

Country Report: Germany



2017
Update



Acknowledgements & Methodology

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

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

The information in this report is up-to-date as of 31 December 2017, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 20 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Glossary

Arrival centre	<i>Ankunftszentrum</i> – Centre where various processes such as registration, identity checks, interview and decision-making are streamlined in the same facility. Around 26 branch facilities of the BAMF operate as arrival centres .
Arrival certificate	<i>Ankunftsnachweis</i> – Certificate received upon arrival in the arrival centre. This replaced the BÜMA in 2016.
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.
Geographical restriction	Also known as “residence obligation” (<i>Residenzpflicht</i>), this refers to the obligation on asylum seekers to stay in the district of the Federal State where they have been assigned for a maximum period of 6 months, pursuant to Section 56 Asylum Act . Derogations apply for applicants who are obliged to stay in initial reception centres for the entire asylum procedure or up to 24 months.
Initial reception centre	<i>Aufnahmeeinrichtung</i> – Reception centre where the BAMF branch office is located and where asylum seekers are assigned to reside.
Residence rule	<i>Wohnsitzregelung</i> – Obligation on beneficiaries of international protection to reside in the Federal State where their asylum procedure was conducted, pursuant to Section 12a Residence Act . This is different from the geographical restriction imposed on asylum seekers.
Revision	Appeal on points of law before the Federal Administrative Court.
Secondary application	Under Section 71a Asylum Act , this is a subsequent application submitted in Germany after the person has had an application rejected in a safe third country or a Dublin Member State.
Special officer	<i>Sonderbeauftragter</i> – Specially trained BAMF officer dealing with vulnerable asylum seekers.
Special reception centre	<i>Besondere Aufnahmeeinrichtung</i> – Reception centre where accelerated procedures are carried out in accordance with Section 30a Asylum Act . Two such centres exist in Bavaria at the moment (Bamberg, Manching/Ingolstadt). Special reception centres are distinct from initial reception centres.
Transit centre	<i>Transitzentrum</i> – Initial reception centre hosting asylum seekers for a period of up to 24 months, in application of Section 47(1b) Asylum Act . Three such centres exist in Bavaria at the moment (Manching/Ingolstadt, Regensburg and Deggendorf).

List of Abbreviations

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

Statistics

Overview of statistical practice

The Federal Office for Migration and Refugees (BAMF) publishes monthly statistical reports (*Asylgeschäftsbericht*) with information on applications and first instance decisions for main nationalities. More detailed information is provided in the monthly *Asylgeschäftsstatistik* and in other BAMF publications (*Bundesamt in Zahlen*).¹ Furthermore, detailed statistics can be found in responses to information requests which are regularly submitted by German members of parliament.

Applications and granting of protection status at first instance: 2017

	Applicants in 2017	Pending at end 2017	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	222,683	68,245	123,909	98,074	39,659	232,207	25.1%	19.9%	4.3%	36.8%

Breakdown by countries of origin of the total numbers

Syria	50,422	:	34,880	55,697	534	133	38.2%	61%	0.6%	0.2%
Iraq	21,930	:	24,320	14,300	1,637	22,170	39%	22.9%	2.6%	35.5%
Afghanistan	16,423	:	17,932	6,892	26,345	56,722	16.6%	6.4%	24.4%	52.6%
Eritrea	10,582	:	10,095	7,340	728	455	54.2%	39.4%	3.9%	2.4%
Iran	9,186	:	14,142	652	349	11,386	53.3%	2.5%	1.3%	42.9%
Turkey	8,483	:	3,291	141	111	6,990	31.2%	1.3%	1.1%	66.4%
Nigeria	8,261	:	1,576	275	2,169	12,611	9.5%	1.7%	13%	75.8%
Somalia	7,561	:	4,906	4,329	2,167	2,349	35.7%	31.5%	15.8%	17.1%
Russian Fed.	6,227	:	779	438	371	9,819	6.8%	3.8%	3.3%	86.1%
Undefined	4,444	:	2,633	2,710	388	3,331	29.1%	29.9%	4.3%	36.8%

Source: BAMF: <https://bit.ly/2GXQBEe>.

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

Gender/age breakdown of the total number of applicants: 2017

	Number	Percentage
Total number of applicants	222,683	100%
Men	:	:
Women	:	:
Children	:	:
Unaccompanied children	9,084	4.1%

Source: Federal Government, Reply to parliamentary question by The Left, 19/1371, 22 March 2018.

Comparison between first instance and appeal decision rates: 2017

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	603,428	100%	146,168	100%
Positive decisions	261,642	43.4%	38,486	22.2%
• <i>Refugee status</i>	123,909	20.5%	23,762	16.3%
• <i>Subsidiary protection</i>	98,074	16.3%	2,113	1.4%
• <i>Humanitarian protection</i>	39,659	6.6%	6,611	4.5%
Negative decisions, including inadmissibility	341,786	56.6%	47,140	32.3%
Termination of appeal procedure (e.g. withdrawal)			66,542	45.5%

Source: BAMF, Asylgeschäftsbericht December 2017; Federal Government, Reply to parliamentary question by The Left, 19/1371, 22 March 2018.

"Rejection" at first instance includes inadmissibility decisions and decisions to terminate the asylum procedure for other reasons (e.g. abandonment of procedures or withdrawal of application).

Overview of the legal framework

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

Title in English	Original Title (DE)	Abbreviation	Web Link
Asylum Act	Asylgesetz	AsylG	http://bit.ly/1K3bGbv (DE) http://bit.ly/2tZaS9E (EN)
Residence Act	Aufenthaltsgesetz	AufenthG	http://bit.ly/1SiAxKm (DE) http://bit.ly/1M5sZvW (EN)
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	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, detention and content of protection

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

Overview of the main changes since the previous report update

The report was previously updated in **March 2017**.

Numbers of newly arriving asylum seekers decreases significantly in comparison to 2015 and 2016, with 198,000 applicants in 2017. The asylum authorities have now managed to handle the main part of the backlog of asylum applications which had built up in previous years: At the end of 2017, about 68,000 cases were pending but only 22,000 of those concerned applications made before 2017.

Asylum procedure

- ❖ **Arrival centres:** Many applications of newly arriving asylum seekers are now processed within a short time-frame, particularly in the so-called arrival centres. In some cases, the complete asylum procedure on the administrative level, from the registration of the application to the handing out of the decision, is dealt with within three or four days.
- ❖ **Quality of decisions:** The quality of decision-making by the asylum authorities has been under particular public scrutiny following a scandal about a German soldier who had been posing as a Syrian asylum seeker, possibly with the aim of carrying out terrorist attacks under this disguise, and who had been granted protection status. Internal investigations of the authorities showed that a high percentage of asylum decisions were considered to be “implausible”. According to media reports, many decision-makers who had been hired in 2015 and 2016 had been on the job for more than a year without completing the in-house training programme. Several hundred of these decisions-makers were even reported as not having completed a single training module.
- ❖ **Dublin:** A high number of family members of asylum seekers or refugees living in Germany were transferred from Greece. According to media reports, the German government reacted to this development by limiting the number of transfers from Greece to a certain quota from April 2017 onwards. The government denied that it had formally introduced a quota, but the numbers of transfers from Greece decreased significantly in the second quarter of 2017, before they increased again towards the end of the year.

Reception conditions

- ❖ **Freedom of movement:** Following a legislative reform introduced in July 2017, Federal States are now allowed to impose an obligation on applicants to stay in “initial reception centres” for up to 24 months. In principle, Federal States are entitled to impose this restriction on all applicants, subject to some qualifications. At the end of 2017, only one Federal State (Bavaria) had made use of this new regulation by obliging asylum seekers from various countries of origin to stay in certain reception centres. These centres were designated “transit centres” by the Bavarian authorities.

Content of international protection

- ❖ **Upgrade appeal:** The high number of decisions being taken by the authorities (more than 600,000), combined with the fact that many asylum seekers such as Syria or Eritrea were granted subsidiary protection status instead of refugee status led to many appeals being filed at courts; over 70,000 such appeals were pending at the end of the year. It also led to a comparably high success rate of appeals; about 40% of appeals, if terminated procedures are not taken into account.
- ❖ **Civil registration:** Legal recognition of marriages concluded in other countries has been restricted since July 2017 by the “Law on combating child marriages”. According to this law, marriages concluded in another country are considered invalid in all cases in which one or both

of the spouses was younger than 16 years old at the time of marriage. The validity of marriages concluded in another country can be challenged by the authorities and nullified in cases in which one or both of the spouses was between 16 and 18 years old at the time of marriage. If such marriages are declared invalid, spouses below the age of 18 generally have to be treated as unaccompanied children in asylum procedures.

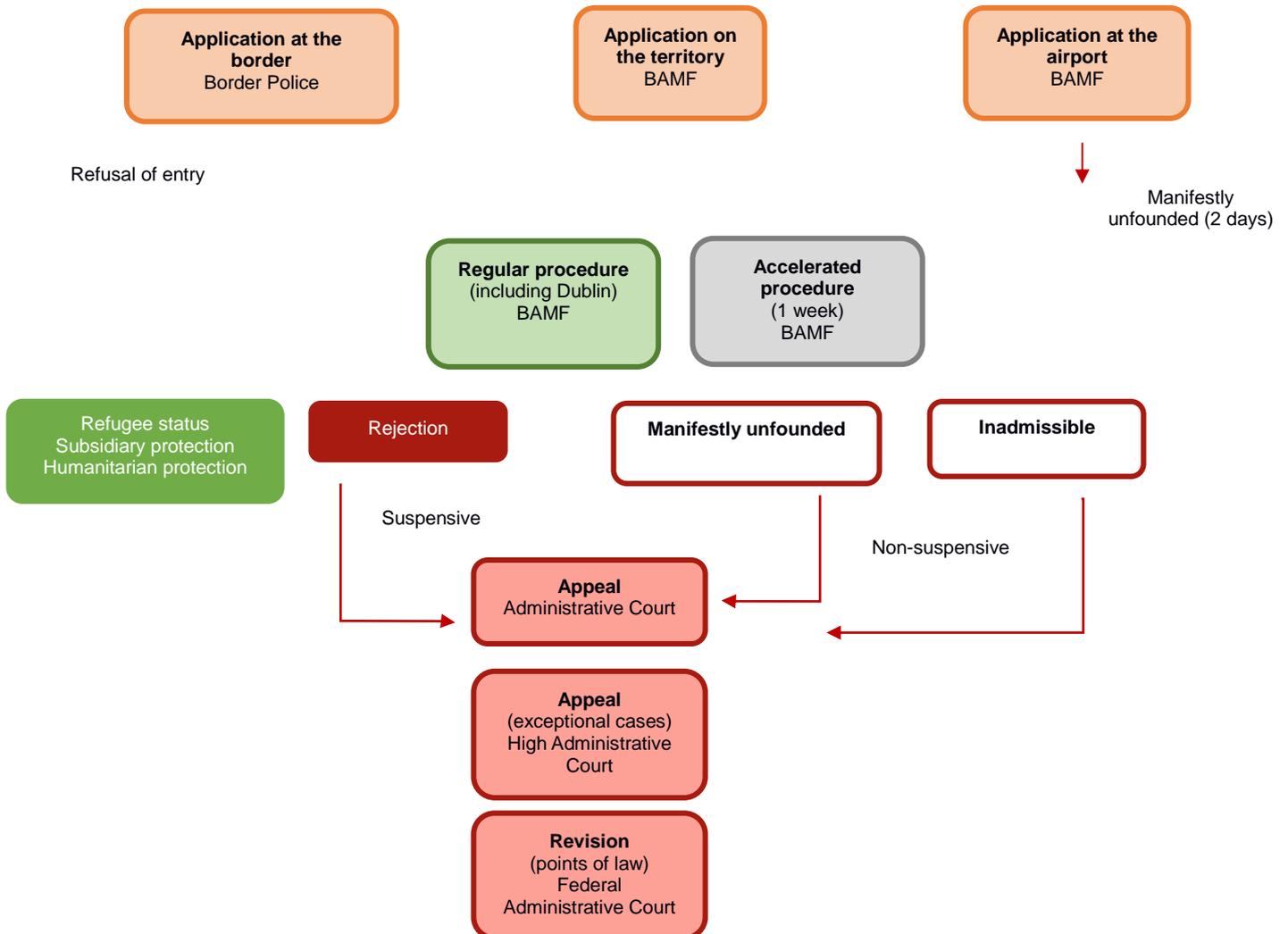
- ❖ **Family reunification:** The right to family reunification was suspended for persons with subsidiary protection status throughout 2017. It was then practically abolished for persons with this status with a new law in March 2018. According to this law, only a “humanitarian quota” of family members of persons with subsidiary protection will be allowed to move to Germany from August 2018 onwards.



Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

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

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

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

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

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

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Federal Office for Migration and Refugees (BAMF)	7,800	Federal Ministry of Interior	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

As of September 2017, the BAMF counted approximately 7,800 officials, including 2,100 decision-makers.

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

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

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

5. Short overview of the asylum procedure

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

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

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

Arrival centres: The number of “arrival centres” which enable the BAMF to fast-track asylum procedures went up to 24 at the end of 2017. In these centres, various processes such as registration, identity checks, the interview and the decision-making are “streamlined”. Fast-tracking of procedures in the “arrival centres” must not be confused with the accelerated procedure which was introduced in March 2016 in the law.

Due to another decrease in the numbers of newly arriving asylum seekers, with 198,000 applicants in 2017 in comparison to 280,000 in 2016 and 890,000 in 2015, authorities have now managed to handle the backlog of unregistered asylum applications which had built up in 2015. At the end of 2017, about 68,000 cases were pending but only 22,000 of those concerned applications made before 2017.

Accelerated procedure: This accelerated procedure can be carried out *inter alia* for asylum seekers from “safe countries of origin” and for asylum seekers who have deliberately misled the authorities about their identity. Asylum seekers processed in the accelerated procedure shall be accommodated in “special reception centres” (*besondere Aufnahmeeinrichtung*) in which they have to stay for the duration of the accelerated procedure. However, at the end of 2017 only two special reception centres existed and both were functioning as “special” and “regular” reception centres simultaneously. No figures were provided by the authorities as to how many accelerated procedures had been carried out in these centres.

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

1. Constitutional asylum (restricted to people persecuted by state actors for political reasons);
2. Refugee status (according to the 1951 Refugee Convention and to the Qualification Directive);
3. Subsidiary protection; and/or
4. Other forms of protection, called prohibition of deportation (*Abschiebungsverbot*).

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

In a considerable number of cases, that is 109,476 (18.1%) in 2017, 87,697 (12.6%) in 2016 and 50,297 (17.8%) in 2015, a “formal decision” – including inadmissibility decisions – was taken, which means that the case was closed without an examination of the asylum claim’s substance. In many instances such formal decisions are issued because another state was found to be responsible for the asylum application under the criteria of the Dublin Regulation.

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

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

B. Access to procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

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

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

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

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

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

remedy as regulated in the Dublin Regulation, were adhered to in these return procedures.⁷ The government clarified in 2017 that Dublin procedures at the borders are conducted by the BAMF (see [Dublin: Procedure](#)).

2. Registration of the asylum application

Indicators: Registration

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

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

Since 2013, asylum seekers should not be sent back to neighbouring countries without their applications having been registered. It is not clear, though, whether this practice is actually applied in all cases: even if migrants have crossed the border, which is defined as a 30 km strip, on the basis of a legal fiction laid down in the Residence Act, they have not necessarily entered the territory,⁹ and it is possible that a removal to the neighbouring state (*Zurückweisung*) is still carried out at this point. The border police (Federal Police) claims that no returns of people who make it clear that they intend to apply for asylum take place at the borders, but there seems to be an increasing number of cases in which asylum seekers are detained by the border police and a Dublin procedure is initiated which may lead to a transfer to another country (see [Access to the Territory](#)). In these cases, asylum applications are automatically rejected as inadmissible as part of the “Dublin decision”. This means that the substance of a possible asylum claim is not examined. However, if the transfer to the responsible Member State cannot be executed, the asylum seeker has to be given the opportunity to enter the regular procedure which includes the substantive examination of the application.

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 foreigners’ authorities.¹⁰ There is no strict definition of an “immediate” application and there are no exclusion rules for applications which are filed at a later date. However, a delay in filing the application may be held against the asylum seeker in the course of the asylum procedure, unless reasonable justification for the delay is brought forward.

Only the BAMF is entitled to register an asylum application. Hence an asylum seeker reporting to the police or to another authority will be referred to the BAMF. Persons who intend to apply for asylum do not have the legal status of asylum seekers as long as they have not arrived at the responsible branch of the BAMF and until their applications have been registered. Asylum seekers are obliged to appear in person without delay or on the date determined by the authorities at the responsible branch office of the BAMF. Asylum seekers who fail to comply with this obligation face the sanction of “failure to pursue” the asylum procedure. The asylum procedure thus can be abandoned before it has begun.¹¹

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

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

⁹ Section 13(2) Residence Act.

¹⁰ Section 13 Asylum Act.

¹¹ Sections 20, 22 and 23 Asylum Act.

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

The backlog of unregistered asylum applications built up in 2015 has been dealt by now and no problems with delayed registration of applications have been reported in 2017, against the backdrop of a comparative low number of applications.

Asylum seekers who report at an initial reception centre have to be issued an “arrival certificate” (*Ankunftsnachweis*). However, the law does not indicate which document (and which legal status) asylum seekers have before they arrive at these centres. In practice, this uncertainty does not seem to lead to serious problems any longer, since reception and registration in the initial reception centres are usually taking place within a few days, in contrast to the situation in 2014 and 2015.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

- | | |
|--|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: | None |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance of 31 December 2017: | 68,245 |

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.

Many decision-makers have not completed the training modules as the BAMF in-house training programme could not keep up with the high number of newly employed staff members. According to a media report, based on information submitted by the BAMF, 454 decision-makers had not received any kind of relevant training in May 2017, although most of them had been handling asylum applications for many months at the time. As of February 2018 the number of decision-makers without any relevant training had been reduced to 36, according to the report. Nevertheless, 769 out of 2,139 staff members who were deciding on asylum applications at the time of February 2018 had not completed the full training programme.¹³

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

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

¹³ Wirtschaftswoche, ‘Eine Behörde arbeitet für die Statistik’, 4 February 2018, available in German at: <http://bit.ly/2oSbU2f>.

¹⁴ Section 24(4) Asylum Act.

The overall number of pending applications at the Federal Office was at 68,245 at the end of 2017. This represents a decrease of 84.3% from 433,719 applications pending at the end of 2016.¹⁵

According to the German government, the average time of asylum procedures up to a legally binding decision was at 7.8 months in 2017, compared to 7.1 months in 2016.¹⁶

Preliminary figures show that the duration of asylum procedures has increased considerably in 2017, reaching an average of 10.7 months according to media reports. The BAMF states that this is due to the high number of procedures pending for a long time which were finally processed in 2017.¹⁷ On the other hand, the duration of asylum procedures at BAMF level has been considerably reduced for newly arriving asylum seekers. The BAMF claims that applicants arriving after 1 January 2017 have been subject to procedures lasting on average 2.3 months in 2017.¹⁸ More detailed figures on the duration of procedures for the whole of 2017 were not available at the time of writing.

For the years 2013 to 2017, statistics show significant variation in length of procedures, depending on the countries of origin of asylum seekers:

Average duration of the procedure (in months) per country of origin					
	2013	2014	2015	2016	2017 Q3
All countries	7.2	7.1	5.2	7.1	10.0
Serbia	2.1	4	4.2	8.9	:
Afghanistan	14.1	13.9	14.0	8.7	13.1
Syria	4.6	4.2	3.2	3.8	6.1
Iraq	9.5	9.6	6.8	5.9	8.0
FYROM	2.4	5.3	4.5	:	:
Iran	13	14.5	17.1	12.3	10.6
Pakistan	15	15.7	15.3	15.5	13.3
Russia	5.6	10	11.8	15.6	14.3

Source: Federal Government, Response to parliamentary questions by The Left: 18/705, 5 March 2014; 18/3580, 28 January 2015; 18/7625, 22 February 2016; 18/11262, 21 February 2017, 19/185, 7 December 2017.

Since 2016, branch offices of the BAMF are entitled to set their own priorities in dealing with caseloads, in order to respond effectively to the local situation.¹⁹ “Clustering” of cases, which had been introduced in late 2015 and which meant that both caseloads with an alleged high and those with an alleged low success rate would be prioritised, does not take place anymore, according to information submitted by the BAMF.²⁰

1.2. Prioritised examination and fast-track processing (“arrival centres”)

The arrival centres (*Ankunftscentren*) were introduced in December 2015 with the aim of fast-tracking procedures. 25 out of approximately 65 branch offices of the BAMF were functioning as arrival centres at the end of 2017.²¹ The concept of arrival centres is not based in law but has been developed by business

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

¹⁶ Federal Government, Response to parliamentary question by The Left, 19/1371, 22 March 2018, 42; 18/11262, 21 February 2017, 13.

¹⁷ Deutsche Welle, ‘Asylverfahren dauern fast elf Monate’, 11 January 2018, available in German at: <https://bit.ly/2GrAXzQ>.

¹⁸ Information provided by the BAMF, 23 January 2018.

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

²⁰ Information provided by the BAMF, 23 January 2018.

²¹ BAMF, *Locations*, 16 January 2018, available at: <http://bit.ly/2nvMMQs>, which lists about 55 “branch offices” or “regional offices” in addition to the arrival centres, with some offices having both functions. In total, there

consultants under the heading “integrated refugee management”.²² Accordingly, this method for fast-tracking of procedures must not be confused with the [Accelerated Procedure](#) introduced into law in March 2016.

In the arrival centres, tasks of various authorities are “streamlined”, such as the recording of personal data, medical examinations, registration of the asylum applications, interviews and decision-making.

The BAMF claims that its staff in the so-called arrival centres is now able to deal with applications from many different countries of origin. Therefore, many applications can be dealt with in the arrival centres and the respective cases do not have to be referred to other offices of the BAMF. On average, the duration of asylum procedures at first instance thus has been reduced to 2.3 months for newly arriving asylum seekers in 2017, according to the BAMF.²³

The procedure, as it has developed at the **Berlin** arrival centre, has been described in detail by the Berlin Refugee Council in November 2017. According to its report, a typical fast-track procedure called “direct procedure” (*Direktverfahren*) in the arrival centre may lead to a decision within four days:²⁴

Day 1 Asylum seekers who report to the authorities are sent to a central accommodation centre, situated in a hangar of the former Tempelhof airport, where they are registered preliminarily and are given instructions on the next steps of the procedure.

Day 2 Asylum seekers are transported by bus to the central office of the arrival centre where the following steps take place: (a) medical examination; (b) formal registration, including identification checks, possible confiscation of documents and mobile phones; (c) decision on whether the asylum procedure is to be carried out in Berlin or in another Federal State, according to the “EASY” distribution system (see [Freedom of Movement](#)).

If it has been established that the asylum procedure is to be carried out in the Federal State of Berlin, the asylum seekers are issued an arrival certificate (*Ankunftsnachweis*) and given various leaflets and instructions on the asylum procedure (see [Provision of Information on the Procedure](#)).

