

Country Report: Germany



2016
Update



Acknowledgements & Methodology

This report was written by Michael Kalkmann, Coordinator of Informationsverbund Asyl und Migration, and was edited by ECRE.

This reports draws on information gathered from national authorities, including publicly available statistics and responses to parliamentary questions, national case law, practice of civil society organisations, as well as other public sources.

The information in this report is up-to-date as of 31 December 2016, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 20 countries. This includes 17 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Glossary

Arrival centre	Centre where various processes such as registration, identity checks, interview and decision-making are streamlined in the same facility. Arrival centres set up in 2015 and 2016.
Special reception centre	Centre, where accelerated procedures are carried out in accordance with Section 30a Asylum Act . Two such centres exist at the moment. Special reception centres are distinct from initial reception centres.
Formal decision	Cases which are closed without an examination of the asylum claim's substance, e.g. because it is found that Germany is not responsible for the procedure or because an asylum seeker withdraws the application
Revision	Appeal on points of law before the Federal Administrative Court
Secondary application	Under Section 71a Asylum Act , this is a subsequent application submitted in Germany after the person has had an application rejected in a safe third country or a Dublin Member State
Abschiebungshaft	Detention pending deportation
Abschiebungsverbot	Prohibition of deportation
Absolutes Direktverfahren	Absolute direct procedure applicable to certain caseloads
Ankunftsnachweis	Arrival certificate, replacing the BÜMA in March 2016
Aufgriffsfälle	Apprehension for irregular entry
Aufnahmeeinrichtung	Initial reception centre
Ausreisegewahrsam	Custody pending departure
Berufung	Onward appeal
Duldung	Tolerated stay
Gemeinschaftsunterkünfte	Collective accommodation
Jugendamt	Youth Welfare Office
Königsteiner Schlüssel	Distribution key across German federal states
Krankenschein	Health insurance voucher
Niederlassungserlaubnis	Settlement permit or permanent residence permit
Nichtbetreiben	Abandoned application
Oberverwaltungsgericht	High Administrative Court
Offensichtlich unbegründet	Manifestly unfounded
Residenzpflicht	Residence obligation
Sonderbeauftragter	Special officer dealing with vulnerable asylum seekers
Unbeachtlich	Inadmissible
Verwaltungsgericht	Administrative Court
Verwaltungsgerichtshof	High Administrative Court
Zurückweisung	Removal

List of Abbreviations

BAMF	Federal Office for Migration and Refugees Bundesamt für Migration und Flüchtlinge
BÜMA	Confirmation of Reporting as Asylum Seeker Bescheinigung über die Meldung als Asylsuchender
BVerfG	Federal Constitutional Court Bundesverfassungsgericht
CEFR	Common European Framework of Reference for Languages
CJEU	Court of Justice of the European Union
CPT	European Committee for the Prevention of Torture
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
GGUA	Gemeinnützige Gesellschaft zur Unterstützung Asylsuchender
ILGA	International Lesbian and Gay Association

Statistics

Overview of statistical practice

The Federal Office for Migration and Refugees (BAMF) publishes monthly statistical reports (*Asylgeschäftsstatistik*) with information on applications and first instance decisions for main nationalities. More detailed information is provided in the BAMF's key asylum figures (*Schlüsselzahlen Asyl*) and annual statistical reports (*Bundesamt in Zahlen*).¹

Applications and granting of protection status at first instance: 2016

	Applicants in 2016	Pending applications in 2016	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	745,545	433,719	256,136	153,700	24,084	173,846	42.1%	25.3%	4%	28.6%

Breakdown by countries of origin of the total numbers

Syria	268,866	58,399	166,520	121,562	910	167	57.6%	42%	0.3%	0.1%
Afghanistan	127,892	102,856	13,813	5,836	18,441	24,817	22%	9.3%	29.3%	39.4%
Iraq	97,162	53,852	36,801	10,912	439	14,248	59%	17.5%	0.7%	22.8%
Iran	26,872	24,045	5,443	257	150	3,806	56.4%	2.6%	1.6%	39.4%
Eritrea	19,103	13,439	16,666	3,652	119	135	81%	17.8%	0.6%	0.6%
Albania	17,236	:	18	73	78	30,020	0.06%	0.24%	0.3%	99.4%
Pakistan	15,528	16,430	275	49	105	8,201	3.2%	0.6%	1.2%	95%
Undefined	14,922	10,586	6,782	6,084	111	1,189	47.9%	43%	0.8%	8.3%
Nigeria	12,916	18,666	127	34	213	1,787	5.9%	1.6%	9.9%	82.6%
Russia	12,234	:	357	127	177	5,712	5.6%	2%	2.8%	89.6%

Source: BAMF, Asylum Statistics December 2016: <http://bit.ly/2kniJo9>; BAMF, Key Asylum Statistics 2016: <http://bit.ly/2lllpqJ>; Federal Government, Reply to parliamentary question by The Left, 21 February 2017, 34.

¹ BAMF, *Asylzahlen*, available in German at: <http://bit.ly/2mb014E>.

Gender/age breakdown of the total number of applicants: 2016

	Number	Percentage
Total number of applicants	745,155	100%
Men	487,370	65.4%
Women	255,870	34.3%
Children	268,190	36%
Unaccompanied children	35,939	5%

Source: Eurostat (rounded). Note that Eurostat figures on asylum applications diverge from those provided by the BAMF.
Unaccompanied children, first applications only: Federal Government, Reply to parliamentary question by The Left, 21 February 2017, 55-56.

Comparison between first instance and appeal decision rates: 2016

	First instance (Jan – Dec 2016)		Appeal (Jan – Nov 2016)	
	Number	Percentage	Number	Percentage
Total number of decisions	695,733	100%	64,251	100%
Positive decisions	433,920	62.4%	7,772	12.1%
• <i>Refugee status</i>	256,136	36.8%	6,223	9.7%
• <i>Subsidiary protection</i>	153,700	22.1%	418	0.7%
• <i>Humanitarian protection</i>	24,084	3.5%	1,131	1.8%
Negative decisions, including inadmissibility	261,813	37.6%	20,399	31.7%
Termination of appeal procedure (e.g. withdrawal)	-	-	36,080	56.2%

Source: BAMF, Asylum Statistics December 2016, 2; Federal Government, Reply to parliamentary question by The Left, 21 February 2017, 63.

Overview of the legal framework

Main legislative acts relevant to asylum procedures, reception conditions and detention

Title in English	Original Title (DE)	Abbreviation	Web Link
Residence Act	Aufenthaltsgesetz	AufenthG	http://bit.ly/1SiAxKm (DE) http://bit.ly/1M5sZvW (EN)
Asylum Act	Asylgesetz	AsylG	http://bit.ly/1K3bGbv (DE)
Asylum Seekers' Benefits Act	Asylbewerberleistungs-gesetz	AsylbLG	http://bit.ly/1yuVyOx (DE)
Basic Law (German Constitution)	Grundgesetz	GG	http://bit.ly/1Twi9QM (DE) http://bit.ly/1Rteu8M (EN)
Act on Procedures in Family Matters and in Matters of Voluntary Jurisdiction (relevant for judicial review of detention)	Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit	FamFG	http://bit.ly/1HAT3Yv (DE) http://bit.ly/1M117bo (EN)

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention

Title in English	Original Title (DE)	Abbreviation	Web Link
Regulation on Residence	Aufenthaltsverordnung	AufenthV	http://bit.ly/1eVh0mp (DE)
Regulation on Employment	Beschäftigungsverordnung	BeschV	http://bit.ly/2nhb2B0 (DE)

Overview of the main changes since the previous report update

The report was previously updated in **November 2015**.

- ❖ The number of *newly arriving asylum seekers* dropped by about 69% in 2016. According to estimates by the Federal Ministry of Interior, 280,000 asylum seekers came to Germany in 2016, in comparison to an estimated 890,000 in 2015. In spite of this, the number of *asylum applications* increased significantly, from 476,649 in 2015 to 745,545 applications in 2016 (a 56% rise). This is due to the fact that the majority of applications were filed by applicants who had already arrived in 2015, at a time when authorities did not manage to register all applications. The backlog of non-registered asylum applications has been cleared in 2016.
- ❖ The overall protection rate was on a very high level in 2016 (62.4% of decisions resulting in refugee status, subsidiary protection or humanitarian/national protection). However, due to a policy change in the first months of 2016, the Federal Office for Migration and Refugees (BAMF) granted subsidiary protection instead of refugee protection in a record number of cases. This policy change affected Syrian nationals in particular, but also asylum seekers from Iraq or Eritrea. For instance, whereas 95.8% of Syrians had been granted refugee status in 2015, this rate dropped to 56.4% in 2016. Conversely, the rate of Syrians being granted subsidiary protection rose from 0.1% in 2015 to 41.2% in 2016. The policy change at the BAMF coincided with a legislative change in March 2016, according to which family reunification was suspended for beneficiaries of subsidiary protection until March 2018 (see below). Tens of thousands of beneficiaries of subsidiary protection appealed against the authorities' decisions in order to gain refugee status ("upgrade-appeals"), with a success rate of more than 75% in 2016.

Asylum procedure

- ❖ **Arrival centres:** The BAMF intensified its efforts to fast-track procedures with the establishment of more than 20 new "arrival centres". In these centres various processes such as registration, identity checks, the interview and the decision-making are "streamlined". Asylum seekers are categorised in "clusters" with the aim of conducting the asylum procedure for some groups of asylum seekers – those with an alleged low chance and those with an alleged high chance of being granted protection – within a few days.
- ❖ **Accelerated procedure:** Accelerated procedures were introduced in March 2016 for certain groups of asylum seekers, most prominently, asylum seekers from safe countries of origin. At the end of 2016 these accelerated procedures were only carried out in two branch offices of the BAMF, so this amendment did not have a major impact in practice.
- ❖ **Quality of decisions:** The quality of many asylum procedures was strongly criticised in a "memorandum" published by twelve NGOs in November 2016. One important issue of the memorandum was that many decisions in asylum procedures are not taken by the BAMF staff member who has conducted the interview but by a decision-maker in a remote location (called decision-making centres). This point has since been confirmed in an official statement, according to which more than 66% of asylum decisions were taken in "decision-making centres" in 2016.
- ❖ **Withdrawal of application:** In March 2016 a new sanction was introduced for asylum seekers who do not file their application without delay or on a given date at the branch office of the BAMF to which they have been sent by the authorities. Failure to report at the branch office in time is now regarded as "failure to pursue" the asylum procedure. The asylum procedure thus can be abandoned before it has begun.
- ❖ **Inadmissible applications:** Criteria for "inadmissibility" of asylum applications, were clarified in

August 2016. They now include “Dublin cases” (responsibility of another Member State of the Dublin regulation for the asylum procedure) as well as cases in which another EU member state has granted international protection and cases in which a secondary application does not lead to an initiation of a new asylum procedure.

- ❖ **Exclusion:** Criteria for exclusion from refugee status were amended in March 2016. An asylum seeker may now be excluded from recognition as a refugee if he or she has been sentenced to a prison term of at least one year (as opposed to three years in the former version of the law) for certain offences such as causing bodily harm, sexual assault or robbery.

Reception conditions

- ❖ **Access to the labour market:** In most parts of Germany asylum seekers with a work permit can start a job without having to undergo the “priority review” i.e. labour market test entailing an examination of whether there is a German national or a foreigner with a better residence status equally suited for the job. The priority review is suspended in 133 of 156 labour agency areas (areas to which a local labour office is assigned) between August 2016 and August 2019.
- ❖ **Financial allowance:** Following an amendment to the Asylum Seekers’ Benefits Act, it is possible as of August 2016 to reduce benefits for an asylum seeker, if he or she does not cooperate with the authorities to establish his or her identity.

Detention of asylum seekers

- ❖ **Place of detention:** New facilities for “detention pending deportation” were opened in several Federal States in 2016, following court decisions from former years which had declared detention of deportees in regular prisons illegal.

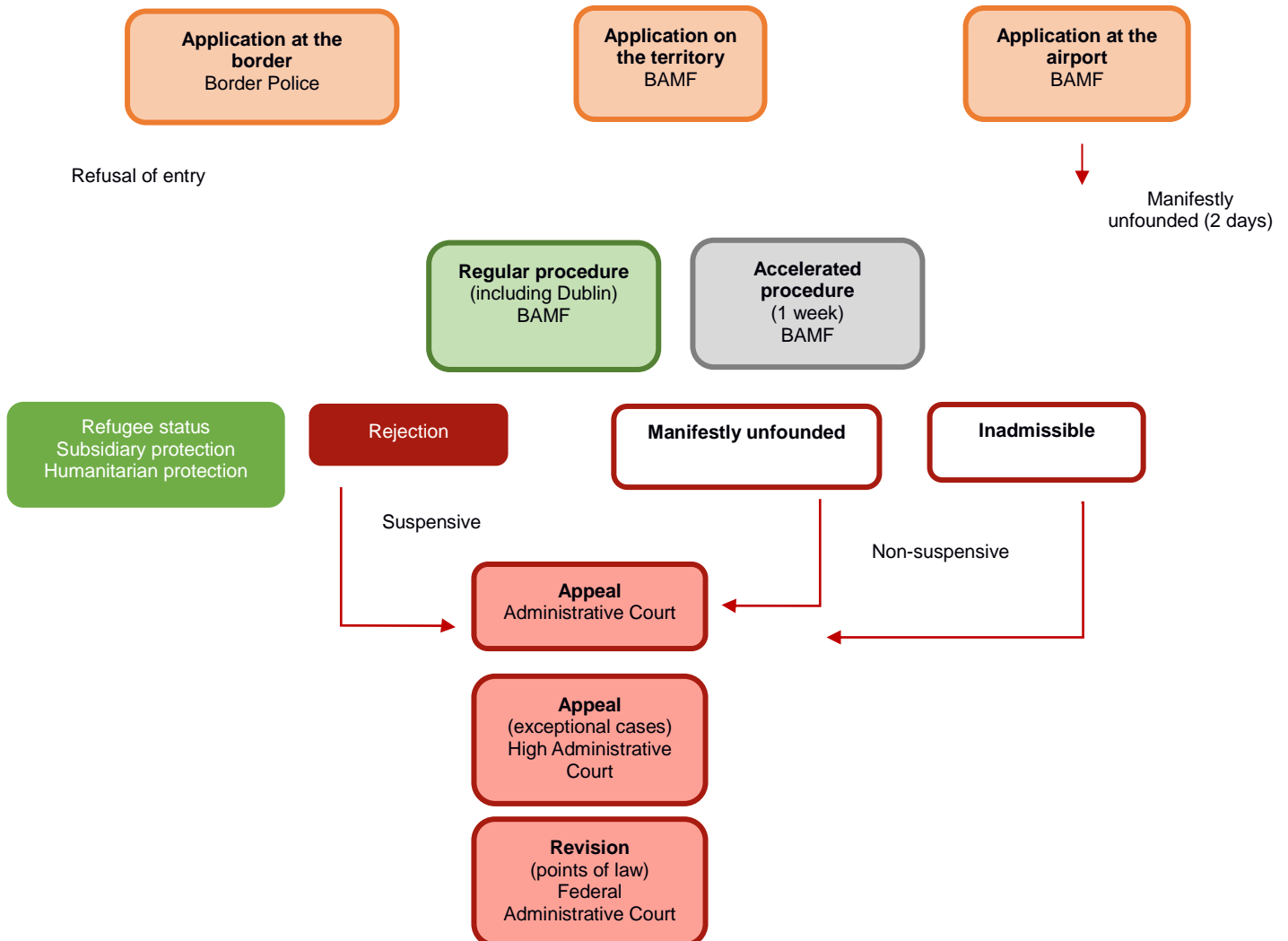
Content of international protection

- ❖ **Family reunification:** Family reunification was suspended for those beneficiaries of subsidiary protection who have been granted this status after 17 March 2016, until March 2018. This change came into effect only eight months after beneficiaries of subsidiary protection had been given the same privileged position as refugees in terms of family reunification conditions.
 - ❖ **Freedom of movement:** Since August 2016, refugees and beneficiaries of subsidiary protection are generally obliged to take up their place of residence within the Federal State in which their asylum procedures has been conducted. Furthermore, authorities can oblige them to take up place of residence in a specific municipality within the Federal State. The obligation to live in a certain place remains in force for three years, but it can be lifted for certain reasons (e.g. for family-related reasons or for education and employment purposes).
 - ❖ **Permanent residence:** Opportunities for refugees to be granted a permanent residence permit were restricted in August 2016. Before this date, persons with refugee status were generally entitled to a permanent residence permit three years after recognition of the status, without having to meet further requirements. Under the new law, most refugees will only be able to gain a permanent residence permit after five years, if they are able to provide for the better part of the cost of living (among other requirements).
-

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

- | | | |
|---|---|-----------------------------|
| ❖ Regular procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ² | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ³ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Dublin procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Admissibility procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Border procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Accelerated procedure: ⁴ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Are any of the procedures that are foreseen in the law, not being applied in practice? Yes No

3. List of authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority (EN)	Competent authority (DE)
Application at the border	Border Police	Bundespolizei
Application on the territory	Federal Office for Migration and Refugees (BAMF)	Bundesamt für Migration und Flüchtlinge (BAMF)
Dublin procedure	Federal Office for Migration and Refugees (BAMF)	Bundesamt für Migration und Flüchtlinge (BAMF)
Airport procedure	Federal Office for Migration and Refugees (BAMF)	Bundesamt für Migration und Flüchtlinge (BAMF)
Refugee status determination	Federal Office for Migration and Refugees (BAMF)	Bundesamt für Migration und Flüchtlinge (BAMF)
Appeal <ul style="list-style-type: none"> • First appeal • Second (onward) appeal • Final appeal 	<ul style="list-style-type: none"> • Administrative Court (local) • High Administrative Court (regional) • Federal Administrative Court 	<ul style="list-style-type: none"> • Verwaltungsgericht • Oberverwaltungsgericht or Verwaltungsgerichtshof • Bundesverwaltungsgericht
Subsequent application (admissibility)	Federal Office for Migration and Refugees (BAMF)	Bundesamt für Migration und Flüchtlinge (BAMF)

4. Number of staff and nature of the first instance authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Federal Office for Migration and Refugees (BAMF)	6,891	Federal Ministry of Interior	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Source: Federal Government, Reply to parliamentary question by The Left, 21 February 2017, 74.

² For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) APD.

³ Accelerating the processing of specific caseloads as part of the regular procedure.

⁴ Labelled as “accelerated procedure” in national law. See Article 31(8) APD.

5. Short overview of the asylum procedure

If migrants report at the border while trying to enter Germany without the necessary documents, entry to the territory has to be denied by the border police on the grounds that the migrant has travelled through a “safe third country”. If an immediate removal to the neighbouring country can be executed, those migrants are not necessarily given the opportunity to apply for asylum. Asylum applications have to be referred to the responsible authorities if asylum seekers are apprehended after having crossed the border.

Asylum seekers who arrive at an international airport without the necessary documents may be subject to the “airport procedure” (dependent on whether the necessary facilities exist at the airport). It then is decided in an accelerated procedure whether they will be allowed to enter the territory or not.

Unless entry is denied at the border or at the airport, a regular procedure takes place. Applications have to be filed at the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge – BAMF*). According to the law, asylum seekers should be accommodated in an “initial reception centre” (*Aufnahmeeinrichtung*) for up to 6 months during the first stage of their asylum procedures. Furthermore, asylum seekers from “safe countries of origin” are obliged to stay in initial reception centres for the whole duration of their procedures. The initial reception centres are usually located on the same premises as the branch office of the BAMF. The interview is supposed to take place while asylum seekers are accommodated in these centres, but in practice this is rarely the case. Following the initial reception period, asylum seekers, except those originating from safe countries of origin, are usually sent to local accommodation centres where they have to stay for the remaining time of their procedures. The obligation to stay in such decentralised accommodation centres also applies to the whole length of possible appeal procedures, but there are regional differences with some municipalities also granting access to the regular housing market.

Arrival centres: Authorities intensified their efforts to fast-track procedures in 2016 with the establishment of more than 20 new “arrival centres”. In these centres, various processes such as registration, identity checks, the interview and the decision-making are “streamlined”. Asylum seekers are categorised in “clusters” with the aim of conducting the asylum procedure for some groups of asylum seekers – those with an alleged low chance and those with an alleged high chance of being granted protection – within a few days. Fast-tracking of procedures in the “arrival centres” must not be confused with the accelerated procedure which was introduced in March 2016 in the law.

Due to a rapid decrease in the numbers of newly arriving asylum seekers, with 280,000 applicants in 2016 in comparison to an estimated 890,000 in 2015, and by opening new offices and “arrival centres”, authorities have now managed to handle the backlog of unregistered asylum applications which had built up in 2015. 745,545 asylum applications were registered in 2016 which means that about 465,000 applications were filed by applicants who had arrived in 2015.

Accelerated procedure: This accelerated procedure can be carried out *inter alia* for asylum seekers from “safe countries of origin” and for asylum seekers who have deliberately misled the authorities about their identity. Asylum seekers processed in the accelerated procedure shall be accommodated in “special reception centres” in which they have to stay for the duration of the accelerated procedure. However, at the end of 2016, only two “special reception centres” existed and both were functioning as “special” and “regular” reception centres simultaneously. No figures were provided by the authorities as to how many accelerated procedures had been carried out in these centres.

First instance decision: Once the asylum procedure has started, the BAMF has to decide whether an asylum seeker is entitled to:

1. Constitutional asylum (restricted to people persecuted by state actors for political reasons);
2. Refugee status (according to the 1951 Refugee Convention and to the Qualification Directive);
3. Subsidiary protection; and/or

4. Other forms of protection, called prohibition of deportation (*Abschiebungsverbot*).

The other forms of protection include a national protection status for people at risk of “substantial and concrete danger to life and limb or liberty”. In principle, this latter status might apply to any such threat, including risks emanating from ill health or from destitution, but case law has narrowed the scope of this provision to instances of “extreme risk”, i.e. cases in which an applicant would face “certain death or most serious harm” upon return.

In a considerable number of cases, that is 87,697 (12.6%) in 2016, 50,297 (17.8%) in 2015 and 45,320 (35.2%) in 2014, a “formal decision” was taken, which means that the case was closed without an examination of the asylum claim’s substance. In many instances such formal decisions are issued because another state was found to be responsible for the asylum application under the criteria of the Dublin Regulation.

Appeal: An appeal against the rejection of an asylum application has to be submitted to a regular administrative court (*Verwaltungsgericht*). The responsible administrative court is the one with regional competence for the asylum seeker's place of residence. Appeals generally have suspensive effect, unless the application is rejected as “manifestly unfounded” or as “inadmissible” (e.g. in “Dublin cases”). In these cases applicants may ask the court to restore suspensive effect, but they only have 1 week to submit the necessary request, which must be substantiated.

The decision of the administrative court is usually final in asylum procedures. Further appeals to higher courts are possible only in exceptional circumstances, e.g. if the case is of fundamental importance or if the administrative court's decision violates basic principles of jurisprudence.

B. Access to procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? Yes No

In practice, difficulties with registration have been reported in connection with the refusal of entry at the borders. Occasionally, it has been reported that asylum seekers were arrested by border police in the immediate vicinity of a branch of the Federal Office before they could apply for asylum. Furthermore, it is also possible that asylum applications are not referred to the BAMF if entry to the territory is denied in “cases of apprehension” at the border.⁵

Media reports from 2016 suggest that this might have been the case at the Austrian-German border in 2016, after border controls had been reintroduced in September 2015. According to reports, people were immediately sent back to Austria, although it had not been clarified whether they intended to apply for asylum in Germany.⁶ In response to an information request, the border police (Federal Police) stated that persons who had asked for asylum had not been returned on the basis of national law or on the basis of the readmission agreement with Austria. However, in the same statement the border police referred to returns of people who had asked for asylum in Germany but were returned to other Member States of the [Dublin Regulation](#). The border police did not provide information on the number of such cases. It claimed

⁵ Flüchtlingsrat Brandenburg, ‘Das Recht auf ein Asylverfahren endet in Eisenhüttenstadt’ (The right to an asylum procedure ends at Eisenhüttenstadt), 17 July 2013, available in German at: <http://bit.ly/1PBzQzm>.

⁶ See e.g. ZDF, ‘Ein Jahr Grenzkontrollen in Deutschland’, 13 September 2016, available in German at: <http://bit.ly/2nG9y3u>.

that the BAMF had not been carrying out Dublin procedures in these cases, but had been involved in these returns by determining the responsible Member State under the Dublin Regulation. The border police also claimed that procedural guarantees, in particular access to an effective remedy as regulated in the Dublin Regulation, were adhered to in these return procedures.⁷

Thus, the border police's statement seems to indicate that there have been cases in which asylum seekers were returned at the border by applying the Dublin Regulation, but it is not clear how a proper "Dublin procedure" (including submission of take charge requests etc.) could possibly be carried out within the short period of time that asylum seekers are held at the border. Furthermore, it is doubtful whether a Dublin procedure managed by the border police would be in line with the Asylum Act which provides that Dublin transfers should only be ordered by the BAMF.

2. Registration of the asylum application

Indicators: Registration

1. Are specific time-limits laid down in law for asylum seekers to lodge their application?
 Yes No
2. If so, what is the time-limit for lodging an application?

The law states that asylum seekers shall apply for asylum at the border. However, entry to the territory has to be refused if a migrant reports at the border without the necessary documents for legal entry and if an immediate removal to the neighbouring country (as [Safe Third Country](#)) is possible.⁸

Since 2013, asylum seekers should not be sent back to neighbouring countries without their applications having been registered. It is not clear, though, whether this practice is actually applied in all cases: even if migrants have crossed the border, on the basis of a legal fiction laid down in the Residence Act, they have not necessarily entered the territory,⁹ and it is possible that a removal to the neighbouring state (*Zurückweisung*) is still carried out at this point. The border police (Federal Police) claims that no returns of people who make it clear that they intend to apply for asylum take place at the borders, but there might have been cases in 2016 in which asylum seekers were returned, supposedly on the basis of the Dublin Regulation (see section on [Access to the Territory](#)).

Irrespective of special regulations which apply in the border region only, which is defined as a 30 km strip, most applications are lodged by asylum seekers who have already entered the territory. Under these circumstances the law obliges asylum seekers to "immediately" report to a branch office of the Federal Office for Migration and Refugees (BAMF). Alternatively, they can report to a police station or to an office of the foreigner's authorities.¹⁰ There is no strict definition of an "immediate" application and there are no exclusion rules for applications which are filed at a later date. However, a delay in filing the application may be held against the asylum seeker in the course of the asylum procedure, unless reasonable justification for the delay is brought forward.

Only the BAMF is entitled to register an asylum application. Hence an asylum seeker reporting to the police or to another authority will be referred to the BAMF. Persons who intend to apply for asylum do not have the legal status of asylum seekers as long as they have not arrived at the responsible branch of the BAMF and until their applications have been registered. Asylum seekers are obliged to appear in person without delay or on the date determined by the authorities at the responsible branch office of the BAMF. In March 2016 a new sanction was introduced for asylum seekers who fail to comply with this obligation:

⁷ Federal Police Head Office, Response to an information request submitted by Informationsverbund Asyl und Migration, 23 February 2017.

⁸ Section 18(2) Asylum Act and Sections 14 and 15 Residence Act.

⁹ Section 13(2) Residence Act.

¹⁰ Section 13 Asylum Act.

This is now regarded as “failure to pursue” the asylum procedure. The asylum procedure thus can be abandoned before it has begun.¹¹

The reception centre and branch of the BAMF responsible for accommodation and for the initial stage of the asylum procedure is determined by a distribution system (known as “*Königsteiner Schlüssel*”). This distribution system allocates places according to a quota system based on the capacities of the centres, which are in turn dependent on the size and the economic strength of the Federal States in which the centres are located. Furthermore, the system takes into account which branch office of the Federal Office deals with the asylum seeker's country of origin (see section on [Freedom of Movement](#)).¹²

Due to the massive increase in numbers of newly arriving asylum seekers in 2014 and 2015, the BAMF did not manage to keep up with the registration of applications. Asylum seekers were therefore frequently registered on a preliminary basis and only received a document entitled “confirmation of having reported as an asylum seeker” (*Bescheinigung über die Meldung als Asylsuchender – BÜMA*). With this document they were sent to accommodation centres or emergency shelters throughout Germany, although their application has not been formally registered. According to the government, it took several weeks or sometimes several months for the asylum application to be registered in these cases.¹³

Due to a rapid decrease in the numbers of newly arriving asylum seekers in 2016, with 280,000 newly arriving applicants in comparison to an estimated 890,000 in 2015, and by opening new offices and “arrival centres”, authorities have managed to handle the backlog of unregistered asylum applications which had built up in 2015. 745,545 asylum applications were registered in 2016 which means that about 465,000 applications were filed by applicants who had arrived in 2015.

The “BÜMA” was replaced by another document called “*Ankunftsnachweis*” (“arrival certificate”) in March 2016, only five months after it had been formally introduced in legislation. The *Ankunftsnachweis* is to be issued after the asylum seeker reports at an initial reception centre, so it is not clear which document (and which legal status) asylum seekers have before they arrive at these centres. In practice, this uncertainty does not seem to lead to serious problems any longer, since reception and registration in the initial reception centres are usually taking place within a few days, in contrast to the situation in 2014 and 2015.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

- | | |
|--|---|
| 1. Time-limit set in law for the determining authority to make a decision on the asylum application at first instance: | None |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases as of 31 December 2016: | 433,719 |

The competent authority for the decision-making in asylum procedures is the BAMF. Until 2004, the processing of asylum applications was the main task of the Federal Office (then under a different name), but since then its functions and duties have expanded in the field of migration to include coordination of integration courses or research on general migration issues. The Federal Office also acts as national administration office for European Funds in the areas of refugees, integration and return.

