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Database

Country Report: Germany

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Edited by:



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The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 16 EU Member States (AT, BE, BG, CY, DE, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 2 non-EU countries (Switzerland, Turkey) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. Furthermore the project 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 & List of Abbreviations

Abschiebungshaft	Detention pending deportation
Abschiebungsverbot	Prohibition of deportation
Absolutes Direktverfahren	Absolute direct procedure applicable to certain caseloads
Aufgriffsfälle	Apprehension for irregular entry
Aufnahmeeinrichtung	Initial reception centre
Ausreisegewahrsam	Custody pending departure
Berufung	Onward appeal
Duldung	Tolerated stay
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
Gemeinschaftsunterkünfte	Collective accommodation
Jugendamt	Youth Welfare Office
Königsteiner Schlüssel	Distribution key across German federal states
Krankenschein	Health insurance voucher
Nichtbetreiben	Abandoned application
Oberverwaltungsgericht	High Administrative Court
Offensichtlich unbegründet	Manifestly unfounded
Residenzpflicht	Residence obligation
Revision	Appeal on points of law before the Federal Administrative Court
Sonderbeauftragter	Special officer dealing with vulnerable asylum seekers
Unbeachtlich	Inadmissible
Verwaltungsgericht	Administrative Court
Verwaltungsgerichtshof	High Administrative Court
Zurückweisung	Removal
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
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

Statistics

Table 1: Applications and granting of protection status at first instance: 2015 (January-October)

	Applicants in 2015	Pending applications in 2015	Refugee status	Subsidiary protection	Humanitarian protection	Rejection ¹	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	362,153	328,207	81,547	1,366	1,590	77,782	50.2%	0.8%	1%	47.9%

Breakdown by countries of origin of the total numbers

Syria	103,708	Not available	57,036	55	164	11	99.5%	0.09%	0.28%	0.02%
Albania	49,692	Not available	7	23	19	25,599	0.03%	0.09%	0.07%	99.8%
Kosovo	35,583	Not available	7	22	84	24,454	0.03%	0.09%	0.34%	99.5%
Serbia	24,486	Not available	3	0	19	11,723	0.02%	0%	0.16%	99.8%
Iraq	21,303	Not available	10,676	185	60	50	97.3%	1.68%	0.54%	0.46%
Afghanistan	20,830	Not available	1,361	254	599	574	48.8%	9.10%	21.5%	20.6%
FYROM	12,704	Not available	21	1	20	4,751	0.44%	0.02%	0.41%	99.1%
Eritrea	8,806	Not available	4,008	326	38	28	91.1%	7.40%	0.86%	0.63%
Pakistan	6,337	Not available	140	11	21	549	19.4%	1.52%	2.91%	76.1%
Stateless	6,173	Not available	2,493	2	5	299	89.1%	0.07%	0.17%	10.6%

Source: BAMF, *Asylum Statistics January-October 2015*, <http://bit.ly/1HI2y9x>. Note that the total number of applications according to Eurostat is 343,610 for that period.

¹ Rejection should include *both* in-merit and admissibility negative decisions (including Dublin decisions).

Table 2: Gender/age breakdown of the total numbers of applicants: 2015 (January-October)

	Number	Percentage
Total number of applicants	343,610	100%
Men	235,430	68.5%
Women	108,180	31.5%
Children	54,805	15.9%
Unaccompanied children (January-June)	3,375	N/A

Source: Eurostat (rounded). Data on unaccompanied children provided by Federal Government of Germany, *Response to information request by the parliamentary group of "The Left" party/"Die Linke"*, 18 August 2015, No. 18/5785, 33-34.

Note, as mentioned in Table 1, that the total number of applicants as per Eurostat differs from that provided by the BAMF (362,153).

Table 3: Comparison between first instance and appeal decision rates: 2015 (January-March)

The validity of the figures below is limited due to the fact that a large number of court decisions were formal decisions ("other settlements"), i.e. proceedings were discontinued by either of the parties. Apart from abandonments of appeals by the claimants, this figure also includes "positive decisions" since the proceedings are also discontinued if the authorities inform the court that they intend to grant protection before the court has reached a decision.

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	58,046	100%	9,502	100%
<i>Positive decisions</i>	21,320	36.7%	607	6.4%
• <i>Refugee status</i>	20,523	35.4%	397	4.2%
• <i>Subsidiary protection</i>	352	0.6%	54	0.6%
<i>Negative decisions</i>	21,002	36.2%	2,426	25.5%

Source: BAMF, Asylgeschäftsstatistik (Official Asylum Statistics), March 2015, 2; Federal Government of Germany, *Response to information request by the parliamentary group of "The Left" party/"Die Linke"*, 18 August 2015, No. 18/5785, 40-41.

Table 4: Applications processed under the accelerated procedure in 2015

Note: The law does not foresee an accelerated procedure at first instance, but certain caseloads are prioritised. No figures are available on how many cases were prioritised in 2015.

Table 5: Subsequent applications lodged in 2015 (January-October)

	Number	Percentage	Total decisions	No subsequent procedure	Rejection	Positive decision
Total number	30,927	100%	25,578	10,116 (39.5%)	3,600 (14.1%)	7,879 (30.8%)
Serbia	9,140	29.5%	6,950	5,228 (75.2%)	887 (12.8%)	0 (0%)
FYROM	4,654	15%	2,215	1,293 (58.4%)	551 (24.9%)	10 (0.5%)
Syria	3,460	11.2%	3,078	26 (1.2%)	0 (0%)	2,974 (96.6%)
Kosovo	3,420	11%	2,749	886 (32.2%)	1,523 (55.4%)	17 (0.6%)
Iraq	1,403	4.5%	3,804	33 (0.9%)	4 (0.1%)	3,711 (97.6%)

Source: BAMF, *Asylum Statistics January-October 2015*, <http://bit.ly/1HI2y9x>.

Table 6: Number of applicants detained per ground of detention: 2013-2015

Statistics on detention of asylum seekers are not available, as Federal States do not disaggregate data on detained foreigners for applicants for international protection.

Table 7: Number of applicants detained and subject to alternatives to detention

Statistics on detention of asylum seekers are not available, as Federal States do not disaggregate data on detained foreigners for applicants for international protection.

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)

Overview of the main changes since the previous report update

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

Procedure

- Due to the massive increase in numbers of newly arriving asylum seekers in 2015, the BAMF has not managed to keep up with the registration of applications. Asylum seekers are therefore now frequently registered on a preliminary basis only. Asylum statistics for the period January through October 2015 indicated that 331,226 (first) asylum applications had been registered, while about 758,000 persons had been recorded as new arrivals by various authorities. This implies that more than 425,000 asylum seekers had to wait for their applications to be registered at the end of October 2015.
- The “protection rate” was at a high level in the first ten months of 2015, with 41.2% of asylum decisions of the first instance resulting in some form of protection. One of the main reasons for the high protection rate can be found in the prioritisation of certain caseloads by the responsible authorities. In particular, Syrian and Eritrean nationals and members of religious minorities from Iraq (Christians, Mandeans and Yazidis) are now frequently granted refugee status on the basis of a questionnaire.
- The list of “safe countries of origin” was amended to include Albania, Kosovo and Montenegro. However, as of September 2015, even before these countries were officially added to the list of safe countries of origin, two “combined reception and return centres for asylum seekers without prospect to remain” were set up specifically for asylum applicants from safe countries of origin. Cases of asylum applicants from safe countries of origin are prioritised and regularly rejected as “manifestly unfounded”.
- As of 21 October 2015, the policy of suspending Dublin procedures for Syrian nationals “to the greatest extent possible”, announced in August, was ended. The rules of the Dublin Regulation have therefore been reinstated in respect of Syrians.
- A new distribution system for unaccompanied children has been set up along with other changes in the reception system for unaccompanied minors.

Reception conditions

- The amendment to the Asylum Act has modified the grounds for restricting material reception conditions for asylum seekers. While the maximum stay in those centres is general 6 months, the law provides that applicants from safe countries of origin are obliged to stay in initial reception centres throughout their entire procedure.
- Rules on access to the labour market were modified by the amended Asylum Act as of October 2015. Asylum seekers from safe countries of origin are now generally excluded from access to work.

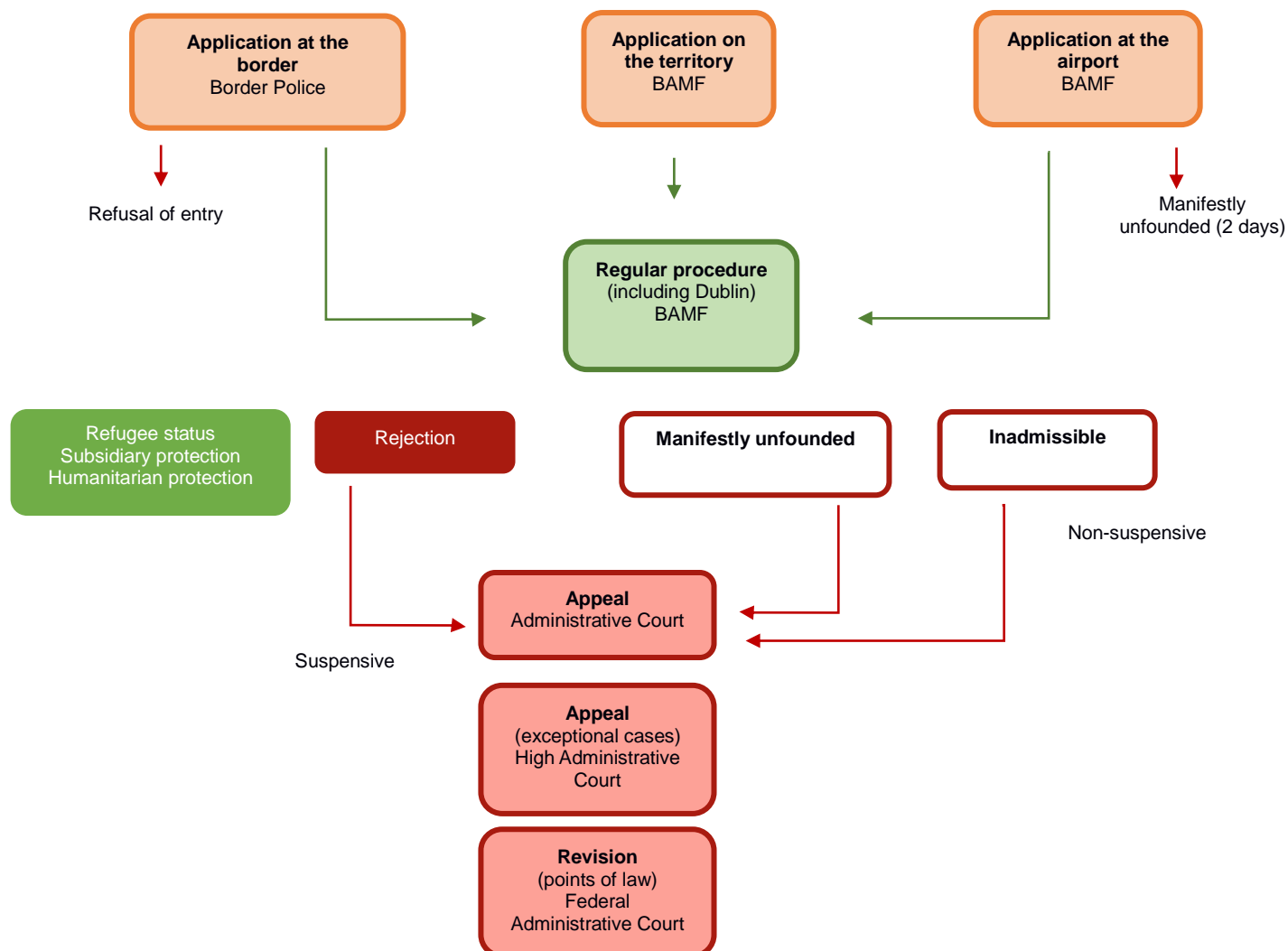
Detention

- Following an amendment of the Residence Act entering into force in August 2015, the grounds for detention of persons subject to the Dublin III Regulation have been defined. The law also sets out the criteria used to determine the existence of a “risk of absconding”.
- Detention of foreigners for the purpose of removal (including Dublin cases) has generally remained low in 2015 as in 2014. As of October 2015, approximately 90 persons were in detention, including 50 in the state of North Rhine-Westphalia.

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

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.

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 in EN	Competent authority in original language (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 procedures <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 as of 15 July 2015	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)	1,760 (Asylum and Dublin Units)	Federal Ministry of the Interior	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

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. However, due to a recent change of practice, 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 initial reception centres 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 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.

Due to the massive increase in numbers of newly arriving asylum seekers in 2014 and 2015, the reception system as foreseen by the law has collapsed in large parts. Initial reception centres are not capable of accommodating all asylum seekers and the BAMF has not managed to keep up with registrations of applications. Therefore, asylum seekers are now frequently registered on a preliminary basis only, and are sent to decentralised accommodation centres or to emergency shelters before the formal registration of the asylum application takes place. In many cases it takes several months for the asylum application to be registered.

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); and/or
3. Other forms of protection, called prohibition of deportation (*Abschiebungsverbot*).

The other forms of protection include subsidiary protection as defined in Article 15 of the Qualification Directive, but in addition there is also 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 (26.5% in the first half of 2015, 35.2% in 2014 and 36.7% in 2013) 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.

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. Procedures

1. 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?
3. 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

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.⁵

However, due to a change of practice which took effect at the end of June 2013, the border police has to refer asylum applications to the Federal Office if they arrest asylum seekers who have already crossed the border. Until June 2013 a directive from the Federal Ministry of the Interior had stipulated that neither the border police nor any other authority had to register asylum applications in such “cases of apprehension” (*Aufgriffsfälle*). This directive was revoked in 2013 in the light of the Dublin III Regulation and of changes in German legislation.⁶ Accordingly, asylum seekers by now should not be sent back to neighbouring countries without their applications having been registered. It is not clear, though, whether this new practice is actually applied in all cases: even if migrants have crossed the border, they have not necessarily entered the territory in the eyes of the law,⁷ and it is possible that a removal to the neighbouring state (*Zurückweisung*) is still carried out at this point. In such cases asylum applications may not be accepted and referred to the Federal Office.