Asylum seekers whose procedure is carried out in Berlin are given the opportunity to speak to a staff member of the Federal State’s social services (*Sozialdienst*). The social services then carry out a consultation interview which lasts between 20 and 30 minutes. They also hand out further leaflets, including information on counselling services offered by NGOs and also basic advice on the interview in the asylum procedure published by Informationsverbund Asyl und Migration. If the social services find that an asylum seeker has special needs reception needs – e.g. single women, persons with physical disabilities or illnesses, LGBTI persons – they try to organise special accommodation on the same day. If there are indications that an asylum seeker is suffering from a severe illness, this person is referred to further medical examinations and the interview in the asylum procedure is postponed. In other cases the social services may also inform the BAMF that the interview should be carried out by a “special officer” (see [Special Procedural Guarantees](#)). Furthermore, asylum seekers are handed out some cash and a travel card for local public transport, valid for three months.

are about 65 offices of the BAMF. However, this number includes so-called “interview centres” and “decision-making centres” as well as “processing lines” at the border and a “waiting room” (at **Munich** airport, for people arriving in the course of relocation or resettlement).

²² These include McKinsey, Roland Berger and Ernst & Young: BAMF, ‘Viele helfende Hände – für den gemeinsamen Erfolg’, 22 March 2016, available in German at: <http://bit.ly/2Hbd1Ru>. See further Washington Post, ‘How McKinsey quietly shaped Europe’s response to the refugee crisis’, 24 July 2017, available at: <http://wapo.st/2HdDq0P>.

²³ Information provided by the BAMF, 23 January 2018.

²⁴ Flüchtlingsrat Berlin, *Das Schnellverfahren für Asylsuchende im Ankunftszentrum Berlin*, November 2017, available in German at: <http://bit.ly/2HdSDzb>.

Day 3 Asylum seekers are again transported by bus to the central office of the arrival centre where the asylum application is now formally registered by the BAMF. The arrival certificate is then replaced with the “residence permit for asylum seekers” (*Aufenthaltsgestattung*). If the “direct procedure” applies, the **Personal Interview** can be carried out on the same day.

Day 4 It is possible that the decision is handed out on the fourth day. If protection is granted, a residence permit can be applied for on the same day. If the asylum application has been rejected, staff members of the authorities explain the reasons for the decision. The Berlin Refugee Council notes that this explanation does not include any advice on appeal procedures, however. In contrast, rejected asylum seekers may contact an advice service on voluntary return immediately.

In any case, regardless of the outcome of the procedure, asylum seekers should be referred to a different reception centre within the Federal State of Berlin.

The “direct procedure” described here shall only apply in “clear-cut” cases, in which protection can be ‘easily’ recognised or rejected. Between September 2016 and March 2017, 21.3% of cases in **Berlin** were classified as being eligible for the direct procedure. In contrast, the regular procedure has to take place in the following instances:

- The facts of the case cannot be established immediately, but further examinations are necessary;
- The applicant states he or she is not able to be interviewed for physical or mental reasons;
- A “special officer” should be consulted but is not readily available;
- The applicant states that a severe illness prevents him or her from returning to their country of origin. In these cases, the applicant should be given four weeks to undergo further medical examinations and to obtain a qualified medical report;
- The applicant has already appointed a lawyer, in which case the interview should take place on a date which enables the lawyer to attend;
- The applicant falls within the scope of the **Dublin** procedure;
- The applicant is an unaccompanied child.

It should be noted that there are considerable variations to the procedure in the various arrival centres. In particular, there is no common approach on access to social services or other counselling institutions, while in many arrival centres no such access exists. This is dependent on how the Federal States and the BAMF have organised the procedure in the respective centres.

Until 2017, streamlining of procedures also took place with the method of “clustering” cases into: caseloads with a high protection rate; caseloads with a low protection rate; and “complex cases”. This method has been abandoned in 2017 and since then, the arrival centres decide depending on capacities whether and to what extent asylum procedures are fast-tracked.

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

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

In the regular procedure, the BAMF conducts an interview with each asylum applicant.²⁵ Only in exceptional cases may the interview be dispensed with, where:

²⁵ Sections 24 and 25 Asylum Act.

- (1) The Federal Office intends to recognise the entitlement to asylum on the basis of available evidence;
- (2) The applicant claims to have entered the territory from a [Safe Third Country](#);²⁶
- (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;²⁷ or
- (4) The applicant fails to appear at the interview without an adequate excuse.²⁸

Between November 2014 and throughout 2015, written procedures, in which the interview was omitted, regularly took place for groups of asylum seekers with good prospects of being recognised as refugees. However, the written procedures were abandoned during 2016. From January 2016 onwards, only asylum seekers whose applications had been filed in 2015 were allowed to participate in the written procedure, while newly arriving asylum seekers were referred to the ‘normal’ asylum procedure. The main reason for the abandonment was a change in the decision-making practice of the BAMF, which increasingly granted subsidiary protection status instead of refugee status to asylum seekers from Syria, in the context of a law suspending family reunification for people with subsidiary protection status for the duration of two years (see [Content of Protection](#)). Since it was not possible to differentiate between refugee status and subsidiary protection status in the written procedures, this practice was cancelled in 2016.²⁹

Interpretation

The presence of an interpreter at the interview is required by law.³⁰ The BAMF recruits its own interpreters on a freelance basis.

According to a newspaper report from August 2016, interpreters at the BAMF have been accused of manipulating asylum procedures to the detriment of asylum seekers. In particular, reference was made to the case of an Eritrean interpreter, allegedly supporting the Eritrean government. Several asylum seekers alleged that he had distorted statements which resulted in Eritreans being registered as “persons with unknown nationality”. In the same report, it was alleged that quality control of interpreters was virtually non-existent at the time, but that the BAMF was planning to introduce in-house training for interpreters on “neutrality and professionalism”.³¹

In 2017, the BAMF announced that procedures for the deployment of interpreters have been revised. For example, a new training programme of online modules and in-house trainings has been established. Both experienced and newly employed interpreters are required to complete the training programme. Apart from basic information on the asylum procedure and general communication skills, several training modules are supposed to deal with specifics of the asylum interview such as the “role of the interpreter during the interview” or “handling psychological burden caused by asylum seekers’ traumatic backgrounds”. Interpreters for many languages now need advanced German language skills; level C1 of the Common European Framework of Reference for Languages. Moreover, the BAMF has stated that a system for complaint management in the context of interpretation at the BAMF has been established.³²

²⁶ 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.

²⁷ Section 24(1) Asylum Act.

²⁸ Section 25 Asylum Act.

²⁹ Asylmagazin, ‘Änderungen in der Entscheidungspraxis des BAMF’, No 4-5/2016, 97.

³⁰ Section 17 Asylum Act.

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

³² BAMF, ‘Online-Videotraining für Sprachmittler gestartet’, 28 September 2017, available in German at: <http://bit.ly/2oWwbTH>.

Transcript of the interview

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

In spite of this, alleged mistakes in the transcript frequently give rise to disputes at later stages of the asylum procedure. For instance, doubts about the credibility of asylum seekers are often based on their statements as they appear in the transcript. However, it is possible that the German wording of the transcript reflects mistakes or misunderstandings which were caused by the translation. For example, the transcript is usually translated (orally) once more at the end of the session by the same interpreter who has been present during the interview as well. On this occasion, it is more than likely that interpreters repeat the mistakes they made during the interview and it is thus impossible for the asylum seeker to identify errors in the German transcript which result from the interpreters' misunderstandings or mistakes. It is very difficult to correct such mistakes afterwards, since the transcript is the only record of the interview. The tape recording of the interview is deleted.

Furthermore, asylum seekers are frequently asked if the retranslation of the transcript may be dispensed with. Few asylum seekers insist on the retranslation, therefore mistakes in the transcript go unnoticed, as reported in observations from a network of 12 German NGOs ("Memorandum Alliance").³³

In November 2016, an alliance of 12 German NGOs published a "Memorandum to enhance fair and diligent asylum procedures in Germany". Based on an analysis of transcripts, decisions and reports from lawyers and NGOs, several recurring deficiencies were identified and observed in the interviews in asylum procedures at the BAMF:³⁴

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

The Memorandum concludes that these problems cannot only be attributed to the high number of applications that the BAMF had to deal with since 2014, as many of the flaws have been criticised by NGOs for many years. However, the report states that the quality of procedures has deteriorated considerably in recent years, partially due to a large number of new staff members at the BAMF who were deployed with insufficient training.³⁵ These new staff members often do not decide on applications, but only carry out the interviews. The protocols of their interviews are sent to decision-makers who decide on a large number of cases without having met the applicants in person.³⁶ In such cases, deficiencies during

³³ Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland: Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, available in German at: <http://bit.ly/2gZGhBq>, 18-19.

³⁴ *Ibid*, 15-19.

³⁵ *Ibid*, 5.

³⁶ No exact statistics are available on procedures, in which interviews and decision-making are not carried out by the same person. However, according to government figures, more than 66% of decisions were taken in so-called "decision-making centres" in 2016. Transcripts of interviews are sent to these centres, in which more experienced staff members usually decide on the application only on the basis of the transcript: Federal Government, Response to parliamentary question by The Left, 18/11262, 21 February 2017, 77-78.

the interview and mistakes in the transcripts might have particularly severe consequences for the outcome of the asylum procedure.³⁷

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.³⁸

Video recordings of interviews do not take place. Video conferencing was used, albeit rarely,³⁹ until 2013, but its use seems to have been abandoned completely since then. Audio or video recording or video conferencing is not used in appeal procedures either.

1.4. Appeal

Indicators: Regular Procedure: Appeal

- | | | |
|---|--|---|
| 1. Does the law provide for an appeal against the first instance decision in the regular procedure? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ 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: | 7.8 months | |

1.4.1. Appeal before the Administrative Court

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

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

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

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

³⁷ Frankfurter Rundschau, ‘Da wird nicht nachgefragt’, Interview with lawyer Reinhard Marx, 26 May 2015.

³⁸ The government estimates that in 25% of asylum cases the staff member conducting the interview is not the staff member deciding on the application: Federal Government, Reply to parliamentary question by The Left, 18/5785, 18 August 2015, 47.

³⁹ Katharina Stamm, ‘Videokonferenztechnik im Asylverfahren – warum sie unzulässig ist’, *Asylmagazin* 3/2012, 70; Federal Government, Response to parliamentary question by The Left, 17/8577, 10 February 2012, 22.

The short deadlines in these rejections are often difficult to meet for asylum seekers and it might be impossible to make an appointment with lawyers or counsellors within this timeframe. Therefore it has been argued that the 1-week period does not provide for an effective remedy and might constitute a violation of the German Constitution.⁴⁰ In any case, suspensive effect is only granted in exceptional circumstances.

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

In 2017, the average processing period for appeals was 7.8 months, up from 7.6 months in 2016,⁴¹ but it has to be taken into account that a high number of appeal procedures (45.5%) were terminated without an examination of the substance of the case, and accordingly, without a hearing at the court; e.g. if the appeal was withdrawn by the asylum seeker or if an out-of-court settlement is reached between the asylum seeker and the BAMF. Therefore, it has to be assumed that the average period for appeals is considerably longer than 7.8 months, if the court decides on the merits of the case.

The average duration of appeal procedures is likely to increase significantly due to a dramatic increase in the number of appeals filed in 2017. At the end of the year, 361,059 cases were pending before the Administrative Courts, compared to 131,856 cases at the end of November 2016.⁴²

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.

1.4.2. Onward appeal

The second appeal stage is the High Administrative Court (*Oberverwaltungsgericht* or *Verwaltungsgerichtshof*); the latter term is used in the Federal States of **Bavaria**, **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 have merged their High Administrative Courts since 2005. High Administrative Courts review the decisions rendered by the Administrative Court both on points of law and of facts.

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

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

⁴⁰ See more references in Dominik Bender and Maria Bethke. “Dublin III', Eilrechtsschutz und das Comeback der Drittstaatenregelung.”, *Asylmagazin* 11/2013, 362.

⁴¹ Federal Government, Response to parliamentary question by The Left, 19/1371, 22 March 2018, 42.

⁴² *Ibid*, 34.

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

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

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

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 Yes With difficulty No

❖ Does free legal assistance cover:
 Representation in interview
 Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 Yes With difficulty No

❖ Does free legal assistance cover
 Representation in courts
 Legal advice

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

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

During court proceedings, asylum seekers can apply for legal aid to pay for a lawyer. The granting of legal aid is dependent on how the court rates the chances of success. This “merits test” is carried out by the same judge who has to decide on the case itself. Therefore some lawyers do not always recommend to apply for legal aid, since they are concerned that a negative decision in the legal aid procedure may have a negative impact on the main proceedings. Furthermore, decision-making in the legal aid procedure may take considerable time so lawyers regularly have to accept a case before they know whether legal aid is

granted or not. Lawyers often argue that fees based on the legal aid system do not always cover their expenses. As a consequence, specialising only on asylum cases is generally supposed to be difficult for law firms. Most lawyers specialising in this area have additional areas of specialisation while a few also charge higher fees on the basis of individual agreements with their clients.

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

2. Dublin

2.1. General

Dublin statistics: 2017

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	64,267	7,102	Total	26,931	8,754
Italy	22,607	2,110	France	9,939	1,016
France	4,417	530	Greece	5,692	3,164
Hungary	3,304	31	Netherlands	2,964	1,141

Source: Federal Government, Reply to parliamentary question by The Left, 19/921, 26 February 2018.

The number of outgoing requests continues to increase significantly:

Outgoing Dublin requests from Germany						
Year	2012	2013	2014	2015	2016	2017
Requests	11,469	35,280	35,115	44,982	55,690	64,267

Source: BAMF, *Bundesamt in Zahlen 2012*, 20-24; *2013*, 23-30 Federal Government, Reply to parliamentary questions 18/3850, 28 January 2015, 22; 18/7625, 22 February 2016, 53; 18/11262, 21 February 2017, 35; Federal Government, Reply to parliamentary question by The Left, 19/921, 26 February 2018, 19.

Application of the Dublin criteria

The majority of outgoing Dublin requests was based on so-called “Eurodac hits” (65.1% in 2017, 69.2% in 2016, in comparison to 76% in 2015, 68.5% in 2014, 66.7% in 2013 and 72.8% in 2012).⁴³

Details on the criteria used for requests are only available for the outgoing requests which were based on “Eurodac hits”. Statistics for 2017 refer to a total of 41,850 requests based on Eurodac, out of which:

- 29,092 (69.5%) after an application for international protection (CAT 1);⁴⁴
- 9,209 (22%) after apprehension upon illegal entry (CAT 2);⁴⁵ and
- 3,549 (8.5%) after apprehension for illegal stay (CAT 3).⁴⁶

The number of transfers from other European countries to Germany decreased significantly, from 12,901 in 2016 to 8,754 in 2017, in particular due to a decline in transfers from Sweden, the Netherlands and Switzerland. In contrast, the number of incoming transfers from Greece increased significantly, from 739 in 2016 to 3,164 in 2017. All transfers from Greece took place under the family unity provisions of the

⁴³ Federal Government, Response to parliamentary question by The Left, 19/921, 26 February 2018, 19; 18/11262, 21 February 2017, 35; 18/7625, 22 February 2016, 32.

⁴⁴ Article 9 recast Eurodac Regulation.

⁴⁵ Article 14 recast Eurodac Regulation.

⁴⁶ Article 17 recast Eurodac Regulation.

Regulation.⁴⁷ According to media reports from May 2017, the German government reacted to the high number of requests by limiting the number of transfers from Greece to a certain quota from April 2017 onwards. The government denied that it had formally introduced a quota, but the numbers of transfers from Greece decreased significantly in the second quarter of 2017.⁴⁸ The breakdown of incoming transfers per month is as follows:

Incoming Dublin transfers From by month: 2017												
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
169	333	495	183	82	129	106	140	281	295	607	369	3,189

Source: Federal Government, Reply to parliamentary question by The Left, 19/921, 26 February 2018.

It should be highlighted, however, that these figures do not match the total figure provided above. Lower figures on transfers have also been provided by the Greek Asylum Service.⁴⁹

In spite of this, some 3,100 asylum seekers for whom Germany has already accepted “take charge” requests were still waiting to be transferred to Germany in February 2018.⁵⁰

The dependent persons and 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 6,958 cases in 2017 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.⁵¹ It is not clear whether the latter category also includes cases in which the humanitarian clause was used.

The formal suspension of Dublin transfers to Greece which had been in place since January 2011 ended in March 2017. The German authorities submitted 2,312 outgoing requests to Greece, but only in 81 was Greece considered responsible for the asylum application. No transfers to Greece took place in 2017,⁵² although the first transfer was implemented in February 2018.⁵³

Furthermore, the sovereignty clause has been applied to particularly vulnerable persons in cases where transfer would result in undue hardship. This practice has been applied to countries such as Malta since the autumn of 2009. The BAMF reported that it has continued this practice in 2016.⁵⁴

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.⁵⁵ Syrians are now treated similar to other nationalities in relation to Dublin, with 500 Syrians being transferred to other Member States in 2016 (12.6%) and 417 in 2017 (5.6%).⁵⁶

⁴⁷ Federal Government, Response to parliamentary question by The Left, 19/921, 26 February 2018, 22.

⁴⁸ Informationsverbund Asyl und Migration, ‘Verlangsamung des Familiennachzugs aus Griechenland’, 2 June 2017, available in German at: <http://bit.ly/2oU0yKe>. See also AIDA, Country Report Greece, 2017 Update, March 2018, available at: <http://bit.ly/2G5vKP2>, 57-58.

⁴⁹ AIDA, Country Report Greece, 2017 Update, March 2018, 58.

⁵⁰ Federal Government, Response to parliamentary question by The Left, 19/921, 26 February 2018, 22-24.

⁵¹ *Ibid*, 13.

⁵² *Ibid*, 19.

⁵³ AIDA, Country Report Greece, 2017 Update, March 2018, 62.

⁵⁴ Federal Government, Reply to parliamentary question by The Left, 18/10953, 19 January 2017, 4.

⁵⁵ Spiegel Online, ‘Deutschland will Syrer wieder in andere EU-Länder zurückschicken’, 10 November 2015, available in German at: <http://bit.ly/1OS6rRk>.

⁵⁶ Federal Government, Response to parliamentary question by The Left, 19/921, 26 February 2018, 14.

2.2. Procedure

Indicators: Dublin: Procedure

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

The Dublin Regulation is explicitly referred to as a ground for inadmissibility of an asylum application in the Asylum Act.⁵⁷

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 an admissibility assessment 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.

Whereas only the BAMF is responsible for conducting the Dublin procedure since 2013, there are indications that the practice of Dublin procedures managed by the border police had resumed in 2016 (see [Access to the Territory](#)). In its response to a parliamentary question,⁵⁸ the German government reiterated in August 2017 that no immediate returns (*Zurückweisungen*) on the basis of national law or on the basis of bilateral readmission agreements with neighbouring states have taken place. It confirmed that Dublin procedures were taking place at the border. However, in contrast to earlier reports, the government explained in this statement that these Dublin procedures were not carried out by the border police. According to the statement, the border police informs the BAMF if there is evidence or if statements of an asylum seeker apprehended at the border indicate that another Dublin State might be responsible for the procedure. The Dublin procedure then is carried out by the BAMF which can issue a deportation order as a result of the procedure. A possible forced return to the responsible Member State is carried out by the border police. The border police may also ask a court to issue a detention order if there is a considerable risk of “absconding”. This implies that asylum seekers are not sent to the “normal” reception centres but remain under the authority of the border police for the whole duration of the Dublin procedure.

In a ruling of the CJEU on 26 July 2017, an important element of the Dublin procedure has been clarified with an important impact on the handling of Dublin procedures by the German authorities. Before this decision the German authorities held that the time limit for sending a request to another country would start with the lodging of an asylum application. Furthermore, requests were frequently submitted to other states after the Dublin Regulation time limits for these requests had expired, in the hope that the other state would take charge of the procedure nevertheless. The CJEU made clear that both practices were incompatible with the Dublin Regulation: the time limit for Dublin requests thus starts with the moment that a Member State becomes aware of an asylum seeker’s intention to apply for asylum. If a Member State fails to submit a request within the time limits as defined in the Regulation, this Member State automatically becomes responsible for carrying out the procedure.⁵⁹

⁵⁷ Section 29(1)(a) Asylum Act.

⁵⁸ Federal Government, Response to parliamentary question by The Left, 18/13428, 18 August 2017, 23-24.

⁵⁹ CJEU, Case C-670/16 *Mengesteab*, Judgment of 26 July 2017. See Constantin Hruschka, ‘Zu EuGH, Mengesteab sowie Shiri: Dublin-Fristen unmittelbar wirksam und gerichtlich voll überprüfbar’, *Asylmagazin* 1-2/2018, 46-49.

Individualised guarantees

Even before the ECtHR's ruling in the case of *Tarakhel v. Switzerland*,⁶⁰ 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.⁶¹

Currently, the BAMF requests individual guarantees for all transfers to Hungary and Greece, to ascertain whether asylum seekers will be treated in accordance with the asylum Directives.⁶² This policy has led to a standstill in transfers to Hungary and Greece, with no transfers to the latter in 2017 and no transfers to Hungary after April 2017. The BAMF also requests individual guarantees for transfers to Italy of families with children below the age of 3, whereby Italy is asked to confirm that the family will have access to accommodation.⁶³ There is no general policy to require guarantees for vulnerable groups, although the Dublin Unit and local authorities make arrangements for the asylum seekers concerned e.g. to ensure the continuation of dialysis treatments, to ensure separate accommodation of families in cases of domestic violence.⁶⁴

In March 2016, the Administrative Court of Hannover stopped a transfer to Italy on the ground that the Italian authorities had not given an individualised guarantee that long-term accommodation would be available for a transferred person.⁶⁵ The court pointed to information repeatedly submitted to the court, according to which the Italian authorities did not provide any individual guarantees at all.⁶⁶ In March 2017, the Administrative Court of Trier halted the transfer of a pregnant woman to Italy and stated that German asylum authorities have to obtain individualised guarantees in all cases of possible transfers of vulnerable persons to Italy.⁶⁷

Some courts have also argued that individualised guarantees have to be obtained in cases of possible transfers to Bulgaria, particularly if the individual concerned has already been granted protection status in Bulgaria. For example, the Administrative Court of Stade, citing a decision by the High Administrative Court of the Saarland of January 2017, stated in a decision of April 2017 that individuals with a protection status only had access to the labour market and other government support if they had a registered address. The court therefore argued that the German authorities had to obtain an individualised guarantee from their Bulgarian counterparts that a person returned to Bulgaria would get a registered address.⁶⁸ However, other courts disagreed and stated that in general no individualised guarantees were necessary in cases of Dublin transfers to Bulgaria.⁶⁹

⁶⁰ ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

⁶¹ BVerfG, Decision No 2 BvR 1795/14 of 17 September 2014, *Asylmagazin* 10/2014, 341, available at: <http://bit.ly/110Lplo>.

⁶² Information provided by the BAMF, 1 August 2017.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Administrative Court Hannover, Decision 4 A 8072/13, 23 March 2016, *asyl.net*, available at: <http://bit.ly/2mlUM2h>.

⁶⁶ This information was confirmed by the Administrative Court Braunschweig, Decision 5 A 332/15, 12 October 2016, *asyl.net*, available at: <http://bit.ly/2j7Mnhj>.

⁶⁷ Administrative Court Trier, Decision 5 L 1846/17.TR, 16 March 2017, *asyl.net*, available at: <http://bit.ly/2FupouH>.

⁶⁸ Administrative Court Stade, Decision 10 A 2369/16, 18 April 2017, *asyl.net*, available at: <http://bit.ly/2FmxORm>.

⁶⁹ Administrative Court Berlin, Decision 23 L 503.17 A, 12 July 2017, *asyl.net*, available at: <http://bit.ly/2193qeZ>.

