

## Humanitarian Visa in Switzerland

An instrument for sustainable access to international protection?



The Swiss Red Cross (SRC) has been running a humanitarian visa advisory service since 2014. The service monitors developments concerning humanitarian visa and legal entry into Switzerland and the EU. In both Switzerland and at EU level, the SRC has noticed a trend towards reinforced border security and restrictions to the legal channels for entering Switzerland. The first part of this report will therefore summarize the findings of a study and report by the EU Parliament and explain how they apply to Switzerland. Then it makes some concrete suggestions for optimizing the current humanitarian visa situation in Switzerland.

A study entitled 'Humanitarian visas – European Added Value Assessment accompanying the European Parliament's legislative own-initiative report' has revealed that 90% of those persons who receive protection in the EU actually arrive in Europe illegally. Thus the opportunities for legal entry do not at all meet the needs. Formal opportunities to enter legally Europe in order to apply for international protection are currently lacking at EU level.

The study also shows that illegal entry has negative repercussions for both the persons involved and the EU member states themselves. A formal harmonized humanitarian visa system at EU level could provide legal certainty, predictability, consistent handling and a basis for decision-making. This would make the asylum process easier to manage and coordinate, reduce the cost of the current asylum procedure and in particular guarantee safe entry channels. The study discusses three different approaches to improving the entry opportunities: visa exemption, visa with limited territorial validity and an EU humanitarian visa. The study argues that all three approaches will result in safer entry opportunities and advantages for the EU as a whole, individual states, and individual people.

At EU level, in October 2018 the Committee on Civil Liberties decided to present a legislative proposal on the introduction of a European humanitarian visa by 31 March 2019. The ad hoc report listed various elements that needed to be ensured for the application process and issuing of humanitarian visas.

The SRC feels that the study tackles a key issue. The clear demand for more safe and legal entry opportunities is consistent with the SRC's own position. The remarks on the observations and developments on the humanitarian visa at European level show that Switzerland, with its system of examining applications and issuing humanitarian visas at EU level, is a pioneer.

Switzerland has a legal basis that makes it possible for individuals in particularly precarious situations to enter the country legally. When the new VEV (ordinance on entry and visas) came into force on 15 September 2018, the humanitarian visa procedure was adapted to European Court jurisprudence and made clearer for applicants.

The findings also show that for Switzerland there are still ways to optimize this procedure. In particular:

- Information about the humanitarian visa and the application procedure should be more easily accessible at the State Secretariat for Migration (SEM) and at the individual Swiss representations.
- Applicants for a humanitarian visa must submit visa application form D at a Swiss representation. This form is not designed for humanitarian visa applications. The information requested on the form does not correspond to the situation of a humanitarian visa applicant. Therefore the SRC suggests to adapt the application form.
- The use of electronic media and assistance in submitting an application for Switzerland also need to be examined in order to be easier, or simply possible, to submit an application.
- When the instructions for humanitarian visas under Art. 4 par. 2 VEV dated 6 September 2018 were updated, the SEM developed a specific refusal form for humanitarian visa applicants. The SRC welcomes this; however, the individual reasons for the refusal are still not stated. This means it is still difficult for the applicant to understand why the visa has been refused and this then might lead to a greater number of appeals. The SRC therefore suggests that the refusal form should be accompanied by individual reasons why the application was denied.
- The SRC's experience shows that some individuals who manage to enter Switzerland then immediately rely on support and often turn to the SRC with their questions. There is a need to make access to this support easier for these people, as it is for resettlement refugees. The procedures and flow of information between the SEM, the cantons and the SRC could also be improved, so that information about the individuals is forwarded to the competent authorities before the persons arrive and the initial preparations can be started. This would be especially useful in the case of particularly vulnerable individuals so that the competent authorities are not taken by surprise even though all the information is already available.
- Facilitating access to support is associated with a faster and more sustainable residence regime for the persons concerned. The humanitarian visa is a legal access channel to international protection; however, it does not provide any long-term residence status. An asylum application is necessary before the individual's reasons can be assessed. So that these reasons can be examined in detail, the SRC suggests that this be included in the new asylum procedure from March 2019, as part of the extended procedure, that the information already available in the humanitarian visa application be accessible for the asylum procedure, and that the decision on the application be taken within a reasonable timespan.