¹¹ Sections 20, 22 and 23 Asylum Act.

¹² For further details, see: <http://bit.ly/1O5qPus>.

¹³ Federal Government, Response to parliamentary question by The Left, 10 April 2015, No. 18/4581, 2-3.

The law does not set a time limit for the Federal Office to decide on an application. If no decision has been taken within 6 months, the Federal Office has to notify asylum seekers upon request about when the decision is likely to be taken.¹⁴

The overall number of pending applications at the Federal Office was at 433,719 as at 31 December 2016. This represents an increase of 18.9% in comparison with the end of 2015, when 364,664 applications were pending.¹⁵

According to the German government, the average time of asylum procedures up to a legally binding decision was at 7.1 months in 2016.¹⁶ The average length of asylum procedure has ranged from 5 to 7 months in recent years.

1.2. Prioritised examination and fast-track processing

The average length of asylum procedures at the authorities' level (BAMF) was at 5-7 months in recent years. For the years 2013 to 2016, statistics show significant variation in length of procedures, depending on the countries of origin of asylum seekers:

Average duration of the procedure (in months) per country of origin				
	2013	2014	2015	2016
All countries	7.2	7.1	5.2	7.1
Serbia	2.1	4	4.2	8.9
Afghanistan	14.1	13.9	14.0	8.7
Syria	4.6	4.2	3.2	3.8
Iraq	9.5	9.6	6.8	5.9
FYROM	2.4	5.3	4.5	:
Iran	13	14.5	17.1	12.3
Pakistan	15	15.7	15.3	15.5
Russia	5.6	10	11.8	15.6

Source: Federal Government, Response to parliamentary questions by The Left: 18/705, 5 March 2014; 18/3580, 28 January 2015; 18/7625, 22 February 2016; 18/11262, 21 February 2017: <http://bit.ly/2mk6Qkd>.

Some of these differences result mainly from a prioritisation of certain caseloads which has taken place since the second half of 2012. Prioritisation had no basis in law at the time and all the rules and guarantees of the regular procedures were still in place technically. However, administrative measures were established with a view to conducting the interview on the day of registration and issuing a decision within 1 week, especially for cases which allegedly had low chances of success.¹⁷ NGOs called this into question and claimed that the fast-tracking of procedures on the assumption that claims were abusive amounted to "summary procedures", in which an unbiased and thorough examination of asylum claims was not possible.

In 2015, applications from the following countries of origin were prioritised: Syria, Serbia, FYROM, Bosnia-Herzegovina, Albania, Kosovo and Eritrea. In addition, applications from members of religious minorities from Iraq (Christians, Yazidi, Mandaeans) were also included in the prioritised caseloads.¹⁸ According to

¹⁴ Section 24(4) Asylum Act.

¹⁵ BAMF, *Schlusszahlen Asyl 2016*, January 2017, available in German at: <http://bit.ly/2llpqj>.

¹⁶ Federal Government, Response to parliamentary question by The Left, 18/11262, 21 February 2017, 13.

¹⁷ *Ibid.*

¹⁸ Federal Government, Response to parliamentary question by The Left, 18/5785, 18 August 2015, 46.

the government, prioritisation of applications from certain countries was revoked in the second quarter of 2016.

Since then, branch offices of the BAMF are entitled to set their own priorities in dealing with caseloads, in order to respond effectively to the local situation.¹⁹ Furthermore, prioritisation has partially been replaced by “clustering” of cases in the newly established “arrival centres” (*Ankunftszentren*). These arrival centres were introduced in December 2015 with the aim of fast-tracking procedures. 24 out of approximately 65 branch offices of the BAMF were functioning as arrival centres at the end of 2016.²⁰ The concept of arrival centres is not based in law but has been developed by business consultants under the heading “integrated refugee management”.²¹ Accordingly, this method for fast-tracking of procedures must not be confused with the **Accelerated Procedure** introduced into law in March 2016.

In the arrival centres, tasks of various authorities are “streamlined”, such as the recording of personal data, medical examinations, registration of the asylum applications, interviews and decision-making. Part of the streamlining process is the clustering of asylum cases into the following four groups:²²

Cluster A	Countries of origin with a high protection rate (from 50 % upwards)
Cluster B	Countries of origin with a low protection rate (up to 20 %)
Cluster C	“Complex cases”
Cluster D	Dublin cases

Under the concept of the arrival centres and the “cluster procedure”, asylum seekers belonging to the Clusters “A” and “B” should usually be interviewed within a few days after the registration of their asylum applications. If capacities are available, interviews of asylum seekers from “Cluster C” can also take place in the arrival centres, otherwise they leave the arrival centres and have to wait for an appointment for the interview at an accommodation centre elsewhere. Interviews for Dublin cases are not scheduled until it has been clarified which state is responsible for the asylum procedure.²³

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure?
❖ If so, are interpreters available in practice, for interviews? Yes No Yes No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? Yes No
3. Are interviews conducted through video conferencing? Frequently Rarely Never

In the regular procedure, the BAMF conducts an interview with each asylum applicant.²⁴ Only in exceptional cases may the interview be dispensed with, where:

¹⁹ Federal Government, Response to parliamentary question by The Left, 18/9415, 17 August 2016, 23.

²⁰ Cf. list of offices of the BAMF at under ‘Federal Office/Structure/Locations’ (as at 11 January 2017) which lists about 40 ‘branch offices’ or ‘regional offices’ in addition to the arrival centres, with some offices having both functions. In total, there are about 110 offices of the BAMF. However, this number includes so-called ‘interview centres’ and ‘decision-making centres’ as well as ‘processing lines’ and ‘waiting rooms’ at the border.

²¹ These include McKinsey, Roland Berger and Ernst & Young: BAMF, ‘Viele helfende Hände – für den gemeinsamen Erfolg’, 22 March 2016, available in German at: <http://bit.ly/2llkWoc>.

²² BAMF, *The stages of the German asylum procedure: An overview of the individual procedural steps and the legal basis*, October 2016, available at: <http://bit.ly/2llmb6R>, 29.

²³ Johannes Moll, “Das verkürzte Asylverfahren im Ankunftszentrum Heidelberg. Ein Modell im Spannungsfeld von effizientem Verfahren und effektiven Rechtsschutz” (“The abridged asylum procedure in the arrival centre at Heidelberg. A concept caught between efficient procedures and effective legal protection”), *Asylmagazin* 12/2016, 412-420 (414).

²⁴ Sections 24 and 25 Asylum Act.

- (1) The Federal Office intends to recognise the entitlement to asylum on the basis of available evidence;
- (2) The applicant claims to have entered the territory from a safe third country;²⁵
- (3) An asylum application has been filed for children under 6 years who were born in Germany “and if the facts of the case have been sufficiently clarified based on the case files of one or both parents;²⁶ or
- (4) The applicant fails to appear at the interview without an adequate excuse.²⁷

Between November 2014 and throughout 2015, written procedures, in which the interview was omitted, regularly took place for groups of asylum seekers with good prospects of being recognised as refugees. However, the written procedures were abandoned during 2016. From January 2016 onwards, only asylum seekers whose applications had been filed in 2015 were allowed to participate in the written procedure, while newly arriving asylum seekers were referred to the ‘normal’ asylum procedure. The main reason for the abandonment was a change in the decision-making practice of the BAMF, which increasingly granted subsidiary protection status instead of refugee status to asylum seekers from Syria, in the context of a new law suspending family reunification for people with subsidiary protection status for the duration of two years (see Chapter on [Content of Protection](#)). Since it was not possible to differentiate between refugee status and subsidiary protection status in the written procedures, this practice was cancelled in 2016.²⁸

Quality of interpretation

The presence of an interpreter at the interview is required by law.²⁹ The BAMF recruits its own interpreters on a freelance basis.

According to a newspaper report from August 2016, interpreters at the BAMF were accused of manipulating asylum procedures to the detriment of asylum seekers. In particular, reference was made to the case of an Eritrean interpreter, allegedly supporting the Eritrean government. Several asylum seekers alleged that he had distorted statements which resulted in Eritreans being registered as “persons with unknown nationality”. In the same report, it was alleged that quality control of interpreters was virtually non-existent at the time, but that the BAMF was planning to introduce in-house training for interpreters on “neutrality and professionalism”.³⁰

Transcript of the interview

The transcript of the interview consists of a summary of questions and answers (i.e. it is not a verbatim transcript). It is usually taken from a tape recording of the interview and it is only available in German. The interpreter present during the personal interview will also be responsible for translations of the transcript. The applicant has the right to correct mistakes or misunderstandings. By signing the transcript the applicant confirms that he or she has had the opportunity to present all the important details of the case, that there were no communication problems and that the transcript was read back in the applicant’s language.

In spite of this, alleged mistakes in the transcript frequently give rise to disputes at later stages of the asylum procedure. For instance, doubts about the credibility of asylum seekers are often based on their statements as they appear in the transcript. However, it is possible that the German wording of the transcript reflects mistakes or misunderstandings which were caused by the translation. For example, the

²⁵ This provision is rarely applied in the regular procedure since it has usually not been established at the time of the interview whether Germany or a safe third country is responsible for the handling of the asylum claim.

²⁶ Section 24(1) Asylum Act.

²⁷ Section 25 Asylum Act.

²⁸ Asylmagazin, ‘Änderungen in der Entscheidungspraxis des BAMF’, No 4-5/2016, 97.

²⁹ Section 17 Asylum Act.

³⁰ Süddeutsche Zeitung, ‘Wenn das Schicksal von Flüchtlingen in der Hand des Dolmetschers liegt’, 31 August 2016, available in German at: <http://bit.ly/2lpvMp5>.

transcript is usually translated (orally) once more at the end of the session by the same interpreter who has been present during the interview as well. On this occasion, it is more than likely that interpreters repeat the mistakes they made during the interview and it is thus impossible for the asylum seeker to identify errors in the German transcript which result from the interpreters' misunderstandings or mistakes. It is very difficult to correct such mistakes afterwards, since the transcript is the only record of the interview. The tape recording of the interview is deleted.

Furthermore, asylum seekers are frequently asked if the retranslation of the transcript may be dispensed with. Few asylum seekers insist on the retranslation, therefore mistakes in the transcript go unnoticed, as reported in recent observations from a network of 12 German NGOs ("Memorandum Alliance").³¹

In November 2016, an alliance of 12 German NGOs published a "Memorandum to enhance fair and diligent asylum procedures in Germany". Based on an analysis of transcripts, decisions and reports from lawyers and NGOs, several recurring deficiencies were identified and observed in the interviews in asylum procedures at the BAMF:³²

- ❖ Asylum seekers are not sufficiently informed about their rights and obligations during the interview; they often have no access to lawyers and/or advice centres before the interview;
- ❖ BAMF staff uses inadequate communication techniques e.g. biased, 'interrogation-like' questioning of asylum seekers;
- ❖ Asylum seekers are not given an opportunity to fully substantiate their applications or to clarify alleged inconsistencies or contradictions in their statements;
- ❖ Mistakes occurring during translation or in the transcripts lead to credibility of asylum seekers' statements being cast into doubt.

The Memorandum concludes that these problems cannot only be attributed to the high number of applications that the BAMF had to deal with since 2014, as many of the flaws have been criticised by NGOs for many years. However, the report states that the quality of procedures has deteriorated considerably in recent years, partially due to a large number of new staff members at the BAMF who were deployed with insufficient training.³³ These new staff members often do not decide on applications, but only carry out the interviews. The protocols of their interviews are sent to decision-makers who decide on a large number of cases without having met the applicants in person.³⁴ In such cases, deficiencies during the interview and mistakes in the transcripts might have particularly severe consequences for the outcome of the asylum procedure.³⁵

Other reports suggest that the increasing number of asylum applications has also led to lower standards in the quality of interviews, since staff members of the BAMF are under increasing pressure to process as many applications as possible within short timeframes.³⁶

Video recordings of interviews do not take place. Video conferencing was used, albeit rarely,³⁷ until 2013, but its use seems to have been abandoned completely since then. Audio or video recording or video conferencing is not used in appeal procedures either.

³¹ Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland: Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, available in German at: <http://bit.ly/2gZGhBq>, 18-19.

³² *Ibid*, 15-19.

³³ *Ibid*, 5.

³⁴ No exact statistics are available on procedures, in which interviews and decision-making are not carried out by the same person. However, according to government figures, more than 66% of decisions were taken in so-called "decision-making centres" in 2016. Transcripts of interviews are sent to these centres, in which more experienced staff members usually decide on the application only on the basis of the transcript: Federal Government, Response to parliamentary question by The Left, 18/11262, 21 February 2017, 77-78.

³⁵ Frankfurter Rundschau, 'Da wird nicht nachgefragt', Interview with lawyer Reinhard Marx, 26 May 2015.

³⁶ The government estimates that in 25% of asylum cases the staff member conducting the interview is not the staff member deciding on the application: Federal Government, Reply to parliamentary question by The Left, 18/5785, 18 August 2015, 47.

³⁷ Katharina Stamm, 'Videokonferenztechnik im Asylverfahren – warum sie unzulässig ist', *Asylmagazin* 3/2012,

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative

 - ❖ If yes, is it
 - ❖ If yes, is it suspensive
 - Rejection

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
 - Rejection as manifestly unfounded
2. Average processing time for the appeal body to make a decision: Not available

Appeals against rejections of asylum applications have to be lodged at a regular Administrative Court. There are 51 Administrative Courts competent to deal with asylum matters. The responsible court is the one with regional competence for the asylum seeker's place of residence. Procedures at the administrative court generally fall into 2 categories, depending on the type of rejection of the application:

Simple rejection: An appeal to the Administrative Court has to be submitted within 2 weeks (i.e. 14 calendar days). This appeal has suspensive effect. It does not necessarily have to be substantiated at once, since the appellant has 1 month to submit reasons and evidence. Furthermore, it is common practice that the courts either set another deadline for the submission of evidence at a later stage (e.g. a few weeks before the hearing at the court) or that further evidence is accepted up to the moment of the hearing at the court.

Rejection as “manifestly unfounded” (*offensichtlich unbegründet*) or as “inadmissible” (*unzulässig*): Section 30 of the Asylum Act lists several grounds for rejecting an application as “manifestly unfounded”. These include among others unsubstantiated or contradictory statements by the asylum seeker, as well as misrepresentation or failure to state one’s identity. For inadmissibility decisions, see [Admissibility Procedure](#).

If asylum applications are rejected as “manifestly unfounded” or as “inadmissible”, the timeframe for submitting appeals is reduced to one week. Since appeals do not have (automatic) suspensive effect in these cases, both the appeal and a request to restore suspensive effect have to be submitted to the court within 1 week (7 calendar days). The request to restore suspensive effect has to be substantiated.

The short deadlines in these rejections are often difficult to meet for asylum seekers and it might be impossible to make an appointment with lawyers or counsellors within this timeframe. Therefore it has been argued that the 1-week period does not provide for an effective remedy and might constitute a violation of the German Constitution.³⁸ In any case, suspensive effect is only granted in exceptional circumstances.

The Administrative Court investigates the facts of the case. This includes a personal hearing of the asylum seeker (usually not when deciding on applications for suspensive effect, though). Courts are required to gather relevant evidence at their own initiative. As part of the civil law system principle, judges are not bound by precedent. Court decisions are generally available to the public (upon request and in anonymous versions if not published on the court's own initiative).

In 2016, the average processing period for appeals was 7.5 months,³⁹ but it has to be taken into account that a high number of appeal procedures (45.4%) were terminated without an examination of the

70; Federal Government, Response to parliamentary question by The Left, 17/8577, 10 February 2012, 22.

³⁸ See more references in Dominik Bender and Maria Bethke. “Dublin III’, Eilrechtsschutz und das Comeback der Drittstaatenregelung.”, Asylmagazin 11/2013, 362.

³⁹ Federal Government, Response to parliamentary question by The Left, No 18/11262, 21 February 2017, 64.

substance of the case, and accordingly, without a hearing at the court; e.g. if the appeal was withdrawn by the asylum seeker or if an out-of-court settlement is reached between the asylum seeker and the BAMF. Therefore, it has to be assumed that the average period for appeals is considerably longer than 7.5 months, if the court decides on the merits of the case.

If the appeal to the Administrative Court is successful (or partly successful), the court obliges the authorities to grant asylum and/or refugee status or to declare that deportation is prohibited. The decision of the Administrative Court is usually the final one in an asylum procedure. Only in exceptional cases is it possible to lodge further appeals to higher instances.

Onward appeal

The second appeal stage is the High Administrative Court (*Oberverwaltungsgericht* or *Verwaltungsgerichtshof*); the latter term is used in the Federal States of Bavaria (Bayern), Hessen, and Baden-Württemberg. There are 15 High Administrative Courts in Germany, one for each of Germany's 16 Federal States, with the exception of the States of **Berlin** and **Brandenburg** which merged their High Administrative Courts in 2005. High Administrative Courts review the decisions rendered by the Administrative Court both on points of law and of facts.

In cases of “fundamental significance” the Administrative Court itself may pave the way for a further appeal (*Berufung*) to the High Administrative Court, but usually it is either the authorities or the applicant who apply to the High Administrative Court to be granted leave for a further appeal. In contrast to the general Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*) the criterion of “serious doubts as to the accuracy of a decision” is not a reason for a further appeal in asylum procedures. It is therefore more difficult to access this second appeal stage in asylum procedures than it is in other areas of administrative law. According to Section 78 of the Asylum Act, a further appeal against an asylum decision of an Administrative Court is only admissible if:

- a. The case is of fundamental importance;
- b. The Administrative Court's decision deviates from a decision of a higher court; or
- c. The decision violates basic principles of jurisprudence.

Decisions by the High Administrative Court may be contested at a third stage, the Federal Administrative Court, in exceptional circumstances. The Federal Administrative Court only reviews the decisions rendered by the lower courts on points of law. The respective proceeding is called “revision” (*Revision*). High Administrative Courts may grant leave for a revision if the case itself or a point of law is of fundamental significance, otherwise the authorities or the asylum seekers have to apply for leave for such a further appeal to the Federal Administrative Court. Possible reasons for the admissibility of a revision are similar to the criteria for an appeal to a High Administrative Court as mentioned above.

Judgments of the Federal Administrative Court are always legally valid since there is no further legal remedy against them. However, as the Federal Administrative Court only decides on points of law and does not investigate the facts, it often sends back cases to the High Administrative Courts for further investigation.

Outside the administrative court system, there is also the possibility to lodge a so-called constitutional complaint at the Federal Constitutional Court (*Bundesverfassungsgericht*). Such complaints are admissible in cases of violations of basic (i.e. constitutional) rights. In the context of asylum procedures this can be the right to political asylum as well as the right to a hearing in accordance with the law, but standards for admissibility of constitutional complaints are difficult to meet. Therefore, only few asylum cases are accepted by the Federal Constitutional Court.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in interview
 Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 Yes With difficulty No
❖ Does free legal assistance cover
 Representation in courts
 Legal advice

Legal assistance is not systematically available to asylum seekers in Germany. Welfare organisations and other NGOs offer free advice services which include basic legal advice. In some initial reception centres welfare organisations or refugee councils have regular office hours or asylum seekers can easily access the offices of such organisations close to the centres. However, such advice services are not available in all centres and not all of the time, so very often interviews take place before asylum seekers have had a chance to contact an NGO or a lawyer. There is no mechanism which ensures that asylum seekers are getting access to legal advice from an independent institution before the interview. Once asylum seekers have left the initial reception centres and have been transferred to other accommodation, the accessibility of legal advice depends strongly on the place of residence. For instance, asylum seekers accommodated in rural areas might have to travel long distances to reach advice centres or lawyers with special expertise in asylum law.

NGOs are not entitled to legally represent their clients in the course of the asylum procedure. During the first instance procedure at the BAMF, asylum seekers may be represented by a lawyer but they are not entitled to free legal aid, so they have to pay their lawyers' fees themselves at this stage.

During court proceedings, asylum seekers can apply for legal aid to pay for a lawyer. The granting of legal aid is dependent on how the court rates the chances of success. This "merits test" is carried out by the same judge who has to decide on the case itself. Therefore some lawyers do not always recommend to apply for legal aid, since they are concerned that a negative decision in the legal aid procedure may have a negative impact on the main proceedings. Furthermore, decision-making in the legal aid procedure may take considerable time so lawyers regularly have to accept a case before they know whether legal aid is granted or not. Lawyers often argue that fees based on the legal aid system do not always cover their expenses. As a consequence, specialising only on asylum cases is generally supposed to be difficult for law firms. Most lawyers specialising in this area have additional areas of specialisation while a few also charge higher fees on the basis of individual agreements with their clients.

It is possible to appeal against the rejection of an asylum application at an Administrative Court without being represented by a lawyer, but from the second appeal stage onwards representation is mandatory.

2. Dublin

2.1. General

Dublin statistics: 2016

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	55,690	3,968	Total	31,523	12,091
Italy	13,010	916	France	5,904	695
Hungary	11,998	294	Netherlands	5,828	1,686
Poland	6,728	884	Sweden	4,523	3,684

Source: Federal Government, Reply to parliamentary question by The Left, 21 February 2017, 37-38 and 52-53.

Since the amendment of the Asylum Act taking effect on 6 August 2016, the Dublin Regulation is now explicitly referred to as a ground for inadmissibility of an asylum application.⁴⁰

Application of the Dublin criteria

No recent information is available on the interpretation of the Dublin criteria.

The major part of outgoing Dublin requests was based on so-called “Eurodac hits” (69.2% in 2016, in comparison to 76% in 2015, 68.5% in 2014, 66.7% in 2013 and 72.8% in 2012).⁴¹

The number of outgoing requests has risen significantly in recent years:

Outgoing Dublin requests from Germany						
Year	2011	2012	2013	2014	2015	2016
Outgoing requests	9,075	11,469	35,280	35,115	44,982	55,690

Source: BAMF, *Bundesamt in Zahlen 2012*, 20-24; 2013, 23-30 Federal Government, Reply to parliamentary questions 18/3850, 28 January 2015, 22; 18/7625, 22 February 2016, 53; 18/11262, 21 February 2017, 35.

Details on the criteria used for requests are only available for the outgoing requests which were based on “Eurodac hits”. Statistics for 2016 refer to a total of 38,513 requests based on Eurodac, out of which:

- 29,248 (76%) after an application for international protection (CAT 1);⁴²
- 7,443 (19.3%) after apprehension upon illegal entry (CAT 2);⁴³ and
- 1,822 (4.7%) after apprehension for illegal stay (CAT 3).⁴⁴

In 2016, Germany accepted a total 162 incoming transfers of unaccompanied children under the Regulation’s family provisions. 68 unaccompanied children were transferred from Greece, 21 from the Netherlands and 16 from Sweden.⁴⁵

The discretionary clauses

⁴⁰ Section 29(1)(a) Asylum Act.

⁴¹ Federal Government, Response to parliamentary question by The Left, 18/11262, 21 February 2017, 35; 18/7625, 22 February 2016, 32.

⁴² Article 9 recast Eurodac Regulation.

⁴³ Article 14 recast Eurodac Regulation.

⁴⁴ Article 17 recast Eurodac Regulation.

⁴⁵ Federal Government, Reply to parliamentary question by The Greens, 1811080, 3 February 2017, available in German at: <http://bit.ly/2lu2c2V>, 13.

The government's statistics do not contain exact information on the number of cases in which the humanitarian clause or the sovereignty clause has been used. Available information only refers to 39,663 cases in 2016 in which either the use of the sovereignty clause or “*de facto* impediments to transfers” resulted in the asylum procedure being carried out in Germany.⁴⁶ It is not clear whether the latter category also includes cases in which the humanitarian clause was used.

Dublin transfers to Greece remained suspended throughout 2016, following practice established since January 2011. Accordingly, in 31,488 cases, in which Greece was found to be responsible for carrying out the asylum procedure, the sovereignty clause was used or the transfer was halted for other reasons.⁴⁷ In December 2016, the Federal Minister of the Interior informed members of the German parliament that transfers to Greece could be reintroduced in the course of 2017 “subject to strict conditions” (see [Suspension of Transfers](#)).⁴⁸

Furthermore, the sovereignty clause has been applied to particularly vulnerable persons in cases where transfer would result in undue hardship. This practice has been applied to countries such as Malta since the autumn of 2009. The BAMF reported that it has continued this practice in 2016.⁴⁹

In August 2015, the authorities announced that Dublin procedures had been suspended for Syrian nationals “to the greatest extent”. The wording of this announcement suggested that “Dublin transfers” of Syrians were not completely excluded and could still take place in exceptional cases. On 10 November 2015, the Federal Ministry of the Interior stated that the practice had been changed from 21 October 2015 onwards with Dublin procedures having been generally reintroduced for Syrian asylum seekers.⁵⁰ Syrians are now treated similar to other nationalities in relation to Dublin, with 500 Syrians being transferred to other member states of the Dublin regulation in 2016 (12.6% of the total number of Dublin transfers).⁵¹

2.2. Procedure

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? 3.2 months

The examination of whether another state is responsible for carrying out the asylum procedure (either based on the Dublin Regulation or on the German “safe third country” rule) is a part of the regular procedure. Thus, in the legal sense, the term “Dublin procedure” does not refer to a separate procedure in the German context, but merely to the shifting of responsibility for an asylum application within the administration (i.e. takeover of responsibility by the “Dublin Units” of the BAMF).

Fingerprints are usually taken from all asylum seekers on the day that the application is registered and they are subjected to Eurodac queries on a routine basis. Eurodac queries are the major cause for the initiation of Dublin procedures.

No cases of asylum seekers refusing to be fingerprinted have been reported, only several cases where manipulation of fingerprints took place i.e. persons scraping off or etching their fingertips, making fingerprints unrecognisable.

⁴⁶ Federal Government, Response to parliamentary question by The Left, 18/11262, 21 February 2017, 42-45.

⁴⁷ *Ibid*, 43.

⁴⁸ Federal Ministry of Interior, Letter by Thomas de Maizière, Federal Minister of the Interior, to the parliamentary committee for interior matters and to the petitions committee, 30 December 2016, available in German at: <http://bit.ly/2k62joe>.

⁴⁹ Federal Government, Reply to parliamentary question by The Left, 18/10953, 19 January 2017, available in German at: <http://bit.ly/2kL2en5>, 4.

⁵⁰ Spiegel Online, ‘Deutschland will Syrer wieder in andere EU-Länder zurückschicken’, 10 November 2015, available in German at: <http://bit.ly/1OS6rRk>.

⁵¹ Federal Government, Response to parliamentary question by The Left, 18/11262, 21 February 2017, 47.

Until 2013 the border police also initiated Dublin procedures, if a person apprehended at or close to the border could not immediately be sent back to the neighbouring country but there were indications that the neighbouring state was responsible for the asylum procedure. Agreements on the handling of such cases exist between Germany and Denmark, Switzerland, Austria and the Czech Republic.⁵² However, this handling of Dublin procedures by the border police seems to be in contradiction to the policy of the asylum authorities: The BAMF informed the Federal States and the border police on 17 July 2013 that Dublin procedures would be carried out by the Federal Office only, with immediate effect.⁵³ In spite of this, Dublin procedures under the responsibility of the border police were still carried out in the second half of and in 2014 (19 Dublin procedures carried out by the border police).⁵⁴ In 2015, no Dublin procedures were initiated by the border police.

It is not entirely clear whether the practice of Dublin procedures managed by the border police has resumed in 2016 (see also [Access to the Territory](#)). In response to an information request, the border police referred to returns of people who had asked for asylum in Germany but were returned to other member states based on the provisions of the Dublin Regulation. The border police did not provide information on the number of such cases. It claimed that the BAMF had not been carrying out Dublin procedures in these cases, but had been involved in these returns by determining the responsible member state under the Dublin Regulation. The border police also claimed that procedural guarantees, in particular access to an effective remedy as regulated in the Dublin Regulation, were adhered to in these return procedures.⁵⁵ Thus, the border police's statement seems to indicate that there have been cases in which asylum seekers were returned at the border by applying the Dublin Regulation, but it is not clear how a proper "Dublin procedure" (including submission of take charge requests to other member states etc.) could possibly be carried out within the short period of time that asylum seekers are held at the border. Furthermore, it is doubtful whether a Dublin procedure managed by the border police would be in line with the Asylum Act which provides that Dublin transfers should only be ordered by the BAMF.

Individualised guarantees

Even before the ECtHR's ruling in the case of *Tarakhel v Switzerland*,⁵⁶ the Federal Constitutional Court (BVerfG) had decided that the BAMF has to take precautionary measures against possible health risks in cases of deportations or transfers to other states. With regard to transfers to Italy, the Constitutional Court specified that children up to the age of three might face such health risks because of scarce capacities of the Italian reception system and possible homelessness. Therefore the Constitutional Court obliged the BAMF to make sure, in coordination with the Italian authorities, that families with children up to the age of three would have access to accommodation in case of transfers to Italy.⁵⁷

In March 2016, the Administrative Court of Hannover stopped a transfer to Italy on the ground that the Italian authorities had not given an individualised guarantee that long-term accommodation would be available for a transferred person.⁵⁸ The court pointed to information repeatedly submitted to the court, according to which the Italian authorities did not provide any individual guarantees at all.⁵⁹

⁵² Dublin Transnational Project, *Dublin II Regulation, National Report – Germany*, December 2012, 71.

⁵³ Letter from the BAMF from 17 July 2013: "Änderung der Verfahrenspraxis des Bundesamtes im Rahmen des Dublinverfahrens" (Change of practices of the Federal Office with regard to Dublin procedures), 430-93604-01/13-05.

⁵⁴ Federal Government of Germany, *Response to information request by the parliamentary group of "The Left" party* "Die Linke", 28 January 2015, No. 18/3850, 36.

⁵⁵ Federal Police Head Office, Response to an information request submitted by Informationsverbund Asyl und Migration, 23 February 2017.