Transfers

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

If asylum seekers have already accessed the regular procedure, they must not be detained for the duration of the procedure. However, detention may be imposed once an application has finally been rejected as “inadmissible” because another country was found to be responsible for the asylum procedure. In these cases, the legal basis for ordering and prolongation of detention is the same as for other forms of detention pending deportation. This implies that certain preconditions for the lawfulness of detention have to be fulfilled: In particular, any placing into custody under these circumstances should generally be ordered in advance by a judge, since it does not constitute a provisional arrest which may be authorised by a court at a later stage. However, a judge should generally not issue a detention order until the formal request to leave Germany - usually a part of the rejection of the asylum application - has been handed out to the person concerned and if sufficient grounds for detention exist. However, it has been alleged that these preconditions are often ignored by authorities and courts in “Dublin cases”.⁷⁰

In December 2017, the government informed the Parliament that the border police had requested courts to issue 364 detention orders in Dublin cases in the period between February and July 2017.⁷¹ Only 20 of these requests were turned down by the courts, while 344 detention orders for the purpose of a Dublin transfer were issued by the courts. No further details were disclosed e.g. on the duration of detention. However, the number of detention orders issued within a few months suggests that these Dublin procedures are now carried out on a routine basis, particularly at the Austrian-German border. The limited information provided by the government also indicates that asylum seekers subject to Dublin procedures at the border are frequently detained for the purpose of being transferred to the responsible Member State (see [Detention of Asylum Seekers](#)).

In 2017, Germany carried out 7,102 Dublin transfers, compared to 3,968 in 2016 and 3,597 in 2015. The average duration of the Dublin procedure was reported at 2.2 months as of the third quarter of 2017 according to government figures.⁷²

2.3. Personal interview

Indicators: Dublin: Personal Interview

Same as regular procedure

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

Since the entry into force of Article 5 of the Dublin III Regulation, a personal interview is obligatory.⁷³

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

⁷⁰ Peter Fahlbusch, ‘Haft in Verfahren nach der Dublin II-Verordnung’, *Asylmagazin* 9/2010, 290.

⁷¹ According to the government, the number of these cases was only registered in this period for “optimisation purposes”, while other statistics do not exist on these cases: Federal Government, Response to parliamentary question by The Left, 19/273, 14 December 2017, 27.

⁷² Federal Government, Response to parliamentary question by The Left, 19/185, 7 December 2017, 7.

⁷³ BAMF, *Entscheiderbrief*, 9/2013, 3.

simultaneously. If the Dublin and regular procedure are carried out simultaneously, a regular interview is conducted according to the standards of the regular procedure. In this context it has been noted that questions on the travel routes of asylum seekers may take up a considerable part of the interview, which may result in a shifting of focus away from the core issues of the asylum interview.

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

2.4. Appeal

Indicators: Dublin: Appeal

Same as regular procedure

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

<ul style="list-style-type: none"> ❖ If yes, is it ❖ If yes, is it suspensive 	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Judicial <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Administrative <input checked="" type="checkbox"/> No
---	---	--

Dublin decisions are inadmissibility decisions under Section 29 of the Asylum Act. However, the legal basis for Dublin procedures is found in provisions originally created for “safe third countries”, which now refer to Dublin cases as well.⁷⁴ The BAMF shall order the deportation to the safe third country or to the country responsible for the asylum procedure “as soon as it has been ascertained that the deportation can be carried out.”

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

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

In addition, serious practical difficulties result from the 7-day time limit for the necessary application to the court. This short deadline is often difficult to meet for asylum seekers since the application for suspensive effect has to be fully substantiated. To prepare such an application requires expert knowledge of the asylum law, but in the absence of systematic legal counselling asylum seekers regularly have to turn to a lawyer or to refugee counsellors for assistance. However, it might prove impossible for asylum seekers to make an appointment with lawyers or counsellors within the short timeframe. Even if they manage to contact a lawyer, it is still very difficult to produce a sufficiently substantiated application at such short notice. Therefore it has been argued that the one-week period, although being an improvement compared to the previous situation, still does not provide for an effective remedy and might constitute a violation of the German Constitution.⁷⁵

⁷⁴ Section 34a(1) Asylum Act.

⁷⁵ Dominik Bender and Maria Bethke, “Dublin III’, Eilrechtsschutz und das Comeback der Drittstaatenregelung.” Asylmagazin 11/2013, 362.

In May 2017, the Federal Constitutional Court established some general standards for the appeal procedure in Dublin cases and cases of deportations of people who have been granted protection status in a third country. With regard to the case at hand, where the Administrative Court had rejected an application to restore suspensive effect of an appeal against a deportation to Greece, the Court stated that the reception conditions in another country have to be assessed on a factual basis which is “reliable and sufficient, also concerning the amount [of available information].” This is necessary, in any case, if there were grounds to assume that inhuman or degrading treatment might take place following a deportation. If sufficient information on the factual situation in another country was not available, suspensive effect of the appeal should be granted. In line with the general principle of judicial independence, the Constitutional Court did not define which kind of information was necessary to clarify the factual situation. It only pointed to the general obligation for authorities and courts to obtain information about conditions in other countries and to obtain individual guarantees, if necessary.⁷⁶

2.5. Legal assistance

Indicators: Dublin: Legal Assistance

Same as regular procedure

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

<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 Dublin 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
--	--

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

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

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?

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

 - ❖ If yes, to which country or countries?

Hungary: According to information submitted by the BAMF, any Dublin request to the Hungarian authorities is accompanied by a request for an individualised guarantee that Dublin returnees would be treated in accordance with the Reception Conditions Directive and the Asylum Procedures Directive.⁷⁷ The German authorities continued to forward a high number of requests (3,304) to Hungary in 2017, but only 31 transfers actually took place.⁷⁸ According to a court decision from December 2017, no Dublin transfers have taken place to Hungary since 11 April 2017.⁷⁹ This is confirmed by official statistics which show that no transfers have taken place in the second half of 2017.

⁷⁶ BVerfG, Decision 2 BvR 157/17, 8 May 2017, asyl.net, available at: <http://bit.ly/2G6rw9X>.

⁷⁷ Information provided by the BAMF, 1 August 2017.

⁷⁸ Federal Government, Response to parliamentary question by The Left, 19/921, 26 February 2018, 19.

⁷⁹ High Administrative Court of North Rhine-Westphalia, Decision 11 A 585/17.A, 8 December 2017, asyl.net, available at: <http://bit.ly/2Ftaa9l>.

Greece: According to information submitted by the BAMF, any transfer request to the Greek authorities is accompanied by a request for an individualised guarantee that “Dublin returnees” would be treated in accordance with the Reception Conditions Directive and the Asylum Procedures Directive.⁸⁰ In spite of 2,312 transfer requests submitted to Greece by the German authorities, no transfers took place in 2017,⁸¹ although the first transfer was implemented in February 2018.

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

Other countries: In addition, several hundred court cases resulted in suspension of transfers to other countries by means of issuance of interim measures. At the same time, however, other courts decided in favour of transfers to these countries, which is mainly due to the fact that the definition of requirements for a suspension of transfers remains highly controversial. For example, courts continue to render diverging decisions on the issue of whether problems in the Italian 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 transfers of asylum seekers and beneficiaries of international protection to those countries are listed below:

Country	Decisions stopping Dublin transfer	Transfer upheld
Bulgaria	Administrative Court Magdeburg, Decision 4 B 761/17 MD of 16 January 2018 Administrative Court Göttingen, Decision 3 A 28/17 of 19 December 2017 Administrative Court Magdeburg, Decision 1 B 467/17 MD of 11 October 2017 Federal Constitutional Court, Decision 2 BvR 863/17 of 29 August 2017 Administrative Court Arnsberg, Decision 12 L 1407/17.A of 13 June 2017	Administrative Court Berlin, Decision 23 L 503.17 A of 12 July 2017
Italy	Administrative Court Freiburg, Decision A 2 K 7807/17 of 24 November 2017 Administrative Court Berlin, Decision 28 L 282.17 A of 20 July 2017 Administrative Court Hannover, Decision 3 B 1492/17 of 8 March 2017	Administrative Court Munich, Decision M 9 S 17.52825 of 7 November 2017 Administrative Court Cologne, Decision 4 L 3909/17.A of 3 November 2017 Administrative Court Bayreuth, Decision B 3 S 17.50851 of 20 July 2017

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).

⁸⁰ Information provided by the BAMF, 1 August 2017.

⁸¹ Federal Government, Response to parliamentary question by The Left, 19/921, 26 February 2018, 19.

The following table illustrates the number of court decisions on requests for urgent legal protection i.e. requests to restore suspensive effect of appeals in Dublin cases in 2017:

Decisions on requests for suspensive effect in Dublin appeals: 2017		
Country	Halting Dublin transfer	Upholding Dublin transfer
Belgium	58	432
Bulgaria	259	266
Denmark	27	305
Estonia	0	68
Finland	23	457
France	75	1,138
Greece	21	10
UK	1	10
Ireland	0	1
Iceland	0	3
Italy	1,912	6,676
Croatia	45	170
Latvia	21	77
Lithuania	11	292
Luxemburg	0	5
Malta	41	33
Netherlands	48	315
Norway	40	417
Austria	6	316
Poland	224	1,811
Portugal	25	299
Romania	80	331
Sweden	38	659
Switzerland	34	369
Slovakia	7	31
Slowenia	9	45
Spain	23	515
Czech Republic	41	475
Hungary	433	206
Cyprus	0	2

Source: Federal Government, Response to parliamentary question by the Left, 19/1371, 22 March 2018, 42

2.7. The situation of Dublin returnees

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

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

There is no separate procedure preceding the regular procedure in which decisions on admissibility of asylum applications are taken. However, it is possible that applications are declared inadmissible in the course of the regular procedure, based on the grounds set out in Section 29 of the Asylum Act.

Applications are deemed inadmissible in the following cases:⁸²

1. Another country is responsible for carrying out the asylum procedure, according to the Dublin Regulation or based on other European or international treaties;
2. Another EU Member State has already granted the applicant international protection;
3. A country that is willing to readmit the foreigner is regarded as a “safe third country” for the asylum seeker;⁸³
4. A country that is not an EU Member State and is willing to readmit the foreigner is regarded as “another third country”;⁸⁴
5. The applicant has made a subsequent,⁸⁵ or secondary,⁸⁶ application.

In 2017, the provision has mainly been applied with regard to Dublin cases (39,822 decisions) and in cases of subsequent and secondary applications (17,817 decisions).⁸⁷

In the same period, a further 8,120 applications were rejected as inadmissible on the grounds that another EU Member State had already granted international protection.⁸⁸ In some of these cases persons concerned appealed the decisions and courts decided that they had the right to a new asylum procedure in Germany. In particular in cases of persons who had been granted international protection in **Bulgaria**, the courts cited deficiencies in the Bulgarian asylum system and risks of inhuman or degrading living conditions as reasons for their decisions.⁸⁹

The provision that asylum applications may be considered inadmissible in case of safety in “another third country” (*sonstiger Drittstaat*) has been based on the concept of **First Country of Asylum** of Article 35 of the recast Asylum Procedures Directive.⁹⁰ “Another third country” may refer to any country which is not defined a **Safe Third Country** under German law.⁹¹ This concept replaces the former notion, according to which asylum applications were “to be disregarded” (*unbeachtlich*) if return to “another third country” was possible. In the process, important restrictions have been removed. In particular, the former provision could only be applied if return to the safe “other third country” was possible within three months. Although this qualification has been removed, the provision has only been applied rarely, only 7 times, in the period between August and December 2016.⁹² No figures on the use of this provision in 2017 are available.

⁸² Section 29(1) Asylum Act.

⁸³ Section 29(1)(3) Asylum Act, citing Section 26a Asylum Act.

⁸⁴ Section 29(1)(4) Asylum Act, citing Section 27 Asylum Act.

⁸⁵ Section 29(1)(5) Asylum Act, citing Section 71 Asylum Act.

⁸⁶ Section 29(1)(5) Asylum Act, citing Section 71a Asylum Act.

⁸⁷ Federal Government, Response to parliamentary question by the Left, 19/921, 26 February 2018, 17; BAMF, *Asylgeschäftsbericht*, December 2017, 7.

⁸⁸ Federal Government, Response to parliamentary question by the Left, 19/921, 26 February 2018, 17.

⁸⁹ High Administrative Court of Hessen, decision 3 A 1322/16.A of 6 November 2016; Administrative Court of Aachen, Decision 8 L 991/16.A of 5 December 2016; Administrative Court of Stuttgart, Decision A 5 K 8144/16 of 28 December 2016.

⁹⁰ Maria Bethke und Stephan Hocks, *Neue „Unzulässigkeits“-Ablehnungen nach § 29 AsylG*, *Asylmagazin* 10/2016, 336-346 (343).

⁹¹ “Safe third countries” are all member states of the European Union plus Norway and Switzerland (Section 26a Asylum Act and addendum to Asylum Act).

⁹² Federal Government of Germany, Response to a written question by Member of Parliament Volker Beck, No.1/6, 10 January 2017.

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

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

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

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

Same as regular procedure

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

The appeal procedure in cases of inadmissible applications (i.e. mostly Dublin cases and cases of persons granted protection in another EU country) has been described in the section on [Dublin: Appeal](#).

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

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

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

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

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

4. Border procedure (border and transit zones)

4.1. General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? Yes No
2. Can an application made at the border be examined in substance during a border procedure? Yes No
3. Is there a maximum time limit for a first instance decision 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.⁹³ 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**.

The following numbers of procedures took place at airports in 2017:

Airport procedures: 2017	
Airport	Number
Frankfurt/Main	397
Munich	31
Berlin	15
Hamburg	1
Total	444

Source: Federal Government, Response to parliamentary question by The Left, 19/1371, 22 March 2018, 37.

The vast majority of procedures take place at the airport of **Frankfurt/Main**: 397 procedures in 2017, 258 in 2016, 627 in 2015, 569 in 2014 and 841 in 2013.

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”. In practice, however, it is not applied to unaccompanied children.

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.⁹⁴ 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

⁹³ Section 18a Asylum Act.

⁹⁴ Section 18a(2)-(4) Asylum Act.

territory and, if necessary, access to the legal remedies of the regular procedure would have to be granted. However, this option seems to be irrelevant in practice since the Federal Office always grants entry to the territory for the asylum procedure to be carried out in a regular procedure if an application is not rejected as manifestly unfounded;

3. The Federal Office declares within the first 2 calendar days following the application that it will not be able to decide upon the application at short notice. Entry to the territory and access to the regular procedure are granted; or
4. The Federal Office has not taken a decision within 2 calendar days following the application: Entry to the territory (and to the regular procedure) is granted.

In practice, the third option is the most common outcome: In 2017, 264 out of 444 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; 2016: 191 out of 273, 2015: 549 out of 627, 2014: 539 out of 643; 2013, 899 out of 972; 2012: 720 out of 787). In 127 cases in 2017 a decision was taken within the 2-day period and rejected the application as “manifestly unfounded”.⁹⁵ This means that 53 cases are not accounted in the government statistics. In any case, the figures imply that in practice those applications are primarily dealt with in the airport procedures which the authorities have already earmarked as “manifestly unfounded”, while in the majority of cases asylum seekers are allowed to leave the airport in order to follow the regular procedure.

Nevertheless, concerns have been expressed regarding the quality of decision-making in the airport procedure in a recent Memorandum by German NGOs. Four of the cases reviewed showed lack of a substantive examination of the applications concerned, leading in one case concerning an Afghan national to rejection as “manifestly unfounded”.⁹⁶

4.2. Personal interview

Indicators: Border Procedure: Personal Interview

Same as regular procedure

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

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ 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](#)).

Monitoring of airport procedures has noted problems with interviews held at the airport, suggesting that an examination of applications cannot be effectively conducted within such short time limits. In some cases, asylum seekers have been interrupted systematically during their submissions.⁹⁷

⁹⁵ Federal Government, Reply to parliamentary question by The Left, 19/1371, 22 March 2018; 21 February 2017; 22 February 2016; 18 August 2015, No. 18/5785; 38-39; 28 January 2015, No. 18/3850, 52; BAMF, *Das Bundesamt in Zahlen 2013 – Asyl* (The Federal Office in numbers 2013 – Asylum matters), February 2014, 36.

⁹⁶ Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland: Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, available in German at: <http://bit.ly/2gZGhBq>, 28.

⁹⁷ Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland: Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, 28.

4.3. Appeal

Indicators: Border Procedure: Appeal

Same as regular procedure

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

- | | | |
|----------------------------|--|---|
| ❖ 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.⁹⁸

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.⁹⁹ 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.¹⁰⁰

4.4. Legal assistance

Indicators: Border Procedure: Legal Assistance

Same as regular procedure

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

- | | | | |
|-------------------------------------|--|--|-----------------------------|
| ❖ 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.¹⁰¹ According to this decision, assistance can be provided by any available person or institution sufficiently qualified in asylum law.

In practice, the association of lawyers of the airport's region coordinates a consultation service with fully qualified lawyers. If an applicant wants to speak to a lawyer, the border police contacts one of the lawyers named by the association of lawyers as soon as a formal denial of entry is issued, which includes the rejection of the asylum application. However, it has been pointed out by NGOs that the short timeframe foreseen in the airport procedure hinders effective access to a lawyer, leading to unsatisfactory implementation of Article 22 of the recast Asylum Procedures Directive.¹⁰²

⁹⁸ Section 18a(4) Asylum Act.

⁹⁹ Section 18a(4) Asylum Act.

¹⁰⁰ Section 18a(6) Asylum Act.

¹⁰¹ 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.

¹⁰² Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland: Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, 27.

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.¹⁰³ Any other actions undertaken by the lawyer are not included in the free assistance. In particular, representation before the court is not part of this free legal assistance.

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

5. Accelerated procedure

An accelerated procedure exists since March 2016. According to the new Section 30a of the Asylum Act, the accelerated procedure can be carried out in branch offices of the BAMF which are assigned to a “special reception centre” (*besondere Aufnahmeeinrichtung*). Only in these locations can accelerated procedures be carried out for the asylum seekers who:¹⁰⁴

1. Come from a [Safe Country of Origin](#);
2. Have clearly misled the authorities about their identities or nationalities by presenting false information or documents or by withholding relevant documents;
3. Have in bad faith destroyed or disposed of an identity or travel document that would have helped establish their identities or nationalities, or if the circumstances clearly give reason to believe that this is so;
4. Have filed a subsequent application, in case they have left Germany after their initial asylum procedure had been concluded;¹⁰⁵
5. Have made an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in their deportations;
6. Refuse to be fingerprinted in line with the Eurodac Regulation; or
7. Were expelled due to serious reasons of public security and order or if there are serious reasons to believe that they constitute a serious threat to public security and order.

In the accelerated procedure, the BAMF has to decide within 1 week (7 calendar days).¹⁰⁶ If it rejects the asylum application as manifestly unfounded or inadmissible within this timeframe, the procedure is carried on as an accelerated procedure and the asylum applicants are obliged to stay in the “special reception centres”. If the BAMF does not decide within one week, or if the application is rejected as simply “unfounded” or if protection is granted, the applicant is allowed to leave the special reception centre and the procedure is carried on as a regular procedure, if necessary.¹⁰⁷

During an accelerated procedure, asylum seekers are obliged to stay in the special reception centres.¹⁰⁸ These are not closed facilities, but asylum seekers may leave the premises and are free to move around in the local area (town or district). In this respect, the same rules apply to them as to asylum seekers in the regular procedure who also face a “residence obligation” in the first months of an asylum procedure (see [Freedom of Movement](#)). However, asylum seekers in the accelerated procedure face significantly stricter sanctions for non-compliance with the “residence obligation”: If they leave the town or district in which the special reception centre is located, it shall be assumed that they have failed to pursue the

¹⁰³ Federal Constitutional Court, Decision 2 BvR 1516/93, 14 May 1996.

¹⁰⁴ Section 30a(1) Asylum Act.

¹⁰⁵ This qualification (that only asylum seekers who have left Germany after a first asylum procedure are subject to this provision) is not contained in the law. However, a representative of the BAMF stated in a committee hearing in Parliament that the authorities were obliged to make use of this qualification for legal reasons. The Federal Government later explained that the authorities would “presumably” apply the law in this manner: Federal Government, Response to a parliamentary question by Member of Parliament Volker Beck, 18/7842, 8 March 2016, 19.

¹⁰⁶ Section 30a(2) Asylum Act.

¹⁰⁷ Section 30a(2)-(3) Asylum Act.

¹⁰⁸ Section 30a(3) Asylum Act.

asylum procedure.¹⁰⁹ This may lead to the termination of their asylum procedure and rejection of their application.

At the end of 2017, only two “special reception centres” existed, in **Bamberg** and **Manching/Ingolstadt**, and both were functioning as “special” and “regular” reception centres simultaneously. The BAMF does not collect statistics on the use of the accelerated procedure.¹¹⁰ At the end of January 2018, the facility at Bamberg had 262 asylum seekers accommodated in its “special reception centre” and 1,112 in its “regular” reception centre, which shows that more regular procedures were taking place in this location than accelerated ones.¹¹¹ By and large, it can be concluded that introduction of accelerated procedures has only had little impact on asylum procedures in general.

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

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

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

1.1. Screening of vulnerability

There is no requirement in law or mechanism in place to systematically identify vulnerable persons in the asylum procedure, with the exception of unaccompanied children. The BAMF and the Federal Ministry of Interior drafted a “concept for the identification of vulnerable groups” in 2015, which was intended to be codified in law as part of the transposition of the recast Asylum Procedures and Reception Conditions Directives. Since the concept has not been implemented, it has been only made available to BAMF staff as an internal guideline.¹¹²

A 2016 amendment to the German Asylum Act has introduced wording relevant to the identification of vulnerable asylum seekers.¹¹³ However, the law stops short of requiring federal states to transmit personal information about an applicant’s vulnerabilities to the BAMF, as it only confers them the power to do so. It also fails to properly transpose the recast Asylum Procedures Directive, as it only requires the BAMF to “duly carry out” the interview and not to provide “adequate support” to applicants in need of special procedural guarantees throughout the duration of the procedure. In practice, therefore, identification procedures in Germany have been generally described as “a matter of luck and coincidence”, given that authorities “are not able to systematically undertake the necessary steps to ascertain mental disorders or trauma.”¹¹⁴

¹⁰⁹ Section 33(2)(3) Asylum Act.

¹¹⁰ Information provided by the BAMF, 1 August 2017.

¹¹¹ Regional government of Oberfranken, *Asylbewerber in Oberfranken*, available at: <http://bit.ly/2k7hLM0>.

¹¹² Information provided by the BAMF, 1 August 2017.

¹¹³ Section 8(1b) Asylum Act.

¹¹⁴ Nina Hager and Jenny Baron, ‘Eine Frage von Glück und Zufall. Zu den Verfahrensgarantien für psychisch Kranke oder Traumatisierte im Asylverfahren’ in Informationsverbund Asyl und Migration (ed), *Beratung und Rechtsschutz im Asylverfahren: Beilage zum Asylmagazin 7-8/2017*, July 2017, 17-26.

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

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.¹¹⁵ 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 pilot scheme has been continued in 2017 as a one-year project, and the government of the Federal State has announced that its results will be part of a new “master plan for the integration and participation of refugees” which is currently under discussion.¹¹⁶

Furthermore, standard procedures in the so called “arrival centre” (*Ankunftszentrum*) of **Berlin** now include a short interview of 20 to 30 minutes with staff members of the social services, if asylum seekers agree to it. If the social services find that an asylum seeker has special reception needs or requires special procedural guarantees, they try to take appropriate measures and inform the BAMF accordingly.¹¹⁷ In spite of these efforts, participating NGOs of the Berlin network have reported that measures to accelerate procedures in the “arrival centre” have had a negative impact on the identification process, since the interview in the asylum procedure is often scheduled before the persons concerned have a chance to speak to staff members of NGOs or of the Federal State institutions. Asylum seekers at this point are mainly in contact with staff members of the BAMF which is not involved in the identification scheme and which does not seem to have a concept for identification of vulnerable groups.¹¹⁸

It should be noted, however, that there are considerable variations to the procedure in the various arrival centres. In particular, there is no common approach on access to social services or other counselling institutions and in many centres no such access exists. This is dependent on how the Federal States and the BAMF have organised the procedure in the respective centres.

