art. 79**          Expiry

Temporary protection expires if the person in need of protection transfers the focus of his living conditions abroad, if he renounces temporary protection or has received a permanent residence permit based on the Swiss Aliens Act<sup>14</sup>.

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<sup>14</sup> SR 142.20

## **5<sup>th</sup> Chapter: Welfare assistance**

### **1<sup>st</sup> Section: Payment of welfare benefits and child benefits**

#### **Art. 80**            Jurisdiction

<sup>1</sup> The cantons provide welfare assistance to persons who are in Switzerland on the basis of this Act. They may delegate this task completely or partly to third parties, viz. to the relief organizations recognized under Article 30 para 2.

<sup>2</sup> As long as these persons stay in a reception centre or in an integration centre for groups of refugees, the Federal Government provides welfare assistance.

#### **Art. 81**            Right to welfare benefits

Persons who are in Switzerland on the basis of this Act and who are unable to maintain themselves from their own resources receive the necessary welfare assistance provided no third party has to support them on the basis of a legal or contractual obligation.

#### **Art. 82**            Welfare benefits

<sup>1</sup> The granting of welfare benefits is regulated by cantonal law.

<sup>2</sup> Support for asylum seekers and persons in need of protection without an annual residence permit is to be granted as far as possible in the form of payment in kind.

<sup>3</sup> The special situation of refugees and persons in need of protection who have a right to an annual residence permit is to be taken into account when deciding on the amount of support; viz. their professional, social and cultural integration is to be facilitated.

#### **Art. 83**            Restriction of welfare benefits

The competent offices may refuse welfare benefits completely or partly, reduce or withdraw these if the beneficiary:

- a. has obtained them or has tried to obtain them by untrue or incomplete information;
- b. refuses to give the competent office information about his financial situation or does not authorize this office to collect information;
- c. does not report important changes in his circumstances;
- d. obviously neglects to improve his financial situation, viz. if he does not accept reasonable work or accommodation allocated to him;
- e. terminates, without the agreement of the competent office, an employment contract or lease or is responsible for its termination and thus exacerbates his situation;
- f. uses welfare benefits improperly;
- g. does not observe the directives of the competent office, despite the threat of welfare benefits being withdrawn.

**Art. 84** Child benefits

Benefits for the children of asylum seekers living abroad are withheld during asylum proceedings. They are paid when the person seeking asylum is recognized as a refugee or temporarily admitted under Article 14a paras 3, 4 or 4<sup>bis</sup> of the Swiss Aliens Act<sup>15</sup>.

**2<sup>nd</sup> Section: Duty to reimburse and security deposits**

**Art. 85** Duty to reimburse

<sup>1</sup> As far as reasonable, welfare, departure and execution costs, as well as the costs of appeal proceedings, are to be reimbursed.

<sup>2</sup> The Federal Government makes the claim for reimbursement. The Department may delegate this task to the cantons.

<sup>3</sup> The right to reimbursement is subject to a one-year limitation period after the competent authority has been informed thereof, but in any case ten years after its creation. The limitation of time is suspended as long as there is a security account as stipulated in Article 86 para 2. No interest is charged on reimbursement claims.

<sup>4</sup> The Federal Council regulates the modalities and defines the exceptions from the duty to reimburse. When determining the costs to be reimbursed, it may base its calculations on general presumptions.

**Art. 86** Duty to provide a security deposit

<sup>1</sup> Asylum seekers and persons in need of protection without an annual residence permit are obliged to provide security to cover the reimbursement of welfare, departure and execution costs as well as for the costs incurred by appeals proceedings.

<sup>2</sup> The Federal Government opens security accounts expressly for this purpose. The costs of managing an account are charged to the person bound to provide security.

<sup>3</sup> The Federal Council determines what proportion of the income earned by the person bound to provide security is to be transferred by the employer to the security account. The cantonal authorities link the temporary permission to pursue gainful employment with this condition.