⁵⁶ ECtHR, *Tarakhel v Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

⁵⁷ BVerfG, Decision No 2 BvR 1795/14 of 17 September 2014, Asylmagazin 10/2014, 341, available at: <http://bit.ly/110Lplo>.

⁵⁸ Administrative Court Hannover, Decision 4 A 8072/13, 23 March 2016, asyl.net, available at: <http://bit.ly/2mIU2h>.

⁵⁹ This information was confirmed by the Administrative Court Braunschweig, Decision 5 A 332/15, 12 October 2016, asyl.net, available at: <http://bit.ly/2j7Mnhj>.

Transfers

Transfers under the Dublin Regulation are usually carried out as deportations since no deadline is set for a “voluntary departure” to the responsible member state. Even if asylum seekers offer to leave Germany on their own, this is frequently not accepted and an escorted return is carried out instead. There are no publicly available statistics on how many “Dublin transfers” are preceded by detention.

If asylum seekers have already accessed the regular procedure, they must not be detained for the duration of the procedure. However, detention may be imposed once an application has finally been rejected as “inadmissible” because another country was found to be responsible for the asylum procedure. In these cases, the legal basis for ordering and prolongation of detention is the same as for other forms of detention pending deportation. This implies that certain preconditions for the lawfulness of detention have to be fulfilled: In particular, any placing into custody under these circumstances should generally be ordered in advance by a judge, since it does not constitute a provisional arrest which may be authorised by a court at a later stage. However, a judge should generally not issue a detention order until the formal request to leave Germany - usually a part of the rejection of the asylum application - has been handed out to the person concerned and if sufficient grounds for detention exist. However, it has been alleged that these preconditions are often ignored by authorities and courts in “Dublin cases”.⁶⁰

In 2016, Germany carried out 3,968 Dublin transfers, compared to 3,597 in 2015. The average duration of the Dublin procedure was reported at 3.2 months.

2.3. Personal interview

Indicators: Dublin: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure?
 Yes No
❖ If so, are interpreters available in practice, for interviews? Yes No
2. Are interviews conducted through video conferencing? Frequently Rarely Never

Since the entry into force of Article 5 of the Dublin III Regulation, a personal interview is obligatory.⁶¹

There is no consistent practice for interviews in Dublin procedures. For the authorities a Dublin procedure means that responsibilities are referred to the “Dublin division” of the BAMF, which may take place at various stages of the procedure. In practice, the procedures may be carried out successively or simultaneously.⁶² If the Dublin and regular procedure are carried out simultaneously, a regular interview is conducted according to the standards of the regular procedure. In this context it has been noted that questions on the travel routes of asylum seekers may take up a considerable part of the interview, which may result in a shifting of focus away from the core issues of the asylum interview.

If a Dublin procedure is initiated before the “regular” interview took place, the BAMF may only carry out a “personal conversation” (sometimes also referred to as the “Dublin interview”) with the asylum seeker. In this “conversation” only facts relevant for the Dublin procedure are established. Accordingly, the asylum seekers are not questioned on the reasons for their asylum applications. However, they should be given an opportunity to provide possible reasons why a deportation to another Dublin state could be impeded (e.g. existence of relatives in Germany).

⁶⁰ Peter Fahlbusch, “Haft in Verfahren nach der Dublin II-Verordnung” (*Detention during the Dublin procedure*), Asylmagazin 9/2010, 290; Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, 69.

⁶¹ BAMF, *Entscheiderbrief*, 9/2013, 3.

⁶² Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, 12.

2.4. Appeal

Indicators: Dublin: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?

- ❖ If yes, is it
- ❖ If yes, is it suspensive

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

As of 6 August 2016, Dublin decisions are inadmissibility decisions under Section 29 of the Asylum Act. However, the legal basis for Dublin procedures is found in provisions originally created for “safe third countries”, which now refer to Dublin cases as well.⁶³ The BAMF shall order the deportation to the safe third country or to the country responsible for the asylum procedure “as soon as it has been ascertained that the deportation can be carried out.”

It is possible to lodge an appeal against a Dublin decision at an Administrative Court within 1 week of notification. This appeal has no automatic suspensive effect; this must be requested to the court. Once an application to restore suspensive effect has been filed, the transfer to another Member State cannot take place until the court has decided on the request. The transfer can be executed only if the applicant misses the deadline or if the court rejects the application for suspensive effect.

Material requirements for a successful appeal remain difficult to fulfil and the way these requirements have to be defined in detail remains a highly controversial issue. For example, administrative courts in the Federal States continue to render diverging decisions with regard to the question of whether problems in the different Member States’ asylum systems amount to “systemic deficiencies” or not (see [Suspension of Transfers](#)).

In addition, serious practical difficulties result from the 7-day time-limit for the necessary application to the court. This short deadline is often difficult to meet for asylum seekers since the application for suspensive effect has to be fully substantiated. To prepare such an application requires expert knowledge of the asylum law, but in the absence of systematic legal counselling asylum seekers regularly have to turn to a lawyer or to refugee counsellors for assistance. However, it might prove impossible for asylum seekers to make an appointment with lawyers or counsellors within the short timeframe. Even if they manage to contact a lawyer, it is still very difficult to produce a sufficiently substantiated application at such short notice. Therefore it has been argued that the one-week period, although being an improvement compared to the previous situation, still does not provide for an effective remedy and might constitute a violation of the German Constitution.⁶⁴

⁶³ Section 34a(1) Asylum Act.

⁶⁴ Dominik Bender and Maria Bethke, “Dublin III’, Eilrechtsschutz und das Comeback der Drittstaatenregelung.” *Asylmagazin* 11/2013, 362.

2.5. Legal assistance

Indicators: Dublin: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in interview
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in courts
 Legal advice

There are no specific regulations for legal assistance in Dublin procedures; therefore the information given in relation to the section on [Regular Procedure: Legal Assistance](#) applies equally to the Dublin procedure.

It is possible to apply for legal aid for the appeal procedure. However, because of time constraints and because many of these cases are likely to fail the “merits test”, it is unusual for legal aid to be granted, with the possible exception of cases concerning certain Dublin countries such as Italy, Hungary, Bulgaria, in which chances of success have to be rated higher due to the conflicting case law.

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?
 Yes No
❖ If yes, to which country or countries?

Greece: In December 2016, the Federal Minister of the Interior informed members of the German parliament that transfers to Greece could be reintroduced in the course of 2017 “subject to strict conditions”.⁶⁵ Following a Recommendation by the European Commission of 8 December 2016, the Minister’s letter states that transfers can only take place of persons who will have entered Greece illegally after 15 March 2017 or for whom Greece is responsible from 15 March under other Dublin criteria. For a transfer to take place, the Greek authorities have to provide an individual assurance that the transferred person will be accommodated in accordance with the standards of the Directive on Reception Conditions. “Vulnerable” persons, in particular unaccompanied minors, should not be transferred to Greece for the time being.

Malta: The sovereignty clause has been applied to particularly vulnerable persons in cases where Malta was determined as the Member State responsible for examination of an asylum application. This practice has been applied since autumn 2009.

Other countries: In addition, several hundred court cases resulted in suspension of transfers to other countries by means of issuance of interim measures. At the same time, however, other courts decided in favour of transfers to these countries, which is mainly due to the fact that the definition of requirements for a suspension of transfers remains highly controversial. For example, courts continue to render diverging decisions on the issue of whether problems in the Italian, Hungarian or Bulgarian asylum system amount to “systemic deficiencies” or not. With regard to Hungary, decisions citing systemic deficiencies

⁶⁵ Federal Ministry of Interior, Letter by Thomas de Maizière, Federal Minister of the Interior, to the parliamentary committee for interior matters and to the petitions committee, 30 December 2016, available in German at: <http://bit.ly/2k62joe>.

in the Hungarian asylum system (including decision by High Administrative Courts) seem to have outnumbered opposing decisions in the second half of 2016.

A detailed analysis of case-law on this issue, which consists of hundreds of decisions, has not been possible within the scope of this report. Recent decisions concerning those countries are listed below:

Country	Decisions stopping Dublin transfer	Transfer upheld
Bulgaria	<p>Administrative Court Göttingen, Decision 2 B 507/16 of 22 December 2016</p> <p>Administrative Court Freiburg, Decision A 6 K 1356/14 of 4 February 2016</p> <p>Administrative Court Cologne, Decision No 19 K 517/14.A of 17 September 2015</p> <p>Administrative Court Oldenburg, Decision No 12 A 181/15 of 20 October 2015.</p>	<p>Administrative Court Saarland, Decision 5 L 1536/16 of 20 October 2016</p> <p>Administrative Court Köln, Decision 2 L 917/16.A of 29 April 2016</p> <p>Administrative Court Stuttgart, Decision No A 13 K 4585/15 of 30 September 2015</p> <p>High Administrative Court Baden-Württemberg, Decision No A 11 S 106/15 of 1 April 2015</p>
Hungary	<p>High Administrative Court of Niedersachsen (Lower Saxony), Decision 8 LB 92/15 of 15 November 2016</p> <p>Administrative Court Oldenburg, Decision 12 B 5754/16 of 9 November 2016</p> <p>High Administrative Court of Baden-Württemberg, Decision A 11 S 1596/16 of 13 October 2016</p> <p>Administrative Court Trier, Decision 1 L 3979/16.TR of 31 August 2016</p> <p>Administrative Court Gelsenkirchen, Decision 18a K 4190/14.A of 27 July 2016</p> <p>Administrative Court Düsseldorf, Decision No 22 L 2944/15.A of 3 September 2015</p> <p>Administrative Court Minden, Decision No 10 L 285/15.A of 1 September 2015</p> <p>Administrative Court Saarland, Decision No 3 L 633/15 of 5 August 2015</p>	<p>Administrative Court Osnabrück, Decision of 18 May 2016</p> <p>Administrative Court Düsseldorf, Decision No 13 L 3465/15.A of 21 October 2015</p> <p>Administrative Court Stade, Decision No 6 B 1371/15 of 16 September 2015</p>
Italy	<p>Administrative Court Minden, Decision 10 L 314/16.A of 29 March 2016</p> <p>Administrative Court Düsseldorf, Decision 8 L 3173/15.A of 28 December 2015</p>	<p>Administrative Court Arnsberg, Decision 5 L 540/16.A of 14 April 2016</p> <p>Administrative Court Düsseldorf, Decision No 13 K 606/14.A of 31 July 2015</p>

Administrative Court Potsdam, Decision 4 K 2689/14.A of 30 September 2015	Administrative Court Lower Saxony, Decision 11 LB 248/14 of 25 June 2015
Administrative Court Hannover, Decision No 10 A 13369/14 of 7 September 2015	

In other cases courts have stopped short of discussing these basic questions and have stopped transfers on individual grounds (e.g. lack of adequate medical treatment for a rare disease in the Member State).

2.7. The situation of Dublin returnees

There have been no reports of “Dublin returnees” facing difficulties in accessing an asylum procedure after having been transferred to Germany.

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

There is no separate procedure preceding the regular procedure in which decisions on admissibility of asylum applications are taken. However, it is possible that applications are declared inadmissible in the course of the regular procedure. Following an amendment to the Asylum Act entering into force on 6 August 2016, the reasons for inadmissibility of applications have been redefined in Section 29 of the Asylum Act.

According to the new section applications are deemed inadmissible in the following cases:⁶⁶

1. Another country is responsible for carrying out the asylum procedure, according to the Dublin Regulation or based on other European or international treaties;
2. Another EU Member State has already granted the applicant international protection;
3. A country that is willing to readmit the foreigner is regarded as a “safe third country” for the asylum seeker;⁶⁷
4. A country that is not an EU Member State and is willing to readmit the foreigner is regarded as “another third country”;⁶⁸
5. The applicant has made a subsequent,⁶⁹ or secondary,⁷⁰ application.

Between August and December 2016, the new provision has mainly been applied with regard to Dublin cases (10,121 decisions) and in cases of subsequent and secondary applications (6,721 and 1,476 decisions respectively).⁷¹

In the same period, a further 1,281 applications were rejected as inadmissible on the grounds that another EU Member State had already granted international protection. In some of these cases persons concerned appealed the decisions and courts decided that they had the right to a new asylum procedure in Germany. In particular in cases of persons who had been granted international protection in **Bulgaria**, the courts cited deficiencies in the Bulgarian asylum system and risks of inhuman or degrading living conditions as reasons for their decisions.⁷²

⁶⁶ Section 29(1) Asylum Act, available at: <http://bit.ly/2kv7cpy>.

⁶⁷ Section 29(1)(3) Asylum Act, citing Section 26a Asylum Act.

⁶⁸ Section 29(1)(4) Asylum Act, citing Section 27 Asylum Act.

⁶⁹ Section 29(1)(5) Asylum Act, citing Section 71 Asylum Act.

⁷⁰ Section 29(1)(5) Asylum Act, citing Section 71a Asylum Act.

⁷¹ Federal Government, Response to parliamentary question by Member of Parliament Volker Beck, 1/6, 10 January 2017.

⁷² High Administrative Court of Hessen, decision 3 A 1322/16.A of 6 November 2016; Administrative Court of Aachen, Decision 8 L 991/16.A of 5 December 2016; Administrative Court of Stuttgart, Decision A 5 K 8144/16 of 28 December 2016.

The provision that asylum applications may be considered inadmissible in case of safety in “another third country” (*sonstiger Drittstaat*) has been based on the concept of [First Country of Asylum](#) of Article 35 of the recast Asylum Procedures Directive.⁷³ “Another third country” may refer to any country which is not defined a [Safe Third Country](#) under German law.⁷⁴ This concept replaces the former notion, according to which asylum applications were “to be disregarded” (*unbeachtlich*) if return to “another third country” was possible. In the process, important restrictions have been removed. In particular, the former provision could only be applied if return to the safe “other third country” was possible within three months. Although this qualification has been removed, the provision has only been applied rarely, only 7 times, in the period between August and December 2016.⁷⁵

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure? Yes No
 - ❖ If so, are questions limited to identity, nationality, travel route? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? Yes No
2. Are interviews conducted through video conferencing? Frequently Rarely Never

The examination of whether an application may be considered as “to be disregarded” is part of the regular procedure; therefore the same standards are applied (see [Regular Procedure: Personal Interview](#)). See also [Dublin: Personal Interview](#), as the majority of inadmissibility decisions concern Dublin cases.

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure?
 - Yes No
 - ❖ If yes, is it Judicial Administrative
 - ❖ If yes, is it suspensive Yes No

The appeal procedure in cases of “inadmissible” applications (i.e. “Dublin cases”) has been described in the section on [Dublin: Appeal](#).

Appeals have to be submitted to the court within 1 week (7 calendar days) together with a request to the court to restore suspensive effect. The latter request has to be substantiated.

⁷³ Maria Bethke und Stephan Hocks, *Neue „Unzulässigkeits“-Ablehnungen nach § 29 AsylG*, Asylmagazin 10/2016, 336-346 (343).

⁷⁴ Safe third countries” are all member states of the European Union plus Norway and Switzerland (Section 26a Asylum Act and addendum to Asylum Act).

⁷⁵ Federal Government of Germany, Response to a written question by Member of Parliament Volker Beck, No.1/6, 10 January 2017.

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in interview
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
 Yes With difficulty No
❖ Does free legal assistance cover
 Representation in courts
 Legal advice

As in the regular procedure, asylum seekers can be represented by lawyers at the first instance (at the BAMF), but they have to pay for legal representation themselves and it may be difficult to find a lawyer for practical reasons.

The appeal procedure in cases of applications which are found inadmissible is identical to the procedure in “manifestly unfounded” cases. It is possible to apply for legal aid for the appeal procedure. However, because of time constraints and because many of these cases are likely to fail the “merits test”, it is unusual for legal aid to be granted, with the exception of some Dublin cases (see [Dublin: Legal Assistance](#)).

4. Border procedure (border and transit zones)

4.1. General (scope, time-limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? Yes No
2. Can an application made at the border be examined in substance during a border procedure? Yes No
3. Is there a maximum time-limit for border procedures laid down in the law? Yes No
❖ If yes, what is the maximum time-limit? 2 days

There is no special procedure at land borders. For the situation of asylum seekers apprehended at the border, see the section on [Registration](#). The following section refers to the **airport procedure**.

The “procedure in case of entry by air” is legally defined as an “asylum procedure that shall be conducted prior to the decision on entry” to the territory.⁷⁶ Accordingly, it can only be carried out if the asylum seekers can be accommodated on the airport premises during the procedure (with the sole exception that an asylum seeker has to be sent to hospital and therefore cannot be accommodated on the airport premises) and if a branch office of the BAMF is assigned to the border checkpoint. The necessary facilities exist in the airports of **Berlin** (Schönefeld), **Düsseldorf**, **Frankfurt/Main**, **Hamburg** and **Munich**.

Significant numbers of procedures only took place at the airport of **Frankfurt/Main**: 258 procedures in 2016, 627 procedures in 2015, 569 procedures in 2014 and 841 procedures in 2013. At the four other airports, only between 3 and 5 airport procedures were initiated in 2016.⁷⁷

⁷⁶ Section 18a Asylum Act.

⁷⁷ Federal Government, Reply to parliamentary question by The Left, 18/11262, 21 February 2017, 62; 18-7625 22 February 2016; 18/3850, 28 January 2015, 52, 18/705, 5 March 2014, 29. Cf. Flüchtlingsrat Brandenburg

The airport procedure usually applies to applicants who do not have valid documents upon arrival at the airport, but it may also apply to applicants who ask for asylum at the border authorities in the transit area and to those who come from a “safe country of origin”.

Potential outcomes of airport procedures are as follows:

1. The Federal Office decides within 2 calendar days that the application is “manifestly unfounded”: Entry to the territory is denied. A copy of the decision is sent to the competent administrative court.⁷⁸ The applicant may ask the court for an interim measure against deportation within three calendar days;
2. In theory, the Federal Office can decide within the 2 calendar days that the application is successful or it can reject the application as “unfounded” (unqualified rejection). In these cases, entry to the territory and, if necessary, access to the legal remedies of the regular procedure would have to be granted. However, this option seems to be irrelevant in practice since the Federal Office always grants entry to the territory for the asylum procedure to be carried out in a regular procedure if an application is not rejected as manifestly unfounded;
3. The Federal Office declares within the first 2 calendar days following the application that it will not be able to decide upon the application at short notice. Entry to the territory and access to the regular procedure are granted; or
4. The Federal Office has not taken a decision within 2 calendar days following the application: Entry to the territory (and to the regular procedure) is granted.

In practice, the third option is the most common outcome: In 2016, 191 out of 273 potential airport procedures were halted because the BAMF notified the border police that no decision would be taken within the time-frame required by law (2015: 549 out of 627, 2014: 539 out of 643; 2013, 899 out of 972; 2012: 720 out of 787). Only in 68 cases in 2016 a decision was taken within the 2-day period, all of which were rejections classified as “manifestly unfounded”.⁷⁹ This implies that in practice only applications are dealt with in the airport procedure which the authorities have already earmarked as “manifestly unfounded”.

Nevertheless, concerns have been expressed regarding the quality of decision-making in the airport procedure in a recent Memorandum by German NGOs. Four of the cases reviewed showed lack of a substantive examination of the applications concerned, leading in one case concerning an Afghan national to rejection as “manifestly unfounded”.⁸⁰

et al, *Gemeinsame Stellungnahme gegen die Inhaftierung von Asylsuchenden auf dem neuen Großflughafen BER Willy Brandt und gegen die Durchführung von Asyl-Schnellverfahren*, January 2012: The reason why airport procedures are not carried out more often at the other airports is because authorities may decide upon an applicant's arrival that an airport procedure cannot be carried out for practical reasons (e.g. non-availability of decision-makers or of translators). In such cases entry to the territory and to the regular asylum procedure is granted immediately.

⁷⁸ Section 18a(2)-(4) Asylum Act.

⁷⁹ Federal Government, Reply to parliamentary question by The Left, 21 February 2017; 22 February 2016; 18 August 2015, No. 18/5785; 38-39; 28 January 2015, No. 18/3850, 52; BAMF, *Das Bundesamt in Zahlen 2013 – Asyl* (The Federal Office in numbers 2013 – Asylum matters), February 2014, 36.

⁸⁰ Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland: Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, available in German at: <http://bit.ly/2gZGhBq>, 28.

4.2. Personal interview

Indicators: Border Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

 - ❖ If so, are questions limited to nationality, identity, travel route?
 - ❖ If so, are interpreters available in practice, for interviews?
2. Are interviews conducted through video conferencing? Frequently Rarely Never

In the airport procedure, the border police may conduct a preliminary interview which includes questions on the travel route and on the reasons for leaving the country of origin. However, the relevant interview is carried out by the BAMF with the presence of an interpreter. The standards for this interview are identical to those described in the context of the regular procedure (see [Regular Procedure: Personal Interview](#)).

Recent monitoring of airport procedures has noted problems with interviews held at the airport, suggesting that an examination of applications cannot be effectively conducted within such short time limits. In some cases, asylum seekers have been interrupted systematically during their submissions.⁸¹

4.3. Appeal

Indicators: Border Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

 - ❖ If yes, is it
 - ❖ If yes, is it suspensive

“Manifestly unfounded” decisions are generally subject to restrictions in legal remedy, but in the airport procedure the law has placed even stricter time-frames on the procedure. Thus, if an application is rejected as “manifestly unfounded” in the airport procedure, a request for an interim measure must be filed with an administrative court within 3 calendar days. The necessary application to the court can be submitted at the border authorities.⁸²

The administrative court shall decide upon the application for an interim measure in a written procedure, i.e. without an oral hearing of the applicant.⁸³ The denial of entry, including possible measures to enforce a deportation, is suspended as long as the request for an interim measure is pending at an administrative court. If the court does not decide on this request within 14 calendar days, the asylum seeker has to be granted entry to the territory.⁸⁴

⁸¹ Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland: Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, 28.

⁸² Section 18a(4) Asylum Act.

⁸³ Section 18a(4) Asylum Act.

⁸⁴ Section 18a(6) Asylum Act.

4.4. Legal assistance

Indicators: Border Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in interview
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in courts
 Legal advice

The airport procedure is the only procedure in Germany in which asylum seekers are entitled to free legal assistance. This requirement does not have a basis in legislation but results from a decision of the Federal Constitutional Court.⁸⁵ According to this decision, assistance can be provided by any available person or institution sufficiently qualified in asylum law.

In practice, the association of lawyers of the airport's region coordinates a consultation service with fully qualified lawyers. If an applicant wants to speak to a lawyer, the border police contacts one of the lawyers named by the association of lawyers as soon as a formal denial of entry is issued, which includes the rejection of the asylum application. However, it has been pointed out by NGOs that the short timeframe foreseen in the airport procedure hinders effective access to a lawyer, leading to unsatisfactory implementation of Article 22 of the recast Asylum Procedures Directive.⁸⁶

Consultation with the lawyer is free of charge for the applicant as far as it concerns the possibilities of legal remedy. The lawyer may also assist with the drafting of the request to the administrative court.⁸⁷ Any other actions undertaken by the lawyer are not included in the free assistance. In particular, representation before the court is not part of this free legal assistance.

In the appeal procedure following an airport procedure, the preconditions for legal assistance are identical to those of the regular procedure.

5. Accelerated procedure

5.1. General (scope, grounds for accelerated procedures, time-limits)

An accelerated procedure was introduced in German law in March 2016. According to the new Section 30a of the Asylum Act, the accelerated procedure can be carried out in branch offices of the BAMF which are assigned to a "special reception centre" (*Aufnahmeeinrichtung*). Only in these locations can accelerated procedures be carried out for the asylum seekers who:⁸⁸

1. Come from a **Safe Country of Origin**;
2. Have clearly misled the authorities about their identities or nationalities by presenting false information or documents or by withholding relevant documents;
3. Have in bad faith destroyed or disposed of an identity or travel document that would have helped establish their identities or nationalities, or if the circumstances clearly give reason to believe that this is so;

⁸⁵ Federal Constitutional Court, Decision of 14 May 1996, 2 BvR 1516/93, cf. Reinhard Marx. AsylVfG – Kommentar zum Asylverfahrensgesetz (*Asylum Procedures Act – Commentary*), 7th edition, 2009, 432.

⁸⁶ Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland: Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, 27.

⁸⁷ Federal Constitutional Court, Decision of 14 May 1996, 2 BvR 1516/93.

⁸⁸ Section 30a(1) Asylum Act.

4. Have filed a subsequent application, in case they have left Germany after their initial asylum procedure had been concluded;⁸⁹
5. Have made an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in their deportations;
6. Refuse to be fingerprinted in line with the Eurodac Regulation; or
7. Were expelled due to serious reasons of public security and order or if there are serious reasons to believe that they constitute a serious threat to public security and order.

In the accelerated procedure, the BAMF has to decide within 1 week (7 calendar days).⁹⁰ If it rejects the asylum application as manifestly unfounded or inadmissible within this timeframe, the procedure is carried on as an accelerated procedure and the asylum applicants are obliged to stay in the “special reception centres”. If the BAMF does not decide within one week, or if the application is rejected as simply “unfounded” or if protection is granted, the applicant is allowed to leave the special reception centre and the procedure is carried on as a regular procedure, if necessary.⁹¹

During an accelerated procedure, asylum seekers are obliged to stay in the special reception centres.⁹² These are not closed facilities, but asylum seekers may leave the premises and are free to move around in the local area (town or district). In this respect, the same rules apply to them as to asylum seekers in the regular procedure who also face a “residence obligation” in the first months of an asylum procedure. However, asylum seekers in the accelerated procedure face significantly stricter sanctions for non-compliance with the “residence obligation”: If they leave the town or district in which the special reception centre is located, it shall be assumed that they have failed to pursue the asylum procedure.⁹³ This may lead to the termination of their asylum procedure and rejection of their application.

At the end of 2016, only two “special reception centres” existed, in **Bamberg** and **Manching/Ingolstadt**, and both were functioning as “special” and “regular” reception centres simultaneously. No figures were provided by the authorities as to how many accelerated procedures had been carried out in these centres.⁹⁴ At the end of January 2017, the facility at Bamberg had 482 asylum seekers accommodated in its “special reception centre” and 794 in its “regular” reception centre, which shows that more regular procedures were taking place in this location than accelerated ones.⁹⁵ By and large, it can be concluded that introduction of accelerated procedures has only had little impact on asylum procedures in general at the end of 2016.

The rules concerning personal interviews, appeal and legal assistance are similar to those described in the [Regular Procedure](#) and, for inadmissibility decisions, the [Admissibility Procedure](#).

⁸⁹ This qualification (that only asylum seekers who have left Germany after a first asylum procedure are subject to this provision) is not contained in the law. However, a representative of the BAMF stated in a committee hearing in Parliament that the authorities were obliged to make use of this qualification for legal reasons. The Federal Government later explained that the authorities would “presumably” apply the law in this manner: Federal Government, Response to a parliamentary question by Member of Parliament Volker Beck, 18/7842, 8 March 2016, 19.

⁹⁰ Section 30a(2) Asylum Act.

⁹¹ Section 30a(2)-(3) Asylum Act.

⁹² Section 30a(3) Asylum Act.

⁹³ Section 33(2)(3) Asylum Act.

⁹⁴ Response by the BAMF to a question submitted by the author, email, 27 January 2017.

⁹⁵ Regional government of Oberfranken, *Asylwerber in Oberfranken*, available at: <http://bit.ly/2k7hLM0>.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? Yes For certain categories No
❖ If for certain categories, specify which: Unaccompanied children
2. Does the law provide for an identification mechanism for unaccompanied children? Yes No

Screening of vulnerability

There is no requirement in law or mechanism in place to systematically identify vulnerable persons in the asylum procedure, with the exception of unaccompanied children. All asylum seekers should undergo a medical examination, which usually takes place shortly after the registration of the asylum application in the initial reception centre. However, this examination is focussed on the detection of communicable diseases and it does not include a screening for potential vulnerabilities. Sometimes medical personnel or other staff members working in the reception centres inform the BAMF if they recognise symptoms of trauma, but there is no systematic procedure in place ensuring that such information is passed on.

Reception and registration procedures were strongly affected by the massive increase in numbers of asylum seekers in 2014 and 2015, to the point that the reception system as foreseen by the law has partially collapsed. Asylum seekers are often sent to emergency shelters or to decentralised accommodation before they have an opportunity to formally apply for asylum. Under these circumstances, identification of potential vulnerabilities has become almost impossible, since it has proved difficult in many places to carry out even the most basic medical examination and no other mechanism is in place to identify vulnerable asylum seekers.

Some federal states have introduced pilot schemes for the identification of vulnerable groups. For instance, in **Berlin** both authorities and NGOs which function as first contact points for asylum seekers receive written information on how vulnerable groups can be identified.⁹⁶ If staff members stationed at the first contact point have grounds to assume that an asylum seeker could belong to a vulnerable group they should send them to a specialised institution. However, the scheme has been struggling with a lack of funding of the participating NGOs since the second half of 2015.

Identification of vulnerable groups has also been made a priority measure in the German programme for the implementation of the Asylum, Migration and Integration Fund (AMIF). Within this programme, a number of projects for identifying and supporting vulnerable groups receive AMIF funding.⁹⁷

The BAMF guidelines stipulate that the following cases shall be handled in a particularly sensitive manner and, if necessary, by specially-trained decision-makers:⁹⁸

- Unaccompanied children;
- Victims of gender-specific prosecution; and
- Victims of torture and traumatised asylum seekers.

Identification of other groups such as victims of trafficking has varied from one federal state to another, while restructuring and recruitment of new staff at the BAMF has made it difficult to ensure the availability of specifically trained staff for such groups.⁹⁹

⁹⁶ *Berliner Modell für die frühzeitige Identifizierung besonders schutzbedürftiger Flüchtlinge* (Berlin pilot scheme for early identification of particularly vulnerable refugees).