Other projects to improve the identification of vulnerable groups have been established in reception centres in Friedland, **Lower Saxony** and in the **Brandenburg** and **Rhineland-Palatinate**. In the latter, the regional government has adopted a protection concept which also includes methods for the identification of vulnerabilities.¹¹⁹

The identification of other groups such as victims of trafficking has also varied from one federal state to another, while restructuring and recruitment of new staff at the BAMF has made it difficult to ensure the availability of specifically trained staff for such groups.¹²⁰

With the exception of unaccompanied children, the BAMF does not collect statistics on the number of vulnerable persons applying for asylum in Germany.¹²¹

¹¹⁵ *Berliner Modell für die frühzeitige Identifizierung besonders schutzbedürftiger Flüchtlinge* (Berlin pilot scheme for early identification of particularly vulnerable refugees).

¹¹⁶ Berliner Netzwerk für besonders schutzbedürftige Flüchtlinge, *Stellungnahme zur Erarbeitung des „Gesamtkonzept des Senats zur Integration und Partizipation Geflüchteter“*, 13 January 2018, available in German at: <http://bit.ly/2G2fBKa>.

¹¹⁷ Flüchtlingsrat Berlin, *Das Schnellverfahren für Asylsuchende im Ankunftszentrum Berlin*, November 2017, available in German at: <http://bit.ly/2HdSDzb>.

¹¹⁸ Nina Hager and Jenny Baron, ‘Verfahrensgarantien für psychisch Kranke oder Traumatisierte’, *Asylmagazin* 7–8/2017, 17-26, 22.

¹¹⁹ *Ibid.*, 22-24.

¹²⁰ FRA, *Monthly data collection: Key highlights – Trafficking*, May 2016, available at: <http://bit.ly/2KLHSD9>, 8.

¹²¹ Information provided by the BAMF, 1 August 2017.

The identification of vulnerable groups has also been made a priority measure in the German programme for the implementation of the Asylum, Migration and Integration Fund (AMIF). Within this programme, a number of projects for identifying and supporting vulnerable groups receive AMIF funding.¹²²

1.2. Age assessment of unaccompanied children

The BAMF is not responsible for age assessments but refers all unaccompanied asylum seekers claiming to be under 18 to the local youth welfare office (*Jugendamt*). 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”, meaning the visual impressions of two experienced staff members of the office.¹²³ 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 law states explicitly that the previously practiced examination of the genitals is excluded in this context.¹²⁴

The problem of questionable age assessments carried out by the authorities has been discussed in some court decisions in 2016. For instance, the Administrative Court **Berlin** criticised the authorities for an age assessment based only on outward appearances.¹²⁵ This age assessment had been called into question by a paediatrician. The High Administrative Court of **Bavaria**, in a decision of 16 August 2016, set certain standards for age assessment by the authorities: According to the High Administrative Court, such an age assessment based only on outward appearances cannot be regarded as sufficiently certain if there is possibility that a medical examination might lead to a different result. This means that such an assessment could only be done in exceptional cases in which there can be no doubt that an asylum seeker is older than 18 years. All other cases should be treated as “cases of doubt” and a “grey area” (margin of error) of one to two years should be taken into account in favour of the asylum seeker. Even following a medical examination a margin of error of *another* two to three years should be considered as a margin of tolerance, in order to avoid any risk of incorrect assessments. The court based its opinion on an expert’s statement, according to which some medical methods for age assessment had a margin of error of up to five years.¹²⁶

The decision of the youth welfare office may be challenged with an “objection”, to be filed within one month and to be examined by the youth authorities themselves. If the objection is not successful, the person can appeal before the competent Family Court. However, neither the objection nor the appeal do have suspensive effect.¹²⁷ This means that the youth welfare office’s decision not to take a young person into custody remains in force as long as the objection or appeal procedure is pending.

Given that different youth welfare offices and Family Courts are responsible for age assessments, no statistics are available on the number and outcome of age assessments.

¹²² List of projects available at: <http://bit.ly/2luvIWj>.

¹²³ Section 42f Social Code (SGB), Vol. VIII.

¹²⁴ Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, *Vorläufige Inobhutnahme – Was ändert sich zum 1.11.2015?*, October 2015, 2-3.

¹²⁵ Administrative Court Berlin, Decision 18 L 81.16, 19 April 2016, asyl.net, available at: <http://bit.ly/2mJm85c>.

¹²⁶ High Administrative Court Bavaria, Decision 12 CS 16.1550, 16 August 2016, asyl.net, available at: <http://bit.ly/2m2hP0w>.

¹²⁷ Section 42f(3) Social Code, Vol. VIII.

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people? Yes For certain categories No
- ❖ If for certain categories, specify which: Unaccompanied children, traumatised persons
Victims of torture or violence

2.1. Adequate support during the interview

The BAMF does not have specialised units dealing with vulnerable groups but employs “special officers” (*Sonderbeauftragte*) responsible for interviews and decisions on claims by applicants with special needs. In addition to the core modules of the EASO Training Curriculum, these special officers also complete the training module on “Interviewing Vulnerable Persons”.¹²⁸ The BAMF guidelines stipulate that the following cases shall be handled in a particularly sensitive manner and, if necessary, by specially-trained decision-makers:¹²⁹

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

As of August 2017, there were 376 officials (including special officers and other staff) for unaccompanied children, 125 for victims of gender-related persecution, 74 for traumatised persons and victims of torture, as well as 79 for victims of trafficking.¹³⁰

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

With dozens of new branch offices and “arrival centres” opening in 2015 and 2016, dedicated special officers are not available in each BAMF branch office. In a statement submitted to Parliament in February 2016, the BAMF disclosed that it could not be ensured that procedures of unaccompanied children are conducted by special officers, although about 100 such special officers for unaccompanied children were available at the time. It should be noted that the training modules for BAMF caseworkers, whether decision-makers, interviewers or both, do not include specific training on vulnerable groups.¹³¹

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.¹³²

It has been noted that the BAMF seems to operate with a very limited understanding of “adequate support” for vulnerable groups.¹³³ Thus, in a BAMF guideline for the establishment of “arrival centres”, vulnerable groups are defined as persons who should be interviewed by a special officer, “following a transposition of the relevant provisions of the Asylum Procedures Directive into German law.” It is not clear which transposition is referred to here, since the law does not contain any reference to the concept of “adequate

¹²⁸ Federal Government, Reply to parliamentary question by The Left, 18/12001, 20 April 2017, 3.

¹²⁹ BAMF, *DA-Asyl (Dienstanweisung Asylverfahren) – Belehrungen*, 2010, 139.

¹³⁰ Information provided by the BAMF, 1 August 2017.

¹³¹ Federal Government, Reply to parliamentary question by The Left, 18/12752, 16 June 2017, 9-13.

¹³² See e.g. FRA, *Monthly data collection: Highlights – Migrants with disabilities*, August 2016, available at: <http://bit.ly/2kWFgLT>, 14.

¹³³ Nina Hager and Jenny Baron, ‘Verfahrensgarantien für psychisch Kranke oder Traumatisierte’, *Asylmagazin* 7–8/2017, 17-26, 19.

support” at the moment. Furthermore, no other procedural guarantees for vulnerable groups are referred to in this document.

2.2. Exemption from special procedures

Guarantees for unaccompanied children are identical in prioritised and non-prioritised cases. Although there is no provision for this in the law, unaccompanied children are exempted from the airport procedure in practice.¹³⁴

3. Use of medical reports

Indicators: Use of Medical Reports

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

Legislation does not explicitly refer to the use of medical reports in asylum procedures. The BAMF is generally obliged to clarify the facts of the case and to compile the necessary evidence.¹³⁵ 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”.¹³⁶ 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.¹³⁷ Such a risk may also consist in a potential serious harm on health grounds or in a risk which might result from a lack of appropriate health care in the country of origin.

The guidelines of the BAMF distinguish between these two categories: While a detailed (oral) submission is generally deemed sufficient to substantiate a claim of past persecution, applicants are routinely required to present medical reports to substantiate a claim of possible “serious concrete risk” upon return. If a medical statement is not deemed sufficient by the BAMF, it may ask the applicant to submit a further medical report within four weeks. The applicant shall be informed about remaining questions which have to be clarified in the new statement.¹³⁸

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.¹³⁹ In spite of this the quality of medical reports on Post-Traumatic Stress Disorder remains a controversial issue, regardless of whether such

¹³⁴ Information provided by the BAMF, 1 August 2017.

¹³⁵ Section 24(1) Asylum Act.

¹³⁶ Section 15(3) Asylum Act.

¹³⁷ Section 60(7) Residence Act.

¹³⁸ BAMF, *DA-Asyl (Dienstanweisung Asylverfahren)* – subsidiärer Schutz/Darlegungslast (Stand 7/14), and *DA-Asyl – Krankheitsbedingte Abschiebungsverbote* (Stand 1/2015).

¹³⁹ Federal Administrative Court, Decision of 11 September 2007 - 10 C 8.07 – (asyl.net, M12108).

reports are submitted by the applicants or whether they have been commissioned by authorities or courts.¹⁴⁰ 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).¹⁴¹ In such cases, it may also prove highly difficult to find experts to submit a medical opinion.

The use of medical reports is defined in detail in the context of “national protection” i.e. prohibition of deportation. This is particularly relevant for rejected asylum seekers who challenge a deportation on health grounds. “The foreigner must substantiate an illness which might impede the deportation by submitting a qualified medical certificate. This medical certificate should in particular document the factual circumstances on the basis of which the professional assessment was made, the method of establishing the facts, the specialist medical assessment of the disease pattern (diagnosis), the severity of the illness and the consequences which will, based on the medical assessment, presumably result from the situation which arose on account of the illness.”¹⁴²

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?

Yes

No

Unaccompanied children who are not immediately refused entry or returned after having entered Germany irregularly, 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.¹⁴³

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

The role of the guardian in the asylum procedure has been described as “unclear”¹⁴⁴ and the 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.¹⁴⁵ 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 children should be represented and assisted by representatives with the necessary expertise.¹⁴⁶

¹⁴⁰ Melanie Glocker, Hans Wolfgang Gierlichs, Friedemann Pfäfflin, “Zur Qualität von Gerichtsgutachten in aufenthaltsrechtlichen Verfahren”, *Recht und Psychiatrie* 2012 (30), 67.

¹⁴¹ *Psycho-social Centre for refugees Dusseldorf* is a centre providing consultation and therapy to traumatised refugees.

¹⁴² Section 60a(2c) Residence Act.

¹⁴³ Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher, Official Gazette I of 28 October 2015, 1802. The most important regulations of the law are summarised in Federal Association for Unaccompanied Refugee Minors, *Vorläufige Inobhutnahme – Was ändert sich zum 1.11.2015?*, October 2015.

¹⁴⁴ *Ibid*, 30.

¹⁴⁵ *Ibid*, 27-28.

¹⁴⁶ Stephan Hocks, ‘Die Vertretung unbegleiteter minderjähriger Flüchtlinge’, *Asylmagazin* 11/2015, 367-373.

E. Subsequent applications

Indicators: Subsequent Applications

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

The law defines a subsequent application (*Folgeantrag*) as any claim which is submitted after a previous application has been withdrawn or has been finally rejected.¹⁴⁷ 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.¹⁴⁸ According to this, a new asylum procedure is only initiated if:

1. The material or legal situation on which the decision was based has subsequently changed in favour of the applicant;
2. New evidence is produced which would have resulted in a more favourable decision for the applicant in the earlier procedure; or
3. There are grounds for resumption of proceedings, for example because of serious errors in the earlier procedure.¹⁴⁹

Further requirements are that:¹⁵⁰

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.¹⁵¹ However, a deportation may proceed from the very moment that the Federal Office informs the responsible Foreigners’ Authority that a new asylum procedure will not be initiated. If an enforceable deportation order already exists, a new deportation order or other notification is not required to enforce

¹⁴⁷ Section 71 Asylum Act.

¹⁴⁸ Section 51(1)-(3) Administrative Procedure Act (*Verwaltungsverfahrensgesetz*).

¹⁴⁹ The relevant grounds for this third alternative are listed in Section 580 of the Code of Civil Procedure (“action for retrial of a case”), to which the Asylum Act makes a general reference. Serious errors according to this provision include false testimony by witnesses or experts. Apart from that, Section 580 of the Code of Civil Procedure contains several grounds which are either not relevant for the asylum procedure or are covered by the grounds referred to under the first and second alternatives mentioned here. Although it is conceivable that the third alternative may apply in certain cases, it hardly seems to be of significance in practice, cf. Kerstin Müller, *AsylVfG* § 71, para. 32, in Hofmann/Hoffmann, eds. *HK-AuslR (Handkommentar Ausländerrecht)*, 2008, 1826.

¹⁵⁰ Section 51(2) Administrative Procedure Act.

¹⁵¹ Kerstin Müller, ‘AsylVfG § 71, para. 44’, in Hofmann/Hoffmann, eds., *HK-AuslR (Handkommentar Ausländerrecht)*, 2008, 1830.

deportation.¹⁵² The applicant may also be detained pending deportation until it is decided that a subsequent asylum procedure is carried out.¹⁵³

The decision on admissibility of a subsequent application can be carried out without hearing the applicant.¹⁵⁴ This means that the Federal Office has full discretion in deciding whether to conduct an interview or not at this stage. Therefore it is often recommended that subsequent applications, which generally have to be submitted in person, should be accompanied with a detailed written motivation.

If the Federal Office decides not to carry out a subsequent procedure, the application is rejected as “inadmissible”.¹⁵⁵ This decision can be appealed before an Administrative Court. It is also necessary to request an interim measure from the court in order to suspend deportation.

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

In contrast, if the Federal Office decides to carry out a new procedure, this will usually be in the form of a “regular procedure” and the applicant regains the status of asylum seeker, including access to reception conditions and including the other rights and obligations connected with this status. Since March 2016, it is also possible that subsequent applications are dealt with in the “accelerated procedure”, but this type of procedure had only been introduced in two offices of the BAMF at the end of 2017 (see [Accelerated Procedure](#)). Furthermore, accelerated procedures should only take place if the applicant has left Germany after his or her initial asylum procedure had been concluded, so most subsequent applications should not be affected by the new law.¹⁵⁶

24,366 persons lodged subsequent applications in 2017:

Subsequent applicants and decisions on subsequent applications: 2017						
Nationality	Applications	Decisions	Inadmissible	Admissible		
				Positive decision	Negative decision	Termination / inadmissibility
Serbia	2,583	3,726	2,786	10	575	355
Albania	2,315	2,766	2,270	11	244	241
FYROM	2,294	3,097	2,167	13	586	331
Afghanistan	1,859	2,945	1,019	804	413	709
Iraq	1,675	2,741	723	759	419	840
Total	24,366	39,247	17,817	5,358	6,520	9,552

Source: BAMF, Asylgeschäftsbericht, December 2017: <http://bit.ly/2tngyKn>.

Out of 5,358 positive decisions on the merits of subsequent applications, 1,995 granted refugee status, 1,521 subsidiary protection and 1,842 prohibition of deportation.

¹⁵² Section 71(5) Asylum Act.

¹⁵³ Section 71(8) Asylum Act.

¹⁵⁴ Section 71(3) Asylum Act.

¹⁵⁵ Section 29(1)(5) Asylum Act.

¹⁵⁶ This qualification (that only asylum seekers who have left Germany after a first asylum procedure are subject to this provision) is not contained in the law. However, a representative of the BAMF stated in a committee hearing in Parliament that the authorities were obliged to make use of this qualification for legal reasons. The Federal Government later explained that the authorities would “presumably” apply the law in this manner: Federal Government, Response to a parliamentary question by Member of Parliament Volker Beck, 18/7842, 8 March 2016, 19.

Most successful subsequent applications were filed by Syrian nationals (63% resulting in refugee status or another kind of protection), Iraqi nationals (27.7%) and Afghan nationals (27.3%. In contrast, only 10 out of 2,726 subsequent applications from Serbian nationals were partially successful; subsidiary protection was granted in one case, another form of protection in 9 cases.

F. The safe country concepts

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

Both the “safe third country” concept and the “safe country of origin” concept are incorporated in the German Constitution (*Grundgesetz*) and further defined in the Asylum Act.¹⁵⁷ The concept of “another third country”, akin to the “first country of asylum” concept, has been incorporated in the inadmissibility concept of the Asylum Act following the reform entering into force in August 2016 (see [Admissibility Procedure](#)).

1. Safe country of origin

The Constitution defines as safe countries of origin the countries “in which, on the basis of their laws, enforcement practices and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists”.¹⁵⁸

1.1. List of safe countries of origin

Member states of the European Union are by definition considered to be safe countries of origin.¹⁵⁹ 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.

¹⁵⁷ Article 16a(2)-(3) Basic Law.

¹⁵⁸ Article 16a(3) Basic Law.

¹⁵⁹ Section 29a(2) Asylum Act.

Serbia, FYROM and Bosnia-Herzegovina were added to the list following the entry into force of a law on 6 November 2014.¹⁶⁰ Albania, Kosovo and Montenegro were added with another law which took effect on 24 October 2015.¹⁶¹

A draft law was introduced by the government in April 2016 with the aim of adding the so-called Maghreb states (**Morocco, Algeria, Tunisia**) to the list of safe countries of origin.¹⁶² However, the law required the approval of the second chamber of parliament (*Bundesrat*) which rejected the designation of the three countries on 10 March 2017.¹⁶³

1.2. Procedural consequences

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

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

Numbers of applications from asylum seekers from safe countries of origin decreased dramatically in 2016 (with the exception of **Ghana**) and the downward trend continued in 2017. The following table shows statistics for asylum applications by relevant nationalities:

Asylum applications by nationals of “safe countries of origin”			
	2017	2016	2015
Albania	6,089	17,236	54,762
Serbia	4,915	10,273	26,945
FYROM	4,758	7,015	14,131
Kosovo	2,403	6,490	37,095
Bosnia and Herzegovina	1,438	3,109	7,473
Ghana	1,134	2,645	1,152
Montenegro	730	1,630	3,635
Senegal	378	767	1,205

Source: BAMF, Antrags-, Entscheidungs- und Bestandsstatistik, 2015, 2016 and 2017.

¹⁶⁰ Gesetz zur Einstufung weiterer Staaten als sichere Herkunftsstaaten und zur Erleichterung des Arbeitsmarktzugangs für Asylbewerber und geduldete Ausländer (Law on classification of further states as safe countries of origin and on the facilitation of access to the labour market for asylum seekers and tolerated foreigners), BGBl. I, No. 49, 5 November 2014, 1649.

¹⁶¹ Asylverfahrensbeschleunigungsgesetz (Law for an acceleration of asylum procedures), BGBl. I, 23 October 2015, 1722.

¹⁶² Entwurf eines Gesetzes zur Einstufung der Demokratischen Volksrepublik Algerien, des Königreichs Marokko und der Tunesischen Republik als sichere Herkunftsstaaten, 68/16, available in German at: <http://bit.ly/2kSi5CO>.

¹⁶³ Bundesrat, ‘Keine Zustimmung: Gesetz zu sicheren Herkunftsstaaten’, 10 March 2017, available at: <http://bit.ly/1owVXpm>.

To illustrate the developments of protection rates of “safe countries of origin”, the following table includes decisions on first applications from Albania, Serbia and FYROM:

Recognition rates for nationals of selected “safe countries of origin”			
	2017	2016	2015
Albania	1.8%	0.4%	0.2%
FYROM	1%	0.4%	0.6%
Serbia	1%	0.4%	0.2%

Source: BAMF, Antrags-, Entscheidungs- und Bestandsstatistik, 2015, 2016 and 2017.

2. Safe third country

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

By definition of the law, all Member States of the European Union are safe third countries. In addition, a list of further safe third countries can be drawn up.¹⁶⁴ 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.¹⁶⁵ 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.¹⁶⁶ 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.¹⁶⁷ Asylum applications may not be accepted or referred to the responsible authority by the border police if entry to the territory is denied, unless it turns out that Germany is responsible for processing the asylum procedure based on EU law, e.g. because Germany has issued a visa.

3. First country of asylum

The “first country of asylum” concept is not referred to as such in German law. However, Section 27 of the Asylum Act refers to cases where a person was already safe from persecution in “another third country” (*sonstiger Drittstaat*) as grounds for inadmissibility. Such safety is presumed where the applicant holds a travel document from that country,¹⁶⁸ or has resided there for more than 3 months without being threatened by persecution.¹⁶⁹

In the process, important restrictions have been removed. In particular, the former provision could only be applied if return to the safe “other third country” was possible within three months. Although this qualification has been removed, the provision has only been applied rarely, only 7 times, in the period between August and December 2016.¹⁷⁰ No figures are available for 2017 at the time of writing.

¹⁶⁴ Section 26a(2) Asylum Act.

¹⁶⁵ Federal Constitutional Court, Decision of 14 May 1996, 2 BvR 1938/93, 2 BvR 2315/93, BVerfGE 94, 49 (189).

¹⁶⁶ Section 18 Asylum Act.

¹⁶⁷ The border area is defined as a strip of 30 kilometres.

¹⁶⁸ Section 27(2) Asylum Act.

¹⁶⁹ Section 27(3) Asylum Act.

¹⁷⁰ Federal Government of Germany, Response to a parliamentary question by Member of Parliament Volker

G. Relocation

Indicators: Relocation

- | | |
|---|---|
| 1. Number of persons effectively relocated since the start of the scheme | 10,279 |
| 2. Are applications by relocated persons subject to a fast-track procedure? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

Relocation statistics: 22 September 2015 – 16 February 2018

Relocation from Italy			Relocation from Greece		
	Requests	Relocations		Requests	Relocations
Total	:	4,908	Total	:	5,371

Source: European Commission

Since September 2016 Germany had pledged 1,000 places for relocation each month – 500 for Italy and 500 for Greece, and had continued doing so in 2017.¹⁷¹

According to media reports, the government expects the relocation programme to run out in the first months of 2018. In response to an information request, the BAMF confirmed this information: Since the period for registration for the programme had run out at the end of September 2017, the number of persons eligible for relocation had decreased significantly: In February 2018, only 285 persons were waiting for relocation from Greece and only about 1000 persons had been registered in Italy for relocation, according to the BAMF.¹⁷²

1. Relocation procedure

No specific nationalities have been prioritised in the relocation procedure. Relocated persons from Italy include nationals of Eritrea, Syria, the Central African Republic (CAR) and Yemen, while from Greece they concern Syrians, Iraqis and persons whose nationality is unknown.¹⁷³

The BAMF has established a National Contact Point for relocation procedures which consists of 20 staff members in Germany, one staff member in Rome and one in Athens. Once the Italian and Greek authorities identified a person which could be relocated to Germany, they submitted a request to the German National Contact Point. If the German authorities accepted the request, the Italian or Greek authorities informed the asylum seekers about the possible relocation.¹⁷⁴

Germany has rejected some requests from Italy and Greece on the basis of individual reasons: (a) security concerns; (b) child marriages; and (c) polygamous marriages; and (d) insufficient *prima facie* evidence of the declared nationality.¹⁷⁵

Information provided by the BAMF suggests that the duration of the relocation procedure, from the first notification of candidates until arrival in Germany, takes between 10 and 12 weeks at the moment.¹⁷⁶

Beck, No.1/6, 10 January 2017.

¹⁷¹ Information provided by the BAMF, 15 March 2017.