Irrespective of special regulations which apply in the border region only, 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.⁸ 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. Which reception centre and which branch of the BAMF is responsible for accommodation and for the initial stage of the asylum procedure is determined by a distribution system (known as “*Königsteiner Schlüsself*”). 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).⁹

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

⁵ Section 18(2) Asylum Act and Sections 14 and 15 Residence Act.

⁶ Federal Government of Germany, Response to an information request by Josef Winkler, Member of Parliament, No. 8/102 (August 2013), 19 August 2013. Cf. also Dominik Bender and Maria Bethke. “Dublin III, Eilrechtsschutz und das Comeback der Drittstaatenregelung.” (‘Dublin III’, interim measures protection and the comeback of the safe- third-country-provision), ASYLMAGAZIN 11/2013, 364-365.

⁷ Section 13(2) Residence Act.

⁸ Section 13 Asylum Act.

⁹ For further details, see: <http://bit.ly/1O5qPus>.

immediate vicinity of a branch of the Federal Office before they could apply for asylum.¹⁰ 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.¹¹

Due to the massive increase in numbers of newly arriving asylum seekers in 2014 and 2015, the BAMF has not managed to keep up with the registration of applications. Asylum seekers are therefore now frequently registered on a preliminary basis and only receive a document entitled “confirmation of having reported as an asylum seeker” (*Bescheinigung über die Meldung als Asylsuchender – BÜMA*). With this document they are sent to accommodation centres or emergency shelters throughout Germany, although their application has not been formally registered. According to the government, it takes several weeks or sometimes several months for the asylum application to be registered in these cases.¹² Asylum statistics for the period January through October 2015 indicated that 331,226 (first) asylum applications had been registered, while about 758,000 persons had been recorded as new arrivals by various authorities. This implies that more than 425,000 asylum seekers had to wait for their applications to be registered at the end of October 2015. However, this conclusion is highly provisional, since the number of new arrivals might include cases of double-counting and other errors.¹³ Furthermore, it is not certain how many people who have been registered preliminarily as potential asylum seekers upon their first contact with German authorities (e.g. upon apprehension by the border police) will actually file an application with the BAMF at a later stage.¹⁴

2. Regular procedure

2.1. 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 30 June 2015: | 237,877 |

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.

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.¹⁵

The overall number of pending applications at the Federal Office was at 237,877 on 30 June 2015. This represents an increase of 40.6% in comparison with the end of 2014 (169,166).¹⁶

¹⁰ Most recent reports date back to 2010.

¹¹ 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>.

¹² Federal Government of Germany, Response to information request by the parliamentary group of “The Left” party/“Die Linke”, 10 April 2015, No. 18/4581, 2-3.

¹³ BAMF, Press release of 6 November 2015, available in German at: <http://bit.ly/1Q9jEFw>.

¹⁴ See e.g. Spiegel Online, ‘Die große Verwirrung um die Flüchtlingszahlen’ (The great confusion about the number of refugees), 2. September 2015, available in German at: <http://bit.ly/1Ni4XyB>.

¹⁵ Section 24(4) Asylum Act.

According to the German government, the average time of asylum procedures up to a legally binding decision was at 11.1 months in 2014 (findings refer to the first half of 2014, while more recent figures are not available).¹⁷

2.2. 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 2012 to 2015, statistics show significant variation in length of procedures, depending on the countries of origin of asylum seekers:¹⁸

Average length (months)	2012	2013	2014	Jan-Jun 2015
All countries	5.5	7.2	7.1	5.4
Serbia	1.9	2.1	4	3.7
Afghanistan	9	14.1	13.9	12.1
Syria	6.5	4.6	4.2	4.2
Iraq	5.6	9.5	9.6	7.7
FYROM	2.1	2.4	5.3	4.6
Iran	9.4	13	14.5	N/A
Pakistan	7.5	15	15.7	13.1
Russia	10.2	5.6	10	N/A

These differences result mainly from a prioritisation of certain caseloads which has taken place since the second half of 2012. Following an increase in applications of asylum seekers from Serbia and FYROM, the Federal Office announced in September 2012 that asylum claims from Serbian and Macedonian citizens would be prioritised.¹⁹ Prioritisation had no basis in law and all the rules and guarantees of the regular procedures were still in place technically. However, a series of administrative measures were established in order to deal with as many cases as possible within a short timeframe (shifting of personnel to certain caseloads and target-setting for decision-makers). The aim was to conduct the interview on the day that the application was registered, or on the next or second next day after that. The decision was supposed to be made and handed down within 1 week.²⁰

According to the government, "all procedural guarantees and quality criteria" were applied when dealing with prioritised caseloads.²¹ NGOs called this into question and claimed that the acceleration of procedures amounted to "summary procedures", in which an unbiased and thorough examination of asylum claims was not possible. Since the procedures were based on the assumption that asylum seekers from the countries concerned were "abusing" the asylum system, the government was accused of creating a "self-fulfilling prophecy" and systematically impeding a proper examination of asylum claims.²²

¹⁶ BAMF, *Asylgeschäftsstatistik für den Monat Dezember 2014 und das Berichtsjahr 2014*, January 2015; Schlüsselzahlen Asyl. 1. Halbjahr 2015, August 2015.

¹⁷ Federal Government of Germany, *Response to information request by the parliamentary group of "The Left" party/"Die Linke"*, 28 January 2015, No. 18/3850, 12-13.

¹⁸ Federal Government of Germany, *Response to information request by the parliamentary group of "The Left" party/"Die Linke"*, 31 January 2013, No. 17/12234, 7-8; *Response to information request by the parliamentary group of "The Left" party/Die Linke*, 5 March 2014, No. 18/705, 12-13; *Response to information requested by the parliamentary group of "Die Linke" ("The Left")*, 28 January 2015, No.18/3580, 11.

¹⁹ BAMF, *Entscheiderbrief* (Newsletter for decision-makers), 9/2012, 2.

²⁰ *Ibid.*

²¹ Federal Ministry of the Interior, '8.849 Asylanträge im November 2012', Press release, 14 December 2012.

²² Pro Asyl, *Entwicklung der Asylanträge im November 2012 (Developments of asylum applications in November 2012)*, Press release, 14 December 2012.

The average length of asylum procedures of Serbian and Macedonian applicants slightly increased in 2013 (to 2.1 and 2.4 months respectively), so the target to decide upon these cases within 1 week could not be upheld in 2013. With regard to that year, the government stated that applications from the Western Balkans (Albania, Bosnia and Herzegovina, Montenegro, FYROM, Serbia) and from Syria were prioritised.²³ Nevertheless, the average length of procedures at first instance increased both for the prioritised and for other countries of origin. 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.²⁴

Until November 2014, the list of safe countries of origin consisted of Ghana and Senegal only, but at that time Serbia, FYROM and Bosnia-Herzegovina were added to the list. In October 2015, the list was further extended to include Albania, Kosovo and Montenegro. According to the German concept of safe countries of origin, means that the asylum authorities are bound by law to assume that generally neither persecution nor inhuman or degrading punishment or treatment exist in these countries. Accordingly, applications of asylum seekers from these countries are summarily considered as manifestly unfounded. A closer examination of the merits of the case only takes place if an applicant provides facts or evidence that he or she might be at risk of persecution in spite of the general situation in the country of origin (see section on Safe Country Concepts). The government claimed that the new measures would lead to an acceleration of procedures concerning asylum seekers from those countries.²⁵ However, the fact that a country is labelled as “safe” does not affect the procedural elements of the asylum claim, with procedures from countries designated “safe” entering the same procedure as other applicants. Moreover, most applications from asylum seekers from Serbia and FYROM had been rejected as “manifestly unfounded” in the past without these countries being part of the list of safe countries. Thus it appears questionable whether the designation of “safe countries of origin” can in itself actually lead to an acceleration of procedures.

However, the safe country of origin concept is increasingly used to introduce administrative and legislative measures aimed at accelerating procedures of asylum seekers from these countries. In September 2015, even before Albania, Kosovo and Montenegro were officially added to the list of safe countries or origin, the Federal State of **Bavaria** set up two “combined reception and return centres for asylum seekers without prospect to remain”. In addition, with effect from 24 October 2015, asylum seekers from safe countries of origin are required to stay in initial reception centres for the whole duration of their procedures. These are discussed further in the section on Safe Country Concepts.

2.3. 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? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? 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

²³ Federal Government of Germany, *Response to information request by the parliamentary group of “The Left” party/Die Linke*, 5 March 2014, No. 18/705, 37.

²⁴ Federal Government of Germany, *Response to information request by the parliamentary group of “The Left” party/Die Linke*, 18 August 2015, No. 18/5785, 46.

²⁵ Federal Ministry of the Interior, ‘Gesetz zu sicheren Herkunftsstaaten tritt in Kraft’ (“Law on safe countries of origin enters into force”), Press release, 6 November 2014.

In the regular procedure, the BAMF conducts an interview with each asylum applicant.²⁶ Only in exceptional cases may the interview be dispensed with, where:

- (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;²⁷
- (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;²⁸ or
- (4) The applicant fails to appear at the interview without an adequate excuse.²⁹

Until 2013, omission of the personal interview also took place in “Dublin cases” if the responsibility of another state for the examination of the asylum application could be established at an early stage in the procedure and the application was rejected as “inadmissible”. The different branches of the BAMF apparently had different ways of handling procedures in such cases: In some branches a “normal” interview took place regardless of the initiation of a “Dublin procedure”. In other branches only a shortened interview was carried out, focussing on the travel route of the applicant and on personal details, in other cases asylum seekers were not interviewed at all before the rejection of their application and before the transfer to another state went ahead.³⁰ With entry into force of the Dublin III Regulation a personal interview should not be dispensed with altogether. However, the aim of the personal interview in the context of the Dublin Regulation is to “facilitate the process of determining the member state responsible” (for processing the asylum application) and to “allow the proper understanding of the information” on the Dublin procedure.³¹ Therefore, it is still possible that only a short interview takes place which focusses on the applicant's travel itinerary and in which the reasons for the asylum application are not referred to at all. Furthermore, even this “Dublin interview” may be omitted if “the applicant has already provided the information relevant to determine the Member State responsible by other means.”³²

Written procedures, in which the interview is omitted, regularly take place for groups of asylum seekers with good prospects of being recognised as refugees. In 2015 these were Syrian and Eritrean nationals and members of ethnic minorities (Christians, Mandeans and Yazidi) from Iraq. Applicants from these groups can be granted refugee status on the basis of a questionnaire, if they agree to take part in this procedure. Only “positive decisions” (i.e. granting of refugee status) can be handed down in the written procedure. If further questions arise in the examination of the questionnaire, a “normal” procedure has to be carried out which includes an interview.

An overwhelming majority of members of the groups mentioned above agrees to the written procedure, since it also results in a significant acceleration of their procedures if refugee status is granted. For the authorities, the written procedures provide an opportunity to deal with a large number of asylum applications within a short timeframe. Thus the BAMF opened a “decision-making centre” (*Entscheidungszentrum*) in **Nürnberg** in July 2015 to deal with written procedures. In October 2015 the authorities announced that three further “decision-making centres” had been established in **Berlin**, **Mannheim** and **Bonn**, also to deal primarily with written procedures. According to a press release from the BAMF, the authorities intend to conclude “tens of thousands of pending procedures” with the aid of these centres.³³

²⁶ Sections 24 and 25 Asylum Act.

²⁷ 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.

²⁸ Section 24(1) Asylum Act.

²⁹ Section 25 Asylum Act.

³⁰ Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, 12 and 24.

³¹ Article 5(1) Dublin III Regulation. Cf. BAMF, *Entscheiderbrief*, 9/2013, 3.

³² Article 5(2) Dublin III Regulation. Cf. Marei Pelzer, “Die Dublin-III-Verordnung” (The Dublin III-regulation) in Informationsverbund Asyl und Migration (ed.), *Neuregelungen im EU-Flüchtlingsrecht, Beilage zum Asylmagazin 7-8/2013* (New provisions in EU refugee law, addendum to Asylmagazin no. 7-8/2013), 33-34.

³³ BAMF, ‘Bundesamt eröffnet drei Entscheidungszentren’ (Federal Office opens three decision-making

The presence of an interpreter at the interview is required by law.³⁴ The BAMF recruits its own interpreters on a freelance basis. According to information submitted by the BAMF to UNHCR in 2010, approximately 400 languages and dialects are covered by the pool of interpreters.³⁵ The law does not require any specific professional qualifications for interpreters and the Federal Office argues that it is not always possible to employ interpreters with a degree, especially for rare languages.³⁶

Problems reported with regard to the translation during the interview include the following:³⁷

- Poor language skills of interpreters.
- Interpreters do not speak the same dialect as applicants.
- Interpreters comment on the applicant's statements.
- Interpreters omit important details when summarising the applicants' statements.
- Interview is not conducted in the first language of applicants, but in a language which they are supposed to understand, e.g. because it is the official language of their country of origin. Thus interviews from West-African applicants may be conducted with French translations although the first language is a local language and the applicant's knowledge of the official language is not proficient.

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 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.

The UNHCR report of 2010, which has been quoted here, represents the most recent systematic study on interview practices. However, lawyers report that the quality of interviews has not improved and in some parts deteriorated considerably in recent years. On a general note, it has been pointed out that a large number of rejections of asylum applications is based on a perceived lack of credibility of the applicants. However, it is alleged that applicants are frequently not given an opportunity to comment on perceived contradictions in their statements during the interview.³⁸ 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. It has also been alleged that an increasing number of interviews is

centres), Press Release, 5 November 2015.

³⁴ Section 17 Asylum Act.

³⁵ UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice. Detailed Research on Key Asylum Procedures Directive Provisions*, March 2010, 117.

³⁶ *Ibid*, 120.

³⁷ *Ibid*, 120-125.

³⁸ Frankfurter Rundschau. 'Da wird nicht nachgefragt' (There are no questions (for clarification)), Interview with lawyer Reinhard Marx, 26 May 2015.

conducted by staff members with little or no experience. 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.³⁹

Video recordings of interviews do not take place. However, video conferencing was used in 364 cases in 2011 and 174 cases in 2012.⁴⁰ In 2013 the use of video conferencing for interviews seems to have ceased, with only 5 such interviews being reported for the first quarter of 2013 and none for the second and third quarter of 2013.⁴¹ The use of video conferencing requires a written declaration of consent from the applicant.⁴² Audio/video recording or video conferencing is not used in appeal procedures.