<sup>4</sup> Asylum seekers and persons in need of protection without an annual residence permit have to reveal any assets which are not derived from their earned income. The competent authority may seize these assets up to the anticipated amount of welfare, departure and execution costs as well as costs incurred by appeals proceedings on behalf of the security account and offset these against the costs arising, provided:

- a. the asylum seekers and persons in need of protection without an annual residence permit cannot prove the origin of the assets; or
- b. these assets exceed an amount to be determined by the Federal Council.

<sup>5</sup> The Federal Government may delegate to third parties tasks connected with the execution of the duty to provide security.

<sup>6</sup> The Federal Council defines the modalities.

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<sup>15</sup> SR 142.20

**Art. 87** Restitution of the security deposit

<sup>1</sup> The security deposit is paid back, after deduction of the offset costs, and on request if :

- a. it has been proved or is probable that the person bound to provide security has definitely left Switzerland;
- b. if this person has received a residence permit as an asylum seeker or refugee;
- c. if this person has been granted temporary protection, has received a permanent residence permit or has lived in Switzerland for at least ten years.

<sup>2</sup> The right of restitution to any credit balance which is not claimed lawfully within ten years after its creation passes to the Federal Government. If there are excusable reasons for not making the claim, the Federal Government pays the entitled person the credit, even after the expiry of ten years.

<sup>3</sup> The Federal Government may delegate to third parties tasks connected with the closure of the security accounts.

<sup>4</sup> The Federal Council defines the modalities.

## 6<sup>th</sup> Chapter: Federal contributions

### Art. 88 Lump sums

<sup>1</sup> The Federal Office pays the cantons for asylum seekers and persons in need of protection without a residence permit at the longest up to the day on which removal is to be executed or on which they receive permission to stay or the right to a residence permit:

- a. a lump sum for welfare costs; and
- b. a lump-sum contribution for care and administrative costs.

<sup>2</sup> For persons in need of protection who are entitled to stay under Article 74 para 2, the Federal Government pays the cantons half of the lump sum stipulated in para 1a, up to the day on which removal is to be executed, respectively until the granting of a permanent residence permit or no longer than the time when such a permit could be granted under Article 74 para 3.

<sup>3</sup> For refugees the Federal Government pays back the cantons welfare, care and administrative costs in the form of a lump sum until the day on which the refugees receive a permanent residence permit or the right to permanent residence under Article 60 para 2.

<sup>4</sup> The Federal Council may order the payment of lump sums for further cases if special circumstances justify this; this applies viz. to refugees with a permanent residence permit or persons in need of protection with an annual residence or permanent residence permit who are elderly or disabled.

<sup>5</sup> These lump sums are not expended if the Federal Government pays out a lump sum under Article 14e para 2 of the Swiss Aliens Act<sup>16</sup>.

### Art. 89 Determination of lump sums

<sup>1</sup> The Federal Council determines the amount of lump sums under Article 88 para 1a, 2 and 3 on the basis of the anticipated expenses for cost-effective solutions.

<sup>2</sup> The lump sums may be graded, viz. according to neediness or length of stay and varied amongst the cantons.

<sup>3</sup> The Federal Council decides on:

- a. the reimbursement of special welfare benefits which have not been paid as lump sums;
- b. the further procedure.

### Art. 90 Funding of collective accommodation

<sup>1</sup> The Federal Government may finance, completely or partly, the erection, conversion and installation of collective accommodation in which the authorities place persons who are in Switzerland on the basis of this Act.

<sup>2</sup> The Federal Council defines the procedure and determines the modalities of ownership, ensuring that the use of such accommodation conforms to the foreseen purpose.

<sup>3</sup> It determines to what extent the amount spent on the direct funding of accommodation by the Federal Government is to be offset against the lump sums.

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<sup>16</sup> SR 142.20



**Art. 91** Further contributions

<sup>1</sup> The Federal Government may promote the realization of charitable occupational and educational programs.