¹⁷² Information provided by the BAMF, 27 February 2018.

¹⁷³ Caritas, *Relocation*, available in German at: <https://bit.ly/2GKKwNI>.

¹⁷⁴ *Ibid.*

¹⁷⁵ Information provided by the BAMF, 27 February 2018.

¹⁷⁶ *Ibid.*

2. Post-arrival treatment

Persons relocated from Greece or Italy arrive by plane at **Munich** airport and are brought to a “waiting room” at Erding (close to the airport) for a maximum duration of 72 hours. Registration and a medical examination take place at the “waiting room”. From there, relocated persons are sent to reception centres at the Federal States according to the standard distribution system (*Königsteiner Schlüssel*). Special rules are applicable to unaccompanied children: if it is established that they have relatives in Germany, they do not travel to Munich and are transferred directly to the Federal State where their relatives are present and taken into custody by the local youth welfare office (*Jugendamt*).¹⁷⁷ In special cases, persons in need of urgent medical treatment may also forgo the transfer to the “waiting room” at Erding and are directly transferred to the relevant Federal State.¹⁷⁸ According to the BAMF, no problems have been reported in the procedure relating to unaccompanied children or persons with special needs.¹⁷⁹

Asylum applications are filed at the BAMF office assigned to the reception centre and a regular procedure takes place.¹⁸⁰ Statistical data concerning the outcome of procedures for relocated persons are not collected by the BAMF.¹⁸¹

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

1. Provision of information on the procedure

Indicators: Information on the Procedure

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

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

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

1.1. Written information

Various other sections of the Asylum Act also contain obligations on the authorities to inform asylum seekers on certain aspects of the procedure. Accordingly, asylum seekers receive various information sheets when reporting to the authorities and/or upon arrival at the initial reception centre,¹⁸² including the following:

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

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

¹⁸⁰ Caritas, Resettlement.de, available at: <http://resettlement.de/relocation/>.

¹⁸¹ Information provided by the BAMF, 28 July 2016.

¹⁸² BAMF, *DA-Asyl (Dienstanweisung Asylverfahren) – Belehrungen* (internal directives of the BAMF), parts of these directives, as at October 2016, were made available by the BAMF upon request: BAMF, Email of 27 February 2017.

- An instruction on the obligation to comply with a decision to be referred to another reception centre, including the obligation to register with the authorities in case of such a referral (“*Belehrung nach § 22 Abs. 3 AsylG*”).

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

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

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.¹⁸³

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

It has been a long-standing criticism from lawyers and NGOs that both the written instructions and the oral briefings provided by the Federal Office are “rather abstract and standardised”.¹⁸⁴ In particular, they are not considered suitable to render the significance and content of questions during interviews sufficiently understandable to applicants. In the “Memorandum to enhance fair and diligent asylum procedures in Germany”, published by an alliance of 12 German NGOs in November 2016, several deficiencies were identified in the context of the right to information.¹⁸⁵

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

Information on the asylum procedure is also made available by NGOs. The Refugee Council of Bavaria has recently published an information leaflet on the specific procedure applicable in the “transit centre” of Manching/Ingolstadt.¹⁸⁶

1.2. Oral information

In addition, asylum seekers are orally informed about “the significance and the proceedings of the interview” and they are instructed about their rights and obligations at the beginning of the interview.¹⁸⁷ However, the oral briefing at the beginning of the interview is described as “formulaic” or “cursory”. In some cases, it is carried out by translators only, so the content of the briefing cannot be controlled.¹⁸⁸

¹⁸³ *Ibid.*

¹⁸⁴ Amnesty International et al., ed. *Memorandum zur derzeitigen Situation des deutschen Asylverfahrens (Memoranda on current situation of the German asylum procedure)*, 2005, 21.

¹⁸⁵ Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland. Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, 14.

¹⁸⁶ Bayerischer Flüchtlingsrat, *Information about the Transit Centre Manching/Ingolstadt*, March 2018, available at: <http://bit.ly/2FYHkL3>.

¹⁸⁷ BAMF, *Das deutsche Asylverfahren – ausführlich erklärt. Zuständigkeiten, Verfahren, Statistiken, Rechtsfolgen (The German asylum procedures – an elaborate explanation. Responsibilities, Procedures, Statistics, Consequences)*, December 2012, 17.

¹⁸⁸ Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland. Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, 14.

Fast-tracking of procedures, in particular in the so-called “arrival centres”, has also been reported to lead to insufficient information given to asylum seekers.¹⁸⁹ For an increasing number of asylum seekers the interview is scheduled within a day or two after their arrival in the arrival centres. Even if they are provided with all the relevant information, there usually is no time for them to contact authorities or other institutions before the interview in case they have any questions or need further information.

In the arrival centre of **Berlin**, asylum seekers are given the opportunity to speak to a staff member of the Federal State’s social services (*Sozialdienst*). The social services then carry out a consultation interview which lasts between 20 and 30 minutes. They also hand out further leaflets, including information on counselling services offered by NGOs and also basic advice on the interview in the asylum procedure published by [Informationsverbund Asyl und Migration](#). However, as the interview in the asylum procedure takes place on the next day in many cases, there is often no opportunity for asylum seekers to contact independent institutions before the interview in case they have any questions.¹⁹⁰

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

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

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

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

Furthermore, interviews are scheduled at very short notice in the arrival centres, at a time when asylum seekers have to come to terms with other administrative regulations and with their new surroundings in general. In this situation, it has proven difficult to create an adequate setting for the preparation for the interview.¹⁹¹ In the light of these problems being described in the context of the exemplary “arrival centre” at Heidelberg, it can be concluded that access to NGOs is even more limited or may be excluded in many

¹⁸⁹ *Ibid.*

¹⁹⁰ Flüchtlingsrat Berlin, *Das Schnellverfahren für Asylsuchende im Ankunftszentrum Berlin*, November 2017, available in German at: <http://bit.ly/2HdSDzb>.

¹⁹¹ Johannes Moll, ‘Das verkürzte Asylverfahren im Ankunftszentrum Heidelberg. Ein Modell im Spannungsfeld von effizientem Verfahren und effektiven Rechtsschutz’, *Asylmagazin* 12/2016, 412, 415-416.

other locations where no similar structures exist. This is particularly the case for the possibilities to access NGOs before the interview, since fast-tracking of procedures is taking place at a growing number of “arrival centres”.

Between 1 March and 31 May 2017 a pilot project for an independent advisory service was carried out in three branch offices of the BAMF (**Gießen, Lebach, Bonn**) in cooperation with welfare organisations. According to reports, an evaluation of this project came to the conclusion that an independent, free-of-charge, qualified individual counselling service which is provided before the interview has “numerous positive effects” on the asylum procedure.¹⁹² However, the evaluation of the pilot project has not been published by the Federal Ministry of the Interior and the government informed Parliament in February 2018 that it had not been decided if or when the evaluation report would be made public.¹⁹³

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.

The so-called “geographical restriction” or “residence obligation” (*Residenzpflicht*) also poses a legal obstacle for many asylum seekers who wanted to contact an NGO or lawyer. Beyond the obligation to stay in initial reception centres for up to 6 months, a general residence obligation is imposed for asylum seekers from safe countries of origin for the whole duration of their procedures,¹⁹⁴ while following the latest reform in July 2017 Federal States may impose an obligation to stay in initial reception centres for up to 24 months subject to certain conditions (see [Freedom of Movement](#)). Therefore the “residence obligation” and the obligation to remain in a particular reception centre pose serious obstacles for access to NGOs and UNHCR in many cases.

I. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? Yes No
❖ If yes, specify which:
2. Are applications from specific nationalities considered manifestly unfounded?¹⁹⁵ Yes No
❖ If yes, specify which: Albania, Bosnia-Herzegovina, Ghana, FYROM, Montenegro, Senegal, Serbia.

Prioritisation of applications from certain countries was revoked in the second quarter of 2016.¹⁹⁶ It was partially replaced by a system of “clustering” applications with the aim of prioritising the caseloads from countries of origin with a high and from those with a low protection rate. The clustering system was also abandoned in the first half of 2017.¹⁹⁷ Since then, the branch offices of the BAMF and the “arrival centres” (*Ankunftszentren*) decide on their own whether they set any priorities in dealing with caseloads, in particular dependent on availability of staff members with the necessary country expertise and availability of interpreters.

In general, the BAMF aims to decide on asylum applications within an average timeframe of 3 months, without differentiating between certain caseloads any longer. The BAMF claims that this aim had already

¹⁹² Federal Government, Reply to parliamentary question by The Greens, 19/873, 22 February 2018, 1.

¹⁹³ *Ibid.*, 5.

¹⁹⁴ Section 47(1a) Asylum Act.

¹⁹⁵ Whether under the “safe country of origin” concept or otherwise.

¹⁹⁶ Federal Government, Reply to parliamentary question by The Left, 18/9415, 17 August 2016, 23.

¹⁹⁷ Information provided by the BAMF, 23 January 2018.

been reached for newly arriving asylum seekers in 2017, for whom the average duration of asylum procedures at the BAMF was 2.3 months.¹⁹⁸

1. Syria

Due to a policy change in the first months of 2016, the BAMF granted subsidiary protection instead of refugee protection in a record number of cases. This policy change affected Syrian nationals in particular, but also asylum seekers from Iraq or Eritrea: For instance, 95.8% of Syrians had been granted refugee status in 2015, this rate dropped to 56.4% in 2016 and 35% in 2017. Conversely, the rate of Syrians being granted subsidiary protection rose from 0.1% in 2015 to 41.2% in 2016 and 56% in 2017. The policy change at the BAMF coincided with a legislative change in March 2016, according to which [Family Reunification](#) was suspended for beneficiaries of subsidiary protection until March 2018, with suspension recently being prolonged until July 2018 and becoming subject to strong restrictions after that date.¹⁹⁹ Tens of thousands of beneficiaries of subsidiary protection have appealed against the authorities' decisions in order to gain refugee status ("upgrade-appeals"), with 55,538 pending appeals by Syrians out of a total 71,084 pending upgrade appeals at the end of 2017.²⁰⁰

2. Afghanistan

Many applications from asylum seekers from Afghanistan had been shelved by the BAMF in the years 2015 and 2016, when applications by asylum seekers from other countries of origin were prioritised. A high number of these cases were decided upon in the second half of 2016 and in 2017. This in turn also resulted in a high number of rejections being issued within a short time-frame. Accordingly, a high number of appeals from Afghan asylum seekers were filed before the courts in 2017. As the number of decisions on Afghan claims has increased exponentially (7,287 decisions in 2015, 68,246 in 2016, 115,537 in 2017), the recognition rate dropped from 77.6% in 2015 to 60.5% in 2016 and 47.4% in 2017. Decision-making practice on Afghanistan has become a major issue of the legal and political debate. This debate was intensified because of a number of controversial deportation flights to Afghanistan, which had been resumed in December 2016.

The legal debate concerning decision-making practices has focused on single male adults. The BAMF generally assumes that "healthy young men who are able to work" can be referred to an internal protection alternative in big cities in Afghanistan (Kabul, Herat oder Mazar-e Sharif) or in the provinces of Bamiyan and Panjshir. Because of the alleged existence of an internal protection alternative, the BAMF often does not fully examine the risks which an asylum seeker might face upon return. The BAMF decisions therefore have been criticised for regularly lacking a thorough examination of the individual circumstances of the case.²⁰¹ Appeals at Administrative Courts against such decisions have frequently been successful, but many cases are still pending at Administrative Courts and High Administrative Courts.²⁰²

¹⁹⁸ Information provided by the BAMF, 23 January 2018.

¹⁹⁹ Deutsche Welle, 'Angela Merkel reaches breakthrough with SPD on refugee family reunion', 30 January 2018, available at: <http://bit.ly/2nne1KE>.

²⁰⁰ Federal Government, Response to parliamentary question by The Left, 19/1371, 22 March 2018, 43.

²⁰¹ For an overview of decision-making and case law in cases of Afghan asylum seekers, see Susanne Giesler and Christopher Wohnig, *Uneinheitliche Entscheidungspraxis zu Afghanistan*, June 2016, available in German at: <http://bit.ly/2G1FSIq>.

²⁰² *Ibid.*

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

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

Asylum seekers are entitled to reception conditions as defined in the Asylum Seekers' Benefits Act (*Asylbewerberleistungsgesetz*) from the moment they arrive at the reception centre to which they have been assigned and where they are issued an "arrival certificate" (*Ankunftsnachweis*). They remain entitled to reception conditions as long as they have the status of asylum seeker (*Aufenthaltsgestattung*) which they usually obtain a few days after arriving in the reception centre. 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.

The entitlement of asylum seekers who have yet to arrive in the assigned reception centre to benefits is not clearly regulated by law. However, this question is not of major practical significance anymore, since admission into the reception centres usually takes place on the day asylum seekers report to the competent authorities. This represents a clear improvement in comparison to the situation in 2015 and early 2016, when many applicants had to wait for several months for their formal admission into a reception centre and/or the registration of their applications.

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.²⁰³ This provision does not seem to be applied often in practice, however.

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

²⁰³ Section 7 Asylum Seekers' Benefits Act.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 1 January 2018 (in original currency and in €):²⁰⁴
 - ❖ Single adult in accommodation centre €135
 - ❖ Single adult outside accommodation centre €354

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).²⁰⁵ Furthermore, the necessary "benefits in case of illness, pregnancy and birth" have to be provided for.²⁰⁶ 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.²⁰⁷

Revisions to the Asylum Seekers' Benefits Act have been passed in November and again in October 2015. These provide an adjustment of standard rates to a level of about 90% of "standard" social benefits, as well as access to standard social benefits 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.

Whereas benefits were primarily to be provided in cash after the 2014 reform, the 2015 reform reverted back to previous policy, 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".²⁰⁸ For asylum seekers in other (decentralised) collective accommodation centres, non-cash benefits "can" be provided "if this is necessary under the circumstances".²⁰⁹ 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.

Benefits under the Asylum Seekers' Benefits Act were slightly raised at the beginning of 2016 in the course of an annual adjustment. However, they were reduced again, to a slightly lower level, with the introduction of amendments to the Asylum Seekers' Benefits Act in March 2016. Since then, there have been some minor adjustments. Allowances for asylum seekers from 1 January 2018 onwards are as follows:

Allowance for asylum seekers						
	Single adult	Adult partners (each)	Member of household > 18	Member of household 14-17	Member of household 6-14	Member of household < 6
Stay in accommodation centre	€135	€122	€108	€76	€83	€79
Stay outside accommodation centre	€354	€318	€284	€276	€242	€214

²⁰⁴ This includes hygienic items allowance and pocket money only.

²⁰⁵ Section 3 Asylum Seekers' Benefits Act.

²⁰⁶ Section 4 Asylum Seekers' Benefits Act.

²⁰⁷ Section 6 Asylum Seekers' Benefits Act.

²⁰⁸ Section 3(1) Asylum Seekers' Benefits Act.

²⁰⁹ Section 3(2) Asylum Seekers' Benefits Act.

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

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

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

Material reception conditions can be reduced to the point that only “irredeemably necessary” benefits are granted, for the following reasons:²¹⁰

1. A person has entered Germany (solely) for the purpose of receiving benefits – this provision does generally not apply to asylum seekers, since it cannot be alleged that claiming benefits has been their only motivation for entering Germany;
2. A person has been asked to leave Germany until a certain date and has not left the country, although this would have been feasible – this provision does generally not affect asylum seekers as long as their asylum procedure is ongoing;
3. A person for whom removal procedures had been scheduled but could not be carried out for reasons, for which this person is responsible – this provision can affect asylum seekers, for instance in cases where an application has been rejected as “inadmissible” following a “Dublin procedure”;
4. A person who has been allocated to another European state within the framework of a European distribution mechanism (not including the Dublin system);
5. A person has been granted international protection in an EU Member State or Dublin State or has acquired a right of residence for other reasons in such a state;
6. An asylum seeker or a person who has filed a secondary asylum application has failed to cooperate with authorities by:
 - Failure to present or hand over a passport or passport substitute to the authorities;
 - Failure to present or hand over other documents necessary for the clarification of his or her identity;
 - Refusal to provide information about his or her identity or nationality in the course of the asylum procedure; or
 - Failure to keep the appointment for the formal registration of their application at the BAMF;
7. An asylum seeker whose application has not yet been registered by the authorities has failed to cooperate with the authorities in a manner that the “arrival certificate” cannot be issued.²¹¹

This list of reduction grounds is exhaustive, so benefits cannot be reduced for other reasons. If one of the above grounds is met, authorities have full discretion to reduce benefits but “irredeemably necessary” benefits have to be granted in any case. Therefore reduction 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 a decision of the Federal Constitutional Court of July 2012 on the Asylum Seeker's Benefits Act,²¹² there have been several

²¹⁰ Section 1a Asylum Seekers' Benefits Act.

²¹¹ Section 11(2a) Asylum Seekers' Benefits Act.

²¹² Federal Constitutional Court, Decision 1 BvL 10/10, 1 BvL 2/11, 18 July 2012.

courts decisions concluding that any reduction of benefits would be unconstitutional and therefore inadmissible, but these rulings do not represent general opinion.

In practice, reduction of benefits rarely applies to asylum seekers as long as their asylum procedure is ongoing. They may, however, 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.

4. Freedom of movement

Indicators: Freedom of Movement

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

4.1. Dispersal and geographical restriction

Asylum seekers have no right to choose their place of residence. According to the Asylum Act, their right to remain on the territory under a “residence permit for asylum seekers” (*Aufenthaltsgestattung*) throughout the duration of the asylum procedure is generally limited to the area of the Federal State responsible for them.²¹³ Furthermore, the authorities of the Federal State may oblige them to live in a certain town or district, subject to certain conditions:

Especially at the beginning of the asylum procedure, the “residence obligation” (*Residenzpflicht*), legally called “geographical restriction” (*räumliche Beschränkung*), applies. This means that asylum seekers are obliged to stay in a particular place, usually the initial reception centre. This restriction is generally imposed for a period of 3 months.²¹⁴ This rule is subject to two derogations:

1. The geographical restriction remains in force for persons who are have an **Obligation to Stay in Initial Reception Centres**;²¹⁵
2. The geographical restriction may be re-imposed if the person has been convicted of a criminal offence or if deportation is imminent.²¹⁶

The place of residence of asylum seekers is usually determined by the “EASY” general distribution system 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.²¹⁷ Distribution of asylum seekers is determined by the following aspects:²¹⁸

- ❖ Capacities of initial reception centres;
- ❖ Competence of the branch offices of the BAMF for the particular applicant’s country of origin;
- ❖ A quota system called “*Königsteiner Schlüssel*”,²¹⁹ 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.

²¹³ Sections 55(1) and 56(1) Asylum Act.

²¹⁴ Section 59a(1) Asylum Act.

²¹⁵ Section 59a(1) Asylum Act.

²¹⁶ Section 59b(1) Asylum Act.

²¹⁷ BAMF, ‘Initial Distribution of Asylum-Seekers (EASY)’, 1 October 2016, available at: <http://bit.ly/2DASJOS>.

²¹⁸ Section 46(2) Asylum Act.

²¹⁹ Section 45 Asylum Act.

The quota for reception of asylum seekers in 2017 (“Königsteiner Schlüsse”) in comparison to number of (first) asylum applications in 2017 was as follows:

Distribution of asylum seekers in Germany: 2017			
Federal State	Quota	Applications in 2017	Actual share in 2017
Baden-Württemberg	12.97%	23,662	10.6%
Bavaria	15.53%	27,647	12.4%
Berlin	5.08%	10,617	4.8%
Brandenburg	3.04%	6,182	2.8%
Bremen	0.95%	2,753	1.2%
Hamburg	2.56%	5,313	2.4%
Hesse	7.4%	15,812	7.1%
Mecklenburg-Vorpommern	2.01%	4,360	2%
Lower Saxony	9.33%	21,586	9.7%
North Rhine-Westphalia	21.14%	59,666	26.8%
Rheinland-Pfalz	4.83%	14,264	6.4%
Saarland	1.21%	3,287	1.5%
Saxony	5.06%	8,514	3.8%
Sachsen-Anhalt	2.8%	5,957	2.7%
Schleswig-Holstein	3.39%	6,910	3.1%
Thuringia	2.69%	6,030	2.7%

Source: BAMF, Asylgeschäftsbericht, December 2017: <http://bit.ly/2FQUJET>.

As shown in the last column, 9 out of 16 Federal States received less asylum applicants than their respective share under the distribution key in 2017; in 2016 this included 10 Federal States. This can – at least partially – be explained by the fact that the distribution of applications takes into account additional criteria, as mentioned above.

It is possible for the asylum seeker 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 allocation of the asylum seeker to a particular area is not a formal decision that can be legally challenged by the individual.

As long as the residence obligation applies – during the initial period of the procedure in most cases – the applicant also has to request permission to temporarily leave the assigned area for urgent public interest reasons, where it is necessary for compelling reasons or where refusal of permission would constitute undue hardship.²²⁰ As a rule, permission shall also be granted if the asylum seeker intends to take up employment or education in another area. Permission shall be granted without delay in cases where the person has to keep appointments with UNHCR or NGOs.²²¹

4.2. Obligation to stay in initial reception centres

Asylum seekers are required to stay in the initial reception centre hosting the BAMF branch office where they lodge their application for a period up to six weeks, but not exceeding 6 months.²²² By way of derogation, since October 2015, applicants from a **Safe Country of Origin** are obliged to stay in the initial reception centre for the entire duration of their asylum procedure.²²³

²²⁰ Section 58(1) Asylum Act.

²²¹ Section 58(2) Asylum Act.

²²² Section 47(1) Asylum Act.

²²³ Section 47(1a) Asylum Act.

Following another legislative reform in July 2017, Federal States are allowed to impose an obligation on applicants to stay in initial reception centres for up to 24 months.²²⁴ In principle, Federal States are entitled to impose this restriction on all applicants, subject to the following qualifications:

- The obligation to stay in initial reception centres is limited to the duration of the first instance procedure until a decision by the BAMF, and may only be prolonged in case the application is rejected as manifestly unfounded or dismissed as inadmissible
- The obligation also ceases if the BAMF informs the Federal States' authorities that it cannot decide, or cannot decide at short notice, whether the asylum application is inadmissible or manifestly unfounded.²²⁵

The new obligation to stay in initial reception centres for up to 24 months only seems to have been introduced in **Bavaria** so far. Three reception centres (**Manching/Ingolstadt**, **Regensburg** and **Deggendorf**) have been turned into "transit centres" (*Transitzentren*) for the purpose of applying this restriction on movement. Manching/Ingolstadt had started operations in 2015 as an arrival and return centre (*Ankunfts- und Rückführungseinrichtung*, ARE) before being converted into a transit centre in 2017. Neither ARE nor "transit centres" are legal terms. However, these designations have been introduced to emphasise the special character of the facility which is supposed to enable authorities to "streamline" asylum and return procedures in one place. As far as the asylum procedure is concerned, the **Manching** facility is an "initial reception centre" (*Aufnahmeeinrichtung*) within the meaning of the Asylum Act, and additionally it also houses a "special reception centre" (*besondere Aufnahmeeinrichtung*) for the purpose of carrying out accelerated procedures.²²⁶

Asylum seekers who allegedly have a low prospect of being granted a right to stay (*Bleibeperspektive*) in Germany are required to remain in these transit centres for the duration of the asylum procedure and, if possible, until they leave Germany or are removed. According to the Refugee Council of Bavaria, applicants from many countries of origin can now be sent to "transit centres". Apart from nationals of **Safe Countries of Origin**, particularly those from Western Balkan countries, this includes nationals of countries such as Russia, Georgia and Ukraine. In addition, Bavarian authorities have also announced that applicants from Ethiopia, Nigeria, Sierra Leone, Mali, Azerbaijan and Afghanistan could be sent to transit centres, although some of these countries have comparably high recognition rates.²²⁷

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.