2.4. 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 |
| ❖ If yes, is it | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| ❖ If yes, is it suspensive | | |
| - Rejection | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| - Rejection as manifestly unfounded | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Average processing time for the appeal body to make a decision: | 8.5 months | |

Appeals against rejections of asylum applications have to be lodged at a regular Administrative Court. There are 50 Administrative Courts with responsibilities for 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 3 categories, depending on the type of rejection of the application:

(1) Rejection without further qualification ("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.

(2) Rejection as "manifestly unfounded" (offensichtlich unbegründet)

In this case, the appeal does not have suspensive effect. Therefore both the appeal and a request to the court to restore suspensive effect have to be submitted within one week (7 calendar days). This request has to be substantiated.

(3) Abandonment of application (Nichtbetreiben) or rejection as "inadmissible" (unbeachtlich or unzulässig)

³⁹ 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 of Germany, *Response to information request by the parliamentary group of "The Left" party/"Die Linke"*, 18 August 2015, No. 18/5785, 47.

⁴⁰ Katharina Stamm, 'Video Conferencing during the asylum procedure – why it is inadmissible' ("Videokonferenztechnik im Asylverfahren – warum sie unzulässig ist"), *Asylmagazin* 3/2012, 70; Federal Government of Germany, *Response to information request by the parliamentary group of "The Left" party/"Die Linke"*, 10 February 2012, No. 17/8577, 22.

⁴¹ Federal Government of Germany. *Response to information request by the parliamentary group of "The Left" party/"Die Linke"*, 24 May 2013, No. 17/13636, 21, and *Response to information request by the parliamentary group of "The Left" party/"Die Linke"*, 4 December 2013, No. 18/127, 2 and 21.

⁴² Federal Government, *Response to information request*, 10 February 2012, 22.

This applies if a case is declared abandoned for failure to pursue the application or if another state has been found to be responsible for the examination of the asylum application (usually under the Dublin Regulation). The appeal does not have (automatic) suspensive effect. Until September 2013 suspensive effect had even been ruled out by law,⁴³ but this provision was changed with the entering into force of a new law on 6 September 2013. As in “manifestly unfounded” cases it is now possible to ask a court to restore suspensive effect in “Dublin cases”. However, the application for suspensive effect has to be submitted to the court within 1 week (7 calendar days) and it has to be substantiated. This short deadline is 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.⁴⁴ In any case, suspensive effect is only granted in exceptional circumstances. In recent years this has taken place with regard to possible transfers to Member States under the Dublin Regulation (especially Greece or, more recently, Italy, Bulgaria and Hungary). However, case law is not consistent as to the degree of possible risks necessary for suspensions of Dublin transfers.⁴⁵

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).

According to the asylum authorities, appeal procedures took an average period of 10.5 months in 2012, with most of the procedures considerably deviating from this average: 35.8% took longer than 18 months, while 40.8% were settled in less than 6 months.⁴⁶ This implies that a high number of cases at the courts were terminated with “formal” decisions within a short time-frame (e.g. withdrawal of the appeal). In contrast, procedures apparently tended to take longer than a year if a decision on the merits of the case was taken. In 2015, the average processing period for appeals was 8.5 months so far.

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.

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:

⁴³ Section 47a Asylum Act.

⁴⁴ Cf. further references in Dominik Bender and Maria Bethke. “Dublin III’, Eilrechtsschutz und das Comeback der Drittstaatenregelung.” (‘Dublin III’, interim measures protection and the comeback of the safe- third-country-provision), ASYLMAGAZIN 11/2013, 362.

⁴⁵ Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, 61-63.

⁴⁶ No more recent figures were available. BAMF, *Entscheiderbrief* 3/2014, 5.

- 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.

2.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?

<input type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
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 - ❖ Does free legal assistance cover:

<input type="checkbox"/> Representation in interview
<input type="checkbox"/> Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
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 - ❖ Does free legal assistance cover

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> Legal advice

Legal assistance is not systematically available to asylum seekers in Germany. Welfare organisations and other NGOs offer free legal 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.

3. Dublin

3.1. General

Indicators: Dublin: General			
1.	Number of outgoing requests in 2015 (January-June):		23,971
	❖ Top 3 receiving countries	HU	6,571
		IT	5,567
		BG	2,910
2.	Number of incoming requests in 2015 (January-June):		3,189
	❖ Top 3 sending countries	FR	598
		SE	493
		NL	461
3.	Number of outgoing transfers in 2015 (January-June):		1,905
	❖ Top 3 receiving countries	IT	433
		PL	310
		FR	224
4.	Number of incoming transfers in 2015 (January-June):		1,375
	❖ Top 3 sending countries	SE	246
		GR	239
		FR	144

The Dublin Regulation is not explicitly referred to in German law, but there is a general reference to EU law in Section 27a of the Asylum Act: “An application for asylum shall be inadmissible if another country is responsible for processing an asylum application based on European Community law or an international treaty.”

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” (18,222 out of 23,971, i.e. 76% of requests in the first half of 2015, in comparison to 68.5% in 2014, 66.7% in 2013 and 72.8% in 2012).

The number of outgoing requests has risen significantly in recent years: In the first half, there were 23,971 outgoing requests. In 2014, there were 35,115 outgoing requests as compared to 35,280 in 2013, 11,469 in 2012, 9,075 in 2011 and 5,390 in 2007. While nowadays outgoing requests by far

outnumber the incoming ones, in earlier years the numbers had almost been on an equal footing (e.g. 4.996 outgoing and 5.103 incoming requests in 2006).⁴⁷

Details on the criteria used for requests are only available for the outgoing requests which were based on “Eurodac hits”. These numbered 18,222 in the first half of 2015. Out of these, 13,152 requests (72.2%) were based on Article 4 of the Eurodac Regulation (i.e. registration of an asylum application in another Member State). 3,854 outgoing requests (21.2%) were made pursuant to Article 8 of the Regulation (registration after illegal entry in another Member State).⁴⁸

The discretionary clauses

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 2,882 cases in the first half of 2015 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.⁴⁹ It is not clear whether the latter category also includes cases in which the humanitarian clause was used. The recent figure represents a significant increase in the number of cases taken charge of by Germany (2,882 cases for the first half of 2015 as compared to 2,225 cases for the whole year of 2014).⁵⁰ This is evidently in line with the general increase in numbers of asylum applications and with the travel routes of asylum seekers. In particular, there were 2,059 asylum procedures in the first half of 2015 which Germany took charge of because **Greece** had been established to be responsible for the procedure (in theory). In practice, all transfers to Greece remain suspended.

This has been the established practice since January 2011, when the government announced for the first time that procedures would be taken charge of in all cases in which Greece was considered to be responsible for the asylum procedure. Dublin transfers to Greece have been suspended on an annual basis since then and they remain suspended until 12 January 2016. Furthermore, the sovereignty clause has been applied to particular vulnerable persons in cases in which **Malta** is considered responsible for the asylum procedure. This practice has been applied since the autumn of 2009.

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.⁵¹

3.2. Procedure

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? Not available

⁴⁷ All figures cited from: Federal Government of Germany, *Response to information request by the parliamentary group of “The Left” party/“Die Linke”*, 18 August 2015, No. 18/5785, 16; *Response to information request by the parliamentary group of “The Left” party/“Die Linke”*, 28 January 2015, No. 18/3850, 22; BAMF, *Bundesamt in Zahlen 2013 – Asyl* (Federal Office in numbers 2013 - Asylum), February 2014, 23-30; *Bundesamt in Zahlen 2012 – Asyl*, February 2013, 20-24.

⁴⁸ Federal Government of Germany, *Response to information request by the parliamentary group of “The Left” party/“Die Linke”*, 18 August 2015, No. 18/5785, 16.

⁴⁹ *Ibid*, 19-23.

⁵⁰ Federal Government of Germany, *Response to information request by the parliamentary group of “The Left” party/“Die Linke”*, 28 January 2015, No. 18/3850, 29-33.

⁵¹ Spiegel Online, ‘Deutschland will Syrer wieder in andere EU-Länder zurückschicken’ (Germany wants to send back Syrians to other EU-countries), 10 November 2015, available in German at: <http://bit.ly/1OS6rRk>.

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.

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 In 2013, the border police initiated 123 takeover requests and carried out 119 transfers.⁵³ In 2012, there were 175 takeover requests from the border police to other states with 169 transfers being carried out in the process.⁵⁴ 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.⁵⁵ 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).⁵⁶ In the first half of 2015, no Dublin procedures were initiated by the border police.⁵⁷

In the regular procedure, all asylum seekers receive an information sheet on the Dublin Regulation. However, it has been noted that translated versions of this sheet are often not available.⁵⁸

Individualised guarantees

Even before the ECtHR’s ruling in the case of *Tarakhel v Switzerland*,⁵⁹ 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.⁶⁰ Furthermore, on 30 April 2015, the Federal Constitutional Court granted an interim measure against a

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

⁵³ Federal Government of Germany, *Response to information request by the parliamentary group of “The Left” party/“Die Linke”*, 5 March 2014, No. 18/705, 18.

⁵⁴ Federal Government of Germany, *Response to information request by the parliamentary group of “The Left” party/“Die Linke”*, 31 January 2013, No. 17/12234, 11.

⁵⁵ 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.

⁵⁶ 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.

⁵⁷ Federal Government of Germany, *Response to information request by the parliamentary group of “The Left” party/“Die Linke”*, 18 August 2015, No. 18/5785, 26.

⁵⁸ According to the BAMF, the “Dublin procedure leaflet” was available in 15 languages in 2010; European Union Agency for Fundamental Rights (FRA), *Country Factsheet Germany*, 2010, 2.

⁵⁹ ECtHR, *Tarakhel v Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

⁶⁰ BVerfG, Decision No 2 BvR 1795/14 of 17 September 2014, *Asylmagazin* 10/2014, 341, available at: <http://bit.ly/110Lplo>.

transfer of a family with several children (the youngest being five years old) to Italy. The Court argued that the minor children belonged to a vulnerable group within the standards of the ECtHR's decision in the case of *Tarakhel v Switzerland*. Therefore it upheld the decision by a lower court which had asked the BAMF to obtain an individual guarantee from the Italian authorities that the family would be accommodated following a possible transfer. Without going into details in the summary proceedings at hand, the Court concluded that such an individualised guarantee would have to adhere to certain standards which would have to be verifiable by a court.⁶¹

In another case the Federal Constitutional Court stopped the transfer of a family to Italy on 17 April 2015. The BAMF and a lower court in this case had argued that it would be sufficient for the BAMF to obtain individual guarantees from the Italian authorities at a later stage (before the actual transfer would take place), so it would not be necessary to include the existence or non-existence of such an individualised guarantee in the decision-making process. The Constitutional Court indicated at the time that it considered this question to be unresolved, but it has not decided on the matter in the main proceedings.⁶²

Going beyond the ECtHR's and the Constitutional Court's case law, several Administrative Courts have argued that the necessity to obtain individual guarantees from Italy for the adequate reception of "Dublin returnees" extends to all asylum seekers, since the existence of systemic deficiencies could not be ruled out.⁶³ However, courts are divided over this issue, with several other courts arguing that no systemic deficiencies exist in Italy and therefore asylum seekers who do not belong to a vulnerable group (especially single male adults) would not be at risk of inhuman or degrading treatment in case of a transfer and therefore no individualised guarantee would be required.⁶⁴

In practice, the BAMF rarely seems to have presented individualised guarantees from the Italian authorities in Dublin procedures. For instance, the Administrative Court of Göttingen granted an interim measure against a transfer of a Nigerian family to Italy in March 2015 because it considered the guarantee submitted to the court to be completely insufficient. According to the decision, the note from the Italian authorities did not contain any reference to the situation of the family in question and it had neither been signed nor dated.⁶⁵ In May 2015 the BAMF informed another Administrative Court that the Italian authorities did not submit any individual guarantees in line with the ECtHR's case law "for the time being".⁶⁶

Transfers

There are no publicly available statistics on how many "Dublin transfers" are preceded by detention. Until June 2013 asylum seekers who were apprehended for illegal entry and who could not be immediately removed to another state were detained "as a rule" and their asylum applications were not accepted before a decision on the Dublin request had been reached. This practice was based on a directive of the German Federal Ministry of the Interior of March 2006. This directive was revoked with effect from 28 June 2013. Accordingly, detention should now only take place exceptionally in these cases and it should be terminated regularly if detained persons apply for asylum.

Generally speaking, however, the filing of an asylum application does not necessarily lead to

⁶¹ BVerfG, Decision No 2 BvR 746/15 of 30 April 2015, asyl.net, M22858, available at: <http://bit.ly/1XahRiA>.

⁶² BVerfG, Decision No 2 BvR 602/15 of 17 April 2015, asyl.net, M22909, available at: <http://bit.ly/1S67zi0>.

⁶³ See e.g. Administrative Court Hannover, Decision No 10 B 3555/15 of 4 August 2015, asyl.net, M23159, available at: <http://bit.ly/1MVhkQ7> and Administrative Court Arnsberg, Decision No 13 K 515/15.A of 20 April 2015, asyl.net, M22864, available at: <http://bit.ly/1kGYaTK>.

⁶⁴ See e.g. High Administrative Court of Lower Saxony (Oberverwaltungsgericht Niedersachsen), Decision No 11 LB 248/14 of 25 June 2015, asyl.net, M23037; Administrative Court Potsdam, Decision No 6 L 712/15.A of 17 June 2015, asyl.net, M23007, available at: <http://bit.ly/1j97cac>.

⁶⁵ Administrative Court Göttingen, Decision No 3 B 83/15 of 26 February 2015, asyl.net, M22677, available at: <http://bit.ly/1MWKmdE>.

⁶⁶ Administrative Court Hannover, Decision No 7 B 1962/15 of 21 May 2015.

termination of detention; independent of whether detention has been ordered for the purpose of removal to another country or for another purpose. In particular, detention may be upheld or prolonged if another country has already been requested to take charge of an asylum procedure on the basis of EU legislation.