⁹⁷ List of projects available at: <http://bit.ly/2luvIWj>.

⁹⁸ BAMF, *DA-Asyl (Dienstanweisung Asylverfahren) – Belehrungen*, 2010, 139.

⁹⁹ FRA, *Monthly data collection: Key highlights – Trafficking*, May 2016, available at: <http://bit.ly/2kLHSd9>, 8.

The lack of a systematic identification procedure for vulnerable persons also pertains to the “prioritised” caseloads. Guarantees for unaccompanied children are identical in prioritised and non-prioritised cases.

Age assessment

The age assessment procedure has been clarified as of November 2015. During the provisional care period, the youth welfare office (*Jugendamt*) has to establish the age of the unaccompanied minor. The office has to check identification documents and, if these are not available, an age assessment has to be carried out based on a “qualified inspection”.¹⁰⁰ As part of this qualified inspection, the office may hear or gather written evidence from experts and witnesses. Only in cases, in which remaining doubts concerning the age cannot be dispelled by these means, the youth office may initiate a medical examination. This examination has to be carried out by qualified medical experts with the “most careful methods”. The explanatory memorandum to the 2015 law states explicitly that the previously practiced examination of the genitals is excluded in this context.¹⁰¹

The problem of questionable age assessments carried out by the authorities has been discussed in some court decisions in 2016. For instance, the Administrative Court **Berlin** criticised the authorities for an age assessment based only on outward appearances.¹⁰² This age assessment had been called into question by a paediatrician. The High Administrative Court of **Bavaria**, in a decision of 16 August 2016, set certain standards for age assessment by the authorities: According to the High Administrative Court, such an age assessment based only on outward appearances cannot be regarded as sufficiently certain if there is possibility that a medical examination might lead to a different result. This means that such an assessment could only be done in exceptional cases in which there can be no doubt that an asylum seeker is older than 18 years. All other cases should be treated as “cases of doubt” and a “grey area” (margin of error) of one to two years should be taken into account in favour of the asylum seeker. Even following a medical examination a margin of error of *another* two to three years should be considered as a margin of tolerance, in order to avoid any risk of incorrect assessments. The court based its opinion on an expert’s statement, according to which some medical methods for age assessment had a margin of error of up to five years.¹⁰³

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people? Yes For certain categories No
❖ If for certain categories, specify which:

If it becomes evident during the interview that an asylum seeker belongs to one of these groups, the officer conducting the interview is obliged to consult a “special officer” (*Sonderbeauftragter*). A note has to be added to the file on how the officers are planning to proceed, particularly if the special officer takes over the case as a result of this consultation.

With dozens of new branch offices and “arrival centres” opening in 2015 and 2016, dedicated special officers are not available in each BAMF branch office. In a statement submitted to Parliament in February 2016, the BAMF disclosed that it could not be ensured that procedures of unaccompanied children are conducted by special officers, although about 100 such special officers for unaccompanied children were available at the time.

¹⁰⁰ Section 42f Social Code (SGB), Vol. VIII.

¹⁰¹ Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (Federal Association for Unaccompanied Refugee Minors), *Vorläufige Inobhutnahme – Was ändert sich zum 1.11.2015?* (Provisional care – what is new from 1. November 2015 onwards?), October 2015, 2-3.

¹⁰² Administrative Court Berlin, Decision 18 L 81.16 of 19 April 2016, asyl.net, available at: <http://bit.ly/2mJm85c>.

¹⁰³ High Administrative Court Bavaria, Decision 12 CS 16.1550 of 16 August 2016, asyl.net, available at: <http://bit.ly/2m2hP0w>.

Lawyers have reported that the introduction of the special officers has led to some improvement in the handling of “sensitive” cases, but there were also examples of cases in which indications of trauma and even explicit references to torture did not lead to special officers being consulted. It has also been reported that the involvement of special officers does not automatically result in a better quality of interviews.¹⁰⁴

3. Use of medical reports

Indicators: Use of medical reports

1. Does the law provide for the possibility of a medical report in support of the applicant’s statements regarding past persecution or serious harm?
 Yes In some cases No
2. Are medical reports taken into account when assessing the credibility of the applicant’s statements?
 Yes No

Legislation does not explicitly refer to the use of medical reports in asylum procedures. The BAMF is generally obliged to clarify the facts of the case and to compile the necessary evidence.¹⁰⁵ As a general rule, an applicant is not expected to provide written evidence, but is only obliged to hand over to the authorities those certificates and documents which are already in his or her possession and which are necessary “to substantiate his claim or which are relevant for the decisions and measures to be taken under asylum and foreigners law, including the decision and enforcement of possible deportation to another country”.¹⁰⁶ This is not only relevant with regard to past persecution, but also with a view to the future, since the German asylum procedure includes an examination of “serious concrete risks” to life and limb which an applicant might face upon return.¹⁰⁷ Such a risk may also consist in a potential serious harm on health grounds or in a risk which might result from a lack of appropriate health care in the country of origin.

The guidelines of the BAMF distinguish between these two categories: While a detailed (oral) submission is generally deemed sufficient to substantiate a claim of past persecution, applicants are routinely required to present medical reports to substantiate a claim of possible “serious concrete risk” upon return. If a medical statement is not deemed sufficient by the BAMF, it may ask the applicant to submit a further medical report within four weeks. The applicant shall be informed about remaining questions which have to be clarified in the new statement.¹⁰⁸

Hence there is no provision or practice ruling out the possibility that medical reports are submitted by the applicant or on the initiative of authorities. There have been frequent debates, though, on the standards which medical reports have to fulfil in order to be accepted by authorities or courts, particularly in cases of alleged Post-Traumatic Stress Disorder. The Federal Administrative Court found in 2007 that a medical expertise attesting a Post-Traumatic Stress Disorder has to adhere to certain minimum standards but does not necessarily have to meet all requirements of an expertise based on the criteria of the International Classification of Diseases (ICD-10). Accordingly, if a medical report complies with minimum standards, it must not simply be disregarded by authorities or courts, but they have to seek further opinions if doubts remain on the validity of the report submitted.¹⁰⁹ In spite of this the quality of medical reports on Post-Traumatic Stress Disorder remains a controversial issue, regardless of whether such reports are submitted by the applicants or whether they have been commissioned by authorities or courts.¹¹⁰ Furthermore, it is often extremely difficult for asylum seekers to get access to an appropriate

¹⁰⁴ See e.g. FRA, *Monthly data collection: Highlights – Migrants with disabilities*, August 2016, available at: <http://bit.ly/2kWFgLT>, 14.

¹⁰⁵ Section 24(1) Asylum Act.

¹⁰⁶ Section 15(3) Asylum Act.

¹⁰⁷ Section 60(7) Residence Act.

¹⁰⁸ BAMF, *DA-Asyl (Dienstanweisung Asylverfahren)* – subsidiärer Schutz/Darlegungslast (Stand 7/14), and *DA-Asyl – Krankheitsbedingte Abschiebungsverbote* (Stand 1/2015).

¹⁰⁹ Federal Administrative Court, Decision of 11 September 2007 - 10 C 8.07 – (asyl.net, M12108).

¹¹⁰ Melanie Glocker, Hans Wolfgang Gierlichs, Friedemann Pfäfflin, “Zur Qualität von Gerichtsgutachten in

therapy because of a lack of specialised therapists or because authorities reject applications to take over the costs for therapy (including costs for interpreters).¹¹¹ In such cases, it may also prove highly difficult to find experts to submit a medical opinion.

With the reform of March 2016, the use of medical reports has been defined in detail in the context of “national protection” i.e. prohibition of deportation. This is particularly relevant for rejected asylum seekers who challenge a deportation on health grounds. “The foreigner must substantiate an illness which might impede the deportation by submitting a qualified medical certificate. This medical certificate should in particular document the factual circumstances on the basis of which the professional assessment was made, the method of establishing the facts, the specialist medical assessment of the disease pattern (diagnosis), the severity of the illness and the consequences which will, based on the medical assessment, presumably result from the situation which arose on account of the illness.”¹¹²

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?
 Yes No

On 1 November 2015, a new law took effect which restructures the reception procedure for unaccompanied children.¹¹³

Unaccompanied children who are not immediately refused entry or returned after having entered Germany illegally, are taken into provisional care of the youth welfare office (*Jugendamt*) in the municipality in which they have had the first contact with authorities or in which they have been apprehended.

In some Federal States, the youth welfare office carries out a so-called “clearing procedure”, which includes an examination of whether there are alternatives to an asylum application, such as family reunification in a third country or application for a residence permit on humanitarian grounds. Although the government has repeatedly declared its intention to establish a nationwide clearing procedure, this has not been introduced so far.

The role of the guardian in the asylum procedure has been described as “unclear”¹¹⁴ and the new law does not contain any provisions which might help improve this situation. Often, guardians appointed by the youth welfare offices are not in a position to sufficiently support the children in the asylum procedure, because of overburdening or because they have no specific knowledge of asylum laws. Only in some parts of the Federal State of **Hesse** guardians may ask a court to appoint a legal representative if they are not sufficiently competent to represent the unaccompanied children in the asylum procedure. In other federal states, attempts to establish a similar practice have not been successful.¹¹⁵ It has been noted that the current legal situation is not in line with relevant provisions of the recast Asylum Procedures Directive

aufenthaltsrechtlichen Verfahren” (The Quality of Psychiatric Court Reports on Asylum Seekers), *Recht und Psychiatrie* 2012 (30), 67.

¹¹¹ *Psycho-social Centre for refugees Dusseldorf* is a centre providing consultation and therapy to traumatised refugees.

¹¹² Section 60a(2c) Residence Act.

¹¹³ Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher (Law on the improvement of accommodation, care and support for foreign children and youth), Official Gazette I of 28 October 2015, 1802. The most important regulations of the law are summarised in: Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (Federal Association for Unaccompanied Refugee Minors), *Vorläufige Inobhutnahme – Was ändert sich zum 1.11.2015?* (Provisional care – what is new from 1. November 2015 onwards?), October 2015.

¹¹⁴ *Ibid*, 30.

¹¹⁵ *Ibid*, 27-28.

and other European legal acts which state that minors should be represented and assisted by representatives with the necessary expertise.¹¹⁶

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? Yes No
2. Is a removal order suspended during the examination of a first subsequent application?
 - ❖ At first instance Yes No
 - ❖ At the appeal stage Yes No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
 - ❖ At first instance Yes No
 - ❖ At the appeal stage Yes No

The law defines a subsequent application (*Folgeantrag*) as any claim which is submitted after a previous application has been withdrawn or has been finally rejected.¹¹⁷ In case of a subsequent application the BAMF conducts a preliminary examination on the admissibility of the application. The admissibility test is determined by the requirements for resumption of procedures as listed in the Administrative Procedure Act.¹¹⁸ According to this, a new asylum procedure is only initiated if:

1. The material or legal situation on which the decision was based has subsequently changed in favour of the applicant;
2. New evidence is produced which would have resulted in a more favourable decision for the applicant in the earlier procedure; or
3. There are grounds for resumption of proceedings, for example because of serious errors in the earlier procedure.¹¹⁹

Further requirements are that:¹²⁰

4. The applicant was unable, without grave fault on his or her part, to present the grounds for resumption in earlier proceedings, particular by means of legal remedy; and
5. The application must be made within 3 months after the applicant has learned of the grounds for resumption of proceedings.

Only if these requirements are met, the applicant regains the legal status of asylum seeker and the merits of the case will be examined in a subsequent asylum procedure. The procedure is the same for third or further applications.

The legal status of applicants pending the decision on the admissibility of their subsequent application is not expressly regulated by law. It is generally assumed, though, that a deportation order has to be suspended until the Federal Office has taken a decision on the commencement of a new asylum procedure. Accordingly, the stay of applicants is to be “tolerated” (*geduldet*) until this decision has been

¹¹⁶ Stephan Hocks, ‘Die Vertretung unbegleiteter minderjähriger Flüchtlinge’ (The representation of unaccompanied refugee minors), *Asylmagazin* 11/2015, 367-373.

¹¹⁷ Section 71 Asylum Act.

¹¹⁸ Section 51(1)-(3) Administrative Procedure Act (*Verwaltungsverfahrensgesetz*).

¹¹⁹ The relevant grounds for this third alternative are listed in Section 580 of the Code of Civil Procedure (“action for retrial of a case”), to which the Asylum Act makes a general reference. Serious errors according to this provision include false testimony by witnesses or experts. Apart from that, Section 580 of the Code of Civil Procedure contains several grounds which are either not relevant for the asylum procedure or are covered by the grounds referred to under the first and second alternatives mentioned here. Although it is conceivable that the third alternative may apply in certain cases, it hardly seems to be of significance in practice, cf. Kerstin Müller, *AsylVfG* § 71, para. 32, in Hofmann/Hoffmann, eds. *HK-AuslR (Handkommentar Ausländerrecht)*, 2008, 1826.

¹²⁰ Section 51(2) Administrative Procedure Act.

rendered.¹²¹ However, a deportation may proceed from the very moment that the Federal Office informs the responsible Foreigners' Authority that a new asylum procedure will not be initiated. If an enforceable deportation order already exists, a new deportation order or other notification is not required to enforce deportation.¹²² The applicant may also be detained pending deportation until it is decided that a subsequent asylum procedure is carried out.¹²³

The decision on admissibility of a subsequent application can be carried out without hearing the applicant.¹²⁴ This means that the Federal Office has full discretion in deciding whether to conduct an interview or not at this stage. Therefore it is often recommended that subsequent applications, which generally have to be submitted in person, should be accompanied with a detailed written motivation.

If the Federal Office decides not to carry out a subsequent procedure, the application is rejected as "inadmissible".¹²⁵ This decision can be appealed before an Administrative Court. It is also necessary to request an interim measure from the court in order to suspend deportation.

There is no free legal assistance available for subsequent applications or for appealing against rejections of subsequent applications.

In contrast, if the Federal Office decides to carry out a new procedure, this will usually be in the form of a "regular procedure" and the applicant regains the status of asylum seeker, including access to reception conditions and including the other rights and obligations connected with this status. Since March 2016, it is also possible that subsequent applications are dealt with in the "accelerated procedure", but this type of procedure had only been introduced in two offices of the BAMF at the end of 2016 (see [Accelerated Procedure](#)). Furthermore, accelerated procedures should only take place if the applicant has left Germany after his or her initial asylum procedure had been concluded, so most subsequent applications should not be affected by the new law.¹²⁶

In 2016, the BAMF took decisions on 37,743 subsequent applications:

Decisions on subsequent applications: 2016		
Type of decision	Number of decisions	Percentage
Inadmissible subsequent applications	18,313	48.5%
Admissible subsequent applications	19,430	51.5%
Rejected / terminated	13,964	36.9%
Refugee status	3,030	8.1%
Subsidiary protection	1,340	3.6%
Prohibition of deportation	1,096	2.9%

Source: BAMF, Asylum Statistics December 2016, 7.

Most successful subsequent applications were filed by Syrian nationals (85.4% resulting in refugee status or another kind of protection) and Iraqi nationals (59.9%). In contrast, only 12 out of 9,396 subsequent

¹²¹ Kerstin Müller, AsylVfG § 71, para. 44, in Hofmann/Hoffmann, eds., *HK-AuslR (Handkommentar Ausländerrecht)*, 2008, 1830.

¹²² Section 71(5) Asylum Act.

¹²³ Section 71(8) Asylum Act.

¹²⁴ Section 71(3) Asylum Act.

¹²⁵ Section 29(1)(5) Asylum Act, applicable as of 6 August 2016.

¹²⁶ This qualification (that only asylum seekers who have left Germany after a first asylum procedure are subject to this provision) is not contained in the law. However, a representative of the BAMF stated in a committee hearing in Parliament that the authorities were obliged to make use of this qualification for legal reasons. The Federal Government later explained that the authorities would "presumably" apply the law in this manner: Federal Government, Response to a parliamentary question by Member of Parliament Volker Beck, 18/7842, 8 March 2016, 19.

applications from Serbian nationals were partially successful; subsidiary protection was in one case, another form of protection in 11 cases.

In comparison, rates of successful subsequent applications were comparably high in 2015, with 30.8% of subsequent applicants being granted constitutional asylum status, refugee status or another form of protection. This was mainly due to subsequent applicants from Iraq and Syria, whose claims resulted in 97.6% and 96.6% being fully or partially successful. By way of contrast, subsequent applications from Serbia, FYROM and Kosovo had a 0%, 0.5% and 0.6% recognition rate respectively. In 2014, subsequent applicants from Iraq and Syria were successful at rates of 86.6% and 77.6% respectively.

F. The safe country concepts

Indicators: Safe Country Concepts

- | | | |
|--|---|-----------------------------|
| 1. Does national legislation allow for the use of “safe country of origin” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Both the “safe third country” concept and the “safe country of origin” concept are incorporated in the German constitution (*Grundgesetz*) and further defined in the Asylum Act.¹²⁷ The concept of “another third country”, akin to the “first country of asylum” concept, has been incorporated in the inadmissibility concept of the Asylum Act following the reform entering into force on 6 August 2016 (see [Admissibility Procedure](#)).

1. Safe country of origin

The Constitution defines as safe countries of origin the countries “in which, on the basis of their laws, enforcement practices and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists”.¹²⁸

List of safe countries of origin

Member states of the European Union are by definition considered to be safe countries of origin.¹²⁹ The list of safe countries of origin is an addendum to the law and has to be adopted by both chambers of the Parliament. If the situation in a safe country of origin changes and it can no longer be considered to be safe within the meaning of the law, the Federal Government may issue a decree to remove this country from the list for a period of 6 months.

At present, the list of safe countries consists of:

- Ghana;
- Senegal;
- Serbia;
- FYROM;
- Bosnia-Herzegovina;
- Albania;
- Kosovo;
- Montenegro.

¹²⁷ Article 16a(2)-(3) Basic Law.

¹²⁸ Article 16a(3) Basic Law.

¹²⁹ Section 29a(2) Asylum Act.

Serbia, FYROM and Bosnia-Herzegovina were added to the list following the entry into force of a law on 6 November 2014.¹³⁰ Albania, Kosovo and Montenegro were added with another law which took effect on 24 October 2015.¹³¹

A draft law was introduced by the government in April 2016 with the aim of adding the so-called Maghreb states (**Morocco, Algeria, Tunisia**) to the list of safe countries of origin.¹³² However, the law required the approval of the second chamber of parliament (*Bundesrat*) which rejected the designation of the three countries on 10 March 2017.¹³³

Procedural consequences

Applications of asylum seekers from safe countries of origin shall be considered as manifestly unfounded, unless the applicant presents facts or evidence which justify the conclusion that he or she might be persecuted in spite of the general situation in the country of origin.

Since March 2016, accelerated procedures can be carried out for applicants from safe countries of origin (see [Accelerated Procedure](#)). However, this is only possible in branch offices of the BAMF to which a “special reception centre” has been assigned. Only two of these centres were established in 2016 (in Bamberg and Manching/Ingolstadt) and in both locations, both accelerated and regular procedures can be carried out. No figures were provided as to how many accelerated procedures had actually taken place in 2016. Therefore, it can be concluded that the introduction of accelerated procedures has only had a minimal impact on procedures in general so far. Most procedures from applicants from safe countries of origin were still examined in regular procedures in 2016.

Numbers of applications from asylum seekers from safe countries of origin decreased dramatically in 2016 (with the exception of **Ghana**). The following table shows statistics for asylum applications by relevant nationalities:

Asylum applications by nationals of “safe countries of origin”		
	2016	2015
Albania	17,236	54,762
Serbia	10,273	26,945
FYROM	7,015	14,131
Kosovo	6,490	37,095
Bosnia and Herzegovina	3,109	7,473
Ghana	2,645	1,152
Montenegro	1,630	3,635
Senegal	767	1,205

Source: BAMF, Antrags-, Entscheidungs- und Bestandsstatistik, 2015 and 2016.

¹³⁰ Gesetz zur Einstufung weiterer Staaten als sichere Herkunftsstaaten und zur Erleichterung des Arbeitsmarktzugangs für Asylbewerber und geduldete Ausländer (Law on classification of further states as safe countries of origin and on the facilitation of access to the labour market for asylum seekers and tolerated foreigners), BGBl. I, No. 49, 5 November 2014, 1649.

¹³¹ Asylverfahrensbeschleunigungsgesetz (Law for an acceleration of asylum procedures), BGBl. I, 23 October 2015, 1722.

¹³² Entwurf eines Gesetzes zur Einstufung der Demokratischen Volksrepublik Algerien, des Königreichs Marokko und der Tunesischen Republik als sichere Herkunftsstaaten, 68/16, available in German at: <http://bit.ly/2kSi5CO>.

¹³³ Bundesrat, ‘Keine Zustimmung: Gesetz zu sicheren Herkunftsstaaten’, 10 March 2017, available at: <http://bit.ly/1owVXpm>.

To illustrate the developments of protection rates in the years before and after several countries were included in the list of “safe countries of origin”, the following table includes decisions on first applications from Albania, Serbia and FYROM. Only in the case of Albania, a decrease in the protection rate is discernible, whereas in the other cases protection rates remained on similar levels compared to the years before the countries were listed as “safe countries of origin”:

Recognition rates for nationals of selected “safe countries of origin”			
	2016	2015	2014
Albania	0.4%	0.2%	2.2%
FYROM	0.4%	0.6%	0.2%
Serbia	0.4%	0.2%	0.3%

Source: BAMF, Antrags-, Entscheidungs- und Bestandsstatistik, 2014, 2015 and 2016.

2. Safe third country

The safe third country concept is provided in Section 26a of the Asylum Act.

By definition of the law, all Member States of the European Union are safe third countries. In addition, a list of further safe third countries can be drawn up.¹³⁴ In those countries the application of the 1951 Refugee Convention and of the European Convention on Human Rights (ECHR) has to be “ensured”. The list is an addendum to the Asylum Act and has to be adopted by both chambers of the German Parliament. The Federal Government is entitled to remove a country from that list if changes in its legal or political situation “give reason to believe” that the requirements for a safe third country are not met any longer. At present, the list of further safe third countries consists of **Norway** and **Switzerland**.

From its wording, the safe third country concept only applies to the German (constitutional) asylum, but the Federal Constitutional Court found in a landmark decision in 1996 that its scope extends to refugee protection and to other forms of protection as well.¹³⁵ Accordingly, asylum seekers can be sent back to safe third countries with neither an asylum application, nor an application for international or national protection being considered. Today the safe third country concept has its main impact at land borders.¹³⁶ Border police shall refuse entry if a foreigner, who has entered from a safe third country, requests asylum at the border. Furthermore, border police shall immediately initiate removal to a safe third country if an asylum seeker is apprehended at the border without the necessary documents.¹³⁷ Asylum applications may not be accepted or referred to the responsible authority by the border police if entry to the territory is denied, unless it turns out that Germany is responsible for processing the asylum procedure based on EU law, e.g. because Germany has issued a visa.

3. First country of asylum

The “first country of asylum” concept is not referred to as such in German law. However, as of 6 August 2016, Section 27 of the Asylum Act refers to cases where a person was already safe from persecution in “another third country” (*sonstiger Drittstaat*) as grounds for inadmissibility. Such safety is presumed where the applicant holds a travel document from that country,¹³⁸ or has resided there for more than 3 months without being threatened by persecution.¹³⁹

¹³⁴ Section 26a(2) Asylum Act.

¹³⁵ Federal Constitutional Court, Decision of 14 May 1996, 2 BvR 1938/93, 2 BvR 2315/93, BVerfGE 94, 49 (189).

¹³⁶ Section 18 Asylum Act.

¹³⁷ The border area is defined as a strip of 30 kilometres.

¹³⁸ Section 27(2) Asylum Act.

¹³⁹ Section 27(3) Asylum Act.

In the process, important restrictions have been removed. In particular, the former provision could only be applied if return to the safe “other third country” was possible within three months. Although this qualification has been removed, the provision has only been applied rarely, only 7 times, in the period between August and December 2016.¹⁴⁰

G. Relocation

Indicators: Relocation

1. Number of persons effectively relocated since the start of the scheme 2,862

Relocation statistics: 22 September 2015 – 13 March 2017

Relocation from Italy			Relocation from Greece		
	Received requests	Relocations		Received requests	Relocations
Total	:	1,070	Total	:	1,792
Eritrea	:	:	Syria	:	:
Syria	:	:	Iraq	:	:
CAR	:	:	Undefined	:	:

Source: European Commission: <http://bit.ly/2ifnGlX>. For nationalities, BAMF, 15 March 2017.

Since September 2016 Germany has pledged 1,000 places for relocation each month – 500 for Italy and 500 for Greece, and has continued doing so in 2017.¹⁴¹ In total, as of 13 March 2017, Germany has pledged 7,250 places for relocation, and 2,862 people have been relocated.¹⁴²

No specific nationalities have been prioritised in the relocation procedure. Relocated persons from Italy mainly include nationals of Eritrea, Syria and the Central African Republic (CAR), while from Greece they concern Syrians, Iraqis and persons whose nationality is unknown.¹⁴³

Germany has not rejected relocation requests from Italy until now, whereas requests from Greece have been rejected on the basis of: (a) security concerns; (b) child marriages; and (c) polygamous marriages.¹⁴⁴

Persons relocated from Greece or Italy arrive by plane at **Munich** airport and are brought to a “waiting room” at **Erding** (close to the airport) for a maximum duration of 72 hours. Registration and a medical examination take place at the “waiting room”. From there, relocated persons are sent to reception centres at the Federal States according to the standard distribution system (*Königsteiner Schlüsself*). Special rules are applicable to unaccompanied children: if it is established that they have relatives in Germany, they do not travel to Munich and are transferred directly to the Federal State where their relatives are present and taken into custody by the local youth welfare office (*Jugendamt*).¹⁴⁵ In special cases, persons in need of urgent medical treatment may also forgo the transfer to the “waiting room” at **Erding** and are directly transferred to the relevant Federal State.¹⁴⁶ According to the BAMF, no problems have been reported in the procedure relating to unaccompanied children or persons with special needs.¹⁴⁷

¹⁴⁰ Federal Government of Germany, Response to a parliamentary question by Member of Parliament Volker Beck, No.1/6, 10 January 2017.

¹⁴¹ Information provided by the BAMF, 15 March 2017.

¹⁴² European Commission, *Member States' Support to Emergency Relocation Mechanism*, 13 March 2017, available at: <http://bit.ly/2ifnGlX>.

¹⁴³ Information provided by the BAMF, 15 March 2017.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

Information provided by the BAMF suggests that the duration of the relocation procedure, from the first notification of candidates until arrival in Germany, takes between 10 and 12 weeks at the moment.¹⁴⁸

Asylum applications are filed at the BAMF office assigned to the reception centre and a “normal” asylum procedure takes place.¹⁴⁹ Statistical data concerning the outcome of procedures for relocated persons are not collected by the BAMF.¹⁵⁰

H. Information for asylum seekers and access to NGOs and UNHCR

1. Provision of information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? Yes With difficulty No
- ❖ Is tailored information provided to unaccompanied children? Yes No

According to Section 24(1) of the Asylum Act, the BAMF:

“... [S]hall inform the foreigner in a language he can reasonably be supposed to understand about the course of the procedure and about his rights and duties, especially concerning deadlines and the consequences of missing a deadline.”

Written information

Various other sections of the Asylum Act also contain obligations on the authorities to inform asylum seekers on certain aspects of the procedure. Accordingly, asylum seekers receive various information sheets when reporting to the authorities and/or upon arrival at the initial reception centre,¹⁵¹ including the following:

- An information sheet on the rights and duties during the procedure and on the proceedings in general (“*Belehrung nach § 10 AsylG und allgemeine Verfahrenshinweise*”);
- An instruction on the obligation to comply immediately with a referral to the competent branch office of the BAMF and to appear in person immediately or on a date determined for the formal registration of the asylum application (“*Belehrung nach § 14 Abs. 1 und § 23 Abs. 2 AsylG*”);
- An instruction on the obligation to comply immediately with a referral to the initial reception centre (“*Belehrung nach § 20 Abs. 1 AsylG*”);
- An instruction on the obligation to comply with a decision to be referred to another reception centre, including the obligation to register with the authorities in case of such a referral (“*Belehrung nach § 22 Abs. 3 AsylG*”);

These information sheets are available in German and 39 other languages on the BAMF website.

Furthermore asylum seekers are handed out instructions concerning the Eurodac Regulation (in accordance with Article 18 of the Eurodac Regulation) and on the data collected in the course of the asylum procedure by the BAMF. These instructions are available in 44 languages.

¹⁴⁸ *Ibid.*

¹⁴⁹ Caritas, Resettlement.de, available at: <http://resettlement.de/relocation/>.

¹⁵⁰ Information provided by the BAMF, 28 July 2016.

¹⁵¹ BAMF, *DA-Asyl (Dienstanweisung Asylverfahren)* – *Belehrungen* (internal directives of the BAMF), parts of these directives, as at October 2016, were made available by the BAMF upon request: BAMF, Email of 27 February 2017.

In addition, a personal interview as foreseen in Article 5 of the Dublin III Regulation has to be conducted. This interview shall contribute to a correct understanding of the written information leaflet.¹⁵²

The applicant has to sign an acknowledgment of the receipt of the information leaflets. In some reception centres, further information is handed out or made available through notice boards or posters (e.g. information on the office hours of authorities, NGOs and other institutions), but there is no systematic practice for the distribution of such additional information.

It has been a long-standing criticism from lawyers and NGOs that both the written instructions and the oral briefings provided by the Federal Office are “rather abstract and standardised”.¹⁵³ In particular, they are not considered suitable to render the significance and content of questions during interviews sufficiently understandable to applicants. In the “Memorandum to enhance fair and diligent asylum procedures in Germany”, published by an alliance of 12 German NGOs in November 2016, several deficiencies were named in the context of the right to information.¹⁵⁴

Asylum seekers are reported to only receive a “pile of papers”, one of which is a leaflet on the asylum procedure. It is not sufficiently taken into account that some asylum seekers are not able to read or do not pay attention to these documents or may not fully understand the content. Furthermore, the leaflet is not considered to be comprehensive since it only describes the process of the asylum procedure and does hardly refer to the rights and obligations of asylum seekers during the interview.