²²⁴ Section 47(1b) Asylum Act, as inserted by the Law of 20 July 2017.

²²⁵ *Ibid.* This is also provided in Section 50(1) Asylum Act.

²²⁶ Bayerischer Flüchtlingsrat, 'Abschiebelager Manching/Ingolstadt', available in German at: <http://bit.ly/2pnLtRg>.

²²⁷ Bayerischer Flüchtlingsrat, 'Transitzentren & ARE: Die bayerischen Abschiebelager', available in German at: <http://bit.ly/2GA5a00>; BR, 'Flüchtlingsrat spricht über Missstände in Transitzentren', 6 July 2017, available in German at: <http://bit.ly/2pk7twx>.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

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

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

- ❖ Initial reception centres, including particular types of centres such as arrival centres, special reception centres and transit centres;
- ❖ Collective accommodation centres;
- ❖ Decentralised accommodation.

Moreover, emergency shelters were used in particular in 2015 and 2016 but have mostly been closed down in 2017, with a few exceptions mainly in the Federal State of **Berlin**.

1.1. Initial reception centres

For a period of up to 6 months after their application has been filed, asylum seekers are generally obliged to stay in an initial reception centre (*Aufnahmeeinrichtung*).²²⁸ An obligation to stay in these centres for a maximum of 24 months may be imposed by Federal States as of July 2017,²²⁹ although only **Bavaria** had made use of this provision until the end of 2017. Furthermore, asylum seekers from **Safe Countries of Origin** are obliged to stay there for the whole duration of their procedures (see **Freedom of Movement**).²³⁰

The Federal States are required to establish and maintain the initial reception centres.²³¹ Accordingly, there is at least one such centre in each of Germany's 16 Federal States with most Federal States having several initial reception facilities.

Since 2016, several reception centres have either been opened as arrival centres (*Ankunftszentren*) or existing facilities have been transformed into arrival centres. In these centres, the BAMF and other relevant authorities apply **Fast-Track Processing**. The concept of "arrival centres" is not established in law, therefore technically the initial reception centres are still functioning as part of the arrival centres, together with a branch office of the BAMF. The BAMF lists 24 arrival centres which are located across 16 Federal States as follows:²³²

- Bavaria: Bamberg
- Berlin
- Brandenburg: Eisenhüttenstadt
- Bremen
- Hamburg
- Baden-Württemberg: Heidelberg
- North Rhine-Westphalia: Bielefeld, Bonn, Dortmund, Mönchengladbach, Münster
- Saxony: Chemnitz, Dresden, Leipzig

²²⁸ Section 47(1) Asylum Act.

²²⁹ Section 47(1b) Asylum Act, as inserted by the Law of 20 July 2017.

²³⁰ Section 47(1a) Asylum Act.

²³¹ Section 44(1) Asylum Act.

²³² BAMF, *Arrival centres*, available at: <http://bit.ly/2lyOpmY>.

- Lower Saxony: Bad Fallingbostal, Bramsche
- Saxony-Anhalt: Halberstadt
- Hessen: Gießen
- Mecklenburg-Vorpommern: Stern-Buchholz
- Thuringia: Suhl
- Rhineland-Palatinate: Trier
- Schleswig-Holstein: Glückstadt, Neumünster
- Saarland: Lebach

In addition, “special reception centres” (*besondere Aufnahmeeinrichtungen*) have been established in Bavaria in **Bamberg** and **Manching/Ingolstadt**. They host applicants falling under the [Accelerated Procedure](#).

Furthermore, Bavaria has also established and/or rebranded some facilities as “transit centres” (**Manching/Ingolstadt**, **Regensburg** and **Deggendorf**) which are supposed to host applicants with ostensibly low recognition rates (see [Freedom of Movement](#)).

As of January 2018, the BAMF website listed 68 branch offices, regional offices and “arrival centres” in 64 locations.²³³ In most of these places, an initial reception centre is assigned to the branch office of the BAMF, or combined with a branch office to constitute an arrival centre.

1.2. Collective accommodation centres

Once the [Obligation to Stay in Initial Reception Centres](#) ends, asylum seekers should, “as a rule”, be accommodated in “collective accommodation” centres (*Gemeinschaftsunterkünfte*).²³⁴ 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. According to the “geographical restriction”, asylum seekers are obliged to stay in the district to which they have been allocated for the whole duration of their procedure, i.e. including appeal proceedings (see [Freedom of Movement](#)). The Federal States are entitled by law to organise the distribution and the accommodation of asylum seekers within their territories.²³⁵ 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.

1.3. 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 2016, the German Federal Statistical Office recorded 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:

²³³ BAMF, *Branch offices / regional offices*, available at: <http://bit.ly/2kIPxMD>.

²³⁴ Section 53 Asylum Act.

²³⁵ Section 10 Asylum Seekers' Benefits Act.

Recipients of asylum seekers benefits in selected Federal States: 31 December 2016				
Federal State	Initial reception centres	Collective accommodation	Decentralised accommodation	Total
North Rhine-Westphalia	35,417	100,309	55,590	191,316
Bavaria	7,582	34,437	51,196	93,215
Baden-Württemberg	8,414	58,489	22,953	89,856
Lower Saxony	3,145	13,520	58,736	75,401
Hessen	11,583	37,305	20,986	69,874
Berlin	10,337	18,073	12,849	41,259
Rhineland-Palatinate	2,962	4,467	24,511	31,940
Schleswig-Holstein	2,341	2,536	24,599	29,476
Saxony	1,649	16,982	10,041	28,672
Brandenburg	1,433	10,477	6,060	17,970
Hamburg	6,286	1,216	9,964	17,466
Sachsen-Anhalt	1,884	4,957	7,166	14,007
Thuringia	:	4,897	7,110	12,007
Mecklenburg-Vorpommern	732	3,213	3,838	7,783
Bremen	228	2,025	3,880	6,133
Saarland	42	770	1,052	1,864
Total	94,035	313,673	320,531	728,239

Source: Statistisches Bundesamt, Empfängerinnen und Empfänger nach Bundesländern: <http://bit.ly/2FITkEj>. This includes both asylum seekers and people with tolerated stay (*Duldung*).

Although Section 53 of the Asylum Act provides that asylum seekers “should, as a rule, be housed in collective accommodation” following the initial reception period, the above figures show that policies vary considerably between the Federal States.²³⁶ In some states such as **North Rhine-Westphalia**, **Baden-Württemberg** or **Brandenburg**, most asylum seekers are indeed living in this type of accommodation. In contrast, there are other Federal States, including **Rhineland-Palatinate**, **Hamburg** or **Lower Saxony** as well as **Bavaria**, in which the majority of recipients of asylum seekers' benefits are staying in so-called “decentralised accommodation”, so usually in apartments of their own.²³⁷ It is remarkable that the situation has remained unchanged since 2014, despite the high number of new arrivals in 2015.²³⁸

1.4. Reception capacity and emergency shelters

With the massive increase in numbers of newly arriving asylum seekers in 2015, reception capacities often reached or exceeded their limits. Accordingly, a large number of asylum seekers was not accommodated in initial reception centres at all. Instead, they were sent to local accommodation centres, in many cases before their asylum application had been registered. In many places, the authorities could not arrange for sufficient accommodation in the existing accommodation centres or in other forms of accommodation such as hotels/hostels or privately owned apartments. Therefore, various types of

²³⁶ 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.

²³⁷ It is possible, though, that some Federal States subsume smaller types of collective accommodation under “decentralised” housing as well.

²³⁸ AIDA, Country Report Germany, 2016 Update, March 2017, 60.

emergency shelters were set up. These included gyms, containers, warehouses or office buildings and tents.

No figures are available on the number of asylum seekers who still had to stay in such shelters in 2017, not least because there is no clear-cut distinction between some temporary accommodation facilities and emergency shelters. Nevertheless, according to media reports, most Federal States have not accommodated asylum seekers in emergency shelters in 2017. One exception was **Berlin**, where about 3,700 people were still accommodated in former barracks or former office buildings. However, other temporary shelters, in particular gyms and the hangar of the former Tempelhof Airport, which had also been used as emergency shelters in Berlin, have been vacated in the course of 2016 and 2017.²³⁹

In contrast, in several other Federal States, thousands of places in reception centres were vacant at the end of 2017, although States had already started to close facilities. For instance, in **North Rhine-Westphalia** capacities for the accommodation of newly arriving asylum seekers had been reduced from 78,000 at the end of 2015 to 44,000 at the end of 2017, but still 50% of these places were not occupied at the end of 2017. In total, a survey by German media showed that throughout Germany around 100,000 places were vacant in reception centres and other accommodation centres at the end of 2017.²⁴⁰

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

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

2.1. Conditions in initial reception centres

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

Many of these centres use former army barracks which have been refurbished. Locations vary significantly: While some of the initial reception centres are situated in or close to big cities (e.g. **Berlin**, **Munich**, **Brunswick/Braunschweig**, **Bielefeld**, **Dortmund**, **Karlsruhe**), others are located in smaller cities (**Eisenhüttenstadt**, **Neumünster**, **Halberstadt**) or in small towns with some distance to the next city (**Eisenberg** near Jena, **Lebach** near Saarbrücken). One initial reception centre (**Nostorf-Horst** in Mecklenburg-Vorpommern) is located in an isolated rural area some 10 km away from the next small town. The transit centre of **Manching/Ingolstadt** in Bavaria is made up of containers, also established far away from services, with the closest supermarket located 40 minutes away by foot.²⁴¹

²³⁹ See e.g. Federal State of Berlin, ‘Schließung der Flüchtlingsunterkunft in der Levetzowstraße’, 10 August 2017, available in German at: <http://bit.ly/2tX9pk8>. See also Berliner Zeitung, ‘Rund 100.000 Plätze in Flüchtlingsunterkünften werden nicht genutzt’, 4 January 2018, available in German at: <http://bit.ly/2HGnKDt>. See also Refugee Rights Data Project, *Starting Over? Filling data gaps relating to refugees and asylum seekers in emergency shelters and community housing in Berlin*, March 2017, available at: <http://bit.ly/2FSsTrA>.

²⁴⁰ *Ibid.*

²⁴¹ Bayerischer Flüchtlingsrat, ‘Abschiebelager Manching/Ingolstadt’, available in German at: <http://bit.ly/2pnLtRg>.

Initial reception centres have at least several hundred places, while some facilities can host large numbers of persons. The special reception centre of **Bamberg** in Bavaria has a capacity of 3,400 places, for example.²⁴²

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** provides that asylum seekers should have 4.5m² of living space, while other regulations provide for 6 or 7m² per person.²⁴³ 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.

Occupancy rates have significantly improved in the course of 2016 and 2017, compared to the situation in previous years (see [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 many facilities in recent years.

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

2.2. Situation in collective accommodation centres and decentralised housing

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

Even before the rise in numbers of asylum seekers made itself evident, studies showed that living conditions of asylum seekers differed considerably between regions and sometimes even within the same town. For example, some municipalities have a policy of generally allowing asylum seekers to live in apartments, which they have to find and rent on their own. In some areas, this is almost impossible in practice for many asylum seekers, since rents are unaffordable in privately owned apartments and space

²⁴² ECRE, 'The Bamberg model and transit camp system in Germany – Op-ed by Aino Korvensyrjä', 2 February 2018, available at: <http://bit.ly/2F1z6KP>. See also Bayerischer Flüchtlingsrat, 'Abschiebelager Bamberg', available in German at: <http://bit.ly/2lwD471>.

²⁴³ European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in Germany*, 2013, 26.

in council housing is extremely limited. This may lead to a situation in which asylum seekers have to stay in collective accommodation centres although they are technically not required to do so.

Overall living conditions

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

Occupancy rates have considerably improved in many regions throughout 2016 and 2017. Only the Federal State of **Berlin** had a significant number of asylum seekers living in emergency facilities at the end of 2017.

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.

Facilities are often isolated or in remote location. Many temporary facilities do not comply with basic standards and do not guarantee privacy.²⁴⁴ According to reports this has led to serious health problems for some asylum seekers, especially in cases of long stays in collective accommodation centres.

In facilities in which food is provided, asylum seekers are sometimes not allowed to prepare their own food and/or no cooking facilities exist. Especially where food is handed out in the form of pre-packed meals, quality is often criticised.²⁴⁵

Concerns have also been raised around limited space and equipment for recreation, including for children, in some facilities. In some centres, no separate and quiet space is available for children, for example to do their homework for school.²⁴⁶

Furthermore, many facilities lack qualified staff, whereas NGOs and volunteers often have to take over authorities' obligations in particular in the areas of counselling and integration. Lack of communication between authorities and NGOs and/or volunteers has also been reported.²⁴⁷

2.3. Physical security

In addition to overall living conditions, the security of residents can also be an issue of concern. According to official statistics, more than 313 attacks on accommodation facilities took place in 2017, compared to over 900 in 2016. These included 17 arson attacks in 2017, compared to 66 in 2016. In addition, 1,906 recorded attacks on individual asylum seekers or refugees. Most of the attacks are classified as racially motivated crimes.²⁴⁸ According to statistics compiled by NGOs, the number of attacks on reception centres during 2017 was significantly higher – 1,527 attacks on facilities, including 25 arson attacks, compared to 1,578 attacks including 102 arson attacks in 2016.²⁴⁹ Nevertheless, NGO statistics also show

²⁴⁴ ProAsyl, 'Ein Leben ohne Privatsphäre? Sammelunterbringung darf nicht zum Dauerzustand werden!', 10 January 2017, available in German at: <http://bit.ly/2kWy5U>.

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

²⁴⁷ For both positive and negative examples of cooperation, see Robert-Bosch-Stiftung, *Die Aufnahme von Flüchtlingen in den Bundesländern und Kommunen - Behördliche Praxis und zivilgesellschaftliches Engagement*, 2015, available in German at: <http://bit.ly/2kIKN9M>.

²⁴⁸ Federal Government, Reply to parliamentary question by The Left, 19/889, 23 February 2018, available in German at: <http://bit.ly/2lxizqE>.

²⁴⁹ Mut Gegen Rechte Gewalt, 'Chronik flüchtlingsfeindlicher Vorfälle', 4 March 2018, available in German at: <http://bit.ly/2l4P8jO>.

a significantly lower number of attacks (349) on individual asylum seekers or refugees, therefore discrepancies may partially be explained by differences in counting methods.

In many facilities, situations of overcrowding and lack of privacy lead to lack of security, particularly for women and children.²⁵⁰

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

In some facilities asylum seekers have to report to staff upon leaving and upon return. Visitors have to report to staff and there are only limited visiting hours. In some cases, no overnight stays are allowed for visitors, even for spouses (see [Access to Reception Centres](#)).²⁵¹

2.4. Duration of stay

In the absence of a consistent policy, the duration of stay in collective accommodation centres is dependent on the place of residence and sometimes it seems to be a matter of pure coincidence whether asylum seekers are allowed to move out of collective accommodation or not. If asylum seekers stay in collective accommodation for the whole duration of their asylum procedure (as it is generally prescribed by law) this often takes several years since the obligation applies to appeal procedures as well. In addition, people whose asylum applications have been rejected, are often obliged to stay in collective accommodation centres as long as their stay is “tolerated”. It has been argued that a stay in collective accommodation which lasts several years corresponds with increased health risks, especially an increased risk of mental disorders.

According to reports, the long duration of stay in temporary facilities (emergency shelters), which do not comply with basic standards has led to serious health problems for some asylum seekers, both in emergency shelters, but in cases of long stays also in “normal” collective accommodation centres.²⁵² Cases of depression, alcohol and drug abuse have been reported to be common in temporary accommodation facilities in **Berlin**.²⁵³

²⁵⁰ ProAsyl, ‘Ein Leben ohne Privatsphäre? Sammelunterbringung darf nicht zum Dauerzustand werden!’, 10 January 2017, available in German at: <http://bit.ly/2kWy5U>.

²⁵¹ *Ibid.*

²⁵² Tagesspiegel, ‘Leben in der Massenunterkunft’, 21 November 2016, available at: <http://bit.ly/2JBA0v>. The article reports that a family from Turkmenistan had stayed in a temporary accommodation facility (a former school) for 26 months. See also Refugee Rights Data Project, *Starting Over?*, March 2017, referring to an average stay of 13.7 months among respondents in Berlin.

²⁵³ *Ibid.*

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers?
 - ❖ Asylum seekers in initial reception centres Yes No
 - ❖ Asylum seekers no longer in initial reception centres Yes No
 - ❖ If yes, when do asylum seekers have access the labour market? 3 months
2. Does the law allow access to employment only following a labour market test? Yes No
3. Does the law only allow asylum seekers to work in specific sectors?
 - ❖ If yes, specify which sectors: No self-employment Yes No
4. Does the law limit asylum seekers' employment to a maximum working time?
 - ❖ If yes, specify the number of days per year Yes No
5. Are there restrictions to accessing employment in practice? Yes No

1.1. Time limit for the right to work

The time limit for access to the labour market is generally 3 months.²⁵⁴

However, asylum seekers are barred from access to employment as long as they are under [Obligation to Stay in Initial Reception Centres](#).²⁵⁵ The maximum period for this stay is 6 months for most asylum seekers, but: (a) asylum seekers from safe countries of origin are obliged to stay in initial reception centres for the whole duration of their asylum procedures;²⁵⁶ and (b) Federal States may impose a 24-month obligation to stay in initial reception centres since July 2017, this option only being used by **Bavaria** so far.²⁵⁷

In principle, the law thus results in unequal treatment. It provides that asylum seekers from safe countries of origin do not have access to the labour market at all, while other applicants may face serious impediments to accessing employment for periods reaching up to 6 or even 24 months as long as they remain in initial reception centres. Nevertheless, access to the labour market also has to be granted to these groups of asylum seekers as soon as their obligation to stay in initial reception centres ceases for legal reasons or where they are transferred to other types of accommodation, for instance if the BAMF cannot decide within a short term on the application or if the application is not deemed manifestly unfounded and an appeal is pending.

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. The asylum seeker's residence permit (*Aufenthaltsgestattung*) does not qualify as such.²⁵⁸

1.2. Restrictions on access to the labour market

After the waiting period has expired, access to the labour market is granted in principle, but with restrictions. Firstly, asylum seekers have to apply for an employment permit. To this end, they have to prove that there is a "concrete" job offer, i.e. an employer has to declare that the asylum seeker will be

²⁵⁴ Section 61(2) Asylum Act.

²⁵⁵ Section 61(1) Asylum Act.

²⁵⁶ Section 47(1a) Asylum Act.

²⁵⁷ Section 47(1b) Asylum Act, as inserted by the Law of 20 July 2017.

²⁵⁸ Section 21(6) Residence Act.

employed in case the employment permit is granted, and they have to hand in a detailed job description to the authorities.

Secondly, for a period of 15 months following the registration of the asylum application and the issuance of the *Aufenthaltsgestattung*, the job centre usually has to carry out a “priority review”, i.e. an examination of whether there is another job-seeker who is suited for the offered position and who has a better status in terms of employment regulations, in particular German citizens or foreigners with a secure residence permit. As of August 2016, following an addendum to the Employment Regulation (*Beschäftigungsverordnung*), this “priority review” has been suspended for three years in most parts of Germany. This addendum lists 133 of 156 regions of the labour agency (areas to which a local labour office is assigned), so only in 23 regions the priority review still has to take place.²⁵⁹

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

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

Recent statistics on the number of employed and unemployed asylum seekers are not available. Available statistics from the Employment Agency include the number of unemployed persons per nationality, without distinguishing on the basis of legal status.

2. Access to education

Indicators: Access to Education

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

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

For example, compulsory education ends at the age of 16 in several Federal States, therefore children in those states do not have the right to enter schools when they are 16 or 17 years old. Furthermore, it has frequently been criticised that parts of the education system are insufficiently prepared to address the specific needs of newly arrived children. While there are “best practice” examples in some regions for the integration of refugee children into the education system, obstacles remain in other places, such as lack of access to language and literacy courses or to regular schools.²⁶⁰

In 2016, an association of various NGOs (regional refugee councils, Federal Association for Unaccompanied Refugee Minors, Youth without Borders) started a campaign called “School for all” (*Schule für alle*) to draw attention to the fact that children in many initial reception centres have only had very basic schooling and no access to the regular school system for the duration of their stay in these facilities (see [Freedom of Movement: Obligation to Stay in Initial Reception Centres](#)). Furthermore, the NGOs have criticised the fact that access to education services was severely limited for asylum seekers above the age of 16, many of whom have not finished school in their countries of origin and therefore need access to the school system in order to gain a degree.²⁶¹

²⁵⁹ These are areas in which the local labour market is considered to be “strained”, but the list actually does not seem to adhere to this principle. The priority review is still in place in parts of **Bavaria** (11 out of 23 regions), parts of **Nordrhein-Westfalen** (7 out of 30 regions) and in the Federal State of **Mecklenburg-Vorpommern**.

²⁶⁰ Stefanie Studnitz, ‘Ausgrenzung statt Ausbildung’, *Migration und Soziale Arbeit*, 2/2011. See 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.

²⁶¹ See the campaign at: <http://kampagne-schule-fuer-alle.de/>.

Problems with access to the education system have particularly been reported with regard to the newly established “transit centres” in **Bavaria**. According to media reports, the regional government tries to generally limit education for children in the transit centres to language courses in classrooms within the centre, but denies them access to the regular school system.²⁶² In March 2018, authorities granted access to regular schools for six children from Kosovo, after an Administrative Court had decided that children from these centres with sufficient German language skills had the right to attend the regular school system. According to one report, Hubert Heinhold, lawyer, estimates that the judgment applies to a least a quarter of children living in the transit centres, who were currently denied access to the regular school system.²⁶³

Asylum seekers generally have access to vocational training. In order to start vocational training, they need an employment permit, but in contrast to other jobs a “priority review” does not have to be carried out.²⁶⁴ However, the fact that asylum seeker's residence permits are issued for a 6-month-period frequently renders it impossible to enter vocational training. Training contracts usually have to be concluded for a duration of two or three years. Hence potential employers are often hesitant to offer vocational training to asylum seekers since there is a considerable risk that the training cannot be completed if the asylum application is rejected.

D. Health care

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

The law restricts health care for asylum seekers to instances “of acute diseases or pain”, in which “necessary medical or dental treatment has to be provided including medication, bandages and other benefits necessary for convalescence, recovery, or alleviation of disease or necessary services addressing consequences of illnesses.” The law further contains a special provision for pregnant women and for women who have recently given birth. They are entitled to “medical and nursing help and support”, including midwife assistance. Furthermore, vaccination and “necessary preventive medical check-ups” shall be provided.²⁶⁵

In addition, the law states that further benefits can be granted “if they are indispensable in an individual case to secure health”.²⁶⁶

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

²⁶² See also Culture of Deportation, ‘No 24 months in this camp! Stop deportations! Deggendorf transit camp protest’ 20 December 2017, available at: <http://bit.ly/2GEk1aw>; ‘We are refugees, not prisoners! Bamberg AEO camp demonstration’, 17 January 2018, available at: <http://bit.ly/2lt6ZwN>.

²⁶³ Süddeutsche Zeitung, ‘Flüchtlingskinder aus Transitzentrum dürfen reguläre Schule besuchen’, 9 March 2018, available in German at: <http://bit.ly/2Dzi9fX>.

²⁶⁴ Section 32(2)(1) Employment Regulation.

²⁶⁵ Section 4 Asylum Seekers' Benefits Act.