From the point of view of asylum seekers, there is no clear separation between the Dublin procedure and the “normal” asylum procedure. Until the first half of 2013, many asylum seekers were not even aware of on-going Dublin procedures or about the outcome of these procedures until the transfer took place. “Dublin decisions” were frequently handed out on the day of the transfer. However, in the light of changes in German law (in turn based on the amendments in the recast Dublin Regulation), the German authorities announced on 17 July 2013 that this practice had been stopped.⁶⁷ “Dublin decisions” are now handed out in written form to the asylum seeker. These decisions also contain information about possible legal remedies, in particular about the possibility to ask an Administrative Court for emergency legal protection, i.e. to stop the transfer by restoring suspensive effect of appeals. In the letter of 17 July 2013 the authorities further confirmed that transfers can only take place if the deadline for emergency legal protection has expired (i.e. 7 calendar days after the decision has been handed out) or if a court has rejected an application for emergency legal protection.

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.⁶⁸

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”.⁶⁹

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.

3.3. 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

⁶⁷ Informationsverbund Asyl und Migration, *Changes in the Dublin procedure*, 2 August 2013.

⁶⁸ Dublin Transnational Project, *Dublin II Regulation, National Report – Germany*, December 2012, 48.

⁶⁹ 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.

In accordance with Article 5 of the Dublin III Regulation, a personal interview is now obligatory.⁷⁰

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.⁷¹ 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. on existence of relatives in Germany).

3.4. 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 | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

As the Dublin Regulation has not been transposed as such into German law, the legal basis for Dublin procedures is found in provisions originally created for “safe third countries”. It is possible to lodge an appeal against a Dublin decision at an administrative court. However, Section 34a of the Asylum Act places severe restrictions on procedural rights and guarantees, although the situation has improved with an amendment of Section 34a, which came into effect on 6 September 2013:⁷²

- 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.”
- Suspensive effect of an appeal against a “Dublin decision” is no longer ruled out by law. However, the law still does not provide for an automatic suspensive effect. Instead, it is possible now not only to appeal before an Administrative Court but also to file an application asking the court to restore suspensive effect of the appeal. The time-limit for this application is 1 week (7 calendar days) following the handing out of the “Dublin decision”. 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.
- In reaction to the new law, the Federal Office for Migration and Refugees has announced that

⁷⁰ BAMF, Entscheiderbrief, 9/2013, 3.

⁷¹ Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, 12.

⁷² See Dominik Bender and Maria Bethke: “Dublin III’, Eilrechtsschutz und das Comeback der Drittstaatenregelung” (‘Dublin III’, interim protection and the comeback of the safe third country-provision), *ASYLMAGAZIN* 11/2013, 358-367.

written decisions will now be handed out in all Dublin cases.⁷³ Previously, the law did not require the authorities to notify asylum seekers in advance, prior to the execution of their transfer to another Member State. This meant that asylum seekers were often informed about the rejection of their application only when it was no longer possible to appeal against the decision, e.g. by contacting a lawyer.

The change in the Asylum Act means that, in terms of the procedural conditions, the obstacles to effective legal remedy in “Dublin cases” have been reduced. However, material requirements for a successful appeal are still difficult to fulfil and how 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](#) below).

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.⁷⁴

3.5. 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.

3.6. 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

⁷³ Letter of the BAMF to the German Federal States, 17 July 2013 (not published), cf. Informationsverbund Asyl und Migration, *Changes in the Dublin procedure*, 2 August 2013.

⁷⁴ Cf. further references in Dominik Bender and Maria Bethke, “Dublin III’, Eilrechtsschutz und das Comeback der Drittstaatenregelung.” (‘Dublin III’, interim measures protection and the comeback of the safe- third-country-provision), ASYLMAGAZIN 11/2013, 362.

From September 2009 onwards, the Constitutional Court itself issued several interim measures against transfers to **Greece**, thus paving the way for a landmark decision on Section 34a(2) of the Asylum Act. However, the government stopped all Dublin transfers to **Greece** in January 2011 before the Constitutional Court could decide on the cases. As a result, the Constitutional Court declared the cases closed, without deciding on the merits of the cases.

Transfers to Greece were suspended for one year from January 2011 onwards by way of a directive issued by the Federal Ministry of the Interior. Since the issuance of the directive the suspension has been extended annually; the latest extension is in effect until 12 January 2016. Procedures are taken charge of by Germany in all cases where Greece has been found to be responsible for the asylum application. This means that asylum seekers are entitled to all rights and subjected to all obligations applicable to asylum seekers in the regular procedure.

Furthermore, 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.

In addition, several hundred court cases resulted in suspension of transfers to other countries by means of issuance of interim measures (most notably to **Italy**, but also to **Hungary, Malta, Bulgaria** and other countries). At the same time, though, 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.

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 transfers	Opposing decisions
Bulgaria	Administrative Court Cologne, Decision No 19 K 517/14.A of 17 September 2015	Administrative Court Stuttgart, Decision No A 13 K 4585/15 of 30 September 2015
	Administrative Court Oldenburg, Decision No 12 A 181/15 of 20 October 2015.	High Administrative Court Baden-Württemberg, Decision No A 11 S 106/15 of 1 April 2015
Hungary	Administrative Court Düsseldorf, Decision No 22 L 2944/15.A of 3 September 2015	Administrative Court Düsseldorf, Decision No 13 L 3465/15.A of 21 October 2015
	Administrative Court Minden, Decision No 10 L 285/15.A of 1 September 2015	Administrative Court Stade, Decision No 6 B 1371/15 of 16 September 2015
	Administrative Court Saarland, Decision No 3 L 633/15 of 5 August 2015	
Italy	Administrative Court Potsdam, Decision 4 K 2689/14.A of 30 September 2015	Administrative Court Düsseldorf, Decision No 13 K 606/14.A of 31 July 2015
	Administrative Court Hannover, Decision No 10 A 13369/14 of 7 September 2015	Administrative Court Lower Saxony, Decision 11 LB 248/14 of 25 June 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). Therefore, Greece remains the only country to which transfers are generally suspended.

4. Admissibility procedure

4.1. General (scope, criteria, time limits)

Apart from the “Dublin procedure”, no other procedure is explicitly designated as an admissibility procedure under German law.⁷⁵ However, German legislation contains the notion that an application is “to be disregarded” (*unbeachtlich*, sometimes also translated as “unfounded” or “irrelevant”) if the return to “another third country” (*sonstiger Drittstaat*) is possible.⁷⁶ The notion of “another third country” may refer to any country which is not defined a “safe third country” under German law.⁷⁷

The Federal Administrative Court holds that this provision transposes Articles 25 and 26 of the 2005 Asylum Procedures Directive,⁷⁸ although the wording of German law is quite different from the Asylum Procedures Directive's concept of inadmissibility. To start with, Section 29 of the Asylum Act only applies where “it is obvious” that an applicant has already been safe from political persecution in “another third country”.

Furthermore, the provision contains some important restrictions. For an application “to be disregarded” it has to be possible to return the applicant to the third country or to another country where the applicant is safe from political persecution. If it is not possible to return applicants within 3 months, the asylum procedure has to be continued in Germany.⁷⁹

Available statistics provide no information as to the number of cases in which recourse has been made to Section 29 of the Asylum Act. The provision has not been addressed by courts in recent years and practitioners report that they are not aware of respective cases. However, if the authorities find that an applicant has been to “another safe country”, this may be held against the applicant in the regular procedure and also lead automatically to a rejection of the asylum status as defined in the German constitution.⁸⁰ It is still possible, though, that applicants are granted refugee status in such cases. In conclusion, it can be noted that section 29 of the Asylum Act is of little practical relevance in Germany.

4.2. 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](#)). Since the provision is hardly employed in practice, it is not known whether any special proceedings take place in practice (e.g. the omission of interviews). Procedural directives of the BAMF

⁷⁵ UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice*, 2010, 272.

⁷⁶ Section 29 Asylum Act.

⁷⁷ “Safe third countries” are all member states of the European Union plus Norway and Switzerland (Section 26a Asylum Act and addendum to Asylum Act).

⁷⁸ Federal Administrative Court, Decision of 4 September 2012 – 10 C 13.11 – par. 16; asyl.net, M20082.

⁷⁹ Section 29(2) Asylum Act.

⁸⁰ Section 27 Asylum Act.

(as far as they are publicly available) do not contain any instructions on possible special proceedings in these cases.

4.3. Appeal

Indicators: Admissibility Procedure: Appeal

Same as regular procedure

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

- | | | |
|----------------------------|--|---|
| ❖ If yes, is it | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

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

The appeal procedure in cases of applications which are found “to be disregarded” (*unbeachtlich*) is identical to the procedure in “manifestly unfounded” cases: 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.

4.4. 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?

- | | | | |
|-------------------------------------|--|--|--|
| ❖ Does free legal assistance cover: | <input type="checkbox"/> Yes | <input type="checkbox"/> With difficulty | <input checked="" type="checkbox"/> No |
| | <input type="checkbox"/> Representation in interview | | |
| | <input type="checkbox"/> Legal advice | | |

2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?

- | | | | |
|------------------------------------|--|---|-----------------------------|
| ❖ Does free legal assistance cover | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| | <input checked="" type="checkbox"/> Representation in courts | | |
| | <input checked="" type="checkbox"/> 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 “to be disregarded” (*unbeachtlich*) is identical to the procedure in “manifestly unfounded” cases. It is (theoretically) 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 would be highly unusual for legal aid to be granted. Since the number of respective cases is very low, it is not possible to rate the chances of success for legal aid applications in these procedures.

5. Border procedure (border and transit zones)

5.1. 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.⁸¹ 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 airports of Frankfurt/Main (initiation of 533 procedures in the first half of 2015, 569 procedures in 2014 and 841 procedures in 2013) and Düsseldorf (initiation of 69 procedures in 2014 and 115 procedures in 2013).⁸²

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.⁸³ 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;

⁸¹ Section 18a Asylum Act.

⁸² Federal Government of Germany, *Response to information request by the parliamentary group of “The Left” party/“Die Linke”*, 18 August 2015, No. 18/5785; 38-39; *Response to information request by the parliamentary group of “The Left” party/“Die Linke”*, 28 January 2015, No. 18/3850, 52; *Response to information request by the parliamentary group of “The Left” party/Die Linke*, 5 March 2014, No. 18/705, 29. Cf. Flüchtlingsrat Brandenburg 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.

⁸³ Section 18a(2)-(4) Asylum Act.

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 the first half of 2015, 342 out of 382 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 (2014: 539 out of 643; 2013, 899 out of 972; 2012: 720 out of 787). Only in 35 cases during January-June 2015 a decision was taken within the 2-day period, all of which were rejections classified as “manifestly unfounded”.⁸⁴ This implies that in practice only applications are dealt with in the airport procedure which the authorities have already earmarked as “manifestly unfounded”.

In April 2013, several NGOs reported that an Indian national, Devender Pal Singh Bhullar, was at risk of imminent execution in India for the alleged involvement in a bomb attack in 2013. After his asylum application had been rejected during an airport procedure in 1994 he was deported to India and arrested by the Indian authorities shortly after his return. When the Indian Supreme Court finally upheld the death penalty in April 2013 he had spent more than 18 years in prison. According to a statement by Amnesty International, Devender Pal Singh Bhullar's trial had fallen far short of international standards. Pro Asyl reported that an administrative court in Germany had overruled the decision from the airport procedure 2 years after the deportation had taken place.⁸⁵ In March 2014, the death penalty was commuted to life imprisonment by the Supreme Court of India on the grounds that there had been "an inordinate delay" in deciding his mercy plea and also because Devender Pal Singh Bhullar was considered to be mentally ill.⁸⁶

5.2. 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
❖ If so, are questions limited to nationality, identity, travel route?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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). It has been noted that discrepancies between the information gathered by the border police

⁸⁴ Federal Government of Germany, *Response to information request by the parliamentary group of “The Left” party/“Die Linke”*, 18 August 2015, No. 18/5785; 38-39; *Response to information request by the parliamentary group of “The Left” party/“Die Linke”*, 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.

⁸⁵ Amnesty International, India: Government urged to stop all executions as new concerns emerge. Public Statement, 17 April 2013; Pro Asyl, ‘Nach rechtswidriger Abschiebung aus Deutschland: Davinder Pal Singh Bhullar in Lebensgefahr’ (After illegal deportation from Germany: Davinder Pal Singh Bhullar's life is in jeopardy). Press release, 17 April 2013.

⁸⁶ See BBC, ‘Devinder Pal Singh Bhullar: India court commutes sentence’, 31 March 2014, available at: <http://bbc.in/1LnWLX1>.

and statements made during the interview in the asylum procedure are sometimes used to cast doubt on the applicant's credibility.⁸⁷

5.3. Appeal

Indicators: Border Procedure: Appeal

Same as regular procedure

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

- | | | |
|----------------------------|--|---|
| ❖ If yes, is it | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

“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.⁸⁸

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.⁸⁹ 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.⁹⁰

5.4. 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?

- | | | | |
|-------------------------------------|--|--|-----------------------------|
| ❖ Does free legal assistance cover: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| | <input type="checkbox"/> Representation in interview | | |
| | <input checked="" type="checkbox"/> Legal advice | | |

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

- | | | | |
|------------------------------------|--|---|-----------------------------|
| ❖ Does free legal assistance cover | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| | <input checked="" type="checkbox"/> Representation in courts | | |
| | <input checked="" type="checkbox"/> 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.⁹¹ 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. 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.⁹²

⁸⁷ UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice*, 2010, 63.

⁸⁸ Section 18a(4) Asylum Act.

⁸⁹ Section 18a(4) Asylum Act.

⁹⁰ Section 18a(6) Asylum Act.

⁹¹ 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.

⁹² *Ibid.*

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.

6. Accelerated procedure

At the authorities' level, the only accelerated procedure in Germany with a basis in law is the airport procedure (see Border Procedure). Apart from this, the BAMF prioritises and fast-tracks certain caseloads through other administrative measures under the regular procedure (see Regular Procedure: Fast-Track Processing).

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

Indicators: Information and Access to NGOs and UNHCR

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
2. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
3. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
4. 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

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.”