Oral information

In addition, asylum seekers are orally informed about “the significance and the proceedings of the interview” and they are instructed about their rights and obligations at the beginning of the interview.¹⁵⁵ However, the oral briefing at the beginning of the interview is described as “formulaic” or “cursory”. In some cases, it is carried out by translators only, so the content of the briefing cannot be controlled.¹⁵⁶

Fast-tracking of procedures, in particular in the so-called “arrival centres”, has also been reported to lead to insufficient information given to asylum seekers.¹⁵⁷

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No

¹⁵² *Ibid.*

¹⁵³ Amnesty International et al., ed. *Memorandum zur derzeitigen Situation des deutschen Asylverfahrens (Memoranda on current situation of the German asylum procedure)*, 2005, 21.

¹⁵⁴ Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland. Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, 14.

¹⁵⁵ BAMF, *Das deutsche Asylverfahren – ausführlich erklärt. Zuständigkeiten, Verfahren, Statistiken, Rechtsfolgen (The German asylum procedures – an elaborate explanation. Responsibilities, Procedures, Statistics, Consequences)*, December 2012, 17.

¹⁵⁶ Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland. Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, 14.

¹⁵⁷ *Ibid.*

Access to NGOs is highly dependent on the place of residence. In some reception centres, welfare organisations or refugee councils have regular office hours or are located close to the centres so asylum seekers can easily access the offices of such organisations. However, offices of NGOs do not exist in all relevant locations and in any case, access to such services is not systematically ensured.

In 2016, numerous “arrival centres” and other offices of the BAMF were opened (see [Short Overview of the Asylum Procedure](#)). In many of these, access to NGOs may be even more difficult since no established structures of NGOs exist in the town or region where the new offices are located. One exception is the “arrival centre” at **Heidelberg** where the Federal State of Baden-Württemberg has established an independent “qualified social and procedural advisory service” in cooperation with welfare organisations. Within this model, a social worker from an independent organisation functions as contact person for 100 asylum seekers and is explicitly commissioned to offer advice on the asylum procedure (while in many other reception centres social workers are not necessarily independent and/or they often are neither qualified nor entitled to offer counselling services on the asylum procedure). Even here, it has proven difficult for the social workers to effectively prepare asylum seekers for the interview in the asylum procedure since they are often approached with other urgent matters such as social support, family reunification etc.

Furthermore, interviews are scheduled at very short notice in the arrival centres, at a time when asylum seekers have to come to terms with other administrative regulations and with their new surroundings in general. In this situation, it has proven difficult to create an adequate setting for the preparation for the interview.¹⁵⁸ In the light of these problems being described in the context of the exemplary “arrival centre” at Heidelberg, it can be concluded that access to NGOs is even more limited or may be excluded in many other locations where no similar structures exist. This is particularly the case for the possibilities to access NGOs before the interview, since fast-tracking of procedures is taking place at a growing number of “arrival centres”.

Following an initial period of up to 6 months in a reception centre, asylum seekers are referred to accommodation centres or apartments in other places of residence. Some of these accommodation centres are located in remote areas without proper access by means of public transport. If the place of residence is located far away from the next town, travel costs to get there may also pose a serious problem in practice. Accordingly, access to NGOs can be severely restricted under such circumstances.

Until the end of December 2014, the so-called “residence obligation” (*Residenzpflicht*) posed a legal obstacle for many asylum seekers who wanted to contact an NGO or lawyer. In general, asylum seekers were only allowed to leave the town or district to which they had been referred if there were “compelling reasons” to leave the area, and they had to apply for official permission in each case. This “residence obligation” was removed for many asylum seekers at the beginning of 2015 (with the exception of an initial 3-month-period).¹⁵⁹

However, obligation to stay in initial reception centres (which goes hand in hand with the “residence obligation”) can be prolonged to a period of up to 6 months as of October 2015. Furthermore, a general residence obligation has been reintroduced for asylum seekers from safe countries of origin for the whole duration of their procedures,¹⁶⁰ Therefore the “residence obligation” again poses a serious obstacle for access to NGOs and UNHCR in many cases.

¹⁵⁸ Johannes Moll, ‘Das verkürzte Asylverfahren im Ankunftszenrum Heidelberg. Ein Modell im Spannungsfeld von effizientem Verfahren und effektiven Rechtsschutz’, *Asylmagazin* 12/2016, 412, 415-416.

¹⁵⁹ A “toleration” (*Duldung*) is granted to foreigners who are not entitled to a residence permit and are obliged to leave the country, but whose deportation cannot be carried out for technical reasons (e.g. lack of necessary documents) or on humanitarian grounds.

¹⁶⁰ Section 47(1a) Asylum Act.

I. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? Yes No
❖ If yes, specify which:
2. Are applications from specific nationalities considered manifestly unfounded?¹⁶¹ Yes No
❖ If yes, specify which: Albania, Bosnia-Herzegovina, Ghana, FYROM, Montenegro, Senegal, Serbia.

Between 2012 and 2016 the applications of asylum seekers from certain countries were prioritised, either on the grounds that they were considered to be manifestly unfounded (Albania, Bosnia-Herzegovina, Montenegro, FYROM, Serbia, Kosovo) or on the grounds that they were considered to be well-founded (Syria, Eritrea, religious minorities from Iraq).

Prioritisation of applications from certain countries was revoked in the second quarter of 2016. Since then, branch offices of the BAMF are entitled to set their own priorities in dealing with caseloads, in order to respond effectively to the local situation.¹⁶² Furthermore, prioritisation has partially been replaced by “clustering” of cases in the newly established “arrival centres” (*Ankunftscentren*) as discussed in [Prioritised Examination and Fast-Track Processing](#). In these centres, asylum cases are divided into the following four groups:¹⁶³

- Cluster A: Countries of origin with a high protection rate (from 50 % upwards)
- Cluster B: Countries of origin with a low protection rate (up to 20 %)
- Cluster C: “Complex cases”
- Cluster D: “Dublin cases”

Asylum seekers belonging to the groups of “Cluster A” and “Cluster B” should usually be interviewed within a few days after the registration of their asylum applications.

Due to a policy change in the first months of 2016, the BAMF granted subsidiary protection instead of refugee protection in a record number of cases. This policy change affected Syrian nationals in particular, but also asylum seekers from Iraq or Eritrea: For instance, 95.8% of Syrians had been granted refugee status in 2015, this rate dropped to 56.4% in 2016. Conversely, the rate of Syrians being granted subsidiary protection rose from 0.1% in 2015 to 41.2% in 2016. The policy change at the BAMF coincided with a legislative change in March 2016, according to which family reunification was suspended for beneficiaries of subsidiary protection until March 2018 (see section on [Family Reunification](#)). Tens of thousands of beneficiaries of subsidiary protection appealed against the authorities’ decisions in order to gain refugee status (“upgrade-appeals”), with a success rate of more than 75% in 2016.¹⁶⁴

¹⁶¹ Whether under the “safe country of origin” concept or otherwise.

¹⁶² Federal Government, Reply to parliamentary question by The Left, 18/9415, 17 August 2016, 23.

¹⁶³ BAMF, *The stages of the German asylum procedure: An overview of the individual procedural steps and the legal basis*. October 2016, 29.

¹⁶⁴ Federal Government, Reply to parliamentary question by the Left, 18/11262, 21 February 2017, 67-68.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?
- | | | | |
|---------------------------|------------------------------|---|-----------------------------|
| ❖ Regular procedure | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Dublin procedure | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Admissibility procedure | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Border procedure | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Accelerated procedure | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Appeal | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Subsequent application | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? Yes No

Asylum seekers are entitled to reception conditions as defined in the Asylum Seekers' Benefits Act (*Asylbewerberleistungsgesetz*) from the moment their application has been registered and as long as they have the status of asylum seeker (*Aufenthaltsgestattung*). This usually includes the whole period of appeal procedures, but asylum seekers may also lose the status following the authorities' decision if the application has been rejected as "manifestly unfounded" or "inadmissible" and no emergency legal protection is granted. In spite of its title, the law applies not only to asylum seekers, but also to people with a "tolerated stay" (*Duldung*) and even to certain groups of people who have been granted a temporary residence permit.

Due to the massive increase in numbers of newly arriving asylum seekers in 2014 and 2015, the BAMF had not managed to keep up with the registration of applications in those years. With the numbers of newly arriving asylum seekers having decreased significantly in 2016 (280,000 in 2016 in comparison to an estimated 890,000 in 2015) and with the authorities having opened new offices and "arrival centres", the backlog of unregistered asylum applications has been cleared at the end of 2016. Therefore, the legal status of asylum seekers, including their access to benefits under the Asylum Seekers' Benefits Act, is now generally indisputable, unlike the situation in 2015 and early 2016 when asylum seekers often had to wait many months for their applications to be registered and their access to social benefits had not been clearly regulated in law during this period.

If asylum seekers have income or capital at their disposal, they are legally required to use up these resources before they can receive benefits under the Asylum Seekers' Benefits Act.¹⁶⁵ This provision does not seem to be applied often in practice, however.

As a rule, asylum seekers receive both non-cash and cash financial benefits only in the town or district to which they have been sent. Accordingly, they will not be entitled to benefits in other parts of Germany, unless they get a permission by the authorities to move to another place.

¹⁶⁵ Section 7 Asylum Seekers' Benefits Act.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2016 (in original currency and in €): ¹⁶⁶	
❖ Single adult in accommodation centre	€135
❖ Single adult outside accommodation centre	€351

Assistance under the Asylum Seekers' Benefits Act generally consists of “basic benefits” (i.e. a fixed rate supposed to cover the costs for food, accommodation, heating, clothing, personal hygiene and consumer goods for the household).¹⁶⁷ Furthermore, the necessary “benefits in case of illness, pregnancy and birth” have to be provided for.¹⁶⁸ In addition, “other benefits” can be granted in individual cases (upon application) if they are necessary to safeguard the means of existence or the state of health.¹⁶⁹

The benefits as regulated in the Asylum Seekers' Benefits Act until 2012 were considerably lower than social allowances granted to German citizens or to foreigners with a secure residence status. For example, a single adult person was entitled to 224.97 €, but 184.07 € out of this allowance was designated for basic needs and could be provided in kind. The allowance paid out in cash (and sometimes in vouchers) was 40.90 € (20.45 € for children under 15 years).

The Federal Constitutional Court declared the Asylum Seekers' Benefits Act as unconstitutional in July 2012, particularly on the grounds that the benefits paid out in cash were incompatible with the fundamental right to a minimum existence. The court considered the benefits to be insufficient because they had not been changed since 1993 and they had not been calculated in a comprehensible manner in the first place.¹⁷⁰

Revisions to the Asylum Seekers' Benefits Act were passed by both chambers of parliament in November 2014 and the law entered into force on 1 March 2015.¹⁷¹ The main changes were:

- Adjustment of standard rates to a level of about 90% of “standard” social benefits;
- Access to standard social benefits is usually granted after 15 months of receiving benefits under the Asylum Seekers' Benefits Act. This means that higher benefits are paid after 15 months and that restrictions which still exist in the Asylum Seekers' Benefits Act, in particular the limited access to health care, do not apply after that period
- The benefits shall primarily be provided in cash. This marked a reversal of the principle of the former Asylum Seeker's Benefits Act, according to which benefits had primarily to be provided as non-cash benefits.

However, with a law entering into force on 24 October 2015, the principle has again been changed, at least for asylum seekers who are housed in collective accommodation centres and especially for those living in the initial reception centres. In these centres, non-cash benefits should be the rule, “as long as this is possible with acceptable administrative burden”.¹⁷² For asylum seekers in other (decentralised) collective accommodation centres, non-cash benefits “can” be provided “if this is necessary under the circumstances”.¹⁷³ The wording of the latter provision implies that authorities on the regional or local level have wide-ranging discretionary powers when deciding how allowances are to be provided. It therefore will be dependent on local conditions and policies whether non-cash benefits will be reintroduced or not.

¹⁶⁶ This includes hygienic items allowance and pocket money only.

¹⁶⁷ Section 3 Asylum Seekers' Benefits Act.

¹⁶⁸ Section 4 Asylum Seekers' Benefits Act.

¹⁶⁹ Section 6 Asylum Seekers' Benefits Act.

¹⁷⁰ Federal Constitutional Court, Decision of 18 July 2012 – 1 BvL 10/10, 1 BvL 2/11 - asyl.net, M19839. Cf. press release of the Federal Constitutional Court.

¹⁷¹ The text of the law and background material (texts of various bills, protocols from the debates and expert opinions) have been compiled by the Berlin refugee council at: <http://bit.ly/1Hq68qM>.

¹⁷² Section 3(1) Asylum Seekers' Benefits Act.

¹⁷³ Section 3(2) Asylum Seekers' Benefits Act.

Benefits under the Asylum Seekers' Benefits Act were slightly raised at the beginning of 2016 in the course of an annual adjustment. However, they were reduced again, to a slightly lower level, with the introduction of amendments to the Asylum Seekers' Benefits Act in March 2016. Allowances for asylum seekers from 17 March 2016 onwards are as follows:

	Single adult person	Adult partners in common household (each)	Member of household > 18	Member of household 14-17	Member of household 6-14	Member of household < 6
Stay in accommodation centre	€135	€122	€108	€76	€83	€79
Stay outside accommodation centre	€351	€316	€282	€274	€240	€212

According to the law, asylum seekers who are accommodated in reception or accommodation centres generally have to be provided with the necessary means of food, heating, clothing and sanitary products in these centres. Therefore the rates for these groups are considerably lower than they are for asylum seekers living in apartments of their own. For those living outside the accommodation centres, the costs for accommodation (rent), heating and household goods have to be provided on top of the allowances as referred to in the table.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions? Yes No
2. Does the legislation provide for the possibility to withdraw material reception conditions? Yes No

The grounds for reduction of material reception conditions have been amended in March and in August 2016 and now expressly include asylum seekers.

Material reception conditions can be reduced to the point that only "irredeemably necessary" benefits are granted, for the following reasons:¹⁷⁴

1. A person has entered Germany (solely) for the purpose of receiving benefits – this provision does generally not apply to asylum seekers, since it cannot be alleged that claiming benefits has been their only motivation for entering Germany;
2. A person has been asked to leave Germany until a certain date and has not left the country, although this would have been feasible – this provision does generally not affect asylum seekers as long as their asylum procedure is ongoing;
3. A person for whom removal procedures had been scheduled but could not be carried out for reasons, for which this person is responsible – this provision can affect asylum seekers whose application has been rejected as "inadmissible" following a "Dublin procedure";
4. A person who has been allocated to another European state within the framework of a European distribution mechanism (not including the Dublin system);
5. A person has been granted international protection in an EU Member State or Dublin State the Dublin or has acquired a right of residence for other reasons in such a state;
6. An asylum seeker or a person who has filed a secondary asylum application has failed to cooperate with authorities by:
 - Failure to present or hand over a passport or passport substitute to the authorities;

¹⁷⁴ Section 1a Asylum Seekers' Benefits Act, as amended in August 2016.

- Failure to present or hand over other documents necessary for the clarification of his or her identity;
 - Refusal to provide information about his or her identity or nationality in the course of the asylum procedure; or
 - Failure to keep the appointment for the formal registration of their application at the BAMF;
7. An asylum seeker whose application has not yet been registered by the authorities has failed to cooperate with the authorities in a manner that the “arrival certificate” cannot be issued.¹⁷⁵

In practice, these provisions give full discretion to the responsible aliens' authorities to reduce benefits, but only for the reasons mentioned here; this means that reductions of benefits cannot be imposed for other reasons. Since “irredeemably necessary” benefits have to be granted in any case, reduction in this manner usually means that cash benefits are reduced or withdrawn, but persons concerned still have to be provided with accommodation, food and other basic necessities. It is possible to appeal a decision on reduction or withdrawal. In the light of the decision of the Federal Constitutional Court of July 2012 on the Asylum Seeker's Benefits Act, several courts have decided that any reduction of benefits would be unconstitutional and therefore inadmissible.¹⁷⁶

Furthermore, the reduction of benefits may still affect former asylum seekers whose application has been rejected as “manifestly unfounded” or “inadmissible” (e.g. in cases of Dublin decisions) and in whose cases no emergency legal protection has been granted. In such cases benefits can be restored to the standard level at a later stage, e.g. if a subsequent application leads to the opening of a new asylum procedure, or if it turns out that a deportation proves impossible for reasons which cannot be held against the foreign national.

In recent years reception conditions have been affected by overcrowding in many facilities, but apart from that no reductions of benefits have taken place because of the high number of new arrivals.

4. Freedom of movement

Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country? Yes No
2. Does the law provide for restrictions on freedom of movement? Yes No

Until the end of the year 2014, freedom of movement of asylum seekers was restricted by the so-called “residence obligation” for asylum seekers (legally called “geographical restriction”). Section 56 of the Asylum Act stipulated that asylum seekers' residence permits (*Aufenthaltsgestattung*) should be limited to the town or district in which their place of accommodation was located. They had to apply for permission from the authorities whenever they wanted to travel to another region.

According to a law which was published on 31 December 2014 in the Official Gazette, the “residence obligation” was largely removed both for asylum seekers and for people with a “tolerated” stay.¹⁷⁷ From 1 January 2015 onwards, this restriction no longer applied after an initial 3-month period. The “geographic restriction” can be re-imposed, however, if the person concerned has been convicted of a criminal offence or if deportation is imminent.¹⁷⁸ Since October 2015, the geographic restriction has further been reinstated

¹⁷⁵ Section 11(2a) Asylum Seekers' Benefits Act, as amended in March 2016.

¹⁷⁶ Federal Constitutional Court, Decision of 18 July 2012 – 1 BvL 10/10, 1 BvL 2/11 - asyl.net, M19839.

¹⁷⁷ A “toleration” (*Duldung*) is granted to foreigners who are not entitled to a residence permit and are obliged to leave the country, but whose deportation cannot be carried out for technical reasons (e.g. lack of necessary documents) or on humanitarian grounds.

¹⁷⁸ Gesetz zur Verbesserung der Rechtsstellung von asylsuchenden und geduldeten Ausländern (Law on improvement of the legal status of asylum seeking and tolerated foreigners), Bundesgesetzblatt (Official Gazette) I, no. 64, 2439, 31 December 2014.

for persons who are obliged to stay in an initial reception centre, for a period which may be extended to 6 months.¹⁷⁹ This change particularly affects asylum seekers from safe countries of origin, who are obliged in principle to stay in initial reception centres for the whole duration of their procedures.

As a rule, asylum seekers have no right to choose the place of residence. Instead, the place of residence for asylum seekers is usually determined by the general distribution systems according to which places for asylum seekers are at first allocated to the Federal States for the initial reception period and to the municipalities within the Federal States afterwards. It is possible to apply to the authorities to be allocated to a particular town or district, but such applications are only successful in highly exceptional cases (e.g. if a rare medical condition requires that an asylum seeker has to stay close to a particular hospital).

The German distribution key (*Königsteiner Schlüssel*)

Distribution of asylum seekers is determined by the following aspects:

- Capacities of initial reception centres;
- Competence of the branch offices of the BAMF for asylum seekers' countries of origin;
- A quota system called "*Königsteiner Schlüssel*", according to which reception capacities are determined for Germany's 16 Federal States. The *Königstein* key takes into account the tax revenue (accounting for $\frac{2}{3}$ of the quota) and the number of inhabitants ($\frac{1}{3}$) of each Federal State.

The quota for reception of asylum seekers in 2016 ("*Königstein Key*") in comparison to number of (first) asylum applications in 2016 was as follows:

Distribution of asylum seekers in Germany: 2016			
Federal State	Quota	Applications in 2016	Actual share in 2016
Baden-Württemberg	12.97%	84,610	11.72%
Bavaria	15.53%	82,003	11.35%
Berlin	5.08%	27,247	3.77%
Brandenburg	3.04%	18,112	2.51%
Bremen	0.95%	8,771	1.21%
Hamburg	2.56%	17,512	2.42%
Hesse	7.4%	65,520	9.07%
Mecklenburg-Vorpommern	2.01%	7,273	1.01%
Lower Saxony	9.33%	83,024	11.5%
North Rhine-Westphalia	21.14%	196,734	27.24%
Rheinland-Pfalz	4.83%	36,985	5.12%
Saarland	1.21%	6,865	0.95%
Saxony	5.06%	23,663	3.28%
Sachsen-Anhalt	2.8%	19,484	2.7%
Schleswig-Holstein	3.39%	28,982	4.01%
Thuringia	2.69%	15,422	2.14%

Source: BAMF, *Verteilung der Asylbewerber*. <http://bit.ly/1j1HMnO>; Asylgeschäftsstatistik, December 2016.

As shown in the last column, 10 out of 16 Federal States received less asylum applicants than their respective share under the *Königstein Key* in 2016. This can – at least partially – be explained by the fact that the distribution of applications takes into account additional criteria, as mentioned above.

¹⁷⁹ Section 59a(1) Asylum Act.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres: Not available
2. Total number of places in the reception centres: Not available
3. Total number of places in private accommodation: Not available
4. Type of accommodation most frequently used in a regular procedure:
 Reception centre Hotel or hostel Emergency shelter Private housing Other
5. Type of accommodation most frequently used in an accelerated procedure:
 Reception centre Hotel or hostel Emergency shelter Private housing Other

In general, 3 types of accommodation for asylum seekers can be distinguished:

- ❖ Initial reception centres;
- ❖ Collective accommodation centres;
- ❖ Decentralised accommodation.

Moreover, emergency shelters have also been increasingly used in 2015 and 2016.

Initial reception centres (*Aufnahmeinrichtung*)

For a period of up to 6 months after their asylum applications have been filed, asylum seekers are generally obliged to stay in an initial reception centre.¹⁸⁰ Furthermore, asylum seekers from “safe countries of origin” are obliged to stay in initial reception centres for the whole duration of their procedures (at least in theory, see section on [Regular Procedure: Fast-Track Processing](#)). The Federal States are required to establish and maintain the initial reception centres. Accordingly, there is at least one such centre in each of Germany's 16 Federal States with most Federal States having several initial reception facilities.

As at January 2017, the BAMF website listed 73 branch offices, regional offices and “arrival centres” in 67 locations.¹⁸¹ In most of these places, an initial reception centre is assigned to the branch office of the BAMF.

“Collective accommodation” centres (*Gemeinschaftsunterkünfte*)

Once the obligation to stay in the initial reception centre ends, asylum seekers should, “as a rule”, be accommodated in “collective accommodation” centres.¹⁸² These accommodation centres are usually located within the same Federal State as the initial reception centre to which the asylum seeker was sent for the initial reception period. Asylum seekers are obliged to stay in the municipality to which they have been allocated for the whole duration of their procedure, i.e. including appeal proceedings (see section on [Freedom of Movement](#)). The Federal States are entitled by law to organise the distribution and the accommodation of asylum seekers within their territories.¹⁸³ In many cases, states have referred responsibility for accommodation to municipalities. The responsible authorities can decide at their discretion whether the management of the centres is carried out by the local governments themselves or whether this task is transferred to NGOs or to facility management companies.

Decentralised accommodation

For many municipalities the establishment and maintenance of collective accommodation has often not proven efficient, in particular against the background of decreasing numbers of asylum applications from

¹⁸⁰ Section 47 Asylum Act.

¹⁸¹ BAMF, *Branch offices / regional offices*, available at: <http://bit.ly/2kIPxMD>.

¹⁸² Section 53 Asylum Act.

¹⁸³ Section 10 Asylum Seekers' Benefits Act.

the mid-1990s onwards, and especially between 2002 and 2007. Accordingly, many collective accommodation centres were closed during that period and municipalities increasingly turned to accommodating asylum seekers in apartments.

For the year 2015, the German Federal Statistical Office records the following numbers for accommodation of “recipients’ of benefits under the Asylum Seeker’s Benefits Act”. It has to be noted that this law applies not only to asylum seekers, but also to people with a “tolerated stay” (*Duldung*) and even to certain groups of people who have been granted a temporary residence permit. Among these groups there are many people who have been staying in Germany for several years and therefore are more likely to live in decentralised accommodation than asylum seekers whose application is still pending.

Accommodation of recipients of Asylum Seekers’ Benefits for selected Federal States

State/Region	Number of Recipients	Type of accommodation		
		Initial reception centres	Collective accommodation	Decentralised accommodation
2015				
Baden-Württemberg	121,280	25,426	79,870	15,984
Bavaria	126,185	26,686	37,077	62,422
Berlin	49,654	5,052	22,933	21,669
Lower Saxony	101,251	22,425	13,976	64,850
North Rhine-Westphalia	224,108	30,990	131,669	61,449
Germany (total)	974,551	182,254	416,689	375,608
2014				
Baden-Württemberg	38,531	0	27,055	11,476
Bavaria	45,396	6,033	17,096	22,267
Berlin	24,607	3,521	9,929	11,157
Lower Saxony	36,591	2,006	5,776	28,809
North Rhine-Westphalia	86,358	16,568	38,812	30,978
Germany (total)	362,850	45,176	147,689	169,985

Source: Statistisches Bundesamt, Table Benefits for Asylum Seekers 2014 and 2015, Recipients for Federal States/for type of accommodation. This includes both asylum seekers and people with tolerated stay (*Duldung*).

Although Section 53 of the Asylum Act provides that asylum seekers “should, as a rule, be housed in collective accommodation” following the initial reception period, the figures show that policies vary considerably between the Federal States.¹⁸⁴ In some states, most asylum seekers are indeed living in this type of accommodation. In contrast, there are other Federal States in which the majority of recipients of asylum seekers’ benefits are staying in so-called “decentralised accommodation”, so usually in apartments of their own.¹⁸⁵ It is remarkable that the situation remained unchanged between 2014 and 2015, despite the high number of new arrivals in 2015.

¹⁸⁴ An analysis of these figures cannot be conclusive since it is complicated by apparent inconsistencies in the statistics. For example, it is unlikely that at a given date more than 10,000 asylum seekers were staying in the initial reception centres of the Federal State of North Rhine-Westphalia. Apparently, other types of state-run accommodation were included in this figure as well.

¹⁸⁵ It is possible, though, that some Federal States subsume smaller types of collective accommodation under “decentralised” housing as well.

Emergency shelters

With the massive increase in numbers of newly arriving asylum seekers in 2015, reception capacities often reached or exceeded their limits. Accordingly, a large number of asylum seekers was not accommodated in initial reception centres at all, although the law provides that they have to spend the first phase of the asylum procedure in such a centre. Instead, they were sent to local accommodation centres, in many cases before their asylum application had been registered.

In many places, the authorities could not arrange for sufficient accommodation in the existing accommodation centres or in other forms of accommodation such as hotels/hostels or privately owned apartments. Therefore, various types of emergency shelters were set up. These included gyms, containers, warehouses or office buildings and tents.¹⁸⁶

No figures are available on the number of asylum seekers who still had to stay in such shelters in 2016, not least because there is no clear-cut distinction between some temporary accommodation facilities and emergency shelters. Reports suggest that types of accommodation still varied significantly between different regions or municipalities and/or within the same municipality.

In February 2016, the television programme “Monitor” conducted a survey among municipalities on the challenges they encountered in the reception of asylum seekers. From 373 towns and districts which participated in the survey, only 6% reported that they were “overburdened” with the reception of asylum seekers. 50% of municipalities stated that their facilities were operating at the limits of their capacities, but that they could manage to deal with the number of asylum seekers at the time. 16% of municipalities reported that they would be able to receive more asylum seekers. According to experts interviewed for the television programme, these results suggest that problems with the reception of asylum seekers were often “presented more dramatically in public” than they actually were in many places.¹⁸⁷

With the decrease in numbers of newly arriving asylum seekers in 2016, a number of reception facilities were not being used to their full capacities and in some cases they were even reports that newly built reception facilities were not used at all.¹⁸⁸ According to some reports, vacant facilities also existed close to overcrowded facilities in the same region. For instance, in **Schleswig-Holstein**, reception centres managed by the Federal State were only used to one third of their capacity in April 2016, while at the same time many asylum seekers were housed in emergency shelters or hotels in some municipalities in the same Federal State.¹⁸⁹

Generally speaking, more problems with accommodation of asylum seekers were reported in the big cities, particularly in **Berlin**, where about 3,300 asylum seekers were still housed in gyms at the end of 2016, partially because newly erected facilities could not be made available for bureaucratic reasons.¹⁹⁰ Also in Berlin, several hundred asylum seekers still lived in the emergency facility located in the hangar of former **Tempelhof** airport. In February 2017, the regional government announced that this facility was used only to 15% of its maximum capacity and was to be closed in autumn 2017 at the latest.¹⁹¹

¹⁸⁶ Tagesschau.de, ‘Die Angst vor einem harten Winter’, 3 September 2015.

¹⁸⁷ 26% of the municipalities which took part in the survey did not answer this particular question: <http://bit.ly/1WKnFzO>.

¹⁸⁸ For example, in the city of **Augsburg**, four reception facilities were reported to be empty in January 2017: Augsburgener Allgemeine, ‘Leere Flüchtlingsunterkünfte kosten Millionen’, 27 January 2017, available in German at: <http://bit.ly/2JkHmG>.

¹⁸⁹ shz.de, ‘Leere Erstaufnahmen – Helfer sind frustriert’, 1 April 2016, available in German at: <http://bit.ly/1N52Eea>.

¹⁹⁰ Tageszeitung, ‘Die Turnhallen bleiben belegt’, 18 November 2016, available in German at: <http://bit.ly/2Is2l7c>.