<sup>2</sup> It may reimburse the cantons for grants for professional and further training:

<sup>3</sup> It may make contributions to facilities for traumatized persons who are in Switzerland on the basis of this Act.

<sup>4</sup> It may make financial contributions towards the social, professional and cultural integration of refugees and persons in need of protection who have a right to an annual residence permit; as a rule, these contributions are only granted if the cantons, communes or third parties contribute to the costs in an adequate manner.

<sup>5</sup> It may make a contribution to the cantons for health insurance premiums.

<sup>6</sup> The Federal Government reimburses the cantons for staff costs which arise through the preparation of decisions taken under with Article 31.

<sup>7</sup> It may, within the scope of international co-operation as provided in Article 113, make contributions to institutions supporting internationally-orientated projects or to international organizations.

<sup>8</sup> The Federal Council regulates the requirements and procedure for the payment and accounting of the contributions.

**Art. 92** Entry and departure costs

<sup>1</sup> The Federal Government may bear the costs for the entry and departure of refugees and persons in need of protection.

<sup>2</sup> It bears the costs for the departure of asylum seekers, of persons whose asylum applications have been rejected or who have withdrawn their asylum application, and of persons who have been ordered to depart following the withdrawal of temporary protection, if these persons are destitute.

<sup>3</sup> It may make contributions to the expenditure of the cantons which are directly linked to the organization of departure.

<sup>4</sup> The Federal Council regulates the conditions and procedure for the payment and accounting of the contributions. If possible, it determines lump sums.

**Art. 93** Return assistance and reintegration

<sup>1</sup> The Federal Government provides return assistance. For this purpose, it may foresee the following measures:

- a. the complete or partial funding of projects in Switzerland aimed at preserving the ability of those concerned to return;
- b. the complete or partial funding of projects in the native country, country of origin or third country aimed at facilitating return and reintegration;
- c. the granting of financial support in individual cases aimed at facilitating the integration of those concerned or for medical care in the native country, country of origin or third country.

<sup>2</sup> For the purpose of return assistance and reintegration, the Federal Government may work together with international organizations and set up a co-ordination office.

<sup>3</sup> The Federal Council defines the requirements and procedure for the payment and accounting of the contributions.

**Art. 94** Contributions to relief organizations

<sup>1</sup> The Federal Government may make contributions to the administrative costs of an umbrella organization of the recognized relief organizations.

<sup>2</sup> The recognized relief organizations are compensated with a lump sum for their participation in the cantonal hearings under Article 30.

<sup>3</sup> The Federal Council determines the amount of the contributions foreseen in para 1 and the lump sums mentioned in para 2.

**Art. 95** Auditing

<sup>1</sup> The Federal Government verifies that the contributions are used in accordance with the legislation on subsidies and that the corresponding accounts are correctly kept. It may also delegate these tasks to a third party.

<sup>2</sup> On request, the beneficiaries of federal contributions must furnish the organs charged with auditing with the necessary files and accounting documents, provide them with any information required and give them access to their documents in situ. Violations of this duty are sanctioned under Article 40 of the Federal Act on Subsidies of 5<sup>th</sup> October 1990<sup>17</sup>.

<sup>3</sup> The Swiss Federal Audit Office monitors financial activities in asylum matters according to the Federal Act on Auditing of 28<sup>th</sup> June 1967<sup>18</sup>. It may also carry out audits in situ.

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<sup>17</sup> SR 616.1

<sup>18</sup> SR 614.0

## 7<sup>th</sup> Chapter: Processing of personal data

### Art. 96 Processing of personal data

Provided they require these data for the fulfilment of their statutory obligations, the Federal Office, the appeals authorities, as well as the private organizations entrusted with duties under this Act, may process or have processed the personal data of persons seeking asylum or protection and their dependants, in particular, also data considered especially worthy of protection or personality profiles as stipulated in Article 3c and d of the Federal Act on Data Protection of 19<sup>th</sup> June 1992<sup>19</sup>.