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 upon lodging their application,⁹³ including the following:

- An information sheet on the rights and duties during the procedure and on the proceedings in general (“*Belehrung nach § 10 AsylVfG und allgemeine Verfahrenshinweise*”, available in around 60 languages);⁹⁴
- An instruction on the consequences of a withdrawal or (final) rejection of an application;
- An instruction on the obligation to comply immediately with a referral to the initial reception centre;
- 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;

⁹³ BAMF, *DA-Asyl (Dienstanweisung Asylverfahren) – Belehrungen* (internal directives of the BAMF, parts of these directives, as at 4 March 2010, were made publicly available by the NGO ProAsyl).

⁹⁴ FRA, *Country Factsheet Germany*, 2010. 2.

- A general leaflet on the Dublin procedure or a special leaflet on the Dublin procedure for unaccompanied minors as prescribed by the Dublin III Regulation.⁹⁵

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.⁹⁶

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.

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.⁹⁷

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”.⁹⁸ In particular, they are not considered suitable to render the significance and content of questions during interviews sufficiently understandable to applicants.

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 where located close to the centres asylum seekers can easily access the offices of such organisations. However, access to such services is not systematically ensured.

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. However, the “residence obligation” has been largely removed both for asylum seekers and for people with a “tolerated” stay.⁹⁹ The respective law was published in the Official Gazette on 31 December 2014. From 1 January 2015 onwards, this restriction only applies for an initial 3-month period after which it is generally removed (see section on Freedom of Movement). The “geographic restriction” can be re-imposed, however, if the person concerned has been convicted of a criminal offence or if deportation is imminent.¹⁰⁰

⁹⁵ BAMF, *Entscheiderbrief*, 9/2013, 3.

⁹⁶ *Ibid.*

⁹⁷ BAMF, *Das deutsche Asylverfahren – ausführlich erklärt. Zuständigkeiten, Verfahren, Statistiken, Rechtsfolgen (The German asylum procedures – an elaborate explanation. Responsibilities, Procedures, Statistics, Consequences)*, December 2012. 17.

⁹⁸ Amnesty International et al., ed. *Memorandum zur derzeitigen Situation des deutschen Asylverfahrens (Memoranda on current situation of the German asylum procedure)*, 2005, 21.

⁹⁹ 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.

¹⁰⁰ 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.

D. 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*, also translated as “follow-up application”) as any claim which is submitted after a previous application has been withdrawn or has been finally rejected.¹⁰¹ 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.¹⁰² According to this, a new asylum procedure is only initiated if:

1. The material or legal situation basic to the decision 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.¹⁰³

Further requirements are that:¹⁰⁴

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 rendered.¹⁰⁵ However, a deportation may proceed from the very moment that the Federal Office informs

¹⁰¹ Section 71 Asylum Act.

¹⁰² Section 51(1)-(3) Administrative Procedure Act (*Verwaltungsverfahrensgesetz*).

¹⁰³ 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-AusIR (Handkommentar Ausländerrecht)*, 2008, 1826.

¹⁰⁴ Section 51(2) Administrative Procedure Act.

¹⁰⁵ Kerstin Müller, AsylVfG § 71, para. 44, in Hofmann/Hoffmann, eds., *HK-AusIR (Handkommentar Ausländerrecht)*, 2008, 1830.

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.¹⁰⁶ The applicant may also be detained pending deportation until it is decided that a subsequent asylum procedure is carried out.¹⁰⁷

The decision on admissibility of a subsequent application can be carried out without hearing the applicant.¹⁰⁸ 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, this decision can be appealed before an administrative court. In most cases 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 be in the form of a "regular procedure"¹⁰⁹ 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.

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.

E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

1. Special procedural guarantees

Indicators: Special Procedural Guarantees

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

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

¹⁰⁶ Section 71(5) Asylum Act.

¹⁰⁷ Section 71(8) Asylum Act.

¹⁰⁸ Section 71(3) Asylum Act.

¹⁰⁹ Reinhard Marx, § 71, para. 132–133, *AsylVfG – Kommentar zum Asylverfahrensgesetz* (Asylum Procedures Act - Commentary), 7th ed., 2009, 1252.

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.¹¹⁰ 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.

The Federal Office's guidelines stipulate that the following cases shall be handled in a particularly sensitive manner and, if necessary, by specially-trained decision-makers:¹¹¹

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

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. According to information published in 2012, there were about 80 such “special officers” (*Sonderbeauftragte*) for unaccompanied children, around 40 for traumatised persons and victims of torture and around 40 for victims of gender-specific persecution. They had been deployed in all of the BAMF's branch offices which existed at the time.¹¹² However, with several new branch offices of the BAMF having been opened in 2015, this is not the case anymore. 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.

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.

2. 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

¹¹⁰ *Berliner Modell für die frühzeitige Identifizierung besonders schutzbedürftiger Flüchtlinge* (Berlin pilot scheme for early identification of particularly vulnerable refugees).

¹¹¹ BAMF. *DA-Asyl (Dienstanweisung Asylverfahren) – Belehrungen*, 2010, 139.

¹¹² BAMF, *Das deutsche Asylverfahren – ausführlich erklärt. Zuständigkeiten, Verfahren, Statistiken, Rechtsfolgen*. December 2012, 23.

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.¹¹³ 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”.¹¹⁴ 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.¹¹⁵ 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 Federal Office distinguish between these two categories: While a detailed (oral) submission is generally deemed sufficient to substantiate a claim of past persecution, an applicant can be asked to present medical reports to substantiate a claim of possible “serious concrete risk” upon return.¹¹⁶

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.¹¹⁷ 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.¹¹⁸ Furthermore, it is often extremely difficult for asylum seekers to get access to an appropriate therapy because of a lack of specialised therapists or because authorities reject applications to take over the costs for therapy (including costs for interpreters).¹¹⁹ In such cases, it may also prove highly difficult to find experts to submit a medical opinion.

3. Age assessment and legal representation of unaccompanied children

Indicators: Unaccompanied Children

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

¹¹³ Section 24(1) Asylum Act.

¹¹⁴ Section 15(3) Asylum Act.

¹¹⁵ Section 60(7) Residence Act.

¹¹⁶ BAMF, *DA-Asyl (Dienstanweisung Asylverfahren) – Darlegungslast*, 2010, 237.

¹¹⁷ Federal Administrative Court, Decision of 11 September 2007 - 10 C 8.07 – (asyl.net, M12108).

¹¹⁸ Melanie Glocker, Hans Wolfgang Gierlichs, Friedemann Pfäfflin, “*Zur Qualität von Gerichtsgutachten in aufenthaltsrechtlichen Verfahren*” (The Quality of Psychiatric Court Reports on Asylum Seekers), *Recht und Psychiatrie* 2012 (30), 67.

¹¹⁹ *Psycho-social Centre for refugees Dusseldorf* is a centre providing consultation and therapy to traumatised refugees.

On 1 November 2015, a new law took effect which restructures the reception procedure for unaccompanied children.¹²⁰

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.

Age assessment

During the provisional care period, the youth welfare office 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”. 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 new law states explicitly that an examination of the genitals is excluded in this context.¹²¹

Furthermore, the youth welfare office has to clarify during the period of provisional care whether relatives of the unaccompanied minor live in Germany or in other countries. It also has to check whether there are obstacles (in particular, health reasons) against the minor being sent to another place in Germany as part of the newly established distribution system for unaccompanied minors. Once the minor has been transferred to the place of residence determined by the distribution system, the provisional care period ends and the local youth office has to take him or her into care. To be taken into care involves the appointment of a guardian and the placing into accommodation in a suitable institution or other adequate accommodation.

However, in the past, the Federal Association for Unaccompanied Refugee Minors had noted that the procedure for taking unaccompanied children into care had not been enforced consistently.¹²² The Association estimates that as many as 25% of unaccompanied children were not taken into care. One of the main reasons was that the legal situation is inconsistent as far as unaccompanied children aged between 16 and 18 years were concerned. While the Youth Welfare Act (*Jugendhilfegesetz*) stipulates that any person under the age of 18 has to be perceived as a child, the Asylum Act states that persons from the age of 16 have the capacity “to perform procedural acts” on their own behalf in asylum procedures.¹²³ As a result, many children aged between 16 and 18 are treated as adults. With the introduction of the new Asylum Act in October 2015, the latter provision was removed. This means that

¹²⁰ 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.

¹²¹ 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.

¹²² Bundesfachverband, *Unbegleitete Minderjährige Flüchtlinge* (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, 10.

¹²³ Section 12 Asylum Act.

unaccompanied minors up to the age of 18 may only apply for asylum with the assistance of a guardian, unless the youth welfare office has not filed an application for them during the provisional care period.

However, another issue noted in the past could still pose a problem. This is the problem of questionable age assessments, which may lead to children being treated as adults.¹²⁴

Guardianship

The role of the guardian in the asylum procedure has been described as “unclear”¹²⁵ 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.¹²⁶ It has been noted that the current legal situation is not in line with relevant provisions of the recast Asylum Procedures Directive and other European legal acts which state that minors should be represented and assisted by representatives with the necessary expertise.¹²⁷

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 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.¹²⁸

Safe country of origin¹²⁹

Member states of the European Union are by definition considered to be safe countries of origin.¹³⁰ Furthermore, the Constitution defines as safe countries:

“[I]n 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”.¹³¹

¹²⁴ Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (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, 10 and 27.

¹²⁵ *Ibid*, 30.

¹²⁶ *Ibid*, 27-28.

¹²⁷ Stephan Hocks, ‘Die Vertretung unbegleiteter minderjähriger Flüchtlinge’ (The representation of unaccompanied refugee minors), *Asylmagazin* 11/2015, 367-373.

¹²⁸ Article 16a(2)-(3) Basic Law.

¹²⁹ Section 29a Asylum Act.

¹³⁰ Section 29a(2) Asylum Act.

¹³¹ Article 16a(3) Basic Law.

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.

Serbia, FYROM and Bosnia-Herzegovina were added to the list following the entry into force of a law on 6 November 2014.¹³² Albania, Kosovo and Montenegro were added with another law which took effect on 24 October 2015.¹³³

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. Although this is not required by law, applications from safe countries of origin are prioritised by the BAMF.¹³⁴ Both the government and the BAMF claim that the classification as “safe country of origin” enables the authorities to deal with asylum applications more quickly.¹³⁵ However, the classification as such does not lead to an acceleration of procedures, since applications of asylum seekers from safe countries of origin are subject to the same procedural conditions and guarantees as “normal” asylum applications (see Regular Procedure: Fast-Track Processing). In particular, the interview has to be carried out in the same manner as in any other asylum procedure. The BAMF has admitted that the classification of safe countries of origin has no impact on the duration of interviews, but it also states that decision-making is accelerated because “further examinations of the application’s reasons can be omitted”.¹³⁶ This seems to indicate that quality standards for the examination of applications have been lowered for applicants from safe countries of origin, although there is no basis in law for such a policy.

A law which took effect on 24 October 2015 has imposed further restrictions on asylum applicants from safe countries of origin:¹³⁷ They are now required to stay in initial reception centres for the whole duration of their procedures. This is specified in the new Asylum Act as the period “up to the Federal Office's decision on the application and, in case the application is rejected, up to the departure or the [deportation]”.¹³⁸ However, it is doubtful whether the law's intention to oblige asylum seekers from safe countries of origin to remain in the same centre for the complete procedure can actually be achieved. For instance, the obligation to remain in an initial reception centre ends if a decision on the asylum

¹³² *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), Bundesgesetzblatt (Official Gazette) I, No. 49, 5 November 2014, 1649.

¹³³ *Asylverfahrensbeschleunigungsgesetz* (Law for an acceleration of asylum procedures), Bundesgesetzblatt (Official Gazette) I, 23 October 2015, 1722.

¹³⁴ UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice: Detailed Research on Key Asylum Procedures Directive Provisions*, March 2010, 339.

¹³⁵ BAMF, *Neues Gesetz zu sicheren Herkunftsstaaten* (New law on safe countries of origin), available at: <http://bit.ly/1NdIMuh>.

¹³⁶ Mediendienst Integration. ‘Was bringen sichere Herkunftsstaaten?’ (What is the use of safe countries of origin?), 22 September 2015, available at: <http://bit.ly/1kHjClf>.

¹³⁷ *Asylverfahrensbeschleunigungsgesetz* (Law for an acceleration of asylum procedures), Bundesgesetzblatt (Official Gazette) I, 23 October 2015, 1722.

¹³⁸ Section 47(I)(a) Asylum Act.

application cannot be taken within a short time-frame or if a deportation cannot be carried out in the short term. Because of these limitations it does not seem likely that the new provision will be applicable in many cases: If the asylum procedure cannot be finalised within a few months, the asylum seekers should usually be allowed to leave these centres.

However, the new law is in line with the government's intention to accelerate procedures for applicants from safe countries of origin. In September 2015, even before Albania, Kosovo and Montenegro were officially added to the list of safe countries of origin, the Federal State of Bavaria set up two „combined reception and return centres for asylum seekers without prospect to remain“. These centres are specifically designed for asylum seekers from the Western Balkan region. According to the regional government of **Bavaria**, offices of all relevant authorities and of the responsible Administrative Courts are established in these centres in order to accelerate asylum procedures and to carry out immediate returns if the asylum application is rejected.¹³⁹ The Refugee Council of Bavaria criticised the new facilities as “deportation centres” in which asylum applications were only examined in a superficial manner and asylum seekers had little access to assistance or to an effective appeal procedure.¹⁴⁰

Protection rates for **Serbia**, which was added to the list in November 2014, were roughly on the same level in the first ten months of 2015 as they were in 2014:

- January-October 2015: 22 “positive” out of 12,318 decisions (0.2%)
- 2014: 38 “positive” out of 13,828 decisions (0.3%)

In the case of **FYROM**, the protection rate actually increased slightly, although from a very low level, after the country was listed as a “safe country of origin” in November 2014:

- January-October 2015: 32 “positive” out of 4,734 decisions (0.7%)
- 2014: 13 “positive” out of 5,610 decisions (0.2%).¹⁴¹

Safe third country¹⁴²

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. 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.¹⁴³ 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.¹⁴⁴ 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.¹⁴⁵ Asylum

¹³⁹ Bavarian Ministry of the Interior, ‘Neue Aufnahmeeinrichtungen für Asylbewerber’ (New reception facilities for asylum seekers), Press release, 14 August 2015, available in German at: <http://bit.ly/1lwiJCK>.