¹⁹¹ rbb-online.de, ‘Flüchtlinge sollen Tempelhof-Hangars verlassen’, 20 February 2017, available in German at: <http://bit.ly/2lk8zrr>.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? Yes No
2. What is the average length of stay of asylum seekers in the reception centres? Not available
3. Are unaccompanied children ever accommodated with adults in practice? Yes No

2.1. Conditions in initial reception centres

There is no common standard for initial reception centres, but Federal States have laid down standards to varying degrees in regional legislation through the various State Reception Acts (*Landesaufnahmegesetz*) and in regulations and directives. Where no standards for the accommodation of asylum seekers exist, the Federal States often take recourse to other regulations, such as general “sanitation plans” as they exist for other forms of communal accommodation (e.g. residential homes or homeless shelters).

Initial reception centres have at least several hundred places. Many of these centres use former army barracks which have been refurbished. Locations vary significantly: While some of the initial reception centres are situated in or close to big cities (e.g. **Berlin, Munich, Brunswick/Braunschweig, Bielefeld, Dortmund, Karlsruhe**), others are located in smaller cities (**Eisenhüttenstadt, Neumünster, Halberstadt**) or in small towns with some distance to the next city (**Eisenberg** near Jena, **Lebach** near Saarbrücken). One initial reception centre (**Nostorf-Horst** in the state of Mecklenburg-Vorpommern) is located in an isolated rural area some 10 km away from the next small town.

As far as regulations on accommodation standards in the initial reception centres exist, these show considerable variety in terms of the required living space and equipment. The Refugee Reception Act of **Baden-Württemberg** stipulates that asylum seekers should have 4.5 m² of living space, while other regulations provide for 6 or 7 m² per person.¹⁹² A typical room in an initial reception centre has between 2 and 4 beds, there are chairs and a table and each resident has a locker for herself or himself. Size of rooms may vary, but rooms with a single bed are highly exceptional.

Overcrowding continued to be a serious problem throughout 2014 and 2015, but the situation has improved in 2016 due to a rapid decrease in numbers of newly arriving asylum seekers. In March 2016, only 50% of the capacities of reception centres and emergency shelters run by the Federal States were used, according to media reports. Only the cities of Bremen, Hamburg and Berlin reported that their facilities were operating at 100% at the time, while centres in other Federal States were running far below their capacities (see also [Types of Accommodation](#)).¹⁹³

Most initial reception centres have a policy to accommodate single women and families in separate buildings or separate wings of their buildings, but in situations of overcrowding this policy could not be put into practice in many facilities in recent years.

Bath and toilet facilities usually consist of shower rooms and toilets which people have to share. Where guidelines are available, it is recommended that one shower should be available for 10 to 12 persons, but in some reception centres the ratio is worse than that, particularly in situations of overcrowding. Cleaning

¹⁹² Cf. overview of the regulations of seven Federal States in Andreas Müller, *The Organisation of Reception Facilities for Asylum Seekers in Germany*, Focussed Study of the German National Contact Point for the EMN, Working Paper 55, 26.

¹⁹³ Tagesspiegel, ‘Erstunterkünfte stehen zur Hälfte leer’, 20 March 2016, available in German at: <http://bit.ly/2lJq853>.

of shared space (halls, corridors) as well as of sanitary facilities is carried out by external companies in the initial reception centres.

Food is supplied in the initial reception centres and is usually served in canteens on the premises of the centres. In general, two or more menus are on offer for lunch and the management of the catering facilities tries to ensure that specific food is provided with regard to religious sentiments. Some, but not all initial reception centres also have shared kitchen space which enables asylum seekers to cook their own food. Refrigerators for the use of asylum seekers are available in some initial reception centres, but this seems to be the exception.

Asylum seekers may leave the premises of the initial reception centres at any time, but in many centres they have to report to security personnel upon leaving and re-entering. In general, they can travel freely within the town and district in which the reception centre is located, but in most Federal States they need a special permission to travel to other parts of the state or to other parts of Germany.

2.2. Situation in collective accommodation centres and decentralised housing

Following the initial reception period, asylum seekers are supposed to be sent to another collective accommodation centre (*Gemeinschaftsunterkunft*) within the same Federal State. However, responsibility for housing at this stage of the procedure often lies with the municipalities and many different forms of accommodation have been established. On the local level, accommodation may still consist of collective housing in former army barracks, in (formerly empty) apartment blocks or in housing containers. At the same time, many municipalities have dissolved collective accommodation centres from the 1990s onwards and are now permitting asylum seekers to rent an apartment on the housing market or in council housing. As mentioned in [Types of Accommodation](#), decentralised accommodation is more common in some regions than in others, so whether asylum seekers are housed in collective accommodation or in apartments depends heavily on the situation of the municipalities.

Even before the rise in numbers of asylum seekers made itself evident, studies showed that living conditions of asylum seekers differed considerably between regions and sometimes even within the same town. For example, some municipalities have a policy of generally allowing asylum seekers to live in apartments, which they have to find and rent on their own. In some areas, this is almost impossible in practice for many asylum seekers, since rents are unaffordable in privately owned apartments and space in council housing is extremely limited. This may lead to a situation in which asylum seekers have to stay in collective accommodation centres although they are technically not required to do so.

Overall living conditions

Because different policies are pursued on regional and local level, it is impossible to make general statements on the standards of living in the follow-up accommodation facilities.

In 2014 and 2015, reports of overcrowding of facilities had become commonplace. The situation improved considerably in many regions in 2016, but there remained serious problems in some locations, particularly in big cities like **Berlin**, where many asylum seekers were still staying in emergency shelters (mainly gyms, but also the hangar of the former airport at Tempelhof) at the end of 2016.

It has also been pointed out that living conditions in individual apartments are not automatically and always better than they are in accommodation centres (e.g. if apartments are provided in run-down buildings or if decentralised accommodation is only available in isolated locations). Nevertheless, the collective accommodation centres, and particularly the bigger ones (often referred to as “camps” by critics) are most often criticised by refugee organisations and other NGOs.

Facilities are often isolated or in remote location. Many temporary facilities do not comply with basic standards and do not guarantee privacy.¹⁹⁴ According to reports this has led to serious health problems for some asylum seekers, both in emergency shelters, but in cases of long stays also in “normal” collective accommodation centres.

In facilities in which food is provided, asylum seekers are sometimes not allowed to prepare their own food and/or no cooking facilities exist. Especially where food is handed out in the form of pre-packed meals, quality is often criticised.¹⁹⁵

Concerns have also been raised around limited space and equipment for recreation, including for children, in some facilities. In some centres, no separate and quiet space is available for children, for example to do their homework for school.¹⁹⁶

Furthermore, many facilities lack qualified staff, whereas NGOs and volunteers often have to take over authorities’ obligations in particular in the areas of counselling and integration. Lack of communication between authorities and NGOs and/or volunteers has also been reported.¹⁹⁷

Physical security

In addition to overall living conditions, the security of residents can also be an issue of concern. According to official statistics, more than 900 attacks on accommodation facilities took place in 2016, including 66 arson attacks. Most of the attacks are classified as racially motivated crimes.¹⁹⁸ According to statistics compiled by NGOs, the number of attacks during 2016 is significantly higher – 1,578 attacks on facilities, including 102 arson attacks.¹⁹⁹

In many facilities, situations of overcrowding and lack of privacy lead to lack of security, particularly for women and children.²⁰⁰

Fences are used around premises, particularly those of the bigger centres or of centres for which former industrial buildings or former army barracks.

In some facilities asylum seekers have to report to staff upon leaving and upon return. Visitors have to report to staff and there are only limited visiting hours. In some cases, no overnight stays are allowed for visitors, even for spouses (see [Access to Reception Centres](#)).²⁰¹

Duration of stay

In the absence of a consistent policy, the duration of stay in collective accommodation centres is dependent on the place of residence and sometimes it seems to be a matter of pure coincidence whether asylum seekers are allowed to move out of collective accommodation or not. If asylum seekers stay in collective accommodation for the whole duration of their asylum procedure (as it is generally prescribed by law) this often takes several years since the obligation applies to appeal procedures as well. In addition,

¹⁹⁴ ProAsyl, ‘Ein Leben ohne Privatsphäre? Sammelunterbringung darf nicht zum Dauerzustand werden!’, 10 January 2017, available in German at: <http://bit.ly/2kWyI5U>.

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

¹⁹⁷ For both positive and negative examples of cooperation, see Robert-Bosch-Stiftung, *Die Aufnahme von Flüchtlingen in den Bundesländern und Kommunen - Behördliche Praxis und zivilgesellschaftliches Engagement*, 2015, available in German at: <http://bit.ly/2kIKN9M>.

¹⁹⁸ Tagesschau, ‘Mehr als 900 Angriffe auf Flüchtlingsheime’, 28 December 2016, available in German at: <http://bit.ly/2ii1bfs>.

¹⁹⁹ Mut Gegen Rechte Gewalt, ‘Chronik flüchtlingsfeindlicher Vorfälle’, 17 February 2017, available in German at: <http://bit.ly/2l4P8jO>.

²⁰⁰ ProAsyl, ‘Ein Leben ohne Privatsphäre? Sammelunterbringung darf nicht zum Dauerzustand werden!’, 10 January 2017, available in German at: <http://bit.ly/2kWyI5U>.

²⁰¹ *Ibid.*

people whose asylum applications have been rejected, are often obliged to stay in collective accommodation centres as long as their stay is “tolerated”. It has been argued that a stay in collective accommodation which lasts several years corresponds with increased health risks, especially an increased risk of mental disorders.

According to reports, the long duration of stay in temporary facilities (emergency shelters), which do not comply with basic standards has led to serious health problems for some asylum seekers, both in emergency shelters, but in cases of long stays also in “normal” collective accommodation centres.²⁰² Cases of depression, alcohol and drug abuse have become common in temporary accommodation facilities in **Berlin**.²⁰³

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market	
1. Does the law allow for access to the labour market for asylum seekers? ❖ If yes, when do asylum seekers have access the labour market? ○ General time-limit ○ Maximum time-limit (in initial reception centres)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No 3 months 6+ months
2. Does the law allow access to employment only following a labour market test?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3. Does the law only allow asylum seekers to work in specific sectors? ❖ If yes, specify which sectors:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No No self-employment
4. Does the law limit asylum seekers' employment to a maximum working time? ❖ If yes, specify the number of days per year	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
5. Are there restrictions to accessing employment in practice?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

The time limit for access to the labour market was reduced to 3 months in November 2014.²⁰⁴ Before that, since 6 September 2013, asylum seekers were not allowed access to the labour market for a period of 9 months.²⁰⁵ Until September 2013, the time limit had been 1 year, but the law was changed to transpose the recast Reception Conditions Directive.

However, with the adoption of a law in October 2015, new restrictions for access to the labour market were imposed. Asylum seekers are now barred from access as long as they are obliged to stay in an initial reception centre. The maximum period for this stay is 6 months for most asylum seekers, but asylum seekers from safe countries of origin are obliged to stay in initial reception centres for the whole duration of their asylum procedures. In principle, the law thus provides that asylum seekers from safe countries of origin do not have access to the labour market at all, but it might prove difficult in practice to enforce the obligation to stay in initial reception centres for longer periods (see [Fast-Track Processing](#)).

For asylum seekers who are not from safe countries of origin the new law results in unequal treatment: For those who are allowed to leave the initial reception centres after a short period (for legal or practical reasons, e.g. because of overcrowding), access to labour market can be granted after 3 months, while those who stay in these centres for a longer period do not have access for up to six months.

²⁰² Tagesspiegel, ‘Leben in der Massenunterkunft’, 21 November 2016, available at: <http://bit.ly/2IJBA0v>. The article reports that a family from Turkmenistan had stayed in a temporary accommodation facility (a former school) for 26 months.

²⁰³ *Ibid.*

²⁰⁴ Gesetz zur Einstufung weiterer Staaten als sichere Herkunftsstaaten und zur Erleichterung des Arbeitsmarktzugangs für Asylbewerber und geduldete Ausländer, BGBl. I, No. 49, 5 November 2014, 1649.

²⁰⁵ Section 61(2) Asylum Act.

Asylum seekers are not allowed to work on a self-employed basis for the whole duration of their asylum procedure, since the permission to pursue self-employment is dependent on a regular residence title, to which the asylum seeker's residence permit (*Aufenthaltsgestattung*) does not belong.²⁰⁶

After the waiting period of 3 or 6 months has expired, access to the labour market is granted in principle, but with restrictions. Firstly, asylum seekers have to apply for an employment permit. To this end, they have to prove that there is a “concrete” job offer, i.e. an employer has to declare that the asylum seeker will be employed in case the employment permit is granted, and they have to hand in a detailed job description to the authorities.

Secondly, for a period of 15 months following the registration of the asylum application and the issuance of the *Aufenthaltsgestattung*, the job centre usually has to carry out a “priority review”, i.e. an examination of whether there is another job-seeker who is suited for the offered position and who has a better status in terms of employment regulations, in particular German citizens or foreigners with a secure residence permit. However, in August 2016, an addendum to the Employment Regulation (*Beschäftigungsverordnung*) was introduced, according to which this “priority review” has been suspended for three years in most parts of Germany. This addendum lists 133 of 156 regions of the labour agency (areas to which a local labour office is assigned), so only in 23 regions the priority review still has to take place.²⁰⁷

In any case, the priority review is not mandatory after 15 months of stay.

Furthermore, the job centre carries out a “review of labour conditions”, i.e. an examination of whether labour rights are adhered at the workplace and whether wages correspond to regional standards.

2. Access to education

Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children? Yes No
2. Are children able to access education in practice? Yes No

As a matter of principle, the right and the obligation to attend school extends to all children who reside in Germany, regardless of their status. However, since the education system is within the responsibility of the Federal States, there are some important distinctions in laws and practices.

For example, compulsory education ends at the age of 16 in several Federal States, therefore children in those states do not have the right to enter schools when they are 16 or 17 years old. Furthermore, it has frequently been criticised that parts of the education system are insufficiently prepared to address the specific needs of newly arrived children. While there are “best practice” examples in some regions for the integration of refugee children into the education system, obstacles remain in other places, such as lack of access to language and literacy courses or to regular schools.²⁰⁸

In 2016, an association of various NGOs (regional refugee councils, Federal Association for Unaccompanied Refugee Minors, Youth without Borders) started a campaign called “School for all” (*Schule für alle*) to draw attention to the fact that children in many (initial) reception facilities have only

²⁰⁶ Section 21(6) Residence Act.

²⁰⁷ These are areas in which the local labour market is considered to be “strained”, but the list actually does not seem to adhere to this principle. The priority review is still in place in parts of **Bavaria** (11 out of 23 regions), parts of **Nordrhein-Westfalen** (7 out of 30 regions) and in the Federal State of **Mecklenburg-Vorpommern**.

²⁰⁸ Stefanie Studnitz, “Ausgrenzung statt Ausbildung”, *Migration und Soziale Arbeit*, 2/2011. Cf. also Federal Association for Unaccompanied Refugee Minors, *Supplementary Report on the third and fourth periodic reports of Germany to the United Nations pursuant to Art. 44 of the UN Convention of the Rights of the Child*. 2013, 23.

had very basic schooling and no access to the regular school system for the duration of their stay in these facilities. This is 3 to 6 months in theory, but for the whole of the procedure for nationals of “safe countries of origin”. Furthermore, the NGOs have criticised the fact that access to education services was severely limited for asylum seekers above the age of 16, many of whom have not finished school in their countries of origin and therefore need access to the school system in order to gain a degree.²⁰⁹

Asylum seekers generally have access to vocational training. In order to start vocational training, they need an employment permit, but in contrast to other jobs a “priority review” does not have to be carried out.²¹⁰ However, the fact that asylum seeker's residence permits are issued for a 6-month-period frequently renders it impossible to enter vocational training. Training contracts usually have to be concluded for a duration of two or three years. Hence potential employers are often hesitant to offer vocational training to asylum seekers since there is a considerable risk that the training cannot be completed if the asylum application is rejected.

D. Health care

Indicators: Health Care			
1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
2. Do asylum seekers have adequate access to health care in practice?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No

The law restricts health care for asylum seekers to instances “of acute diseases or pain”, in which “necessary medical or dental treatment has to be provided including medication, bandages and other benefits necessary for convalescence, recovery, or alleviation of disease or necessary services addressing consequences of illnesses.” The law further contains a special provision for pregnant women and for women who have recently given birth. They are entitled to “medical and nursing help and support”, including midwife assistance. Furthermore, vaccination and “necessary preventive medical check-ups” shall be provided.²¹¹

In addition, the law states that further benefits can be granted “if they are indispensable in an individual case to secure health”.²¹²

The term “necessary treatment” within the meaning of the law has not conclusively been defined but is often taken to mean that only absolutely unavoidable medical care is provided. However, the wording of the law suggests that health care for asylum seekers must not be limited to “emergency care” since the law refers to acute diseases or pain as grounds for necessary treatment. Accordingly, it has been argued that a limitation of treatment to acute diseases is not in accordance with the law, since chronic diseases are equally likely to cause pain. This latter opinion has been upheld by courts in several cases. Nevertheless, it has been reported that necessary but expensive diagnostic measures or therapies are not always granted by local authorities, which argue that only “elementary” or “vital” medical care would be covered by the law.²¹³

²⁰⁹ See the campaign at: <http://kampagne-schule-fuer-alle.de/>.

²¹⁰ Section 32(2)(1) Employment Regulation.

²¹¹ Section 4 Asylum Seekers' Benefits Act.

²¹² Section 6 Asylum Seekers' Benefits Act.

²¹³ Georg Classen, *Leitfaden zum Asylbewerberleistungsgesetz* (Guideline to the Asylum Seekers' Benefits Act), September 2016; *Krankenhilfe nach dem Asylbewerberleistungsgesetz* (Medical assistance according to the Asylum Seekers' Benefits Act), Updated version, May 2012. 6-7.

A common problem in practice is caused by the need to obtain a health insurance voucher (*Krankenschein*). These vouchers or certificates are usually handed out by medical personnel in the initial reception centres, but once asylum seekers have been referred to other forms of accommodation they usually have to apply for them at the social welfare office of their municipality. There have been reports that necessary treatment has been delayed or even denied by staff of social welfare offices, due to incompetence to decide on these matters.²¹⁴ The necessity to distribute health insurance vouchers individually also imposes significant administrative burden on the social services. In response, the Federal States of **Berlin, Brandenburg, Bremen, Hamburg** and **Schleswig-Holstein** issue “normal” health insurance cards to all asylum seekers, enabling them to see a doctor without permission from the authorities. In some Federal States (**North Rhine-Westphalia, Lower Saxony** and **Rhineland-Palatinate**) the health insurance card for asylum seekers has been introduced in principle, but municipalities have largely failed to implement the system.²¹⁵ Other Federal States (e.g. **Bavaria** and **Baden-Württemberg**) have announced that they will not participate in the scheme.

In reception centres, the limited availability of health care professionals and volunteers has also been reported as a problem, especially on weekends.²¹⁶

According to Section 1a of the Asylum Seekers Benefits Act, reception conditions can be reduced for reasons defined in the law (see [Reduction or Withdrawal of Reception Conditions](#)).²¹⁷ However, the law states that “irredeemably necessary” benefits still have to be granted in these cases. Accordingly, at least “essential treatment” has to be provided for in these cases, and it has also been argued that treatment should be on the same level as it is for other asylum seekers, especially if the need for medical treatment has been the result of an emergency which has not existed at the time of arrival in Germany.²¹⁸

After 15 months of having received benefits under the Asylum Seekers’ Benefits Act, asylum seekers are entitled to social benefits as regulated in the Twelfth Book of the Social Code (*Sozialgesetzbuch*).²¹⁹ Once people are entitled to the “standard” social benefits, this includes access to health care under the same conditions that apply to German citizens who receive social benefits.

Specialised treatment for traumatised asylum seekers and victims of torture can be provided by some specialised doctors and therapists and in several specialised institutions (Treatment Centres for Victims of Torture – *Behandlungszentren für Folteropfer*). Since the number of places in the treatment centres is limited, access to therapies is not always guaranteed. The treatment centres often have to cover costs for therapies through donations or other funds since therapies are often only partially covered by the authorities, e.g. costs for interpreters are frequently not reimbursed. Large distances between asylum seekers’ places of residence and treatment centres may also render an effective therapy impossible in practice.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?

Yes

No

²¹⁴ *Ibid*, 7-8.

²¹⁵ Die Zeit, ‘Warten auf die Gesundheitskarte für Flüchtlinge’, 15 May 2016, available in German at: <http://bit.ly/1rMOmL6>; ndr.de, ‘Warum die Gesundheitskarte umstritten ist’, 23 May 2016, available in German at: <http://bit.ly/2mjd3vV>.

²¹⁶ FRA, *Monthly overviews: March 2016*, available at: <http://bit.ly/2lkcqVm>, 13.

²¹⁷ However, it should be noted that this provision generally only affects asylum seekers whose application has been (finally) rejected. Furthermore, the admissibility of this provision is now under dispute (see [Criteria and Restrictions to Access Reception Conditions](#)).

²¹⁸ Georg Classen, *Krankenhilfe nach dem Asylbewerberleistungsgesetz* (Medical assistance according to the Asylum Seekers’ Benefits Act), updated version, May 2012. 3.

²¹⁹ However, the reduction of benefits may apply for more than 48 months (i.e. without any time-limit) to persons who have “abused the law to affect the duration of their stay”.

Special needs should be taken into account as part of the admission procedure to the initial reception centres, and social workers or medical personnel in the reception centres can assist with applications for specific medical treatment. However, there is no systematic assessment procedure for vulnerable persons.

There is no legal obligation to provide separated facilities or separate wings for families, single women or other vulnerable groups. In practice, several reception facilities have tried to introduce a policy to house families and single women in separate wings. However, it has often not been possible to consistently carry out this policy, especially in cases of overcrowded facilities.

1. Reception of unaccompanied children

Unaccompanied children should be taken into care of a youth welfare office and the youth welfare office has to seek “adequate accommodation”.²²⁰ This is often provided in specialised “clearing houses” or other youth welfare facilities, but there are also examples of special accommodation centres, which have only been established for unaccompanied children and which have been strongly criticised for being inadequate to meet the special needs of this group.²²¹ Furthermore, because of some inconsistencies in legislation, the procedure for taking unaccompanied children into care is not observed thoroughly. According to estimates of the Federal Association for Unaccompanied Refugee Minors (*Bundesfachverband Unbegleitete Minderjährige Flüchtlinge*), as many as 25% of all unaccompanied children are not taken into care and do not regularly receive benefits and services from the youth welfare office.²²² Unaccompanied children who are not taken into care are thus housed in the “regular” reception or accommodation centres and they receive the same benefits as adults.

From November 2015 onwards, unaccompanied minors do not generally stay in the place in which they have arrived, but they can be sent to other places throughout Germany as part of a distribution system established in November 2015 (see section on [Unaccompanied Children](#)). At the time, the NGO Federal Association for Unaccompanied Refugee Minors had expressed its concern that many municipalities might not be sufficiently prepared for an adequate reception of unaccompanied minors.²²³

In July 2016, the Federal Association for Unaccompanied Refugee Minors published an evaluation of the provisional care system which had been established in November 2015.²²⁴ The evaluation is based on information submitted by about 1,400 persons working in youth welfare institutions and NGOs via an internet-based survey. Major problems identified in the study concerning the provisional care system include the following:²²⁵

- Accommodation of unaccompanied minors in temporary facilities which are not suited to their needs;
- Duration of procedures to clarify guardianship for refugee minors in excess of authorities' legal obligations;

²²⁰ Section 42(1) first sentence Eighth Book of the Social Code.

²²¹ Federal Association for Unaccompanied Refugee Minors, “Bayerns Ignoranz bei der Unterbringung unbegleiteter minderjähriger Flüchtlinge provoziert geradezu weitere Eskalationen” (“Bavaria’s ignorance in relation to accommodation of underaged and unaccompanied refugees lead to increased escalations”), Press release, 6 March 2013.

²²² Federal Association for Unaccompanied Refugee Minors, *Supplementary Report on the third and fourth periodic reports of Germany to the United Nations pursuant to Art. 44 of the UN Convention of the Rights of the Child*, 2013, 27.

²²³ Federal Association for Unaccompanied Refugee Minors, ‘Bundestag beschließt Quotenregelung: Unbegleitete minderjährige Flüchtlinge werden auf unvorbereitete Kommunen verteilt’ (Parliament adopts quota system: Unaccompanied refugee minors will be distributed to unprepared municipalities), Press release, 15 October 2015.

²²⁴ Federal Association for Unaccompanied Refugee Minors, *Die Aufnahmesituation unbegleiteter minderjähriger Flüchtlinge in Deutschland. Erste Evaluation zur Umsetzung des Umverteilungsgesetzes*. (The reception situation for Unaccompanied Refugee Minors in Germany. First evaluation of the Redistribution Law). July 2016.

²²⁵ *Ibid*, 29-30.

- Inadequate medical care during provisional care period;
- Staff in provisional care system is insufficiently trained and equipped to decide whether distribution is in the best interest of the child;
- Insufficient access to education system during the provisional care period which can last for more than six months.

2. Reception of LGBTI persons

The situation of LGBTI persons in reception centres and other collective accommodation centres has been frequently discussed, after many reports had emerged about LGBTI persons being harassed and attacked by other asylum seekers. NGO opened an accommodation centre in Berlin for victims of such harassment.²²⁶

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

The law imposes an obligation on authorities to provide general information on rights and obligations of asylum seekers:

“Within 15 days of the filing of an asylum application, the reception centre shall inform the foreigner, if possible in writing and in a language which he can reasonably be assumed to understand, of his rights and duties under the Asylum Seekers Benefits Act. With the information referred to in the first sentence, the reception centre shall also inform the foreigner about who is able to provide legal counsel and which organizations can advise him on accommodation and medical care.”²²⁷

In practice, the initial reception centres hand out leaflets which contain information on where and when asylum seekers can receive advice or assistance. In general, though, asylum seekers are expected to contact the social services in the reception centres in order to get more detailed information on reception conditions.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
 Yes With limitations No

UNHCR is entitled by law to visit foreigners, including those in detention and in airport transit zones.²²⁸ Any restriction of access to reception centres for UNHCR would therefore be considered illegal.

There is no general rule for other third parties. Access of other organisations or individuals to reception centres can be restricted by house rules issued by the owner of the premises or by the management of the facilities. For instance, visits can generally be restricted to daytime hours, even for spouses in some facilities. There have also been cases in which NGOs staff or volunteers were banned from entering premises of reception or accommodation centres.

²²⁶ ILGA Europe, *Seeking refuge without harassment, detention or return to a “safe country”*, ILGA Europe Briefing on LGBTI Refugees and Asylum, February 2016, available at: <http://bit.ly/2mEpmqk>, 2.

²²⁷ Section 47(4) Asylum Act.

²²⁸ Section 9 Asylum Act.

In practice, the geographical location of reception centres can pose a considerable obstacle to visits. In addition, many accommodation centres do not have an office or another room in which confidentiality of discussions between an asylum seeker and a visitor is ensured.

G. Differential treatment of specific nationalities in reception

Asylum seekers from [Safe Countries of Origin](#) are subject to special reception conditions. Asylum seekers from these countries are obliged to stay in initial reception centres for the whole duration of their procedure. Furthermore, since March 2016, accelerated procedures can be carried out for applicants from safe countries of origin (see [Accelerated Procedure](#)). For the purpose of the accelerated procedure, asylum seekers have to be accommodated in “special reception centres”, only two of which have been established in 2016 in **Bamberg** and **Manching/Ingolstadt**.

Although it may prove difficult in practice to enforce the obligation to stay in initial reception centres for an indefinite period, these provisions mean that asylum seekers from safe countries of origin will usually not have access to decentralised accommodation, i.e. apartments.

Furthermore, since asylum seekers are barred from access to the labour market as long as they are obliged to stay in an initial reception centre, these provisions also result in asylum seekers from safe countries of origin being excluded from work.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2016: ²²⁹	:
2. Number of asylum seekers in detention at the end of 2016:	:
3. Number of pre-removal detention centres:	7
4. Total capacity of detention centres:	:

Responsibility for detention, including detention pending deportation (*Abschiebungshaft*), lies with the Federal States. Available statistics on detention pending deportation do not contain information on the number of people who have applied for asylum while in detention.²³⁰

Asylum seekers are generally not detained as long as their application is not finally rejected and as long as they have an asylum seeker's residence permit. In cases of applications which have been rejected as inadmissible or manifestly unfounded, a deportation order may take effect regardless of legal remedy, unless a court grants an interim measure suspending such a deportation. However, if applicants are detained at this point, they do not have a legal status as asylum seekers, since the asylum seekers' residence permit (*Aufenthaltsgestattung*) ceases to be valid once a deportation order becomes enforceable.²³¹

Accordingly, within the meaning of German law, detention is only ordered once an asylum application has been finally rejected (with few exceptions as explained below). However, it has to be noted that in Dublin cases applications are rejected without an examination of the substance of the case and applicants are referred to another European state for the asylum procedure to be carried out there. In a more general sense, detention of asylum seekers thus happens frequently in cases of asylum seekers whose application has been rejected on the grounds that another European state is responsible for the procedure. In 2016, 3,968 people were transferred following a Dublin procedure (compared to 3,597 in 2015).²³² In these cases transfers are usually preceded by detention, but this often is only for a very short period of time (i.e. police custody), since many people are transferred on the same day as they are arrested. Exact statistics on the duration of custody and/or detention are not available.