### Art. 97 Disclosure of personal data to the native country or country of origin

<sup>1</sup> It is forbidden to disclose to the native country or country of origin the personal data of asylum seekers, recognized refugees and persons in need of protection if the person concerned or his dependants would consequently be endangered.

<sup>2</sup> From the time when the removal order is enforceable, the competent authority is authorized to take up contact with the authorities of the native country or country of origin for the purpose of acquiring the travel documents required for the execution of removal and to pass on to these the personal details required for the issue of identity papers.

<sup>3</sup> For the execution of return to the native country or country of origin, the authorities responsible for organizing the departure may disclose the following data to the foreign authorities:

- a. Name, first name, alias names, date of birth, sex, nationality, name and first name of the parents and last address in the native country or country of origin;
- b. if necessary, fingerprints and photographs;
- c. information on the state of health, insofar as this lies in the interest of the person concerned.

### Art. 98 Disclosure of personal data to third countries and international organizations

<sup>1</sup> For the execution of this Act, the Federal Office and the appeals authorities may disclose personal data to the foreign authorities and international organizations entrusted with relevant duties if the country or the international organization concerned guarantees an equivalent protection of the data transmitted.

<sup>2</sup> The following personal data may be disclosed:

- a. personal details (name, first name, alias names, date of birth, sex, nationality) of the person concerned and, as far as necessary, of the dependants;
- b. information on the passport or other identity papers;
- c. further data required for the identification of a person;
- d. information on the places where he has stayed and travel routes;
- e. information on the permits allowing a stay and visas granted;
- f. information on the possible filing of an asylum application (place and date of filing, stage of proceedings, summary details of the contents of the decision made).

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<sup>19</sup> SR 235.1

**Art. 99**                      Fingerprints and photographs

<sup>1</sup> Fingerprints and photographs are taken of asylum seekers and persons in need of protection. The Federal Council regulates exceptions.

<sup>2</sup> The fingerprints and photographs are stored without the corresponding personal details in a databank.

<sup>3</sup> The Department compares the new fingerprints with the fingerprint collection of the Federal Office and that of the Federal Office for Police Matters.

<sup>4</sup> If the fingerprints of the Federal Office correspond with those of the Federal Office for Police Matters, the Department informs both Offices as well as the competent cantonal police authorities and provides the personal details of the person concerned (name, first name, alias names, date of birth, sex and reference number). In the case of police registration, the date, place and reason for the taking of fingerprints are also transmitted in code.

<sup>5</sup> The Federal Office uses this information to:

- a. check the identity of the person concerned;
- b. check whether the person concerned has already applied for asylum once before;
- c. check whether there are data which confirm or refute the statements of the person concerned;
- d. check whether there are data which question the worthiness of the person concerned to be granted asylum;
- e. facilitate official assistance between the Federal Office and the police authorities.

<sup>6</sup> The personal data transmitted under para 4 may not be disclosed abroad without the consent of the bearer of the data collection. Article 6 para 1 of the Federal Act on Data Protection of 19<sup>th</sup> June 1992<sup>20</sup> applies analogously.

<sup>7</sup> The data are deleted:

- a. if asylum is granted;
- b. at the latest ten years after final rejection, withdrawal or deletion of the asylum application or after a decision to dismiss the application without entering into the substance of the case;
- c. in the case of persons in need of protection, at the latest ten years after their entry to Switzerland.

**Art. 100**                      Filing system

<sup>1</sup> The Federal Office and the appeals authorities each operate their own computerized registration system on:

- a. the registration of asylum seekers, refugees, persons in need of protection, temporarily admitted and stateless persons;
- b. the registration of appeals;
- c. the efficient and rational organization of work flows;

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<sup>20</sup> SR 235.1

- d. the control of operations;
- e. the compilation of statistics.