¹⁴⁰ Refugee Council of Bavaria, ‘Balkan-Sonderlager in Bamberg eröffnet’ (Balkan special camp opens in Bamberg), Press release, 16 September 2015, available at: <http://bit.ly/1NEXG7d>.

¹⁴¹ Numbers refer to decisions on first applications only; BAMF, *Asylgeschäftsstatistik* (Asylum statistics) October 2015, 7, and *Asylgeschäftsstatistik* (Asylum statistics) December 2014, 6.

¹⁴² Section 26a Asylum Act.

¹⁴³ Federal Constitutional Court, Decision of 14 May 1996, 2 BvR 1938/93, 2 BvR 2315/93, BVerfGE 94, 49 (189).

¹⁴⁴ Section 18 Asylum Act.

¹⁴⁵ The border area is defined as a strip of 30 kilometres.

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.

G. Treatment of specific nationalities

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? Yes No
 ❖ If yes, specify which: Syria, Eritrea, Iraq (Christians, Yazidi and Mandeans)
2. Are applications from specific nationalities considered manifestly unfounded?¹⁴⁶ Yes No
 ❖ If yes, specify which: Albania, Bosnia-Herzegovina, Ghana, FYROM, Montenegro, Senegal, Serbia.

The BAMF prioritises the processing of applications from specific nationals both on the grounds that they are considered to be manifestly unfounded (**Albania, Bosnia-Herzegovina, Montenegro, FYROM, Serbia, Kosovo**) and on the ground that they are considered to be well-founded (**Syria, Eritrea, religious minorities from Iraq**).

Prioritisation started in the second half of 2012 when a special procedure was introduced for asylum seekers from “Western Balkan” states, i.e. **Serbia, FYROM, Montenegro, Albania, Bosnia-Herzegovina**. This special procedure did not have a basis in law but consisted of a series of administrative measures such as shifting of personnel to certain caseloads and target-setting for decision-makers.¹⁴⁷

In 2013 the government stated that applications from the Western Balkans (Albania, Bosnia and Herzegovina, Montenegro, FYROM, Serbia) were prioritised.¹⁴⁸ Nevertheless, the average length of procedures at first instance increased both for the prioritised and for other countries of origin. In 2015, applications from Kosovar asylum seekers also were prioritised in addition to the countries mentioned above. The average length of procedures at first instance for the prioritised Western Balkan countries as at second quarter of 2015 was as follows:¹⁴⁹

Country	Average length of procedure (months)
<i>Kosovo</i>	2.4
<i>Albania</i>	3.4
<i>Montenegro</i>	3.5
<i>Serbia</i>	3.7
<i>Bosnia-Herzegovina</i>	4.2
<i>FYROM</i>	4.6

All the Western Balkan countries were also listed as “safe countries of origin” in 2015.

Prioritisation of applications from **Syrian** nationals has taken place since 2013. Since November 2014 applications of Syrians are also dealt with in written procedures. This means that they can be granted refugee status on the basis of a questionnaire, if they agree to take part in this procedure. Only “positive decisions” (i.e. granting of refugee status) can be handed down in the written procedure. If further

¹⁴⁶ Whether under the “safe country of origin” concept or otherwise.

¹⁴⁷ BAMF, *Entscheiderbrief*, 9/2012, 2.

¹⁴⁸ Federal Government of Germany. *Response to information request by the parliamentary group of “The Left” party/Die Linke*, 5 March 2014, No. 18/705, 37.

¹⁴⁹ Federal Government of Germany. *Response to information request by the parliamentary group of “The Left” party/Die Linke*, 18 August 2015, No. 18/5785, 46.

questions arise in the examination of the questionnaire, a “normal” procedure has to be carried out which includes an interview. The average period for deciding on asylum applications from Syrian nationals was at 4.2 months mid-2015.

By mid-2015, prioritisation (including the offer of a written procedure) has been extended to members of **religions minorities from Iraq** (Mandaeans, Yazidis, Christians) and to **Eritreans**.

The German Federal States and the Ministry of Interior have formally decided not to carry out deportations to Syria. Therefore most Syrian nationals whose asylum applications have been rejected or who have not applied for asylum are eligible for temporary residence permits. These might be based on regional regulations or on the legal assumption according to which it is impossible in fact and in law for Syrian nationals to leave Germany in the foreseeable future.¹⁵⁰

Persons granted asylum status and/or refugee status initially receive a three-year residence permit. At the end of these three years the Federal Office for Migration and Refugees examines whether there are grounds for a possible withdrawal of the status (e.g. a change of the political situation in the country of origin). If no reasons for a withdrawal are ascertained, the temporary residence permit is converted into a permanent residence permit (*Niederlassungserlaubnis*).

Persons with asylum or refugee status have the same status as German citizens within the social insurance system. They have unrestricted access to the labour market, are entitled to social welfare and to integration assistance, including language courses. Core family members (spouse or children) of persons with asylum or refugee status are automatically granted the same status if they are already in Germany. In addition, the requirements for family reunification are strongly relaxed if refugees apply for a residence permit for their family members within three months after they have received asylum or refugee status. In this case, core family members may join a refugee living in Germany even if requirements, which would otherwise be necessary for family reunification are not fulfilled (in particular, the requirements of sufficient living space and sufficient financial resources).

For Syrian refugees who have been staying in Germany for more than three months, 15 out of 16 Federal States have issued directives according to which they can 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 foresee that refugees living in Germany have 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 have 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.¹⁵¹ In response to that situation, several Federal States have 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.¹⁵² Nevertheless, the biggest obstacle for family reunification remains the long procedure – even if Syrian refugees and their family members fulfil all the criteria for reunification, procedures to obtain the necessary visa to travel to Germany can still take between several months (at the German embassy in Lebanon), but up to 15 months (at the German consulate in Istanbul).¹⁵³

Persons granted subsidiary protection status or another form of (national) protection receive a temporary residence permit (for at least one year, in most cases issued for two years). Temporary residence permits are usually extended and it is possible to convert a temporary residence permit into a

¹⁵⁰ Section 25 V Residence Act.

¹⁵¹ Save me Kampagne, (*Federal States’ Regulations on family reunification of Syrian refugees*), 2 December 2013.

¹⁵² GGUA Flüchtlingshilfe, *Die Privatisierung der Humanität* (The privatisation of humanity), October 2015, available in German at: <http://bit.ly/1MVzKQL>.

¹⁵³ Tagesschau.de, ‘Endloses Warten auf die Familie’ (Endless Waiting for the family), 4 September 2015, available in German at: <http://bit.ly/1S6m9Ge>.

permanent one after five years. Persons granted subsidiary protection or a similar status have to apply for a work permit (which is usually granted), while further restrictions have been removed in July 2013. Therefore they now have an almost unrestricted access to the labour market. They are also entitled to social benefits, although with some restrictions in comparison to German citizens. Family reunification is only possible under strict conditions for persons with subsidiary protection status. In particular, it is necessary to prove that sufficient living space and sufficient financial resources exist to support all family members in Germany. These requirements can only be met by few persons.

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 |
| ❖ 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 has not managed to keep up with the registration of applications. Many asylum seekers therefore are now frequently registered on a preliminary basis and only receive a document entitled "confirmation of having reported as an asylum seeker" (BÜMA). The law does not contain any provision on the social benefits that asylum seekers with a BÜMA document are entitled to, although it may take several months before their application is formally registered and they receive the status of the *Aufenthaltsgestattung*.¹⁵⁴ This has led to uncertainties, with some authorities reducing cash payments for asylum seekers with a BÜMA. However, as a general rule, it seems to be accepted that asylum seekers with a BÜMA have the same rights as asylum seekers with an *Aufenthaltsgestattung*, including access to benefits under the Asylum Seekers' Benefits Act.¹⁵⁵

The Asylum Seekers' Benefits Act has been substantially revised in November 2014 and the new provisions have taken effect as of 1 March 2015.

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.¹⁵⁶

¹⁵⁴ Flüchtlingsrat Berlin, 'Stellungnahme zum Asylverfahrensbeschleunigungsgesetzentwurf' (Comment on the draft law for the acceleration of asylum procedures), 11 October 2015.

¹⁵⁵ The Federal Government confirmed in a response to a parliamentary query that all asylum seekers may be considered to have the status of *Aufenthaltsgestattung*, even if they have not been given the paper confirming this status. Accordingly, asylum seekers should be considered to have all the rights and obligations connected to the *Aufenthaltsgestattung* as soon as they have reported to the authorities. Federal Government of Germany, Response to information request by the parliamentary group of "The Left" party/Die Linke, 10 April 2015, No. 18/4581, 3.

¹⁵⁶ Section 7 Asylum Seekers' Benefits Act.

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.

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 October 2015 (in original currency and in €): ¹⁵⁷ | |
| ❖ Single adult in accommodation centre | €143 |
| ❖ Single adult outside accommodation centre | €359 |

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).¹⁵⁸ Furthermore, the necessary “benefits in case of illness, pregnancy and birth” have to be provided for.¹⁵⁹ 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.¹⁶⁰

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.¹⁶¹

Revisions to the Asylum Seekers' Benefits Act were eventually passed by both chambers of parliament in November 2014 and the new law entered into force on 1 March 2015.¹⁶² The main changes are:

- 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 new 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”.¹⁶³ For asylum seekers in other (decentralised) collective accommodation centres, non-cash benefits

¹⁵⁷ This includes hygienic items allowance and pocket money only.

¹⁵⁸ Section 3 Asylum Seekers' Benefits Act.

¹⁵⁹ Section 4 Asylum Seekers' Benefits Act.

¹⁶⁰ Section 6 Asylum Seekers' Benefits Act.

¹⁶¹ 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.

¹⁶² 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>.

¹⁶³ Section 3 I Asylum Seekers' Benefits Act.

“can” be provided “if this is necessary under the circumstances”.¹⁶⁴ 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.

Allowances for asylum seekers from 1 March 2015 onwards:

	Single adult person	Adult partners in common household (each)	Member of household > 18	Member of household 14-17	Member of household 6-13	Member of household < 6
Stay in accommodation centre	€143	€129	€113	€85	€92	€84
Stay outside accommodation centre	€359	€323	€287	€283	€249	€217

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. 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:

- (1) Initial reception centres;
- (2) Collective accommodation centres;
- (3) Decentralised accommodation.

Moreover, emergency shelters have also been increasingly used in 2014 and 2015.

Initial reception centres (*Aufnahmeeinrichtung*)

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.¹⁶⁵ 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 several Federal states such as **Bavaria**, **Lower Saxony** and **North Rhine-Westphalia** having several initial reception facilities. The exact

¹⁶⁴ Section 3 II Asylum Seekers' Benefits Act.

¹⁶⁵ Section 47 Asylum Act.

number is not easy to determine since many facilities have opened in recent months which are not officially designated as initial reception centres although they are used to accommodate asylum seekers in the initial reception period. Normally initial reception centres are located either on the premises of or in proximity to a BAMF branch office, 39 of which existed in November 2015.¹⁶⁶

“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.¹⁶⁷ 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.¹⁶⁸ 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 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 2014, 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 (as at 31 December 2014)¹⁶⁹

State/Region	Number of Recipients	Type of accommodation		
		Initial Reception Centres	Collective accommodation	Decentralised accommodation
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

¹⁶⁶ BAMF, *Überblick: BAMF-Standorte bundesweit* (Overview: Location of BAMF-offices throughout Germany), 18 November 2015, available in German at: <http://bit.ly/218tZ8v>.

¹⁶⁷ Section 53 Asylum Act.

¹⁶⁸ Section 10 Asylum Seekers’ Benefits Act.

¹⁶⁹ Includes both asylum seekers and people with “tolerated stay”. Source: Statistisches Bundesamt, Table Benefits for Asylum Seekers 2014, Recipients for Federal States/for type of accommodation.

Although Section 53 of the Asylum Act stipulates 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.¹⁷⁰ 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.¹⁷¹ This result is surprising since only the Federal State of Berlin has officially adopted a policy according to which asylum seekers shall generally be accommodated in apartments.¹⁷²

Emergency shelters

With the massive increase in numbers of newly arriving asylum seekers in 2014 and 2015, reception capacities have 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. Asylum statistics for the period January through October 2015 indicated that 331,226 (first) asylum applications had been registered, while about 758,000 persons had been recorded as new arrivals by various authorities (see section on [Registration](#)). This implies that more than 425,000 asylum seekers were still waiting for their asylum applications to be registered at the time, and it has to be assumed that the overwhelming majority of these were asylum seekers who were not staying in initial reception centres. However, this conclusion is only a provisional one, since the number of new arrivals might include cases of double-counting and other errors.

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, privately owned apartments. Therefore, various types of emergency shelters have been set up. These include gyms, containers, warehouses or office buildings and tents. In the Federal State of **Hamburg**, 3,000 asylum seekers were living in tents in September 2015, and only a few of these tents were considered to be suitable for the winter months. Other Federal States also reported that thousands of asylum seekers were living in tents in September 2015.¹⁷³ Authorities claim that such emergency shelters should only serve as temporary accommodation until new centres have been built or until other buildings have been converted into accommodation centres. However, there is widespread concern that many of these centres will not be finished in time for the winter months and that structures, which were set up as temporary accommodation, will become permanent facilities.

¹⁷⁰ 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.

¹⁷¹ It is possible, though, that some Federal States subsume smaller types of collective accommodation under “decentralised” housing as well.

¹⁷² For an overview of accommodation policies in the Federal States (as at the beginning of 2011), cf. Die Landesflüchtlingsräte und Pro Asyl (eds.), *AusgeLagert, Zur Unterbringung von Flüchtlingen in Deutschland*, (“DeCamped, on accommodation of refugees in Germany”), Sonderheft der Flüchtlingsräte (Special issue of refugee councils' newsletters), 2011, 54-70.

¹⁷³ Tagesschau.de, ‘Die Angst vor einem harten Winter’ (The fear of a hard winter), 3 September 2015, available in German at: <http://bit.ly/1KsXpZp>.

4. 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

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.¹⁷⁴ 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.¹⁷⁵ 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.¹⁷⁶ 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.