Furthermore, asylum seekers can be apprehended in the transit zone of the airport for a maximum period of 19 days in the course of the airport procedure. However, it has to be noted that this stay in the transit zone is not considered to constitute detention in terms of the law.²³³

The Jesuit Refugee Service reported in October 2015 that "virtually no use had been made" by the authorities of the new legal provisions which in principle would allow for an extension of detention.²³⁴

The number of deportations increased to 25,375 in 2016, in comparison to 20,888 in 2015,²³⁵ and the number of people in detention pending deportation seems to have risen as well. No countrywide statistics are available, but the following reports suggest that capacities of detention facilities are increasingly used:

²²⁹ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

²³⁰ Federal Government of Germany, "*Umsetzung der Abschiebungsrichtlinie der Europäischen Union und die Praxis der Abschiebungshaft*" (Implementation of the EU guidelines on deportation and the practice of detention pending deportation); *Response to information request by the parliamentary group of "The Left" party/"Die Linke"*, 5 September 2012, 17/10579.

²³¹ Federal Government, Reply to parliamentary question by The Left, no. 18/1112 of 9 February 2017, 47.

²³² Section 67 Asylum Act.

²³³ Federal Constitutional Court, Decision of 14 May 1996, 2 BvR 1516/93.

²³⁴ Jesuiten-Flüchtlingsdienst (Jesuit Refugee Service), Newsletter October 2015, 2.

²³⁵ Federal Government, Reply to parliamentary question by The Left, no. 18/7588 of 18 February 2016 and no. 18/11112 of 9 February 2017.

- ❖ Pro Asyl reported in July 2016 that 55 former asylum seekers were in detention pending deportation in the Federal State of **Hessen** between January and April 2016, in comparison to only five cases during the same period in 2015.²³⁶
- ❖ The Refugee Council of Baden-Württemberg reported in August 2016 that the newly established facility at **Pforzheim** (with 21 places) was increasingly used, with 18 deportees being held in the facility at the time of the report.²³⁷
- ❖ On the other hand, only five people were detained in the facility at Eisenhüttenstadt in **Brandenburg** in November 2016 (the average rate was six detainees in the first months of 2016 who spent an average of 16 days in the detention centre).²³⁸

In general, the overall number of people in detention pending deportation seems to have been low in comparison with the situation before 2014. This implies that the vast majority of deportations and Dublin transfers is carried out within one day, so only a few hours pass between arrest and departure. In this manner persons who are obliged to leave the country are only taken into custody and no formal detention order has to be issued.

Facilities for detention pending deportation existed in seven Federal States in 2016.²³⁹ This includes Pforzheim, **Baden-Württemberg**, Mühldorf am Inn in **Bavaria**, Eisenhüttenstadt in **Brandenburg**, **Bremen**, Hannover (Langenhagen) in **Lower Saxony**, Büren in **North Rhine-Westphalia**, and Ingelheim am Rhein in **Rhineland-Palatinate**. Since detention pending deportation must not be carried out in other prisons since 2014 (see section on [Place of Detention](#)) this means that the majority of Federal States did not have any facilities for this kind of detention in 2016. These Federal States therefore either did not make use of detention pending deportation at all, or they had to transfer deportees to other Federal States for this purpose.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
 - ❖ on the territory: Yes No
 - ❖ at the border: Yes No
2. Are asylum seekers detained in practice during the Dublin procedure?
 - Frequently Rarely Never
3. Are asylum seekers detained during a regular procedure in practice?
 - Frequently Rarely Never

In terms of law there is only one basis for the detention of asylum seekers whose application is still pending: This relates to asylum applications which are lodged by people who are already in detention, in particular those:

- In pre-trial detention;
- In prison (following a conviction for a criminal or other offence); or
- In detention pending deportation (*Abschiebungsgewahrsam*).

An asylum application lodged after a foreigner has been detained for the purpose of removal does not always lead to release from detention, but it is possible that detention is legally possible under certain

²³⁶ Pro Asyl, Newsletter no. 226, 29 July 2016.

²³⁷ Schwäbische Zeitung, 'Belegung im Abschiebegefängnis steigt', 4 August 2016, available in German at: <http://bit.ly/2muMfft>.

²³⁸ Die Tageszeitung, 'Geh mir aus dem Land', 16 November 2016, available in German at: <http://bit.ly/2lvj10V>.

²³⁹ Information provided by the Jesuit Refugee Service, February 2017.

circumstances. However, it has to be noted that detention pending deportation, ordered solely on the grounds of illegal border crossing, is in itself not a sufficient reason to uphold such detention in case that an asylum application has been lodged. In addition, the authorities have to prove that there are further reasons for the perpetuation of detention, such as a risk of absconding or an illegal stay for a duration of one month,

If an asylum application does not lead to release from detention, a detained person may be kept in detention for 4 weeks or until the BAMF has decided upon the case, and detention may even be upheld beyond that period if another country has been requested to admit or re-admit the foreigner on the basis of European law, i.e. the Dublin Regulation, or if the application for asylum has been rejected as inadmissible or as manifestly unfounded.²⁴⁰

The German constitution stipulates that detention may only be ordered by a judge. The responsible authorities may only take a person into custody if there is reason to believe that this person is trying to abscond in order to avoid deportation and if a judge cannot be requested to issue a detention order beforehand. In such cases, the detention order has to be subsequently obtained from a court as soon as possible.

Grounds for detention are defined in Section 62(3) of the Residence Act. This provision states that a foreigner shall be placed in detention pending deportation "if:

1. The foreigner is enforceably required to leave the Federal territory on account of his or her having entered the territory unlawfully;
- 1a. A deportation order has been issued pursuant to Section 58a but is not immediately enforceable;
2. The period allowed for departure has expired and the foreigner has changed his or her place of residence without notifying the foreigners authority of an address at which he or she can be reached;
3. He or she has failed to appear at the location stipulated by the foreigners authority on a date fixed for deportation, for reasons for which he or she is responsible;
4. He or she has evaded deportation by any other means; or
5. In the foreigner's individual case a well-founded suspicion, based on the grounds as defined in Section 2(14), exists that he or she intends to evade deportation by means of flight."

The grounds referred to in the last paragraph have been part of a law which took effect on 1 August 2015. They are listed in Section 2(14) Residence Act, in cases where the foreigner:

1. Has evaded apprehension by an authority in the past by changing his or her place of residence without informing the authorities;
2. Has provided the authorities with misleading information about his or her identity, in particular by withholding or destroying documents or by claiming a false identity;
3. Has not cooperated with the authorities to establish his or her identity and it can be concluded from his or her actions that he or she is actively resisting a deportation;
4. Has paid substantial amounts of money to a smuggler or trafficker and it can be concluded under the individual circumstances that he or she will resist deportation, because otherwise his or her expenditures would have been of no avail;
5. Has expressly declared that he or she will resist deportation;
6. Has committed other acts of comparable severity to evade an impending deportation.

In Section 2(15) Residence Act, special provisions for detention in the course of Dublin procedures were introduced. As a general rule, this section provides that all grounds for detention as referred to in the former paragraph have to be regarded as "objective criteria" for a "risk of absconding" within the meaning of Article 2(n) of the Dublin III Regulation. In addition, this section defines another criterion for "risk of absconding", i.e. the fact that an asylum seeker:

²⁴⁰ Section 14(3) Asylum Act.

Has left another Dublin Member State before his or her asylum procedure (or Dublin procedure) had been concluded in this state and if there is no indication that he or she is going to return to the responsible Member State in the near future.

Furthermore, with the amendment of the Residence Act of August 2015 another new legal instrument has been introduced which is called “*Ausreisegewahrsam*” (“custody pending departure”). According to the new Section 62b of the Residence Act, this type of detention can be carried out in the transit zones of airports or in other facilities “from where a direct departure is possible”. No cases have become known in which this new instrument has been applied.

NGOs strongly condemned the amendments of August 2015 as authorising a “boundless extension” of reasons for detention, especially in Dublin procedures.²⁴¹

However, the number of cases of detention pending deportation, which had been at a low level since the second half of 2014, reportedly remained low in the second half of 2015. They did increase in 2016, but remained on a comparatively low level (see [General](#)). The drop in numbers of detention cases had been the result of a decision by the German Federal Supreme Court which had found on 26 June 2014 that there was no legal basis for detention within the Dublin procedure, if detention was based on an alleged “risk of absconding”.²⁴² The Federal Supreme Court observed that Section 62(3)(5), the relevant provision of the German Residence Act, had been irreconcilable with the Dublin III Regulation. Nevertheless, the court also found that it was still possible to detain “Dublin deportees” on other grounds; in particular “failure to appear at the location stipulated by the foreigners authority on a date fixed for deportation” and “evasion of deportation by any other means”. In addition, the CJEU had ruled on 17 July 2014 that detention for the purpose of removal of illegally staying third-country nationals had to be carried out in specialised detention facilities in all Federal States of Germany.²⁴³ Accordingly, the practice of carrying out detention for the purpose of deportation in regular prisons came to an end in the second half of 2014.

2. Alternatives to detention

Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?
 Reporting duties
 Surrendering documents
 Financial guarantee
 Residence restrictions
 Other
2. Are alternatives to detention used in practice?
 Yes No

The section on detention pending deportation in the Residence Act opens with a general clause on the principle of proportionality:

“Detention pending deportation is not admissible if the purpose of the detention can be achieved by other, less severe but equally sufficient means. The detention shall be limited to the shortest possible duration. Minors and families with minors may be taken into detention awaiting

²⁴¹ Pro Asyl, ‘Ausweitung der Abschiebungshaft droht: Gesetz zu Bleiberecht und Aufenthaltsbeendigung verabschiedet’ (Looming extension of detention pending deportation: Adoption of law on right to remain and termination of stay), Press Release, 3 July 2015.

²⁴² Federal Supreme Court (Bundesgerichtshof), Decision of 26 June 2014 – V ZB 31/14 – Asylmagazin 9/2014, 315-318.

²⁴³ CJEU, Joined Cases C-473/13 and C-514/13 *Bero v Regierungspraesidium Kassel & Bouzalmane v Kreisverwaltung Kleve*, Judgment of 17 July 2014.

deportation only in exceptional cases and only for as long as it is adequate considering the well-being of the child.”²⁴⁴

In spite of this provision, lawyers and NGOs have frequently criticised that detention pending deportation is imposed by the responsible local courts in a manner “too hastily, too often, too long” and a high number of detention orders were overturned by higher courts upon appeal.²⁴⁵

Furthermore, the “geographic restriction” (often referred to as “residence obligation”), which normally is only relevant for asylum seekers for a period of 3 months, can be re-imposed if “concrete measures to end the foreigner’s stay are imminent”.²⁴⁶ The law also contains a general provisions according to which “further conditions and sanctions” may be imposed on foreigners who are obliged to leave the country.²⁴⁷ In particular, these further sanctions may consist of reporting duties, but also of an obligation to consult a counselling service for returnees.²⁴⁸ Passports of foreigners obliged to leave the country can be confiscated.²⁴⁹ The authorities may also ask foreigners who are obliged to leave the country to deposit a security to cover for the costs of a possible deportation.²⁵⁰ However, the law does not allow for security deposits which may be used as bail and confiscated in cases of “absconding”.²⁵¹

Responsibility for carrying out removal procedures lies with local or regional authorities or with the border police. Therefore, no common approach to the use of alternatives to detention could be adequately ascertained.²⁵² In the wake of landmark decision by the German Federal Supreme Court and the CJEU, authorities apparently have been generally hesitant to apply for detention to enforce removal (see section on [Grounds for Detention](#)) since the summer of 2014.

In spite of this, the number of deportations has risen considerably (from 10,884 in 2014 to 20,888 in 2015 and 25,375 in 2016).²⁵³ The most likely explanation for this apparent contradiction is that in the vast majority of cases deportations are enforced within one day, so only a few hours pass between arrest and departure. In this manner persons who are to be deported are only taken in to police custody for a few hours and no formal detention order has to be issued by a court.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
 Frequently Rarely Never
- ❖ If frequently or rarely, are they only detained in border/transit zones? Yes No
2. Are asylum seeking children in families detained in practice?
 Frequently Rarely Never

²⁴⁴ Section 62(1) Residence Act.

²⁴⁵ Pro Asyl, ‘Abschiebungshaft: Zu schnell, zu oft, zu lange’ (Detention pending deportation: too hastily, too often, too long), 13 September 2012. See also preliminary remarks of the inquiring party to Federal Government, Reply to parliamentary question by The Left, no. 18/249 of 7 January 2014, 1.

²⁴⁶ Section 61(1)(c) Residence Act.

²⁴⁷ Section 61(1)(e) Residence Act.

²⁴⁸ Section 46(1) General Administrative Regulations relating to the Residence Act.

²⁴⁹ Section 50(5) Residence Act.

²⁵⁰ Section 66(5) Residence Act.

²⁵¹ Ministry of the Interior of the Federal State of Schleswig-Holstein, *Interministerielle Arbeitsgruppe (IMAG) “Alternative Abschiebungshaft”* (Report of a working group “alternative detention pending deportation”), 25 March 2014, 5.

²⁵² Cf. Janne Grote, *The use of detention and alternatives to detention in Germany. Study by the German National Contact Point for the European Migration Network (EMN)*, Working paper 59, July 2014.

²⁵³ Federal Government, Reply to parliamentary question by The Left, no. 18/4025 of 23 February 2015, no. 18/7588 of 18 February 2016 and no. 18/11112 of 9 February 2017.

In terms of the German law, minors and members of other vulnerable groups must not be detained while they have the status of asylum applicants. However, asylum seekers may lose this status as a result of a Dublin procedure and hence be detained for the purpose of transfer to another Dublin Member State (see section on [Grounds for Detention](#)).

Section 62(1) of the Residence Act contains the following provision regarding the detention of children and families:

“Minors and families with minors may be taken into detention awaiting deportation only in exceptional cases and only for as long as it is adequate considering the well-being of the child.”

Before 2011, several hundred cases of detention of minors were recorded, but the numbers have been much lower since then.²⁵⁴ The majority of the cases at the time were considered to be “Dublin cases”. No recent cases of detention of minors have been reported. In 2016, 872 minors were transferred to other Member States of the Dublin Regulation (which usually involves that they were taken into custody for a few hours on the day the transfer took place).²⁵⁵ As far as deportations are concerned, the official statistics only record unaccompanied minors. No deportations of unaccompanied minors took place in 2016.²⁵⁶

A few Federal States have regulations in place for the detention of other vulnerable groups (such as elderly persons, persons with disabilities, nursing mothers, single parents), but most do not have any special provisions for these groups.²⁵⁷

4. Duration of detention

Indicators: Duration of Detention

- | | |
|--|---------------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 18 months |
| 2. In practice, how long in average are asylum seekers detained? | Not available |

The maximum duration of detention for the purpose of removal is 18 months. No countrywide information on the duration of detention is available. According to a media report, detainees at the facility of **Eisenhüttenstadt** in Brandenburg were detained for an average period of 16 days in the first months of 2016.²⁵⁸ At the facility of **Hannover** (Langenhagen) detainees spent an average time of three weeks before deportations took place.²⁵⁹ These numbers refer to all detainees, not only asylum seekers or former asylum seekers.

²⁵⁴ Diakonie in Hessen und Nassau, Pro Asyl (eds.), *Schutzlos hinter Gittern. Abschiebungshaft in Deutschland (Without protection behind bars. Detention pending deportation in Germany)*. Authors: Marei Pelzer and Uli Sextro, June 2013.

²⁵⁵ Federal Government, Reply to parliamentary question by The Left, no. 18/11112 of 9 February 2017, 13.

²⁵⁶ *Ibid.*, 29.

²⁵⁷ Janne Grote. *The use of detention and alternatives to detention in Germany. Study by the German National Contact Point for the European Migration Network (EMN)*. Working paper 59, July 2014, 21-23 and Annex, 46.

²⁵⁸ Die Tageszeitung, ‘Geh mir aus dem Land’, 16 November 2016, available in German at: <http://bit.ly/2lvj10V>.

²⁵⁹ NDR, ‘Land schafft mehr Plätze in Abschiebungshaft’, 26 March 2016, available in German at: <http://bit.ly/2msilmH>.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? Yes No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? Yes No

National law only provides basic rules for detention centres. As a result, conditions differ very much throughout the country.²⁶⁰

In July 2014, the CJEU ruled that detention for the purpose of removal of illegally staying third-country nationals has to be carried out in specialised detention facilities in all Federal States of Germany.²⁶¹ Accordingly, the practice of carrying out detention for the purpose of deportation in regular prisons came to an end in the second half of 2014. Most Federal States which did not have specialised facilities before announced that the necessary institutions would be established (deportees were sent to facilities in other Federal States in the meantime). For example, in the Federal State of **North Rhine-Westphalia**, the prison of Büren, used before as detention facility both for criminal convicts and for deportees, was turned into a specialised detention facility uniquely for deportees.²⁶²

As a result of the CJEU ruling in *Bero & Bouzalmate* and the ruling of the Federal Supreme Court of 26 June 2014,²⁶³ the overall number of detainees in “detention pending deportation” seems to have dropped dramatically in the second half of 2014. The Jesuit Refugee Service Germany reported in November 2014 that the number was at a “historical low”, with “fewer than 30” asylum seekers or migrants being detained for the purpose of deportation throughout Germany.²⁶⁴ Since then, numbers seem to have risen, but stayed on a comparably low level (see section [General](#)).

At the end of 2016, facilities for detention pending deportation existed in seven Federal States:

Pre-deportation detention facilities in Germany		
Federal State	Location	Maximum capacity
Baden-Württemberg	Pforzheim	21
Bavaria	Mühldorf am Inn	82
Brandenburg	Eisenhüttenstadt	108
Bremen	:	:
Lower Saxony	Hannover (Langenhagen)	30
North Rhine-Westphalia	Büren	100
Rhineland-Palatinate	Ingelheim am Rhein	70

Source: Jesuit Refugee Service, February 2017, and figures taken from: <http://bit.ly/2ms723h>.

²⁶⁰ Jesuit Refugee Service, *Detention in Europe: Germany*, available at: www.detention-in-europe.org.

²⁶¹ CJEU, Joined Cases C-473/13 and C-514/13 *Bero v Regierungspräsidium Kassel & Bouzalmate v Kreisverwaltung Kleve*, Judgment of 17 July 2014.

²⁶² Ministry of the Interior of the Federal State of North Rhine-Westphalia, Press release of 28 November 2014, available at: <http://bit.ly/1dW0e5P>.

²⁶³ Federal Supreme Court (Bundesgerichtshof), Decision of 26 June 2014 – V ZB 31/14 – Asylmagazin 9/2014, 315-318.

²⁶⁴ Jesuit Refugee Service Germany. Info-Brief (Newsletter) November 2014, available at: <http://bit.ly/1HXzd0a>.

Two of the facilities are expected to increase in capacity. **Pforzheim**, Baden-Württemberg will expand from 21 places at the time of the opening in April 2016 to 80 places until 2018,²⁶⁵ while Hannover (Langenhagen) is to expand from 30 to 116 places.²⁶⁶

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it limited to emergency health care? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

There are no special detention centres for asylum seekers and only asylum seekers already in detention may remain detained. Accordingly, conditions are dependent on whether an applicant has been in a prison or in a detention facility for the purpose of removal at the time of his or her application. Furthermore, the organisation of detention facilities is within the responsibility of the Federal States.

Responsibility for detention pending deportation lies with the prison authorities of the Federal States, regardless of whether it is implemented in regular prisons or in special facilities. Therefore members of staff are usually either prison officers or employees of the administrative part of the prison services.

No institution is managed by external companies, but in some cases the authorities cooperate with external companies (private security companies or facility management) to take over certain tasks.

An extensive study on conditions in pre-deportation detention facilities (*Abschiebungshaft*) was published in June 2013 by NGOs Pro Asyl and Diakonie Hessen and Nassau. This report was based on visits to 13 facilities which took place in the second half of 2012.²⁶⁷ However, most of the facilities referred to in this study are not used for “detention pending deportation” any longer. More recent systematic and countrywide observations on conditions in detention pending deportation could not be found in the course of this research.²⁶⁸

Eisenhüttenstadt, Brandenburg: In a newspaper report on the detention facility of Eisenhüttenstadt in Brandenburg, conditions at the facility were described as follows: the facility is encircled by a high metal fence and rooms contain three beds, a table, chairs and a TV set. Detainees are not locked in during the day and are allowed to access the yard of the facility for 90 minutes per day. On average, they spent 16 days in the facility in 2016.²⁶⁹

Pforzheim Baden-Württemberg: Upon the opening of a new detention facility in Pforzheim in April 2016, the authorities in the Federal State of Baden-Württemberg claimed that efforts had been made to minimise the “prison character” of the building as much as possible. Conditions in the newly established facility at Pforzheim were described as follows in a press release of April 2016:

“Unless security reasons do not allow it, persons housed in the facility are allowed to move freely within the building during the day, they may receive visitors, read newspapers, watch TV, listen to

²⁶⁵ Federal State of Baden-Württemberg, ‘Abschiebungshafteinrichtung in Pforzheim nimmt Betrieb auf’, 1 April 2016, available in German at: <http://bit.ly/2muUed9>.

²⁶⁶ NDR, ‘Land schafft mehr Plätze in Abschiebungshaft’, 26 March 2016, available in German at: <http://bit.ly/2msilmH>.

²⁶⁷ Diakonie in Hessen und Nassau, Pro Asyl, eds. *Schutzlos hinter Gittern. Abschiebungshaft in Deutschland (Without protection behind bars. Detention pending deportation in Germany)*. Authors: Marei Pelzer and Uli Sextro, June 2013.

²⁶⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report on the visit to Germany from 25 November to 7 December 2010, CPT/Inf (2012) 6, 22 February 2012, 27.

²⁶⁹ Die Tageszeitung, ‘Geh mir aus dem Land’, 16 November 2016, available in German at: <http://bit.ly/2lvj10V>.

the radio, make phone calls and use the internet in an internet café, receive mail and presents, prepare their own meals and wear their own clothes.”²⁷⁰

Hannover-Langenhagen, Lower Saxony: The facility at Hannover-Langenhagen in the Federal State of Lower Saxony was referred to as a “prison of open doors” in a newspaper article in February 2015:

“Conditions have changed drastically in recent months... [At the time of the report] six people were interned at the facility. Maximum duration of stay is six weeks. Each inmate has a room of his/her own... Each room has a TV set, a shelf, a wardrobe and a desk... Inmates often prepare their meals together. The door to the small kitchen is always open, like all other doors. The refugees decide on their own what is on the menu and they are allowed to request certain products... Pastoral care is available for all religions as well as social and psychological care or contact to the refugee council, if necessary.”²⁷¹

Since August 2016, as part of a pilot project, the Refugee Council of Lower Saxony offers an independent advice service in the detention facility at Hannover-Langenhagen. Advice services include counselling on possible legal measures to challenge the deportation order, on options to remain in Germany or to return to Germany as well as on possible support upon return to the country of origin.²⁷²

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

- | | | | |
|-------------------|---|---|-----------------------------|
| ❖ Lawyers: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |

Section 62a of the Residence Act states: “Upon application, staff of relevant support and assistance organisations shall be permitted to visit detainees awaiting deportation if the latter so request. “No recent information on the application of this provision (or problems with application) were found in the course of this research. As part of a pilot project, the Refugee Council of Lower Saxony offers a regular counselling service for detainees in the facility at **Hannover-Langenhagen** since August 2016 (see section on [Conditions in Detention Facilities](#)).

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

- | | | |
|---|---|-----------------------------|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed? | 4 weeks | |

Under German law, only a judge is competent for the ordering and the prolongation of detention. The responsible courts are the district courts (*Amtsgericht*) and their decision can be challenged at a regional court (*Landgericht*).

²⁷⁰ Federal State of Baden-Württemberg, ‘Abschiebungshafteinrichtung in Pforzheim nimmt Betrieb auf’, 1 April 2016, available in German at: <http://bit.ly/2muUed9>.

²⁷¹ Neue Presse, ‘Das Gefängnis der offenen Türen’, February 2015, available in German at: <http://bit.ly/2malquR>.

²⁷² Refugee Council of Lower Saxony, *Beratung in Abschiebungshaft* (Counselling in detention pending deportation), available in German at: <http://bit.ly/2mdosAb>.

The authorities therefore have to apply to the court for a detention order. The application has to lay out the detailed reasons for the necessity of detention and the complete authorities' file should be presented to the court. The foreigners should be heard by the court and they shall be able to call witnesses. In cases of detention pending deportation, this may be particularly relevant if the detention order is based on an alleged risk of absconding and the foreigners have to prove that they have an address at which they can be reached by the authorities. Before the hearing at the court, the foreigner has to receive a copy of the request for detention (*Haftantrag*) which the authorities have filed. This copy has to be orally translated if necessary.²⁷³ Case law also states that the foreigner shall have sufficient time to prepare an answer to the content of the authorities' request. This means that it can be sufficient to hand out the request immediately before the hearing if the content is simple and easily understandable. In other cases, if the content is more complicated, it can be necessary that the foreigner is handed out the authorities' request in advance of the hearing.²⁷⁴ The court has to inform the foreigner on all possible legal remedies against the detention order and this information has to be translated if necessary.

Detention pending deportation must only be ordered or prolonged if there is a possibility for the deportation to be carried out in the near future. The maximum duration of detention therefore has to be expressly stated in the detention order. Once this date has expired, the detained person either has to be released or an automatic judicial review of detention takes place.

If an asylum application is filed after a person has been taken into detention pending deportation, this does not necessarily lead to a release but detention may be upheld for a period of 4 weeks (see section on [Grounds for Detention](#)). The personal interview may take place in detention during that period, i.e. a caseworker of the BAMF and an interpreter carry out the interview in the detention facility. There are no special rules for an interview in detention, so rights and obligations are identical to an interview carried out in a branch office of the BAMF.

In spite of the safeguards outlined above, the system of ordering detention pending deportation has been severely criticised by lawyers for alleged violations of the standards applicable to detention. In particular, it has been noted that judges frequently issue orders for detention pending deportation even if authorities' applications for detention orders do not lay out sufficient reasons as to why detention is necessary.²⁷⁵ Detention based on insufficient grounds may also affect asylum seekers if they have lodged an application while already in detention.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
------------------------------	--
2. Do asylum seekers have effective access to free legal assistance in practice?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
------------------------------	--

If asylum applications are lodged by persons in detention, applicants shall immediately be given an opportunity to contact a lawyer of their choice, unless they have already secured legal counsel.²⁷⁶ However, this does not mean that legal assistance is paid for out of public funds. Therefore an applicant usually has to cover the costs for legal representation for the purpose of judicial review of detention and representation in the asylum procedure. There is a possibility to apply for legal aid in the context of judicial review of detention, but this is rarely granted since legal aid is dependent on how the court rates the chances of success.

²⁷³ Bundesgerichtshof (Federal Supreme Court), Decision of 18 April 2013 - V ZB 67/12 – (asyl.net, M20735).

²⁷⁴ Bundesgerichtshof (Federal Supreme Court), Decision of 1 July 2011 - V ZB 141/11 – (asyl.net, M18726).

²⁷⁵ Peter Fahlbusch, *Haft in Verfahren nach der Dublin II-Verordnung* (Detention in the context of the Dublin procedure), *Asylmagazin* 9/2010, 289-295.

²⁷⁶ Section 14(3) Asylum Act.

E. Differential treatment of specific nationalities in detention

No information on differential treatment of specific nationalities was found in the course of the research for this update.

A. Status and residence

1. Residence permit

Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?	
❖ Refugee status	3 years
❖ Subsidiary protection	1 year
❖ Humanitarian protection	1 year

According to Section 25(2) of the Residence Act, both refugees and subsidiary protection beneficiaries are entitled to a residence permit (*Aufenthaltserlaubnis*). According to Section 26(1) of the Residence Act, the duration of residence permits differs for the various groups:

- Three years for persons with **refugee status**;
- One year for beneficiaries of **subsidiary protection**, renewable for an additional two years;
- At least one year for beneficiaries of **humanitarian** protection.

Responsibility for issuing the residence permits lies with the local authorities of the place of residence of the beneficiary of protection. There have been reports that issuance of residence permits by local authorities may take several weeks and sometimes several months, for various reasons. However, it is not possible to ascertain whether these have been isolated incidents or whether they are symptomatic of a general problem.

Renewal of residence permits is generally subject to the same regulations as apply to issuance.²⁷⁷ Therefore, residence permits have to be renewed as long as the reasons which have led to the first issuance persist. The status or the so called “prohibition of deportation” (*Abschiebungsverbot*) which has led to national protection, have to be formally revoked by the BAMF, otherwise the residence permit has to be issued and/or renewed.²⁷⁸

2. Long-term residence

Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2016:	Not available
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Refugee status

After a certain period, a permanent status, “settlement permit” (*Niederlassungserlaubnis*) or also translated as “permanent residence permit”, can be granted. However, the preconditions for this are more restrictive as of August 2016.²⁷⁹ Before August 2016, persons with refugee status had a privileged access to the *Niederlassungserlaubnis* after three years, i.e. they did not have to fulfil the requirements which usually have to be met by foreign nationals. In particular, refugees did not have to prove that they had a job for a particular period of time and that their income covered the cost of living. These privileges have been narrowed down considerably:

- After three years, persons with refugee status can be granted a *Niederlassungserlaubnis* if they

²⁷⁷ Section 8(1) Residence Act.

²⁷⁸ Sections 73a to 73c Residence Act.

²⁷⁹ Amendment of Section 26 Residence Act by the “Integration Act” of 31 July 2016 (Official Gazette no. I, 1939), which took effect on 6 August 2016.

have become “outstandingly integrated” into society.²⁸⁰ The most important preconditions are that they have to speak German on an advanced level (level C1 of the Common European Framework of Reference for Languages, CEFR), have to be able to cover the “overwhelming part” of the cost of living and have to prove that they have sufficient living space for themselves and their families;

- After five years of stay in Germany (into which period the duration of the asylum procedure is included), persons with refugee status can be granted a *Niederlassungserlaubnis* under certain conditions. Most importantly, they have to be able to cover for the “better part” of the cost of living, have to speak basic German (level A2 of the CEFR) and have to prove that they have sufficient living space for themselves and their families.