<sup>2</sup> All personal data required for the fulfilment of tasks under para 1 are stored and processed in the computerized registration system, in particular, also information on religious denomination and ethnic background as well as information on welfare benefits received, including medical costs.

<sup>3</sup> The Federal Council issues provisions regulating the organization and operation of the computerized registration system, the catalogue of the data to be processed, access to data, data-processing rights, the length of data storage as well as the archiving and deletion of data.

#### **Art. 101** Disclosure of data from the registration system

<sup>1</sup> The Federal Office may grant the following authorities access to data it has stored or which has been stored on its behalf in the computerized registration system by means of a retrieval system, provided these data are indispensable for the fulfilment of their statutory obligations:

- a. the cantonal aliens police and welfare authorities, to enable these to execute their duties under this Act;
- b. the federal authorities responsible for internal security and police affairs, to enable these to identify persons in matters of security and judiciary police investigations, in matters of intercantonal and international exchange of police information, in matters of international judicial and administrative assistance and of the supervision of RIPOL entries under the RIPOL Order of 19<sup>th</sup> June 1995<sup>21</sup> (RIPOL = Swiss Computerized Search Index) as well as to enable these authorities to assess the unworthiness of asylum and the violation or endangering of Switzerland's internal or external security according to Article 53 of this Act;
- c. the Federal Aliens Office, to enable it to execute its duties in accordance with the Swiss Aliens Act<sup>22</sup>;
- d. the Appeals Commission, to enable it to deal with appeals lodged there;
- e. the Departmental Appeals Service, to enable it to determine appeals received there;
- f. the border posts, to enable them to control illegal entries;
- g. the Co-ordinator of International Refugee Policy at the Federal Department of Foreign Affairs, to enable him to fulfil his duties as stipulated by this Act;
- h. the Swiss Federal Audit Office, to enable it to exercise financial control;
- i. the cantonal and communal police authorities, to facilitate their aliens police duties as well as to enable them to identify persons in criminal police and security-related investigations;
- j. the cantonal employment offices, to enable them to examine applications for work permits for asylum seekers and persons in need of protection.

<sup>2</sup> The Federal Office may disclose in another way data which it has stored or which has been stored on its behalf in the computerized registration system to the following authorities or organizations:

- a. the Federal Statistical Office, to enable it to compile statistics, in particular for the annual federal statistics on the population level and for the censuses, the data transmitted being in an anonymous form;

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<sup>21</sup> SR 172.213.61

<sup>22</sup> SR 142.20

- b. the Swiss Refugee Council, to enable it to co-ordinate the tasks delegated to the recognized relief organizations as provided for in this Act;
- c. third parties authorized to manage the security accounts, to enable them to fulfil their duties as provided for in this Act.

<sup>3</sup> The personal data transmitted under paras 1 and 2 may not be further transmitted abroad without the consent of the bearer of the data collection. Article 6 para 1 of the Federal Act on Data Protection of 19<sup>th</sup> June 1992<sup>23</sup> applies analogously.

<sup>4</sup> As a rule, the data of uninvolved third parties may not be made accessible to the authorities named in para 1 and may on no account be processed by these.

**Art. 102** Information and documentation system

<sup>1</sup> Together with the Appeals Commission the Federal Office operates a computerized information and documentation system. This system contains factual information and documentation from the range of duties of the Federal Office and the Appeals Commission which is stored in various databanks. Insofar as is required, personal data contained in the texts may also be stored, viz. personal details as well as particularly sensitive personal data and personality profiles.

<sup>2</sup> Only employees of the Federal Office and the Appeals Commission have access to databanks containing particularly sensitive personal data and personality profiles.

<sup>3</sup> Databanks containing predominantly factual information drawn from public sources may, on request, be made accessible to external users by means of a retrieval procedure.

<sup>4</sup> The Federal Council defines the modalities, viz, access to the system and the protection of the personal data collected therein.