With the number of asylum seekers rising significantly since 2012, overcrowding has been reported with regard to several initial reception centres throughout Germany. Overcrowding continued to be a serious problem throughout 2014 and 2015. In some centres, mobile units (housing containers) and tents were used for temporary housing. In other reception centres distribution of applicants to other accommodation in the same Federal State was accelerated, the duration of stay for newly arrived asylum seekers was limited to a period of a few days to make room for new arrivals. In 2015 many asylum seekers were not even received in the initial reception centres but sent to local accommodation or to emergency shelters before their asylum application had been registered (see section on Types of Accommodation). This in turn led to a higher demand for places in follow-up accommodation and decentralised housing. The rise in numbers of asylum applications thus proved to be a challenge both

¹⁷⁴ A survey carried out by Informationsverbund Asyl und Migration in February 2011 (unpublished) showed that regional legislation (called State Reception Acts or Refugee Reception Acts) existed in 14 out of 16 Federal States. However, most of these laws deal with administrative issues, such as the responsibilities of municipal administrative levels and the financing of centres, but do not define the standards for accommodation. At the time of the survey, at least some common standards were determined by administrative regulations in 12 out of 16 states.

¹⁷⁵ Some general remarks on the situation in the initial reception centres, unless indicated otherwise, are based on impressions from several initial reception centres which the author of this report visited in 2012 and 2013.

¹⁷⁶ 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.

for the Federal States' centres and for many municipalities since accommodation capacities had been significantly reduced in reaction to a fall in numbers of asylum seekers between 1992 and 2007.

Federal States and municipalities responded to the rise in numbers in 2012 and 2013 by increasingly commissioning non-state actors (welfare organisations as well as companies) with accommodation of asylum seekers. In addition, housing containers and individual apartments were increasingly used.¹⁷⁷ In spite of these efforts, capacities of accommodation structures proved to be insufficient in many places in 2014 and 2015. Many asylum seekers therefore could only be accommodated in emergency shelters such as gyms, office buildings, containers or tents (see section on Types of Accommodation).

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 most of the 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 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.

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. Policies regarding accommodation are not necessarily consistent within Federal States. For instance, a report of the NGO Pro Asyl of March 2011 referred to the example of the Federal State of **Hesse/Hessen**. In this state the quota of asylum seekers living in apartments ranged from 21% in one municipality to 95% in another.¹⁷⁸

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 the years before 2011 many collective accommodation centres were closed, often because they did not prove to be cost-

¹⁷⁷ *Ibid*, 29-31.

¹⁷⁸ Pro Asyl and Interkultureller Rat in Deutschland (eds.), *Menschen wie Menschen behandeln!* (Treat humans like humans!), March 2011, 7-8.

effective any longer against the background of lower numbers of asylum seekers.¹⁷⁹ However, since 2012 and 2013, the responsible authorities have had to deal with a rising demand for follow-up accommodation because of a significant rise in numbers of asylum seekers. In response, municipalities and Federal States increasingly commissioned non-state actors (welfare organisations as well as companies) with collective accommodation of asylum seekers. In addition, housing containers and individual apartments were increasingly used.¹⁸⁰ Nonetheless, reports of overcrowding of facilities have become commonplace.¹⁸¹ Overcrowding of accommodation centres and the lack of apartments for asylum seekers continued to be serious problems in 2014 and 2015 and by September 2015 thousands of asylum seekers were living in emergency shelters (see section on Types of Accommodation).

Even before the rise in numbers of asylum seekers made itself felt, 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.

It has also been pointed out that 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.

Some prominent issues relate to the following issues:¹⁸²

- 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 prefabricated (packed) meals, quality is often criticised;
- Fences surrounding premises, particularly of the bigger centres or of centres for which former industrial buildings or former army barracks are used; in some facilities asylum seekers have to report to staff upon leaving and upon return,
- In some centres visitors have to report to staff and there are only limited visiting hours; in some cases, no overnight stays are allowed for visitors (even spouses);
- Limited space and equipment for recreation (including for children),
- No separate and quiet space for children, for example to do their homework for school.

For lack 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 procedures (as it is generally prescribed by law) this often takes several years since the obligation applies to appeal procedures as well. In addition, 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.

¹⁷⁹ Die Landesflüchtlingsräte und Pro Asyl (eds.), *AusgeLagert, Zur Unterbringung von Flüchtlingen in Deutschland*, (“DeCamped, on accommodation of refugees in Germany”), Sonderheft der Flüchtlingsräte, (Special Issue of refugee councils' newsletters), 2011, 20.

¹⁸⁰ *Ibid*, 29-31.

¹⁸¹ Cf. for instance the compilation of news on the situation in the Federal State of **Baden-Württemberg** at Flüchtlingsrat Baden-Württemberg, “*Container und andere Module*” (“Containers and other modules”), available at: <http://bit.ly/1HFAvgZ>.

¹⁸² For an overview of concerns cf. Die Landesflüchtlingsräte und Pro Asyl (eds.), *AusgeLagert, Zur Unterbringung von Flüchtlingen in Deutschland*, (“DeCamped, on accommodation of refugees in Germany”), Sonderheft der Flüchtlingsräte, (Special Issue of refugee councils' newsletters), 2011, 4-7.

5. 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

Material reception conditions can be reduced to the point that only “irredeemably necessary” benefits are granted, for the following reasons:¹⁸³

- 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;
- 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;
- 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”;
- A person who has been allocated to another European state within the framework of a European distribution mechanism (not including the Dublin system).

In practice, this provision gives full discretion to the responsible aliens' authorities to reduce benefits, but only for the reasons mentioned here so 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.¹⁸⁴

For asylum seekers, benefits may only be reduced after they have lost the status according to the law. Furthermore, it has been disputed whether any reductions are admissible at all in the light of the decision of the Federal Constitutional Court of July 2012. If authorities reduce benefits in spite of this decision, this 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.

6. 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

¹⁸³ Section 1a Asylum Seekers' Benefits Act, as amended in October 2015.

¹⁸⁴ Federal Constitutional Court, Decision of 18 July 2012 – 1 BvL 10/10, 1 BvL 2/11 - asyl.net, M19839.

UNHCR is entitled by law to visit foreigners, including those in detention and in airport transit zones.¹⁸⁵ 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. There have also been (rare) cases where members of NGOs have been banned from entering premises of reception or accommodation centres.

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.

7. Addressing special reception needs of vulnerable persons

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?
 Yes No

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.

Unaccompanied children should be taken into care of a youth welfare office and the youth welfare office has to seek “adequate accommodation”.¹⁸⁶ 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.¹⁸⁷ 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.¹⁸⁸ 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 newly established distribution system (see section on Unaccompanied Children). The NGO Federal Association for

¹⁸⁵ Section 9 Asylum Act.

¹⁸⁶ Section 42(1) first sentence Eighth Book of the Social Code.

¹⁸⁷ 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.

¹⁸⁸ 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.

Unaccompanied Refugee Minors has expressed its concern that many municipalities might not be sufficiently prepared for an adequate reception of unaccompanied minors.¹⁸⁹

8. Provision of information

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.”¹⁹⁰

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.

However, due to the massive increase in numbers of asylum seekers in 2014 and 2015, many asylum seekers are not being accommodated in the initial reception centres, but are sent to local accommodation centres or emergency shelters. Whether asylum seekers are informed about their rights and obligations under these circumstances, is highly dependent on the work of staff and of volunteers in these facilities.

9. 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 new law which was published on 31 December 2014 in the Official Gazette, the “residence obligation” has now been largely removed both for asylum seekers and for people with a “tolerated” stay.¹⁹¹ From 1 January 2015 onwards, this restriction no longer applies after an initial 3-month period. The “geographic restriction” can be re-imposed, however, if the person concerned has

¹⁸⁹ 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.

¹⁹⁰ Section 47(4) Asylum Act.

¹⁹¹ 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.

been convicted of a criminal offence or if deportation is imminent.¹⁹² Since October 2015, the geographic restriction has further been reinstated for persons who are obliged to stay in an initial reception centre.¹⁹³ 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 (e.g. Ethiopian asylum seekers are likely to be sent to branch offices of the BAMF in **Hesse** or **Bavaria** which are responsible for Ethiopia as a country 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 2015 ("*Königstein Key*") in comparison to number of (first) asylum applications 2015 (January-October) was as follows:¹⁹⁴

Federal State	Quota	Applications in 2015	Actual share in 2015
Baden-Württemberg	12.97%	42,390	12.80%
Bavaria	15.33%	51,147	15.44%
Berlin	5.05%	20,478	6.18%
Brandenburg	3.08%	13,955	4.21%
Bremen	0.94%	3,902	1.18%
Hamburg	2.52%	9,640	2.91%
Hesse	7.32%	21,794	6.58%
Mecklenburg-Vorpommern	2.04%	12,654	3.82%
Lower Saxony	9.36%	26,632	8.04%
North Rhine-Westphalia	21.24%	52,261	15.78%
Rheinland-Pfalz	4.83%	14,699	4.44%
Saarland	1.22%	6,864	2.07%
Saxony	5.10%	21,161	6.39%
Sachsen-Anhalt	2.86%	11,589	3.50%
Schleswig-Holstein	3.39%	11,837	3.57%
Thuringia	2.75%	10,217	3.08%

¹⁹² 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.

¹⁹³ Section 59a I Asylum Act, as amended in October 2015.

¹⁹⁴ BAMF: Verteilung der Asylbewerber (Distribution of asylum seekers), 1 January 2015, available at: <http://bit.ly/1j1HMnO>; BAMF, Asylgeschäftsstatistik, October 2015.

As shown in the last column, 5 out of 16 Federal States received less asylum applicants than their respective share under the Königstein Key in the period January-October 2015. However, as noted above, the distribution of applications takes into account additional criteria.

B. 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?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
❖ If yes, when do asylum seekers have access the labour market?	
○ General time-limit	3 months
○ Maximum time-limit (in initial reception centres)	6+ months
2. Does the law allow access to employment only following a labour market test?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3. Does the law only allow asylum seekers to work in specific sectors?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
❖ If yes, specify which sectors:	No self-employment
4. Does the law limit asylum seekers' employment to a maximum working time?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
❖ If yes, specify the number of days per year	
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 2014.¹⁹⁵ Before that, since 6 September 2013, asylum seekers were not allowed access to the labour market for a period of 9 months.¹⁹⁶ 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 new 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.

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.¹⁹⁷

After the waiting period of three 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

¹⁹⁵ *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), Bundesgesetzblatt (Official Gazette) I, No. 49, 5 November 2014, 1649.

¹⁹⁶ Section 61(2) Asylum Act.

¹⁹⁷ Section 21(6) Residence Act.

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 12 months following the asylum seekers' access to the labour market, the job centre 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. Following a change in legislation in November 2014, the priority review is no longer applicable after a stay of 15 months (i.e. three months waiting period for access to the labour market plus 12 months).

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? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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.¹⁹⁸

Conditions for access to vocational training are identical to the conditions for access to the labour market in general. Therefore access to vocational training is severely restricted for asylum seekers, especially because of the “priority review”, according to which asylum seekers are able to access training only if no applicant with a better residential status has applied for that same spot. In addition, the fact that asylum seeker's residence permits are issued for a six-month-period frequently renders it impossible to enter vocational training at all. Training contracts usually have to be concluded for a duration of two or three years. Hence there is a considerable risk that a vocational training cannot be completed if the asylum application is rejected.

¹⁹⁸ 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.

C. Health care

Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?
 Yes No
2. Do asylum seekers have adequate access to health care in practice?
 Yes Limited No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?
 Yes Limited No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?
 Yes Limited 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.¹⁹⁹

In addition, the law states that further benefits can be granted “if they are indispensable in an individual case to secure health”.²⁰⁰

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.²⁰¹

A common problem in practice is caused by the necessity 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.²⁰² The necessity to distribute health insurance vouchers individually also imposes significant administrative burden on the social services. In response, the Federal States of **Bremen, Hamburg, Schleswig-Holstein** and **North Rhine-Westphalia** (the latter with regional differences) issue “normal” health insurance cards to asylum seekers, enabling them to see a doctor without permission from the authorities.

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).²⁰³ 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

¹⁹⁹ Section 4 Asylum Seekers' Benefits Act.

²⁰⁰ Section 6 Asylum Seekers' Benefits Act.

²⁰¹ Georg Classen, *Krankenhilfe nach dem Asylbewerberleistungsgesetz* (Medical assistance according to the Asylum Seekers' Benefits Act), Updated version, May 2012. 6-7.

²⁰² *Ibid.*, 7-8.

²⁰³ 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, cf. section on Access and forms of reception conditions, above.

medical treatment has been the result of an emergency which has not existed at the time of arrival in Germany.²⁰⁴

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*).²⁰⁵ 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.

²⁰⁴ Georg Classen, *Krankenhilfe nach dem Asylbewerberleistungsgesetz* (Medical assistance according to the Asylum Seekers' Benefits Act), updated version, May 2012. 3.

²⁰⁵ 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".

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2015: ²⁰⁶	Not available
2. Number of asylum seekers in detention at the end of 2015:	Not available
3. Number of detention centres:	Not available
4. Total capacity of detention centres:	Not available

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.²⁰⁷

Asylum seekers are generally not detained as long as their application is not finally rejected and 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.²⁰⁸

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 2014, 4,772 people were transferred following a Dublin procedure (compared to 4,741 in 2013), 186 of whom had not applied for asylum in Germany.²⁰⁹ Thus, about 3,370 asylum seekers were transferred on the grounds of the Dublin Regulation. 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.²¹⁰

According to the NGO "Hilfe für Menschen in Abschiebehaft Büren" ("Support for humans in detention pending deportation in Büren"), there were fewer than 90 persons detained throughout Germany for the purpose of forceful removal in October 2015. The NGO's compilation shows regional discrepancies, with the Federal State of **North Rhine-Westphalia** accounting for more than half of the number of detainees (50), while no persons at all were in detention pending deportation in at least 6 out of 16 Federal

²⁰⁶ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

²⁰⁷ 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.

²⁰⁸ Section 67 Asylum Act.

²⁰⁹ 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.

²¹⁰ Federal Constitutional Court, Decision of 14 May 1996, 2 BvR 1516/93.