In both cases, the *Niederlassungserlaubnis* can only be granted if the Federal Office for Migration and Refugees (BAMF) has not initiated a procedure to revoke or withdraw the status. The necessary procedure has been simplified considerably as of 1 August 2015. Before this date, local aliens offices had to wait for a formal notification from the BAMF on the outcome of a so-called “revocation examination procedure”²⁸¹ before they could issue the *Niederlassungserlaubnis*. This also meant that the BAMF had to formally notify the local authorities about the outcome of the revocation test for every single refugee, although no revocation took place in about 95 per cent of the cases.²⁸² Now the *Niederlassungserlaubnis* shall always be granted as long as the local authorities do *not* receive a notification from the BAMF. Accordingly, the BAMF can now summarily decide not to initiate revocation procedures for most refugees and it only carries out revocation tests in exceptional cases.

Subsidiary protection and humanitarian protection

Beneficiaries of other kinds of protection (subsidiary or national) do not have privileged access to a *Niederlassungserlaubnis*. They can apply for this status after five years, with the duration of the asylum procedure being taken into account.²⁸³ However, they have to meet all the legal requirements for the *Niederlassungserlaubnis*,²⁸⁴ such as the requirement to completely cover the cost of living and to possess sufficient living space for themselves and their families. In addition, they have to prove that they have been paying contributions to a pension scheme for at least 60 months (which generally means that they must have had a job and met a certain income level for 60 months).

3. Naturalisation

Indicators: Naturalisation

- | | |
|---|---------------|
| 1. What is the waiting period for obtaining citizenship? | 8 years |
| 2. Number of citizenship grants to beneficiaries in 2016: | Not available |

Like other foreign nationals, refugees and beneficiaries of subsidiary protection can apply for German citizenship subject to a number of conditions. Most of these conditions apply to all foreign nationals who wish to become German citizens:²⁸⁵

- ❖ Applicants must have stayed legally in Germany for 8 years without interruptions. The duration of a former asylum procedure can be included in this waiting period if the applicants have been granted refugee status or subsidiary protection status.
The residence period can be reduced to 7 years if applicants have attended an integration course

²⁸⁰ Government's explanatory memorandum to the Integration Act. Cf. Melina Lehrian and Johanna Mantel, “Neuerungen durch das Integrationsgesetz” (“Amendments by the Integration Act”, *Asylmagazin* 9/2016, 293.

²⁸¹ Within this procedure the BAMF has to decide whether a proper revocation procedure is initiated or not.

²⁸² BAMF, ‘Neue Rechtslage: Widerrufsprüfung ändert sich’, 13 August 2015, available in German at: <http://bit.ly/2mrAkM1>.

²⁸³ Section 26(4) Residence Act.

²⁸⁴ Section 9 Residence Act.

²⁸⁵ Section 10 German Nationality Act (*Staatsangehörigkeitsgesetz*). An overview on the naturalisation procedure is available in English on the BAMF website: <http://bit.ly/2ms1va9>.

successfully, and it can be reduced to 6 years if applicants have integrated particularly well into society;

- ❖ Applicants must be able to cover the cost of living for themselves and their families;
- ❖ Applicants must have sufficient German language skills (level B1 of the Common European Framework of Reference for Languages);
- ❖ Applicants must pass a “naturalisation test” to prove that they have sufficient knowledge of Germany’s legal and social system, as well as living conditions in Germany; and
- ❖ Applicants must not have committed serious criminal offences.

In contrast to other foreign nationals, **refugees** are not required to give up their former nationality. The local authorities responsible for naturalisation therefore regularly ask the BAMF whether the reasons, which originally have led to the granting of refugee status, are still valid or whether a revocation procedure has to be initiated. In many cases, even if a revocation procedure was carried out, loss of refugee status would only be a formal act, since a foreign national who fulfils all the other requirements for citizenship would usually be entitled to stay in Germany and to naturalisation. Nevertheless, it is often recommended that refugees who apply for naturalisation consult an advice centre and/or a lawyer in order to avoid problems which might result from a revocation of the refugee status.

Fees for naturalisation are €255 for an adult person and €51 for children.

4. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the beneficiary in most cases conducted in practice in the cessation procedure? Yes No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

4.1. Cessation (*Erlöschen*) based on individual conduct

Cessation (*Erlöschen*) of a protection status is defined in Section 72(1) of the Asylum Act as follows:²⁸⁶

“Recognition of asylum status and **refugee status** shall cease to have effect if the foreigner

1. voluntarily or by accepting or renewing a national passport or by any other action places himself anew under the protection of the state whose nationality he holds,
 - 1a. voluntarily returns to and settles in the country he left or stayed away from for fear of persecution, or
2. after losing his nationality has voluntarily regained it,
3. has obtained a new nationality upon application and enjoys the protection of the state whose nationality he has obtained, or
4. renounces such recognition or withdraws his application before the decision of the Federal Office becomes incontestable...”

If the local authorities at the refugee's place of residence have found that one of these reasons applies, they inform the refugee in writing about cessation of his or her status and ask him or her to hand in the residence permit, travel documents and other documents relating to the asylum procedure. It is possible to appeal the decision at an Administrative Court and the appeal has suspensive effect. No statistics are available on the number of cases in which the cessation provision of Section 72 of the Asylum Act has

²⁸⁶ Translation provided by the Language Service of the Federal Ministry of the Interior, available at: <http://bit.ly/2nmUGuW>.

been applied and only a few cases have been decided upon by the courts in recent years; usually cases of voluntary return to a refugee's country of origin.

The cessation provisions of Section 72 of the Asylum Act do not apply to beneficiaries of **subsidiary protection**.

4.2. Revocation (*Widerruf*) based on change in circumstances

More importantly, the Asylum Act also contains a “ceased circumstances” clause in Section 73(1), and the procedure for the respective loss of status is called revocation (*Widerruf*) in German. Responsibility for the revocation procedure lies with the BAMF. The law contains two provisions for the necessary procedures:

(a) Routine revision of status 3 years after status determination: Section 73(2a) Asylum Act

Before a formal revocation procedure is initiated, the BAMF carries out a “revocation test”, i.e. it examines summarily whether preconditions for a revocation might apply. A revocation under this provision can be based either on a change of conditions on which status determination was based, or on other evidence, namely if it has turned out that status determination was based on incorrect information or on withholding of essential facts. Before August 2015, the BAMF had to formally notify the local authorities about the outcome of the revocation test for every single refugee, although no revocation took place in about 95% of the cases.²⁸⁷ This is not necessary anymore, so the BAMF can now summarily decide not to initiate revocation procedures for certain groups of refugees and it only carries out substantial revocation tests in exceptional cases (see [Long-Term Residence](#)).

(b) Revocation without a set period of time: Section 73(1) Asylum Act

This provision is generally applicable if the conditions on which the recognition of status was based have ceased to exist *and* the refugee “can no longer refuse to claim the protection of the country of which he is a citizen, or if he, as a stateless person, is able to return to the country where he had his usual residence”.²⁸⁸ Accordingly, revocation of the status cannot be based only on a change of circumstances in the country of origin, but it also has to be ascertained whether the refugee can be reasonably expected to return to the country of origin. This is not the case if, for example, a refugee has “compelling reasons, based on earlier persecution” to refuse to return.²⁸⁹ Case law has established that trauma or mental disorders which result from persecution constitute compelling reasons within the meaning of this provision.²⁹⁰

Revocation is also possible if refugees, after they have been granted the status, are found to have committed offences which fulfil the criteria of exclusion from refugee status, e.g. acts that violate the aims and principles of the United Nations or serious criminal offences in Germany (see section on [Withdrawal](#)).

If the BAMF intends to revoke or withdraw refugee status, the refugee is informed in advance and in writing that revocation or withdrawal is intended. He or she shall be given opportunity to respond.²⁹¹ The decision on revocation or withdrawal then has to take into account the refugee's response. If the BAMF decides to revoke or withdraw the status, the refugee has two weeks' time to appeal the decision at an Administrative Court. The appeal has suspensive effect, so the refugee retains the status until the court has decided upon the appeal. If refugees choose to be represented by lawyer in this procedure, they

²⁸⁷ BAMF, 'Neue Rechtslage: Widerrufsprüfung ändert sich', 13 August 2015, available in German at: <http://bit.ly/2mrAkM1>.

²⁸⁸ Section 73(1) Asylum Act.

²⁸⁹ Section 73(1) Asylum Act.

²⁹⁰ Federal Administrative Court, Decision 1 C 21/04 of 1 November 2015, asyl.net, M7834. See also Kirsten Eichler, *Leitfaden zum Flüchtlingsrecht* (Guideline to refugee law), 2nd edition (2016), 105.

²⁹¹ Section 73(4) Asylum Act.

would usually have to pay the fees themselves. It is possible to apply for legal aid, which is granted under the normal conditions, i.e. the court decides upon legal aid after a summary assessment of the appeal's chances.

If refugee status is revoked or withdrawn, this does not necessarily mean that a foreigner loses his or her right to stay in Germany. The decision on the residence permit has to be taken by the local authorities and it has to take into account personal reasons which might argue for a stay in Germany (such as length of stay, degree of integration, employment situation, family ties). Therefore, it is possible that even after loss of status another residence permit is issued.

The cessation provisions of Section 73 of the Asylum Act (for ceased circumstances and for reasons corresponding to exclusion clauses) and the procedure for revocation or withdrawal of status equally apply to beneficiaries of **subsidiary protection**.

Statistics in recent years show that revocation procedures have not been systematically applied to any group of beneficiaries.

In 2016, the BAMF took 2,207 decisions in the so-called "revocation examination procedures" (*Widerrufsprüfverfahren*), or "revocation tests". In comparison to 9,894 revocation tests 2015, this number marked a very significant decrease of more than 78%.

295 (17.9%) of these procedures resulted in revocation or withdrawal of a protection status in 2016, in comparison to only 3% in 2015.²⁹² The comparably low number of procedures suggest that no group of beneficiaries of protection has been systematically targeted for revocation. Nevertheless, for some nationalities the numbers of revocations were distinctly above average, in particular Kosovo, Lebanon, Afghanistan and persons with unknown nationality. However, the figures indicate that even with regard to these countries of origin the overall number of revocation procedures was rather low and the majority of revocation tests did *not* result in a revocation of status. Therefore, it cannot be concluded that the cessation clause has been systematically applied to the respective groups of beneficiaries.

Between January and November 2016, 11.8% of appeals against revocation or withdrawal of status were successful, but it has to be taken into account that a high percentage (45.4%) of these appeal procedures were abandoned e.g. because the appeal was withdrawn by the claimant, or because a settlement out of court took place.²⁹³

5. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the beneficiary in most cases conducted in practice in the withdrawal procedure? Yes No
2. Does the law provide for an appeal against the withdrawal decision? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice?
 Yes With difficulty No

The grounds for withdrawal of refugee status are defined in Section 73(2) of the Asylum Act. According to this provision, **refugee status** "shall be withdrawn if it was granted on the basis of incorrect information or withholding of essential facts and if such recognition could not be based on any other grounds."²⁹⁴

²⁹² Federal Government, Response to parliamentary question by The Left, No 18/11262, 21 February 2017, 11; No 18/7625, 22 February 2016, 11-12.

²⁹³ Federal Government, Response to parliamentary question by The Left, No 18/11262, 21 February 2017, 64.

²⁹⁴ Translation provided by the Language Service of the Federal Ministry of the Interior.

There are similar grounds for withdrawal of **subsidiary protection** defined in Section 73b(3) of the Asylum Act. This status shall be withdrawn where “misrepresentation or omission of facts or the use of false documents were decisive for the granting of subsidiary protection status”. In addition, subsidiary protection status shall also be withdrawn, if the foreigner “should have been or is excluded” due to exclusion clauses as apply to eligibility for this status e.g. serious criminal offences, risk to the general public or to security.

The procedure for withdrawal of protection status is identical to the revocation procedure (see section on [Cessation: Revocation](#)).

If refugee status is revoked or withdrawn, this does not necessarily mean that a foreigner loses his or her right to stay in Germany. The decision on the residence permit has to be taken by the local authorities and it has to take into account personal reasons which might argue for a stay in Germany (such as length of stay, degree of integration, employment situation, family ties). Therefore, it is possible that even after loss of status another residence permit is issued. Since this is decided on the local level, no statistics are available concerning the number of cases in which people were granted a new residence permit after revocation or withdrawal of protection status.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?
 Yes No
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?
For preferential conditions: refugee status Yes No
❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement? Yes No

Persons with **refugee status** enjoy a privileged position compared to other foreign nationals in terms of family reunification, since they do not necessarily have to cover the cost of living for themselves and their families and they do not have to prove that they possess sufficient living space. In order to claim this privilege, refugees have to notify the authorities within 3 months after the refugee status has become incontestable (final) that they wish to be reunited with a close family member.²⁹⁵ The application has to be handed in at the embassy of the country where the family members are staying. In addition, the local authorities at the place of residence of the refugee living in Germany should be notified that an application for a visa for the purpose of family reunification has been filed at the embassy.

Persons eligible for family reunification under this provision are:

1. Spouses or “registered partners” i.e. partners in a same-sex partnership which has been registered in Germany or is equivalent to a registered partnership in Germany;
2. Minor unmarried children;
3. Parents of unaccompanied children, if no other parent with entitlement to custody is living in Germany.

If refugees are entitled to family reunification under this provision, the local authorities usually have to declare that they have no objections against the issuance of a visa to the family members. The German

²⁹⁵ Section 29(2)(1) Residence Act.

embassy in the country where the family members are staying then has to issue the necessary visa.

If family members of refugees apply for family reunification later than 3 months after status determination has become final, “normal rules” for family reunification apply. In particular, refugees living in Germany have to prove that they can cover the cost of living for themselves and their families and that they have sufficient living space.²⁹⁶ For family reunification of spouses, a further requirement is that both spouses have to be at least 18 years of age.²⁹⁷

One important privilege applies regardless of whether the procedure for family reunification is initiated within the three-month period or at a later date: Spouses of refugees who wish to immigrate to Germany by means of family reunification do not have to prove that they have basic German language skills.²⁹⁸

Family reunification was suspended for those beneficiaries of **subsidiary protection** who have been granted the residence permit based on this status after 17 March 2016, until March 2018.²⁹⁹ This change came into effect only eight months after beneficiaries of subsidiary protection had been given the same privileged position as refugees in terms of family reunification. The government argues that suspension of family reunification was necessary “to safeguard the integration of those people who are moving to Germany [under family reunification rules].”³⁰⁰ Now family members of beneficiaries of subsidiary protection are not entitled to visas for family reunification either under the “privileged” or under the “normal” regulation. Following 18 March 2018, the privileged regulation shall apply again, meaning that family members of beneficiaries of subsidiary protection will then have three months’ time to apply for a visa for family reunification under the easier conditions outlined above.

The suspension of family reunification for beneficiaries of subsidiary protection coincided with a steep rise in decisions in which asylum applicants were granted subsidiary protection instead of refugee status. At the same time, suspension of family reunification resulted in tens of thousands of beneficiaries of subsidiary protection appealing against the authorities’ decisions in order to gain refugee status (“upgrade-appeals”), with a success rate of more than 75% in 2016 (see [Differential Treatment of Specific Nationalities in the Procedure](#)).

For Syrian refugees who have been staying in Germany for more than three months, 15 out of 16 Federal States had issued directives according to which they could apply to be reunited with family members under “relaxed” conditions (e.g. without a certificate for basic German language skills). However, most of these directives foresaw that refugees living in Germany had to declare that they take over all the living costs for their relatives and that they pay for the health insurance for all family members. These requirements proved impossible to fulfil in many cases. Accordingly, only 160 persons were granted leave to move to relatives living in Germany at the end of October 2013 under these conditions.³⁰¹ In response to that situation, several Federal States introduced new regulations to facilitate an easier family unification. In October 2015, 9 out of 16 Federal States had dispensed with the requirement to pay for the health insurance for all family members.³⁰² In 2016, several of the regulations issued by the Federal States ran out, but in at least five Federal States (**Berlin, Brandenburg, Hamburg, Schleswig-Holstein, Thuringia**) they were replaced by new directives, so the regional programmes remain in place in these states.³⁰³

²⁹⁶ Sections 27(3) and 29 Residence Act.

²⁹⁷ Section 30(1)(1) Residence Act.

²⁹⁸ Section 30(1)(1) Residence Act.

²⁹⁹ This means that suspension of family reunification also applies to persons who have been granted the status before 17 March 2016, but have been issued the residence permit after this date.

³⁰⁰ Federal Government, Response to parliamentary question by The Left, No 18/9992, 17 October 2016, 5.

³⁰¹ Save me Kampagne, (*Federal States’ Regulations on family reunification of Syrian refugees*), 2 December 2013.

³⁰² GGUA Flüchtlingshilfe, *Die Privatisierung der Humanität* (The privatisation of humanity), October 2015.

³⁰³ Informationsverbund Asyl und Migration, ‘Berliner Landesaufnahmeprogramm für syrische Flüchtlinge verlängert und auf irakische Flüchtlinge ausgedehnt’, 10 February 2017, available in German at: <http://bit.ly/2mrOT2c>.

Nevertheless, the biggest obstacle for family reunification remains the length of the procedure. Even if Syrian refugees and their family members fulfil all the criteria for reunification, it takes several months at least to get an appointment at the German representations in the neighbouring countries. As at October 2016, the waiting periods ranged from 7 to 9 months (at the embassy and consulates in **Turkey**), to 15 months (embassy in **Beirut**) and even to 2 years (German consulate in **Erbil**).³⁰⁴

The German Foreign Office has tried to react to the situation by expanding the capacities of the embassies and consulates in the region. The impact on waiting periods for appointments has been limited, but there has been progress in terms of visa applications processed by the diplomatic missions. In the first half of 2016, 23,883 visas for family reunification were issued to Syrian nationals, more than had been handed out in the whole year of 2015 (21,376 visas).³⁰⁵

2. Status and rights of family members

If family members are already in Germany and have applied for asylum at the same time as the person granted protection, they are usually granted the protection status at the same time, often as part of the same decision, within the concept of “family asylum”.³⁰⁶ These provisions apply to refugees and beneficiaries of subsidiary protection accordingly.³⁰⁷

Family members who immigrate to Germany by means of family reunification are entitled to a residence permit with validity of at least one year. The maximum period of validity must not exceed the period of validity of the residence permit held by the beneficiary of protection.³⁰⁸ At first, the right of residence is generally dependent on the status of the beneficiary of protection, so residence permits of family members are prolonged as long as this person enjoys protection status. However, after a period of three years, spouses may gain entitlement to a right of residence which is independent of the beneficiary of protection. Accordingly, they can be issued a residence permit of their own in case of a divorce.³⁰⁹

C. Movement and mobility

1. Freedom of movement

No restrictions on the freedom of movement within Germany exist for refugees and beneficiaries of subsidiary protection. They can travel at any time to any destination within Germany, without having to ask for permission by the authorities, in contrast to the so-called “residence obligation” which applies to asylum seekers during the early stages of the procedure (see [Reception Conditions: Freedom of Movement](#)).

However, since August 2016, refugees and beneficiaries of subsidiary protection are generally obliged to take up their place of residence within the Federal State in which their asylum procedures have been conducted. This has been regulated by the newly introduced “residence rule” of Section 12a of the Residence Act.³¹⁰ Furthermore, authorities can oblige them to take up place of residence in a specific municipality within the Federal State. However, this further obligation is not applied in all Federal States.³¹¹

³⁰⁴ Federal Government, Response to parliamentary question by The Left, No 18/9992, 17 October 2016, 8-9.

³⁰⁵ *Ibid.*, 9.

³⁰⁶ Translation provided by the Language Service of the Federal Ministry of the Interior.

³⁰⁷ Section 26(5) Asylum Act.

³⁰⁸ Section 27(4) Residence Act.

³⁰⁹ Section 31 Residence Act.

³¹⁰ Not to be confused with the “residence obligation” (*Residenzpflicht*) as described above. The residence rule is part of the so-called Integration Act of 31 July 2016, Official Gazette I no. 39 (2016) of 5 August 2016, 1939.

³¹¹ As of November 2016, the Federal States of **Bavaria**, **Baden-Württemberg** and **North Rhine-Westphalia** made use of this regulation, while the Federal States of **Lower Saxony**, **Rhineland-Palatinate** and **Thuringia**

The obligation to live in a certain Federal State or in a certain municipality remains in force for a maximum period of three years, but it can be lifted for certain reasons e.g. for family-related reasons or for education and employment purposes.

The regulation of Section 12a of the Residence Act only applies to beneficiaries of protection who have been granted a residence permit based on protection status at a date from 1 January 2016 onwards. The residence rule shall not apply if a beneficiary of protection (or one of his or her family members) can take up a job in another place, if this job provides for a sufficient income to cover the cost of living. It also has to be lifted, if a beneficiary of protection takes up vocational training or university education in another place. Furthermore, the rule shall not apply if family members (spouses, registered partners or minor children) live in another place.³¹²

According to the official explanatory memorandum, the new residence rule is supposed to promote sustainable integration by preventing segregation of communities.³¹³ However, it has been questioned whether the way in which the provision has been put into effect is suitable for achieving the intended aim.³¹⁴

2. Travel documents

Persons with **refugee status** are entitled to “travel documents for refugees” (*Reiseausweis für Flüchtlinge*) in accordance with Article 28 of the 1951 Refugee Convention. The travel document for refugees is either automatically issued together with the residence permit after status determination has become final, or it is issued upon application. The document shall adhere to European standards³¹⁵ and therefore has to include a storage medium with the facial image, fingerprints etc.³¹⁶

The duration of the travel document for refugees is “up to three years”. Alternatively, it can be issued as a preliminary travel document, i.e. without an electronic storage medium, for “up to one year”.³¹⁷ A prolongation of the document is not possible, so refugees have to apply for a new document once the old one has expired.

Beneficiaries of **subsidiary protection** can be issued with a “travel document for aliens” (*Reiseausweis für Ausländer*) if they do not possess a passport or a substitute document and if they cannot be reasonably expected to obtain a passport or a substitute document from the authorities of their country of origin.³¹⁸ This is a general provision which applies to beneficiaries of subsidiary protection as well as to other aliens with residence status in Germany.

While it is generally accepted that refugees and their family members cannot be reasonably expected to obtain a passport from the authorities of their country of origin,³¹⁹ this is not the case for beneficiaries of subsidiary protection. Guidelines by the Federal Ministry of Interior stipulate that persons who cannot be deported for legal or humanitarian reasons generally cannot be expected to travel to their countries of

had announced that this obligation would not apply in these states. See Clara Schlotheuber and Sebastian Röder, *Integrative (?) Zwangsmaßnahme (!)*, *Die neue Wohnsitzregelung nach § 12a AufenthG* (“Integrational (?) coercive measure (!), The new residence rule of Section 12a Residence Act), *Asylmagazin* 11/2016, 364-373.

³¹² Section 12a(5) Residence Act.

³¹³ Explanatory memorandum, Bundestag Document no. 18/8614, 42-43.

³¹⁴ Clara Schlotheuber and Sebastian Röder, *Integrative (?) Zwangsmaßnahme (!)*, *Die neue Wohnsitzregelung nach § 12a AufenthG*, *Asylmagazin* 11/2016, 364-373.

³¹⁵ Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, *OJ* L385/1.

³¹⁶ Section 4(4) Residence Regulation (*Aufenthaltsverordnung*).

³¹⁷ Section 4(1) Residence Regulation.

³¹⁸ Section 5(1) Residence Regulation.

³¹⁹ *Verfahrenshinweise der Ausländerbehörde Berlin* (Guidelines for the Aliens Office Berlin), 12 September 2016, available at: <http://bit.ly/2m1sjCe>, 492.

origin if this is necessary to obtain a passport.³²⁰ This applies to beneficiaries of subsidiary protection as well. However, if it is possible to obtain a passport from an embassy in Germany, beneficiaries of subsidiary protection are generally required to do so. If they argue that this is impossible for them, they have to apply for a “travel document for aliens” on individual grounds and have to demonstrate that they cannot be reasonably expected to get a passport on individual grounds.

The duration of the “travel document for aliens” is usually equivalent to the validity of the residence permit that a foreign citizen has in Germany.³²¹ For beneficiaries of subsidiary protection this is one year with an option of renewal(s) for two years (see [Residence Permit](#)).

D. Housing

Indicators: Housing

- | | |
|--|---------------|
| 1. For how long are beneficiaries entitled to stay in reception centres? | N/A |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2016 | Not available |

Neither refugees nor beneficiaries of subsidiary protection are obliged to stay in reception centres or other forms of collective accommodation centres. However, in many places, particularly in the big cities, it often proves very difficult for beneficiaries to find apartments after they have been granted protection status. Therefore, it has been reported that many beneficiaries stay in collective accommodation centres, including emergency shelters (such as gyms) for long periods. This can pose a problem for municipalities since it is not clear on which legal basis they are staying in those centres and which institution has to cover the costs.³²² According to Pro Asyl, the situation is particularly critical in **Berlin**, where up to 5,000 recognised refugees are estimated to stay in collective accommodation without a realistic perspective to move into apartments any time soon.³²³

If refugees or beneficiaries of subsidiary protection cannot provide for the costs, the rent for a room or an apartment is covered by the local social welfare office or the local job centre, but only up to an “adequate” level. What is considered “adequate” depends on the local housing market, so beneficiaries of protection have to inquire with the local authorities to what amount rent will be reimbursed.

Many local organisations and initiatives try to support refugees in finding apartments. One initiative operating for the whole of Germany, “Refugees Welcome” (*Flüchtlinge willkommen*) runs an online platform providing assistance for people who want to share a flat with asylum seekers and refugees.³²⁴

Since August 2016, refugees and beneficiaries of subsidiary protection are generally obliged to take up their place of residence within the Federal State in which their asylum procedures have been conducted. Furthermore, under the new Section 12a of the Residence Act authorities can oblige them to take up place of residence in a specific municipality within the Federal State (see section on [Freedom of Movement](#)). One of the provisions introduced in the context of the new law refers explicitly to refugees and beneficiaries of subsidiary protection who still live in a reception centre or another form of temporary accommodation after their status has been determined. They can be obliged to take up their place of

³²⁰ Federal Ministry of Interior, *Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz* (General Administrative Guidelines for the Residence Act), 26 Oct. 2009, no. 3.3.1.3.

³²¹ Section 8 Residence Regulation.

³²² In most Federal States, the municipalities receive support for accommodation of asylum seekers from the Federal State’s budget, but it is not regulated whether this applies to recognised refugees as well. According to a media report, the Federal State of **Thuringia** has declared that it will cover the municipalities’ costs if refugees are housed in collective accommodation centres: mdr.de, ‘Federal State opens accommodation centres for recognised refugees’, 27 May 2017, available in German at: <http://bit.ly/2notjRc>.

³²³ Münchner Merkur, “Thousands of refugees do not find an apartment”, 29 December 2016, available in German at: <http://bit.ly/2nov28Z>.

³²⁴ The English version of the platform is available at: <http://www.fluechtlinge-willkommen.de/en/>.

residence in a “specific place” in order to provide themselves with “suitable accommodation”.³²⁵ It has to be assumed that a “specific place” within the context of this provision refers to a municipality rather than to a particular apartment, but it is not clear how this provision is supposed to be applied in practice.³²⁶

E. Employment and education

1. Access to the labour market

Persons with refugee status and beneficiaries of subsidiary protection have unrestricted access to the labour market, including self-employment, under the same conditions as German citizens.³²⁷ They are entitled to all supportive measures offered by the labour agency. This includes qualification offers and training programmes, but also costs which may result from the need to have professional qualifications recognised.

Recognition of professional qualifications has been often described as a major practical obstacle for access to the labour market. This does not only affect refugees but other immigrants as well. The German government therefore has set up an information portal offering advice on the necessary procedures (“Recognition in Germany”).³²⁸

2. Access to education

Persons with refugee status and beneficiaries of subsidiary protection are entitled to take up vocational training as well as school or university education, if they can prove that they have the necessary qualifications. They can also receive support for the costs of living for the duration of training or studies under the same conditions as German citizens.

F. Health care

Persons with refugee status and beneficiaries of subsidiary protection have the same status as German citizens within the social insurance system. This includes membership in the statutory health insurance, if they have a job other than “minimal employment” (i.e. a low-paid part time job). If they are unemployed, the job centre or the social welfare office provides them with a health insurance card which entitles them to the same medical care as statutory health insurance.

³²⁵ Section 12a(2) Residence Act.

³²⁶ Clara Schlotheuber and Sebastian Röder, *Integrative (?) Zwangsmaßnahme (!), Die neue Wohnsitzregelung nach § 12a AufenthG*, Asylmagazin 11/2016, 368.

³²⁷ Section 25(2) Residence Act.

³²⁸ Available in English at: <https://www.anerkennung-in-deutschland.de/html/en/index.php>.

ANNEX – Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	1 December 2013	Act for the Transposition of the Directive 2011/95/EU	http://bit.ly/1eVWZfC (DE)
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015	20 October 2015 6 August 2016	Asylum Procedures Acceleration Act Integration Act (provisions on inadmissibility only)	http://bit.ly/1PVCs9T (DE)
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	5 November 2014 20 October 2015	Act on classification of further states as safe countries of origin and on the facilitation of access to the labour market for asylum seekers and tolerated foreigners Asylum Procedures Acceleration Act	http://bit.ly/1RtIQIb (DE) http://bit.ly/1PVCs9T (DE)
Regulation (EU) No 604/2013 Dublin III Regulation	Directly applicable 20 July 2013	1 August 2015	Act on the redefinition of the right to stay and on the termination of stay	http://bit.ly/1IbaPmO (DE)

Note that the Asylum Procedures Directive and the Reception Conditions Directive have only partially been transposed by the corresponding acts referred to here.