## **8<sup>th</sup> Chapter: Legal protection**

### **1<sup>st</sup> Section: Appeal proceedings at cantonal level**

#### **Art. 103**

<sup>1</sup> The cantons foresee at least one appeals instance with which appeals may be lodged against orders of cantonal authorities based on this Act and its provisions.

<sup>2</sup> Appeals against last instance cantonal decisions are conducted in accordance with the general provisions on the Federal Organization of Justice, provided this Act does not foresee otherwise.

### **2<sup>nd</sup> Section: Appeal proceedings at federal level**

#### **Art. 104**                      Swiss Asylum Appeals Commission

<sup>1</sup> The Federal Council appoints the members of the Appeals Commission and defines their status. It regulates the organization and may, in particular, foresee the establishment of an emergency service for urgent cases. It may, furthermore, issue procedural regulations, viz. on oral procedure, the oral delivery of orders and summary proceedings.

<sup>2</sup> The Appeals Commission decides with a panel of three judges on appeals, revisions and applications under Article 24 of the Administrative Procedure Act<sup>24</sup> which do not fall within the competence of the single judge as provided for in Article 111 para 2.

<sup>3</sup> If a fundamental question is to be decided on or an important legal question is to be judged in deviation from an earlier decision, the consent of the whole Commission must be obtained. It decides with the majority vote of its members; the Commission president has the casting vote. The decision is binding for the settlement of the case.

<sup>4</sup> The Commission president determines the organizational measures required for the co-ordination of court rulings.

#### **Art. 105**                      Jurisdiction

<sup>1</sup> The Appeals Commission decides finally (absolutely) on appeals against decisions of the Federal Office regarding:

- a. the rejection of asylum and the dismissal of an asylum application without entering into the substance of the case;
- b. the rejection of temporary protection; Article 68 para 2 is reserved, provided the violation of the principle of family unity is not the subject of the appeal;
- c. removal;
- d. the cessation of asylum or of temporary protection;
- e. the withdrawal of temporary protection granted under Article 44 paras 2 and 3.

<sup>2</sup> The canton may lodge an appeal with the Appeals Commission, provided the Federal Office does not grant its request as provided for in Article 44 para 5.

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<sup>24</sup> SR 172.021

<sup>3</sup> Article 25 of the Federal Act on Data Protection of 19<sup>th</sup> June 1992<sup>25</sup> applies to appeals based on the provisions of the 7<sup>th</sup> Chapter.

<sup>4</sup> The Department decides finally (absolutely) on other appeals, provided the administrative court appeal is not admissible at the Swiss Federal Supreme Court.

**Art. 106**                      Grounds for appeal

<sup>1</sup> The appeal to the Appeals Commission may contest:

- a. the violation of federal law, including the abuse and the excess of discretion;
- b. the incorrect and incomplete determination of the relevant facts;
- c. unreasonableness.

<sup>2</sup> In the assessment of unreasonableness, the Appeals Commission is bound by the guidelines and special directives of the Federal Council.

**Art. 107**                      Contestable interlocutory decisions

<sup>1</sup> Interlocutory decisions taken in application of Article 10 paras 1-3 and 18-48 of this Act as well as Article 22a of the Swiss Aliens Act<sup>26</sup>, may only be contested by appeals against the final decision. The contesting of orders falling under Article 27 para 3 is reserved.

<sup>2</sup> Also independently contestable, provided they cannot cause irreparable damage, are:

- a. precautionary measures;
- b. decisions which cause a stay of proceedings, with the exception of decisions falling under Article 69 para 3.

<sup>3</sup> Also independently contestable are decisions on the temporary rejection of entry to Switzerland as well as on the allocation of a place where the asylum seekers may wait at the airport (Art. 22 paras 1 and 2).

**Art. 108**                      Review of the rejection of entry and the allocation  
of a place to wait at the airport

<sup>1</sup> The person seeking asylum may lodge an appeal against the temporary rejection of entry as well as against the allocation of a place to wait at the airport (Art. 22 paras 1 and 2) until the delivery of the decision on removal under Article 23 paras 1 and 3.