States.²¹¹ 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.²¹²

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

- | | | |
|---|-------------------------------------|--|
| 1. In practice, are most asylum seekers detained | | |
| ❖ on the territory: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ at the border: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Are asylum seekers detained in practice during the Dublin procedure? | <input type="checkbox"/> Frequently | <input checked="" type="checkbox"/> Rarely |
| | <input type="checkbox"/> Never | |
| 3. Are asylum seekers detained during a regular procedure in practice? | <input type="checkbox"/> Frequently | <input checked="" type="checkbox"/> Rarely |
| | <input type="checkbox"/> Rarely | <input checked="" type="checkbox"/> 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 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 “to be disregarded” or as manifestly unfounded.²¹³

This form of detention of asylum seekers may particularly be relevant in “Dublin cases” if the border police has detained an applicant, e.g. because of illegal border crossing, and has already initiated a “Dublin procedure”.²¹⁴

²¹¹ Hilfe für Menschen in Abschiebehaft Büren (Support for humans in detention pending deportation in Büren), (public) E-mail of 19 October 2015.

²¹² Jesuiten-Flüchtlingsdienst (Jesuit Refugee Service), Newsletter October 2015, 2.

²¹³ Section 14(3) Asylum Act.

²¹⁴ Peter Fahlbusch, *Haft in Verfahren nach der Dublin II-Verordnung* (Detention in the context of the Dublin procedure), *Asylmagazin* 9/2010, 289-295; Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, 68.

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 III 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 XIV, 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 new law which took effect on 1 August 2015. They are listed in Section 2 XIV 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 XV 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:

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.²¹⁵ 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 (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”.²¹⁶ 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.²¹⁷ 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 deportation only in exceptional cases and only for as long as it is adequate considering the well-being of the child.”²¹⁸

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.²¹⁹

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

²¹⁵ 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.

²¹⁶ Federal Supreme Court (Bundesgerichtshof), Decision of 26 June 2014 – V ZB 31/14 – ASYLMAGAZIN 9/2014, 315-318.

²¹⁷ CJEU, Joined Cases C-473/13 and C-514/13 *Bero v Regierungspraesidium Kassel & Bouzalmane v Kreisverwaltung Kleve*, Judgment of 17 July 2014.

²¹⁸ Section 62 I Residence Act.

²¹⁹ Pro Asyl, ‘Abschiebungshaft: Zu schnell, zu oft, zu lange’ (Detention pending deportation: too hastily, too often, too long), 13 September 2012; cf also preliminary remarks of the inquiring party to Federal Government of Germany, *Response to information request by the parliamentary group of “The Left” party/Die Linke*, 7 January 2014, No. 18/249, 1.

end the foreigner’s stay are imminent”.²²⁰ 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.²²¹ In particular, these further sanctions may consist of reporting duties, but also of an obligation to consult a counselling service for returnees.²²² Passports of foreigners obliged to leave the country can be confiscated.²²³ 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.²²⁴ However, the law does not allow for security deposits which may be used as bail and confiscated in cases of “absconding”.²²⁵

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.²²⁶ 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 above) since the summer of 2014.

In spite of this, the number of deportations has risen considerably. According to media reports, 8,178 deportations took place in the in the first half of 2015, an increase of 42% compared to the first half of 2014. The most likely explanation for this apparent contradiction is that authorities increasingly enforce deportations within one day, so only a few hours pass between arrest and departure. In this manner the police can take persons who are obliged to leave the country into custody and authorities do not have to apply to a court to issue a detention order.

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

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 I 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.”

²²⁰ Section 61 I(c) Residence Act.

²²¹ Section 61 I(e) Residence Act.

²²² Section 46(1) General Administrative Regulations relating to the Residence Act.

²²³ Section 50 V Residence Act.

²²⁴ Section 66 V Residence Act.

²²⁵ 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.

²²⁶ 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.

Before 2011, several hundred cases of detention of minors were recorded, but the numbers have been much lower since then.²²⁷ The majority of the cases at the time were considered to be “Dublin cases”. No recent cases of detention of minors have been reported. A parliamentary request from January 2015 to release detailed recent statistics has not been answered by the government as at November 2015.²²⁸

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.²²⁹

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 recent figures on the average length of detention of asylum seekers are available.

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)? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

National law only provides basic rules for detention centres. As a result, conditions differ very much throughout the country.²³⁰

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.²³¹ 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, the Federal State of **North Rhine-Westphalia** announced that the prison of Büren, used before as detention facility both for criminal convicts and for

²²⁷ 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.

²²⁸ Parliamentary request no. 18/3769 of 16 January 2015, not answered according to the Parliament's information system DIP.

²²⁹ 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.

²³⁰ Jesuit Refugee Service, *Detention in Europe: Germany*, available at: www.detention-in-europe.org.

²³¹ CJEU, Joined Cases C-473/13 and C-514/13 *Bero v Regierungspraesidium Kassel & Bouzalmane v Kreisverwaltung Kleve*, Judgment of 17 July 2014.

deportees, was turned into a specialised detention facility uniquely for deportees.²³²

The Federal State of **Schleswig-Holstein** closed down its detention facility for deportees permanently at the end of October 2014, announcing that deportees would be detained in the facilities of other states in the future.²³³

As a result of the CJEU ruling in *Bero & Bouzalmate* and the ruling of the Federal Supreme Court of 26 June 2014,²³⁴ 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.²³⁵

In October 2015, the NGO “Hilfe für Menschen in Abschiebehaft Büren” (“Support for humans in detention pending deportation in Büren”) reported that there were fewer than 90 persons detained throughout Germany for the purpose of forceful removal. The NGO’s compilation shows regional discrepancies, with the Federal State of **North Rhine-Westphalia** accounting for more than half of the number of detainees (50), while no persons at all were in detention pending deportation in at least 6 out of 16 Federal States.²³⁶

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 |
| 2. 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 |

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. The “National Agency for the Prevention of Torture” reports that in one facility (*Eisenhüttenstadt* in the state of **Brandenburg**) staff is almost entirely made up of employees of a private security company who did

²³² Ministry of the Interior of the Federal State of North Rhine-Westphalia, Press release of 28 November 2014, available at: <http://bit.ly/1dW0e5P>.

²³³ Flüchtlingsrat (Refugee Council) Schleswig-Holstein, Press release of 1 October 2014, <http://bit.ly/1M1GnAa>.

²³⁴ Federal Supreme Court (Bundesgerichtshof), Decision of 26 June 2014 – V ZB 31/14 – ASYLMAGAZIN 9/2014, 315-318.

²³⁵ Jesuiten-Flüchtlingsdienst/Jesuit Refugee Service Germany. Info-Brief (Newsletter) November 2014, <http://bit.ly/1HXzd0a>.

²³⁶ Hilfe für Menschen in Abschiebehaft Büren (“Support for humans in detention pending deportation in Büren”), (public) E-mail of 19 October 2015.

not have any training in the penitentiary system. In contrast, the National Agency also notes that other institutions are “well-staffed” (**Berlin**) and that in other facilities staff has been chosen with care to meet the requirements of detention pending deportation (**Büren, North Rhine-Westphalia; Rendsburg, Schleswig-Holstein**).²³⁷

An extensive study on conditions in facilities of “detention pending deportation” (*Abschiebungshaft*) was published in June 2013 by NGOs Pro Asyl and Diakonie Hessen and Nassau. This report is based on visits to 13 facilities which took place in the second half of 2012.²³⁸ It should be noted that some of the facilities referred to in this study are not used for “detention pending deportation” any longer. Still, the observations apply to several facilities which are still operational. As regards detention conditions, the authors quote from one of the CPT reports mentioned above, according to which “...care should be taken in the design and layout of the premises to avoid as far as possible any impression of a prison environment.”²³⁹ According to the study, this requirement is not implemented in the detention facilities which the authors visited:

“In all facilities – including the four institutions which were exclusively used for detention pending deportation – the predominant impression is that one is confronted with a prison atmosphere. Appearances in all facilities are as follows: enforcement (of deprivation of liberty) in cells, locked corridors or sections, a predominantly heavy regimentation of movement within the facility, inadequate social support and recreational activities, plus largely missing opportunities of the inmates to organise their daily activities on their own. Within this framework, it is the more critical if people detained for the purpose of deportation are placed in penal institutions, since they are subject to the security regime of a normal prison.”²⁴⁰

The study draws particular attention to the situation of women, families, children and transgender or transsexual persons in detention pending deportation:²⁴¹

- The low number of detained women may lead to a situation in which women find themselves in a situation close to “solitary confinement”. For instance, a Chinese woman, who could not properly communicate with staff without an interpreter, was alone in the women's section of one facility for over three weeks. Only two facilities have sections in which spouses or families can be placed together. In other Federal states spouses and/or families are separated when arrested since women and men are detained in different facilities.
- According to the study, fewer children had been detained recently in comparison to earlier years (61 cases in 2011 as compared to 214 cases in 2008).²⁴² German law states that children shall only be detained under the conditions of Art. 17 of the Return Directive, i.e. only as a measure of last resort and for the shortest appropriate period of time. In addition, facilities have to take into account “the needs of persons of their age”, including access to education (depending on

²³⁷ Nationale Stelle zur Verhütung von Folter, Jahresbericht 2013 (Annual Report 2013), April 2014, pp. 23 and 50. The National Agency for the Prevention of Torture is an advisory board of the German government established under the UN Convention Against Torture.

²³⁸ 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.

²³⁹ 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, p. 27.

²⁴⁰ 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, p. 15.

²⁴¹ *Ibid*, pp. 11-13.

²⁴² Figures quoted from a response by the Federal Government of Germany to an information request in parliament. It has to be noted that all numbers concerning detention pending deportation are incomplete since some Federal States did not make available the necessary information; 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, p. 12.

the length of the stay) and to recreational activities appropriate to their age. In the light of this provision courts (including the Federal Supreme Court / *Bundesgerichtshof*) have repeatedly declared detention of children unlawful.²⁴³ No cases of minors being detained for detention purposed have been reported in recent years.

Furthermore, the study shows that enormous differences exist between facilities with regard to several aspects of detention conditions:²⁴⁴

- Bath and toilet facilities: Standards are described as “extremely different” depending on the overall state of the buildings. In one prison showers were reported to be “in a desolate state” and they were only accessible to the prisoners twice a week.
- Food is provided by the prison kitchen or by caterers. With some exceptions detainees are generally not allowed to prepare their own food.
- Restrictions of movement: Doors to the corridors or to a section of the building are open in most facilities for a duration ranging between 4.5 and 24 hours per day. However, it was also reported that in one prison doors to the corridors were never opened but inmates had to contact prison staff in order to be left out of their cells. Access to the yards was granted for only one hour in some facilities and for up to eight hours in others.
- Visiting hours and means of communication: In some facilities visiting hours were extremely restricted (e.g. only one hour per week in one prison), in others visits were allowed at all times after prior notification. Equally different were the policies regarding use of phones or mobile phones: While some facilities did not allow for the use of mobile phones at all (only the use of public phones is possible in these institutions), the use of mobile phones was permitted without restrictions in other facilities.
- Social support and access for NGOs and lawyers: In two out of the 13 institutions, which were considered for the study, no social support existed for the inmates, in two others social support was allegedly provided by staff of the prison administration. In nine institutions social workers were present to varying degrees. Only in three institutions a regular and professional advice service for inmates was provided by NGOs, in most others, volunteers or prison chaplains could be asked for advice at least to a limited degree. In three institutions no counselling services were available at all.
- Health care: In general, all facilities provide the opportunity to see a doctor if necessary, but in most cases no interpreter is present during consultation with medical staff. In response to an information request in the German parliament,²⁴⁵ all Federal States reported that a medical screening took place in the course of reception at the facilities and that measures were in place to identify vulnerable persons or other persons with special needs. However, the study comes to the conclusion that these measures are ineffective:

“Apparently the screening process does not lead to the identification of the groups of person referred to here. In all interviews [with prison staff] we were told that traumatised persons did not play a role in the daily routine of the prisons.”²⁴⁶

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. “NGOs Pro Asyl and Diakonisches Werk report that in spite of this provision it proved impossible to visit three

²⁴³ Cf. Federal Supreme Court (Bundesgerichtshof), decision of 7 March 2012 - V ZB 41712 - asyl.net, M19452; Regional Court (Landgericht) Passau, decision of 24 July 2012 – 2 T 113/12 – asyl.net, M19979.

²⁴⁴ 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, p. 12, pp. 16-28.

²⁴⁵ Federal Government of Germany, *Response to an information request by the parliamentary group of The Green Party/Die Grünen*, No. 17/7442, 5 September 2012.

²⁴⁶ 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, 26.

facilities (all in the Federal State of Bavaria) since the responsible authorities stated that there was no time to meet the NGOs.²⁴⁷ In general, other visitors (media or politicians) have to apply for permission to see the facilities as well.

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*).

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.²⁴⁸ 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.²⁴⁹ 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 these regulations, 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.²⁵⁰

²⁴⁷ *Ibid.*

²⁴⁸ Bundesgerichtshof (Federal Supreme Court), Decision of 18 April 2013 - V ZB 67/12 – (asyl.net, M20735).

²⁴⁹ Bundesgerichtshof (Federal Supreme Court), Decision of 1 July 2011 - V ZB 141/11 – (asyl.net, M18726).

²⁵⁰ Peter Fahlbusch, *Haft in Verfahren nach der Dublin II-Verordnung* (Detention in the context of the Dublin procedure), Asylmagazin 9/2010, 289-295.

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?
 Yes No
2. Do asylum seekers have effective access to free legal assistance in practice?
 Yes 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.²⁵¹ 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.

²⁵¹ Section 14(3) Asylum Act.

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 ²⁵²	< http://bit.ly/1eVWZfC > (DE)
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015	20 October 2015	Asylum Procedures Acceleration Act	< http://bit.ly/1PVCs9T > (DE)
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	5 November 2014	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	< http://bit.ly/1RtlQlb > (DE)
		20 October 2015	Asylum Procedures Acceleration Act	< 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/1lbaPmO > (DE)

²⁵² For an overview of amendments, see Informationsverbund Asyl & Migration, *Übersichten zu den gesetzlichen Neuerungen ab 1. Dezember 2013*, Asylmagazin 12/2013, available in German at: <http://bit.ly/1HYmQyW>; *Änderungen im Flüchtlingsrecht durch das Richtlinienumsetzungsgesetz 2013*, available in German at: <http://bit.ly/1Lba2X4>.