²⁶⁶ Section 6 Asylum Seekers' Benefits Act.

are equally likely to cause pain. This latter opinion has been upheld by courts in several cases. Nevertheless, it has been reported that necessary but expensive diagnostic measures or therapies are not always granted by local authorities, which argue that only “elementary” or “vital” medical care would be covered by the law.²⁶⁷

A common problem in practice is caused by the need to obtain a health insurance voucher (*Krankenschein*). These vouchers or certificates are usually handed out by medical personnel in the initial reception centres, but once asylum seekers have been referred to other forms of accommodation they usually have to apply for them at the social welfare office of their municipality. There have been reports that necessary treatment has been delayed or even denied by staff of social welfare offices, due to incompetence to decide on these matters.²⁶⁸ The necessity to distribute health insurance vouchers individually also imposes significant administrative burden on the social services. In response, the Federal States of **Berlin, Brandenburg, Bremen, Hamburg** and **Schleswig-Holstein** issue “normal” health insurance cards to all asylum seekers, enabling them to see a doctor without permission from the authorities. In some Federal States (**North Rhine-Westphalia, Lower Saxony** and **Rhineland-Palatinate**) the health insurance card for asylum seekers has been introduced in principle, but municipalities have been slow in implementing the system.²⁶⁹ for example, only one district in the Federal State of **Lower Saxony** and three municipalities in **Rhineland-Palatinate** had started handing out health insurance cards as of April 2017, according to media reports.²⁷⁰ Other Federal States (e.g. **Bavaria** and **Baden-Württemberg**) have announced that they will not participate in the scheme.

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](#)).²⁷¹ However, the law states that “irredeemably necessary” benefits still have to be granted in these cases. Accordingly, at least “essential treatment” has to be provided for in these cases, and it has also been argued that treatment should be on the same level as it is for other asylum seekers, especially if the need for medical treatment has been the result of an emergency which has not existed at the time of arrival in Germany.²⁷²

After 15 months of having received benefits under the Asylum Seekers’ Benefits Act, asylum seekers are usually entitled to social benefits as regulated in the Twelfth Book of the Social Code (*Sozialgesetzbuch*).²⁷³ 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

²⁶⁷ Georg Classen, *Leitfaden zum Asylbewerberleistungsgesetz* (Guideline to the Asylum Seekers’ Benefits Act), September 2016; *Krankenhilfe nach dem Asylbewerberleistungsgesetz* (Medical assistance according to the Asylum Seekers’ Benefits Act), Updated version, May 2012. 6-7.

²⁶⁸ *Ibid.*, 7-8.

²⁶⁹ Die Zeit, ‘Warten auf die Gesundheitskarte für Flüchtlinge’, 15 May 2016, available in German at: <http://bit.ly/1rMOmL6>; ndr.de, ‘Warum die Gesundheitskarte umstritten ist’, 23 May 2016, available in German at: <http://bit.ly/2mjd3vV>.

²⁷⁰ DAZ, ‘Gesundheitsversorgung für Flüchtlinge ist ein Flickenteppich’, 15 April 2017, available in German at: <http://bit.ly/2pkTbMR>.

²⁷¹ However, it should be noted that this provision generally only affects asylum seekers whose application has been (finally) rejected. Furthermore, the admissibility of this provision is now under dispute (see [Criteria and Restrictions to Access Reception Conditions](#)).

²⁷² Georg Classen, *Krankenhilfe nach dem Asylbewerberleistungsgesetz* (Medical assistance according to the Asylum Seekers’ Benefits Act), updated version, May 2012. 3.

²⁷³ 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”.

seekers' places of residence and treatment centres may also render an effective therapy impossible in practice.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

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

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, although asylum seekers some “arrival centres” such as **Berlin** undergo a short interview with the social services of the Federal State *inter alia* to identify special reception needs (see also [Identification](#)).

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 in the past.

1. Reception of unaccompanied children

Unaccompanied children should be taken into care of a youth welfare office which has to seek “adequate accommodation”.²⁷⁴

Unaccompanied children do not generally stay in the place in which they have arrived, but they can be sent to other places throughout Germany as part of a distribution system (see [Legal Representation of Unaccompanied Children](#)). In November 2015, when the distribution system was established, the Federal Association for Unaccompanied Refugee Minors had expressed its concern that many municipalities might not be sufficiently prepared for an adequate reception of unaccompanied children.²⁷⁵

According to the Federal Association for Unaccompanied Refugee Minors, numbers of unaccompanied children and young adults under the care of youth authorities decreased significantly during 2017, from 64,045 at the end of 2016 to 54,692 in December 2017.²⁷⁶ Out of these, 30,874 were registered as children, while 24,088 persons were older than 18 years but still fell under the competence of youth welfare offices because they were entitled to youth welfare measures. Figures also show that unaccompanied children are now sent to all 16 Federal States, with numbers only roughly corresponding to the distribution system of the *Königsteiner Schlüssel*. Only the city state of **Bremen** shows a significant deviation from this quota system, with the actual number of children and young adults staying in Bremen in December 2017 amounting to 330.9% of the Federal State’s quota. Two other Federal States (**Hamburg**: 132% and **Hessen**: 129.9%) were also considerably over their quota, while all East German States (**Mecklenburg-Vorpommern**, **Brandenburg**, **Berlin**, **Saxony**, **Saxony-Anhalt**, **Thuringia**) did not fully meet the quota allocated to them under the distribution key.

²⁷⁴ Section 42(1) Social Code, Vol. VIII.

²⁷⁵ Federal Association for Unaccompanied Refugee Minors, ‘Bundestag beschließt Quotenregelung: Unbegleitete minderjährige Flüchtlinge werden auf unvorbereitete Kommunen verteilt’, 15 October 2015, available in German at: <http://bit.ly/2p1PPcu>.

²⁷⁶ Figures based on unpublished statistics by the Federal Administrative Office (*Bundesverwaltungsamt*): Federal Association for Unaccompanied Refugee Minors, *Die Situation unbegleiteter minderjähriger Flüchtlinge in Deutschland*, December 2017, available in German at: <http://bit.ly/2tY16Wz>, 4.

The latest study of the Federal Association for Unaccompanied Refugee Minors, published in December 2017, shows significant disparities between regions as far as reception conditions for unaccompanied children are concerned. More than 1,300 persons working in youth welfare institutions and NGOs had participated in an online survey for this study. 8% of participants reported that unaccompanied children had to stay in accommodation facilities for adults during the period of “provisional care”. Participants from cities like **Berlin** or **Hamburg** reported that children had to be accommodated in temporary housing (youth hostels, other hostels, emergency shelters) for the provisional care period. The authors of the report observe that reception conditions for unaccompanied children have generally improved in recent years due to a significant decrease in the number of newly arriving asylum seekers. Nevertheless, they also conclude that a good quality of accommodation and of other supportive measures for unaccompanied children is still not ensured in all parts of Germany.²⁷⁷

2. Reception of LGBTI persons

The situation of LGBTI persons in reception centres and other collective accommodation centres has been frequently discussed, after many reports had emerged about LGBTI persons being harassed and attacked by other asylum seekers. In several cities, authorities and/or NGOs have opened specialised accommodation centres for LGBTI persons.²⁷⁸

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

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

“Within 15 days of the filing of an asylum application, the reception centre shall inform the foreigner, if possible in writing and in a language which he can reasonably be assumed to understand, of his rights and duties under the Asylum Seekers Benefits Act. With the information referred to in the first sentence, the reception centre shall also inform the foreigner about who is able to provide legal counsel and which organizations can advise him on accommodation and medical care.”²⁷⁹

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

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

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

UNHCR is entitled by law to visit foreigners, including those in detention and in airport transit zones.²⁸⁰ Any restriction of access to reception centres for UNHCR would therefore be considered illegal.

²⁷⁷ Federal Association for Unaccompanied Refugee Minors, *Die Situation unbegleiteter minderjähriger Flüchtlinge in Deutschland*, December 2017.

²⁷⁸ Queer.de, ‘München schafft Schutzräume für LGBTI-Flüchtlinge’, 19 January 2017, available in German at: <http://bit.ly/2jByQkW>; Die Welt, ‘Hamburg bietet Wohnungen für schwule Flüchtlinge an’, 4 August 2016, available in German at: <http://bit.ly/2DBL6rl>.

²⁷⁹ Section 47(4) Asylum Act.

²⁸⁰ Section 9 Asylum Act.

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

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

G. Differential treatment of specific nationalities in reception

Asylum seekers from [Safe Countries of Origin](#) are subject to special reception conditions. Asylum seekers from these countries are obliged to stay in initial reception centres for the whole duration of their procedure.

In addition, following the latest amendment of the Asylum Act in July 2017, Federal States may impose an obligation on asylum seekers to stay in initial reception centres for up to 24 months. **Bavaria** has implemented this law in three reception centres (Maching/Ingolstadt, Regensburg and Deggendorf) which have been turned into “transit centres”. While the law does not define which groups of asylum seekers are concerned by this provision, the Bavarian centres accommodate persons from safe countries of origin, as well as nationals of **Russia, Georgia and Ukraine**, while the authorities have announced that nationals of **Ethiopia, Nigeria, Sierra Leone, Mali, Azerbaijan and Afghanistan** would also be affected (see [Freedom of Movement](#)).

Due to these provisions, asylum seekers from safe countries of origin and persons placed in the transit centres will usually not have access to decentralised accommodation.

Furthermore, since asylum seekers are barred from access to the labour market as long as they are obliged to stay in an initial reception centre, these provisions also mean that these groups are effectively excluded from employment for the duration of their stay in these centres.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2017:	Not available
2. Number of asylum seekers in detention at the end of 2017:	Not available
3. Number of pre-removal detention centres:	6
4. Total capacity of detention centres:	400

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.

Asylum seekers are generally not detained as long as their application is not finally rejected and as long as they have an asylum seeker's residence permit. In cases of applications which have been rejected as inadmissible or manifestly unfounded, a deportation order may take effect regardless of legal remedy, unless a court grants an interim measure suspending such a deportation. However, if applicants are detained at this point, they do not have a legal status as asylum seekers, since the asylum seekers' residence permit (*Aufenthaltsgestattung*) ceases to be valid once a deportation order becomes enforceable.²⁸¹ 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 2017, 7,102 persons were transferred following a Dublin procedure, compared to 3,968 in 2016.²⁸² 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. The border police requested courts to issue 364 detention orders in Dublin cases between February and July 2017, of which 344 were issued by the courts.²⁸³ These figures indicate that asylum seekers subject to Dublin procedures at the border are frequently detained for the purpose of transfer.

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, according to the Federal Constitutional Court.²⁸⁴

The number of deportations was 23,966 in 2017, compared to 25,375 in 2016 and 20,888 in 2015.²⁸⁵ While there have been political discussions about increased use of detention pending deportation, the overall capacity of detention facilities remained on roughly the same level as it had been at the end of 2016, partially due to the facility in Eisenhüttenstadt being out of use for technical reasons for most of 2017. In general, relationship between the high number of deportations and the comparably low capacity of detention centres implies that the vast majority of deportations and Dublin transfers is carried out within

²⁸¹ Section 67 Asylum Act.

²⁸² Federal Government, Reply to parliamentary question by The Left, 18/1112, 9 February and 19/921, 26 February 2018.

²⁸³ Federal Government, Reply to parliamentary question by The Left, 19/273, 14 December 2017, 27.

²⁸⁴ Federal Constitutional Court, Decision of 14 May 1996, 2 BvR 1516/93. See also Federal Supreme Court, Decision V ZB 170/16, 16 March 2017, available in German at: <http://bit.ly/2oRx9B4>.

²⁸⁵ Federal Government, Reply to parliamentary question by The Left, 18/7588, 18 February 2016, 18/11112, 9 February 2017, 19/800, 20 February 2018.

one day, so only a few hours pass between arrest and departure. In this manner persons who are obliged to leave the country are only taken into custody and no formal detention order has to be issued.

Facilities for detention pending deportation existed in six Federal States at the end of 2017.²⁸⁶ This includes Pforzheim in **Baden-Württemberg**, Eichstätt in **Bavaria**, **Bremen**, Hannover (Langenhagen) in **Lower Saxony**, Büren in **North Rhine-Westphalia**, and Ingelheim am Rhein in **Rhineland-Palatinate**. In addition, detention could be carried out at the airports of Frankfurt/Main in **Hesse** and **Hamburg**.

Since detention pending deportation must not be carried out in other prisons since 2014 (see section on [Place of Detention](#)) this means that the majority of Federal States did not have any facilities for this kind of detention in 2017. These Federal States therefore either did not make use of detention pending deportation at all, or they had to transfer deportees to other Federal States for this purpose.

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 [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.

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
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3. Are asylum seekers detained during a regular procedure in practice?

<input type="checkbox"/> Frequently	<input type="checkbox"/> Rarely	<input checked="" type="checkbox"/> Never
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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 (*Abschiebungshaft*).

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. Detention may even be upheld

²⁸⁶ Information provided by the Jesuit Refugee Service, February 2018.

beyond that period if another country has been requested to admit or re-admit the foreigner on the basis of European law, i.e. the Dublin Regulation, or if the application for asylum has been rejected as inadmissible or as manifestly unfounded.²⁸⁷

The German Constitution provides 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.

1.1. Pre-removal detention (*Abschiebungshaft*)

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

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

The grounds referred to in the provision on the risk of absconding include 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.

Section 2(15) Residence Act contains special provisions for detention in the course of Dublin procedures. 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.

²⁸⁷ Section 14(3) Asylum Act.

1.2. Custody pending departure (*Ausreisegewahrsam*)

According to the Section 62b of the Residence Act, custody pending departure can be carried out in the transit zones of airports or in other facilities “from where a direct departure is possible”.²⁸⁸ This detention is subject to the same rules as other forms of detention.²⁸⁹

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 permissible 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.”²⁹⁰

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 often and too easily” and a high number of detention orders were overturned by higher courts upon appeal.²⁹¹

Furthermore, the “geographical restriction” which normally is only relevant for asylum seekers for a period of 3 months, can be re-imposed if “concrete measures to end the foreigner’s stay are imminent” (see [Freedom of Movement](#)).²⁹² 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.²⁹³ In particular, these further sanctions may consist of reporting duties, but also of an obligation to consult a counselling service for returnees.²⁹⁴ Passports of foreigners obliged to leave the country can be confiscated.²⁹⁵ 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.²⁹⁶ However, the law does not allow for security deposits which may be used as bail and confiscated in cases of “absconding”.²⁹⁷

²⁸⁸ Section 62b(2) Residence Act.

²⁸⁹ Section 62b(3) Residence Act.

²⁹⁰ Section 62(1) Residence Act.

²⁹¹ Die Rechtsberaterkonferenz, *50 Forderungen zum Flüchtlings-, Aufenthalts-, Staatsangehörigkeits- und Sozialrecht*, November 2017, available in German at: <http://bit.ly/2HOWd2J>, 32-34. See also statistics of the pilot project of the Refugee Council of Lower Saxony at [Judicial Review of the Detention Order](#).

²⁹² Section 61(1)(c) Residence Act.

²⁹³ Section 61(1)(e) Residence Act.

²⁹⁴ Section 46(1) General Administrative Regulations relating to the Residence Act.

²⁹⁵ Section 50(5) Residence Act.

²⁹⁶ Section 66(5) Residence Act.

²⁹⁷ 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.

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.²⁹⁸ In the wake of landmark decision by the German Federal Supreme Court and the CJEU, authorities apparently have been generally hesitant to apply for detention to enforce removal (see section on [Grounds for Detention](#)) since the summer of 2014.

In spite of this, the number of deportations was 23,966 in 2017 and 25,375 in 2016).²⁹⁹ This apparent contradiction can be explained by the fact that in the vast majority of cases deportations are enforced within one day, so only a few hours pass between arrest and departure. In this manner persons who are to be deported are only taken in to police custody for a few hours and no formal detention order has to be issued by a court.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

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

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 State (see section on [Grounds for Detention](#)).

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

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

No recent cases of detention of children have been reported. In 2017, 1,280 children were transferred to other Member States of the Dublin Regulation (which usually involves that they were taken into custody for a few hours on the day the transfer took place).³⁰⁰ As far as deportations are concerned, the official statistics only record unaccompanied children. No unaccompanied children were deported to their countries of origin in 2017, but 237 were returned to neighbouring countries after being refused entry. In the course of such immediate returns or removals (*Zurückweisungen* or *Zurückschiebungen*) at least an arrest takes place and short-term detention is possible.

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.³⁰¹

²⁹⁸ 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.

²⁹⁹ Federal Government, Reply to parliamentary question by The Left, 18/11112, 9 February 2017, 19/800, 20 February 2018.

³⁰⁰ Federal Government, Reply to parliamentary question by The Left, 19/800, 20 February 2018, 14.

³⁰¹ 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.

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 6 months, subject to a possibility of extension to a total of 18 months if the person hinders removal.³⁰² The maximum time limit for the duration of the custody pending departure (*Ausreisegewahrsam*) was increased from 4 days to 10 days following the 2017 reform.³⁰³

No countrywide information on the duration of detention is available. Statistics published in May 2017 for the years 2015 and 2016 show that the majority of persons detained at the initiative of the Federal State of **Hesse** in various facilities – Ingelheim in Rhineland-Palatinate, Büren in North Rhine-Westphalia, Eisenhüttenstadt in Brandenburg – in the years 2015 and 2016 spent between 2 and 10 days in detention. A significant number of persons spent between 10 and 40 days in these facilities. Cases of longer detention were rare, but there were a few cases in which persons were detained for more than 90 days; 100 days in the case of a Ghanaian national and 130 days in the case of a US citizen, no further details on these cases being reported.³⁰⁴ For the facility of Langenhagen, **Hannover** the Refugee Council of Lower Saxony reports that 48 detainees spent an average time of 19.85 days in detention before authorities or courts decided that they had to be released.³⁰⁵ These numbers refer to all detainees, not only asylum seekers or former asylum seekers.

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 |

1.1. Pre-removal detention centres

According to the law, detention shall take place in specialised detention facilities.³⁰⁶

Since July 2014, when 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,³⁰⁷ most Federal States which did not have specialised facilities before have announced that the necessary institutions would be established (deportees were sent to facilities in other Federal States in the meantime). For example, in the Federal State of **North Rhine-Westphalia**, the prison of Büren,

³⁰² Section 62(4) Residence Act.

³⁰³ Section 62b(1) Residence Act, as amended by the Law of 20 July 2017.

³⁰⁴ Regional Government of Hesse, Reply to parliamentary question by the Liberal Party, 19/4485, 2 May 2017.

³⁰⁵ Flüchtlingsrat Niedersachsen, 'Abschiebungshaft in Niedersachsen: Rund ein Viertel aller Inhaftierungen erfolgt rechtswidrig!', 11 January 2018, available in German at: <http://bit.ly/2HOzsf1>.

³⁰⁶ Section 62a(1) Residence Act.

³⁰⁷ CJEU, Joined Cases C-473/13 and C-514/13 *Bero v Regierungspraesidium Kassel & Bouzalmane v Kreisverwaltung Kleve*, Judgment of 17 July 2014.

used before as detention facility both for criminal convicts and for deportees, was turned into a specialised detention facility uniquely for deportees.³⁰⁸

As a result of the CJEU ruling in *Bero & Bouzalmate* and the ruling of the Federal Supreme Court of 26 June 2014,³⁰⁹ the overall number of detainees in detention pending deportation seems to remain comparably low. Although numbers have risen in 2017, 9 out of 16 Federal States still had not established specialised detention facilities at the end of 2017 and one facility had been closed at the time. The Federal States which do not have a facility of their own may use facilities of other states to carry out detention. For instance, persons who were to be deported on the initiative of the Federal State of **Hesse** have been detained in **North Rhine-Westphalia** and **Brandenburg** since 2015.³¹⁰

At the end of 2017, facilities for detention pending deportation existed in six Federal States:

Pre-removal detention facilities in Germany		
Federal State	Location	Maximum capacity
Baden-Württemberg	Pforzheim	36
Bavaria	Eichstätt	96
Bremen	Bremen	20
Lower Saxony	Hannover (Langenhagen)	68
North Rhine-Westphalia	Büren	140
Rhineland-Palatinate	Ingelheim am Rhein	40
Total		400

Source: Jesuit Refugee Service, February 2018; Welt, 1 August 2017: <http://bit.ly/2prNhcZ>.

The detention facility at Eisenhüttenstadt in the Federal State of **Brandenburg** was temporarily closed in March 2017 following a report by regulatory authorities which found various structural defects affecting fire safety and other security measures. The facility had not been reopened at the end of 2017.

1.2. Airport detention facilities

At the end of 2017, facilities to carry out custody pending deportation under Section 62b of the Residence Act existed at the airports of **Hamburg** and Langenhagen, Hamburg in **Lower Saxony**.³¹¹ According to media reports, the facility at Hamburg Airport was opened in October 2016 as the first of its kind. Authorities insist that the facility “is no prison”, according to one report. It has a capacity of 20 places in containers in a fenced area where persons who are obliged to leave the country can be kept for up to ten days prior to the departure.³¹² It has been reported, however, that the facility has been rarely used since its opening. According to a document submitted to the regional parliament of the Federal State of Hamburg, only one or two persons per month were detained at the facility in the first half of 2017.³¹³

³⁰⁸ Ministry of the Interior of the Federal State of North Rhine-Westphalia, Press release of 28 November 2014, available at: <http://bit.ly/1dW0e5P>.

³⁰⁹ Federal Supreme Court, Decision of 26 June 2014 – V ZB 31/14 – Asylmagazin 9/2014, 315-318.

³¹⁰ Regional Government of Hesse, Reply to parliamentary question by the Liberal Party, 19/4485, 2 May 2017.

³¹¹ Information provided by the Jesuit Refugee Service, February 2018.

³¹² NDR, ‘Abschiebe-Zentrum: Bereits mehrere Fluchtversuche’, 10 November 2017, available in German at: <http://bit.ly/2IES8zF>.

³¹³ Regional Government of Hamburg, Reply to parliamentary question by the CDU, 21/9975, 8 August 2017, available in German at: <http://bit.ly/2G6zfqO>.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice? Yes No
❖ If yes, is it limited to emergency health care? Yes No

National law only provides basic rules for detention centres. As a result, conditions differ very much throughout the country.³¹⁴

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.

Büren, North Rhine-Westphalia: According to a media report, persons are detained in rooms described as “normal prison cells” which are locked up at night. They are allowed to move freely within the building and an outdoor area in front of the building between 7am and 10pm. Persons are allowed to use mobile phones.³¹⁵ According to a press release from the local support group “Hilfe für Menschen in Abschiebehäft Büren”, several people have notified the support group about ill-treatment by the facility’s staff. The allegations include “regular and arbitrary” incommunicado confinement by administrative order, with detainees being denied access to all other persons and to any activities. They also claimed that persons who were taken into this type of confinement were not allowed to wear their own clothes and were denied pen and paper. The support group brought criminal charges against the facility’s management following a report that one detainee had drugs mixed in his food without his knowledge. The support group also reported that the allegations were difficult to confirm since access to the facility in general or to certain people in particular was “massively impeded” by the facility’s management.³¹⁶

Pforzheim Baden-Württemberg: Upon the opening of a new detention facility in Pforzheim in April 2016, the authorities in the Federal State of Baden-Württemberg claimed that efforts had been made to minimise the “prison character” of the building as much as possible. Conditions in the facility at Pforzheim were described as follows in a press release of April 2016: “Unless security reasons do not allow it, persons housed in the facility are allowed to move freely within the building during the day, they may receive visitors, read newspapers, watch TV, listen to the radio, make phone calls and use the internet in an internet café, receive mail and presents, prepare their own meals and wear their own clothes.”³¹⁷

Hannover-Langenhagen, Lower Saxony: The facility at Hannover-Langenhagen in the Federal State of Lower Saxony was referred to as a “prison of open doors” in a newspaper article in February 2015: “Conditions have changed drastically in recent months... [At the time of the report] six people were interned at the facility. Maximum duration of stay is six weeks. Each inmate has a room of his/her own... Each room has a TV set, a shelf, a wardrobe and a desk... Inmates often prepare their meals together.