<sup>2</sup> The Appeals Commission decides on appeals within 48 hours, as a rule, on the basis of the files.

**Art. 109**                      Deadline for processing

As a rule, the Appeals Commission decides within six weeks on appeals against decisions taken under Articles 32-35 and 40 para 1.

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<sup>25</sup> SR 235.1  
<sup>26</sup> SR 142.20



**Art. 110**                      Deadlines for proceedings

<sup>1</sup> Additional respite for the amendment of the appeal amounts to seven days.

<sup>2</sup> The time-limit for submitting evidence is seven days if the evidence must be procured in Switzerland, and 30 days for evidence from abroad. Expert reports are to be submitted within 30 days.

<sup>3</sup> The time-limit may be extended if the appellant or his representative is prevented from acting within this time-limit, viz. due to illness or accident

<sup>4</sup> In proceedings falling under Article 108, the deadlines for proceedings amount to 24 hours.

**Art. 111**                      Simplified proceedings

<sup>1</sup> In the case of manifestly unfounded appeals and appeals falling under Article 108, the exchange of correspondence may be waived.

<sup>2</sup> The judges decide as sole judges in the following cases:

- a. the deletion of appeals after becoming null and void;
- b. the dismissal of manifestly inadmissible appeals;
- c. the decision on the temporary rejection of entry at the airport and the allocation to a place to wait at the airport.

<sup>3</sup> The appeal decision is only summarily substantiated.

**Art. 112**                      Suspensive effect and immediate execution

<sup>1</sup> If the immediate execution of removal has been ordered, the alien may lodge an application with the Asylum Appeals Commission for the restitution of suspensive effect within 24 hours. The alien is to be informed of his rights.

<sup>2</sup> The Appeals Commission must decide within 48 hours on applications for the restitution of suspensive effect.

<sup>3</sup> The appellant may be held by the competent authority until the decision on his application is taken, but not longer than 72 hours.

<sup>4</sup> The lodging of extraordinary redress and remedies does not hinder execution, unless the authority responsible for processing decides otherwise.

**9<sup>th</sup> Chapter:**  
**International co-operation and consultative commission**

**Art. 113**                      International co-operation

The Federal Government participates in the harmonization of European refugee policy at international level as well as in efforts to solve refugee problems abroad. It supports the activities of international relief organizations. It works together with viz. the United Nations High Commissioner for Refugees.

**Art. 114**                      Consultative commission

The Federal Council appoints a consultative commission for refugee matters.

## 10<sup>th</sup> Chapter: Penal provisions relative to the 5<sup>th</sup> Chapter, 2<sup>nd</sup> Section

### Art. 115 Criminal offences

Whosoever commits one of the following acts will be punished by up to six months imprisonment or by a fine of up to Fr. 20 000, provided he has not committed a crime under the Swiss Penal Code<sup>27</sup> which foresees a heavier punishment, viz. if he:

- a. by untrue or incomplete information or in another way on the basis of this Act obtains for himself or for a third person a pecuniary advantage that is not his by right;
- b. by untrue or incomplete information or in another way completely or partly evades his duty to provide security as stipulated in Article 86;
- c. as an employer deducts security payments from the wages of an employee and does not use them for the foreseen purpose.

### Art. 116 Minor offences

Punishable by a fine, provided no crime punishable under Article 115 has been committed, is whosoever:

- a. violates the duty to give information by knowingly giving false information or refusing to give information;
- b. opposes a control ordered by the competent authority or renders this impossible in another way.

### Art. 117 Criminal and minor offences committed in an enterprise

For criminal or minor offences committed in the enterprise of a legal entity, a partnership or a privately-owned firm or in the enterprise of a public law corporation or institution, Articles 6 and 7 of the Penal Administrative Act of 22<sup>nd</sup> March 1974<sup>28</sup> are applicable.

### Art. 118 Prosecution

Prosecution is in the jurisdiction of the cantons.

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<sup>27</sup> SR 311.0

<sup>28</sup> SR 313.0

## 11<sup>th</sup> Chapter: Final provisions

### Art. 119 Execution

The Federal Council is charged with execution of the present Act. It issues the implementing provisions.

### Art. 120 Repeal of prior law

The following are repealed:

- a. the Asylum Act of 5<sup>th</sup> October 1979<sup>29</sup>;
- b. the Federal Order of 16<sup>th</sup> December 1994<sup>30</sup> on cuts in the asylum and aliens sectors.

### Art. 121 Transitional provisions

<sup>1</sup> The new law is valid for proceedings pending at the time of the entry into force of this Act.

<sup>2</sup> Pending proceedings on the granting of an aliens-police annual residence permit under former Article 17 para 2 are null and void.

<sup>3</sup> The Appeals Commission and the Department remain competent for appeals pending in their offices on entry into force of this Act. Para 2 is reserved.

<sup>4</sup> With the entry into force of this Act, groups of aliens temporarily admitted under the former Article 14a para 5 of the Swiss Aliens Act<sup>31</sup> are admitted according to the provisions of Chapter 4. The length of stay of persons temporarily admitted in groups is taken into account when calculating the time-limits under Article 74 paras 2 and 3.

<sup>5</sup> The payment of welfare benefits to refugees with an annual residence permit is governed by the prior law up to two years after the entry into force of this Act.

### Art. 122 Relationship to the Federal Order of 26<sup>th</sup> June 1998<sup>32</sup> on urgent measures in asylum and aliens matters

If the referendum is taken up against the Federal Order on Urgent Measures in Asylum and Aliens Matters of 26<sup>th</sup> June 1998 and this is rejected in a popular vote, the provisions listed below are to be repealed:

- a. Article 8 para 4 (duty to co-operate in the acquisition of valid travel documents);
- b. Article 32 para 2a (dismissal of the application on non-submission of travel documents or identity papers);
- c. Article 33 (dismissal of the application on abusive later submission);
- d. Article 32 para 2b (dismissal of the application in the event of identity deception); in this case, the contents of Article 16 para 1b are inserted in the version as provided for in subpara I of the

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<sup>29</sup> [AS 1980 1718, 1986 2062, 1987 1674, 1990 938 1587 Art. 3, 1994 1634 subpara 1 8.1 2876, 1995 146 subpara II 1126 subpara II I 4356, 1997 2372 2394, 1998 1582]

<sup>30</sup> [AS 1994 2876]

<sup>31</sup> SR 142.20

<sup>32</sup> AS 1998 1582 subpara III. Based on the acceptance of this Federal Order in the popular vote of 13<sup>th</sup> June 1999, this article is null and void.

Federal Order on Asylum Proceedings of 22<sup>nd</sup> June 1990<sup>33</sup> instead of the repealed provision of Article 32 para 2b; and

- e. Article 45 para 2 (immediate execution in the event of dismissal of an application); in this case, the contents of Article 17a para 2 are inserted in the version provided in subpara II of the Federal Act on Coercive Measures under Aliens Legislation of 18<sup>th</sup> March 1994<sup>34</sup> instead of the repealed provision of Article 45 para 2. The references to the articles are to be adjusted accordingly.

**Art. 123**                      Referendum and entry into force

<sup>1</sup> This Act is subject to the optional referendum

<sup>2</sup> The Federal Council determines the date of entry into force.

Date of entry into force: 1<sup>st</sup> October 1999.<sup>35</sup>

SR: Systematisches Register; BBl: Bundesblatt

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<sup>33</sup> AS 1990 938

<sup>34</sup> AS 1995 146 151

<sup>35</sup> Acc. to Federal Council Order of 11th Aug. 1999 (AS 1999 2298; BBl 1996 II I).