³¹⁴ Jesuit Refugee Service, *Detention in Europe: Germany*, available at: www.detention-in-europe.org.

³¹⁵ Tagesschau, ‘Abschiebehäft Büren: Zwischen Frust und Verzweiflung’, 6 September 2017, available in German at: <http://bit.ly/2FW3Bcg>.

³¹⁶ Hilfe für Menschen in Abschiebehäft Büren, ‘Schwere Menschenrechtsverletzungen in der Abschiebehäft Büren’, 24 January 2018, available in German at: <https://bit.ly/2pYgn3k>.

³¹⁷ Federal State of Baden-Württemberg, ‘Abschiebungshafteinrichtung in Pforzheim nimmt Betrieb auf’, 1 April 2016, available in German at: <http://bit.ly/2muUed9>.

The door to the small kitchen is always open, like all other doors. The refugees decide on their own what is on the menu and they are allowed to request certain products... Pastoral care is available for all religions as well as social and psychological care or contact to the refugee council, if necessary.”³¹⁸

3. Access to detention facilities

Indicators: Access to Detention Facilities

- | | | | | | | |
|--|-------------------------------------|-----|-------------------------------------|---------|--------------------------|----|
| 1. Is access to detention centres allowed to | | | | | | |
| ❖ Lawyers: | <input checked="" type="checkbox"/> | Yes | <input type="checkbox"/> | Limited | <input type="checkbox"/> | No |
| ❖ NGOs: | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | Limited | <input type="checkbox"/> | No |
| ❖ UNHCR: | <input checked="" type="checkbox"/> | Yes | <input type="checkbox"/> | Limited | <input type="checkbox"/> | No |
| ❖ Family members: | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | Limited | <input type="checkbox"/> | No |

Section 62a of the Residence Act states: “Upon application, staff of relevant support and assistance organisations shall be permitted to visit detainees awaiting deportation if the latter so request. “No recent information on the application of this provision (or problems with application) were found in the course of this research.

Since August 2016, as part of a pilot project, the Refugee Council of Lower Saxony offers an independent advice service in the detention facility at **Hannover-Langenhagen**. The report on the first year of the project was published in January 2018.³¹⁹

The support group *Hilfe für Menschen in Abschiebehäft Büren* reported in January 2018 that access to the detention centre in **Büren** in general or to certain detainees in particular was “massively impeded” by the facility’s management.³²⁰

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 order and the prolongation of detention. The responsible courts are the District Courts (*Amtsgericht*) and their decision can be challenged at a Regional Court (*Landgericht*), and under certain conditions before the Federal Supreme Court (*Bundesgerichtshof*) as final instance.

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.³²¹ Case law also states that the foreigner shall have sufficient time to prepare an answer to

³¹⁸ Neue Presse, ‘Das Gefängnis der offenen Türen’, February 2015, available in German at: <http://bit.ly/2malquR>.

³¹⁹ Flüchtlingsrat Niedersachsen, ‘Abschiebungshaft in Niedersachsen: Rund ein Viertel aller Inhaftierungen erfolgt rechtswidrig!’, 11 January 2018, available in German at: <http://bit.ly/2HOzsf1>.

³²⁰ Hilfe für Menschen in Abschiebehäft Büren, ‘Schwere Menschenrechtsverletzungen in der Abschiebehäft Büren’, 24 January 2018, available in German at: <https://bit.ly/2pYgn3k>.

³²¹ Federal Supreme Court, Decision of 18 April 2013 - V ZB 67/12 – (asyl.net, M20735).

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.³²² 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 can 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.

In spite of the safeguards outlined above, the system of ordering detention pending deportation has been severely criticised by lawyers for alleged violations of the standards applicable to detention. In particular, it has been noted that judges frequently issue orders for detention pending deportation even if authorities' applications for detention orders do not lay out sufficient reasons as to why detention is necessary.³²³ The Convention of Legal Advisors (*Rechtsberaterkonferenz*), a group of lawyers cooperating with German welfare organisations on asylum matters, notes that currently detention pending deportation is again ordered "too often and too easily". According to them, this development began with a political 'climate change' in 2016 and public debate based on "misleading, partly wrong information" on the number of persons who were obliged to leave the country.³²⁴

The following information is available from review of detention in the facilities of Langenhagen and Büren:

Langenhagen, Hannover, Lower Saxony: According to a report published by the Refugee Council of Lower Saxony, detention orders were frequently revoked or retroactively annulled, thereby suggesting that a high number of people were "unlawfully detained" in the facility. Out of 200 cases of persons assisted between August 2016 and July 2017, in 48 cases the detention order was revoked either as a result of review by the court or appeal before a higher court. These court decisions led to the release of 19 persons from detention and the retroactive revocation of detention in 29 cases. The rate of "unlawful detentions" could be even higher since another 42 cases were still pending before the court. In 29 other cases, people were released from detention as the deportation or transfer did not take place as scheduled, either for legal reasons or because the detention order was revoked or because the persons left voluntarily.³²⁵

Büren, North Rhine-Westphalia: An analysis of 221 detention cases was conducted by the local support group "Hilfe für Menschen in Abschiebehaft Büren" from 15 May 2015 to 31 December 2017. Out of 119 completed cases, the court found detention to be unlawful in 68 cases. Another 102 cases were pending, 23 before the District Court, 40 before the Regional Court and 39 before the Federal Supreme Court.³²⁶

³²² Federal Supreme Court, Decision of 1 July 2011 - V ZB 141/11 – (asyl.net, M18726).

³²³ This is a recurrent concern. See Peter Fahlbusch, *Haft in Verfahren nach der Dublin II-Verordnung*, Asylmagazin 9/2010, 289-295.

³²⁴ Die Rechtsberaterkonferenz, *50 Forderungen zum Flüchtlings-, Aufenthalts-, Staatsangehörigkeits- und Sozialrecht*, November 2017, available in German at: <http://bit.ly/2HOWd2J>, 32-34.

³²⁵ Flüchtlingsrat Niedersachsen, 'Abschiebungshaft in Niedersachsen: Rund ein Viertel aller Inhaftierungen erfolgt rechtswidrig!', 11 January 2018, available in German at: <http://bit.ly/2HOzsf1>.

³²⁶ Hilfe für Menschen in Abschiebehaft Büren, 'Auswertung Abschiebungshaftverfahren Ufa Büren', available in German at: <http://bit.ly/2GLC0M5>. See also Flüchtlingsrat Nordrhein-Westfalen, '60 Prozent zu Unrecht in Abschiebehaft', 15 February 2018, available in German at: <http://bit.ly/2pt2ppJ>.

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.³²⁷ 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.

Since August 2016, as part of a pilot project, the Refugee Council of Lower Saxony offers an independent advice service in the detention facility at Hannover-Langenhagen. Advice services include counselling on possible legal measures to challenge the deportation order, on options to remain in Germany or to return to Germany as well as on possible support upon return to the country of origin.³²⁸ According to report on the first year of the project, the Refugee Council offered advice to 205 persons, of whom 200 men and 5 women, between August 2016 and July 2017. Out of that number, 149 persons were detained for the purpose of deportation to their country of origin (it is not known how many were asylum seekers or former asylum seekers), 48 persons were detained for the purpose of a Dublin transfer and 8 for the purpose of readmission to a “safe third country” as they had a protection status or residence right in another European country.³²⁹

E. Differential treatment of specific nationalities in detention

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

³²⁷ Section 14(3) Asylum Act.

³²⁸ Flüchtlingsrat Niedersachsen, *Beratung in Abschiebungshaft*, available in German at: <http://bit.ly/2mdosAb>.

³²⁹ Flüchtlingsrat Niedersachsen, ‘Abschiebungshaft in Niedersachsen: Rund ein Viertel aller Inhaftierungen erfolgt rechtswidrig!’, 11 January 2018, available in German at: <http://bit.ly/2HOzsf1>.

A. Status and residence

1. Residence permit

Indicators: Residence Permit

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

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

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

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

Renewal of residence permits is generally subject to the same regulations as apply to issuance.³³⁰ Therefore, residence permits have to be renewed as long as the reasons which have led to the first issuance persist. The status or the so called “prohibition of deportation” (*Abschiebungsverbot*) which has led to national protection, have to be formally revoked by the BAMF, otherwise the residence permit has to be issued and/or renewed.³³¹

2. Civil registration

2.1. Registration of child birth

If a child is born in a hospital, the hospital automatically informs the local civil registry office. If the birth of a child takes place outside a hospital, parents themselves have to inform the civil registry office. In both cases, parents or persons authorised by the parents have to formally register the birth afterwards and they have to collect the certificate of birth “within a reasonable timeframe” after the date of birth. This timeframe is defined as a period of up to 3 months.³³²

The issuance of the certificate of birth is dependent on a number of documents which parents usually have to submit. These include, among other documents:

- Passport or identity card from the country of origin. Asylum seekers (for as long as the asylum procedure is ongoing) and people with **refugee status** are not obliged to submit these documents if this would involve getting in contact with the authorities from their countries of origin. Instead, they have to submit the asylum seeker’s temporary residence permit (*Aufenthaltsgestattung*) in

³³⁰ Section 8(1) Residence Act.

³³¹ Sections 73a to 73c Residence Act.

³³² Humboldt Law Clinic Grund- und Menschenrechte, *Geboren, registriert – und dann? Probleme bei der Geburtenregistrierung von Flüchtlingskindern in Deutschland und deren Folgen*. Working Paper no. 16/2018, available in German at: <http://bit.ly/2pw1DIn>, 10-11.

case of asylum seekers) or the residence permit in case of persons with refugee status. However, these documents do not necessarily serve as evidence for “proof of identity”;

- Birth certificates of parents in original document and an officially certified translation;
- If the parents are married, a marriage certificate or marriage contract in original document and an officially certified translation.

If one of these documents cannot be submitted, the civil registry office may accept a declaration “in lieu of an oath”, but no general rules exist for this procedure, so acceptance of such a declaration is dependent on the individual circumstances and on the practice of the local civil registry office. An overview of the procedure in English has been published by the German Institute for Human Rights.³³³

Problems occur in particular if the parents do not have a passport or birth certificate from the country of origin and if the authorities find that the identity of the parents has not been sufficiently clarified by other means. In these cases, many civil registry offices regularly refuse to issue birth certificates. However, they may issue other documents instead. A recent study by the Humboldt Law Clinic found that offices have various strategies to deal with these cases of “unclarified identity”:³³⁴

- ❖ Most civil registry offices issue a confirmation that birth has been registered (“extract from the Birth Registry” / *Auszug aus dem Geburtenregister*) which is an official document that is supposed to have the same legal effect as a birth certificate;
- ❖ Other civil registry offices issue substitute documents such as an “attestation” that the office has been notified of the birth. The legal effect of these substitute documents is unclear;
- ❖ There have also been reports that a few civil registry offices do not issue any documents in cases of “unclarified identity” of the parents, although this may include cases in which the parents refuse to accept an alternative document and legal measures for the issuance of a ‘proper’ birth certificate are pending.³³⁵ It is also possible that parents refuse a document if it does not refer to the father of the child but only contains the name of the mother; this happens in cases in which the parents cannot produce sufficient evidence that they are married.³³⁶

Refusal by German authorities to issue birth certificates to new born children has frequently been criticised as a violation of the Convention on the Rights of the Child.

The birth certificate is formally required to claim a number of rights and services, including:

- Registration with health insurance services, including family insurance i.e. extension of parents’ insurance on children;
- Child allowances of €194 per month available to all families staying in Germany, regardless of legal status;
- Parental allowances for persons in employment who stop working for a certain period after the child is born. Allowances amount to a standard 65 per cent of monthly income and up to one 100% of monthly income for people with lower wages and they are provided for a period of up to 14 months if both parents divide these period between them;
- Change of the parents’ tax status, in connection with registration at the (residents’) registration office.
- In cases of unmarried couples, recognition of paternity of the child’s father.

Failure to obtain a birth certificate from the civil registry office regularly results in difficulties with access to rights and services. In a recent study on difficulties with the registration of new born children, authors from the Humboldt Law Clinic refer to the following problems which have been reported in the course of

³³³ Deutsches Institut für Menschenrechte ‘How to register your newborn - Information for refugees’, 2nd ed., 20 July 2017, available at: <http://bit.ly/2c5Esku>.

³³⁴ Humboldt Law Clinic Grund- und Menschenrechte, *Geboren, registriert – und dann? Probleme bei der Geburtenregistrierung von Flüchtlingskindern in Deutschland und deren Folgen*. Working Paper no. 16/2018.

³³⁵ *Ibid*, 18.

³³⁶ Deutsches Institut für Menschenrechte, ‘Die Politik muss dafür sorgen, dass Kinder von Geflüchteten Geburtsurkunden erhalten’, 1 June 2016, available in German at: <http://bit.ly/2GQQvOM>.

their research: problems with health insurance and/or access to hospitals or medical practitioners; (temporary) denial of child allowances; problems with payment of parental allowances; problem with registration of new born children at local residents' registration offices.³³⁷ These difficulties were apparently also encountered by persons who had been issued an "extract from the Birth Registry", even though this document is supposed to replace the birth certificate officially. All of these difficulties were further encountered by persons who were issued other substitute documents instead of a birth certificate.

2.2. Registration of marriage

There is no obligation in German law for a marriage which has been concluded in another country to be registered again at a German civil registry office. Instead, marriage certificates from other countries are generally considered to be sufficient evidence of the validity of a marriage in legal affairs. However, German authorities and courts often ask for certificates of legalisation of marriage from other countries. This legalisation usually has to be carried out by the German embassy in the respective country.³³⁸

An important restriction on the legal recognition of marriages concluded in other countries was introduced in 2017. The new Law on combating child marriages which took effect on 22 July 2017 contains the following measures:³³⁹

- Marriages concluded in another country are considered invalid in all cases in which one or both of the spouses was younger than 16 years old at the time of marriage;
- The validity of marriages concluded in another country can be challenged by the authorities and nullified in cases in which one or both of the spouses was between 16 and 18 years old at the time of marriage. However, the marriage has to be recognised by the German authorities if both spouses have reached the age of 18 years in the meantime and both declare that they want to remain married. Furthermore, the marriage may also be recognised in exceptional cases in which annulment of the marriage would cause "serious hardship" to the minor involved.

Rights and obligations in connection with marriage are dependent on whether the competent authorities recognise the marriage certificates or other documents from the country of origin as sufficient evidence for the validity of the marriage in question.

Problems with recognition of marriages concluded in another country occur regularly in practice, in particular if the couple does not have an official marriage certificate or if the German embassy is unable to carry out the legalisation of a foreign marriage certificate. However, these difficulties do not occur in the context of the registration of such marriages in Germany, but in connection with other areas in which the formal recognition of the validity of a marriage is important.

³³⁷ Humboldt Law Clinic Grund- und Menschenrechte, *Geboren, registriert – und dann? Probleme bei der Geburtenregistrierung von Flüchtlingskindern in Deutschland und deren Folgen*. Working Paper no. 16/2018, 17-18.

³³⁸ Leaflets on the legalisation of documents in various countries can be found on the homepage of the Foreign Office, available in German at: <http://bit.ly/2DKI4kL>.

³³⁹ An overview of the new law has been published by Terre des Femmes, 'Die wichtigsten Änderungen im Rahmen des Gesetzes zur Bekämpfung von Kinderehen', December 2017, available in German at: <http://bit.ly/2DLyGgG>.

3. Long-term residence

Indicators: Long-Term Residence

1. Number of permanent residence permits issued to beneficiaries in 2017:	
❖ Refugees under preferential conditions	1,812
❖ Persons with protection or humanitarian status	5,938

Refugee status

After a certain period, a permanent status, “settlement permit” (*Niederlassungserlaubnis*) or also translated as “permanent residence permit”, can be granted. However, the preconditions for this are more restrictive as of August 2016.³⁴⁰

- After three years, persons with refugee status can be granted a *Niederlassungserlaubnis* if they have become “outstandingly integrated” into society.³⁴¹ The most important preconditions are that they have to speak German on an advanced level (level C1 of the Common European Framework of Reference for Languages, CEFR), have to be able to cover the “overwhelming part” of the cost of living and have to prove that they have sufficient living space for themselves and their families;

A total of 1,812 permanent residence permits were granted on this basis for the first time in 2017.³⁴²

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

In both cases, the *Niederlassungserlaubnis* can only be granted if the BAMF has not initiated a procedure to revoke or withdraw the status. The necessary procedure has been simplified considerably as of August 2015. Before this date, local aliens offices had to wait for a formal notification from the BAMF on the outcome of a so-called “revocation examination procedure”³⁴³ before they could issue the *Niederlassungserlaubnis*. This also meant that the BAMF had to formally notify the local authorities about the outcome of the revocation test for every single refugee, although no revocation took place in about 95% of the cases.³⁴⁴ Now the *Niederlassungserlaubnis* shall always be granted as long as the local authorities do *not* receive a notification from the BAMF. Accordingly, the BAMF can now summarily decide not to initiate revocation procedures for most refugees and it only carries out revocation tests in exceptional cases.

Subsidiary protection and humanitarian protection

Beneficiaries of other kinds of protection (subsidiary or national) do not have privileged access to a *Niederlassungserlaubnis*. They can apply for this status after five years, with the duration of the asylum procedure being taken into account.³⁴⁵ However, they have to meet all the legal requirements for the *Niederlassungserlaubnis*,³⁴⁶ such as the requirement to completely cover the cost of living and to possess sufficient living space for themselves and their families. In addition, they have to prove that they have

³⁴⁰ Section 26(3) Residence Act.

³⁴¹ Government's explanatory memorandum to the Integration Act. Cf. Melina Lehrian and Johanna Mantel, “Neuerungen durch das Integrationsgesetz” (“Amendments by the Integration Act”, *Asylmagazin* 9/2016, 293.

³⁴² Federal Government, Reply to parliamentary question by The Left, 19/633, 5 February 2018, 50.

³⁴³ Within this procedure the BAMF has to decide whether a proper revocation procedure is initiated or not.

³⁴⁴ BAMF, ‘Neue Rechtslage: Widerrufsprüfung ändert sich’, 13 August 2015, available in German at: <http://bit.ly/2mrAkM1>.

³⁴⁵ Section 26(4) Residence Act.

³⁴⁶ Section 9 Residence Act.

been paying contributions to a pension scheme for at least 60 months (which generally means that they must have had a job and met a certain income level for 60 months).

A total of 5,938 permanent residence permits were issued to persons with protection or humanitarian status based on the general provisions, which is likely to include refugees as well.³⁴⁷

4. Naturalisation

Indicators: Naturalisation	
1. What is the waiting period for obtaining citizenship?	8 years
2. Number of citizenship grants to beneficiaries in 2017:	Not available

Like other foreign nationals, refugees and beneficiaries of subsidiary protection can apply for German citizenship subject to a number of conditions. Most of these conditions apply to all foreign nationals who wish to become German citizens.³⁴⁸

- ❖ Applicants must have stayed legally in Germany for 8 years without interruptions. The duration of a former asylum procedure can be included in this waiting period if the applicants have been granted refugee status or subsidiary protection status. The residence period can be reduced to 7 years if applicants have attended an integration course successfully, and it can be reduced to 6 years if applicants have integrated particularly well into society;
- ❖ Applicants must be able to cover the cost of living for themselves and their families;
- ❖ Applicants must have sufficient German language skills (level B1 of the Common European Framework of Reference for Languages);
- ❖ Applicants must pass a “naturalisation test” to prove that they have sufficient knowledge of Germany’s legal and social system, as well as living conditions in Germany; and
- ❖ Applicants must not have committed serious criminal offences.

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

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

Numbers of naturalisations are only available for 2016 and concerned 110,883 persons, without differentiating between different residence and/or protection statuses.³⁴⁹ The countries of origin of persons granted citizenship suggest that only a small number of them were beneficiaries of international protection.

³⁴⁷ Federal Government, Reply to parliamentary question by The Left, 19/633, 5 February 2018, 50.

³⁴⁸ Section 10 German Nationality Act (*Staatsangehörigkeitsgesetz*). An overview on the naturalisation procedure is available in English on the BAMF website: <http://bit.ly/2ms1va9>.

³⁴⁹ Federal Statistical Office, ‘Einbürgerungen im Jahr 2016 um 2,9 % gestiegen – vor allem Briten sorgen für Zuwachs’, 13 June 2017, available in German at: <http://bit.ly/2FSeOOZ>.

5. Cessation and review of protection status

Indicators: Cessation

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

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

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

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

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

If the local authorities at the refugee's place of residence have found that one of these reasons applies, they inform the refugee in writing about cessation of his or her status and ask him or her to hand in the residence permit, travel documents and other documents relating to the asylum procedure. It is possible to appeal the decision at an Administrative Court and the appeal has suspensive effect. No statistics are available on the number of cases in which the cessation provision of Section 72 of the Asylum Act has been applied and only a few cases have been decided upon by the courts in recent years; usually cases of voluntary return to a refugee's country of origin.

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

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

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

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

Before a formal revocation procedure is initiated, the BAMF carries out a “revocation test”, i.e. it examines summarily whether preconditions for a revocation might apply. A revocation under this provision can be based either on a change of conditions on which status determination was based, or on other evidence, namely if it has turned out that status determination was based on incorrect information or on withholding of essential facts. Before August 2015, the BAMF had to formally notify the local authorities about the outcome of the revocation test for every single refugee, although no revocation took place in about 95%

of the cases.³⁵⁰ This is not necessary anymore, so the BAMF can now summarily decide not to initiate revocation procedures for certain groups of refugees and it only carries out substantial revocation tests in exceptional cases (see [Long-Term Residence](#)).

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

This provision is generally applicable if the conditions on which the recognition of status was based have ceased to exist *and* the refugee “can no longer refuse to claim the protection of the country of which he is a citizen, or if he, as a stateless person, is able to return to the country where he had his usual residence”.³⁵¹ Accordingly, revocation of the status cannot be based only on a change of circumstances in the country of origin, but it also has to be ascertained whether the refugee can be reasonably expected to return to the country of origin. This is not the case if, for example, a refugee has “compelling reasons, based on earlier persecution” to refuse to return.³⁵² Case law has established that trauma or mental disorders which result from persecution constitute compelling reasons within the meaning of this provision.³⁵³

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

If the BAMF intends to revoke or withdraw refugee status, the refugee is informed in advance and in writing that revocation or withdrawal is intended. He or she shall be given opportunity to respond.³⁵⁴ The decision on revocation or withdrawal then has to take into account the refugee's response. If the BAMF decides to revoke or withdraw the status, the refugee has two weeks' time to appeal the decision at an Administrative Court. The appeal has suspensive effect, so the refugee retains the status until the court has decided upon the appeal. If refugees choose to be represented by lawyer in this procedure, they would usually have to pay the fees themselves. It is possible to apply for legal aid, which is granted under the normal conditions, i.e. the court decides upon legal aid after a summary assessment of the appeal's chances.

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

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

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

In 2017, the BAMF initiated 77,106 “revocation examination procedures” or “revocation tests” (*Widerrufsprüfverfahren*), i.e. preliminary examinations on whether a formal revocation is to be carried out or not.³⁵⁵ This represents a dramatic increase in comparison to 2016, when 3,170 “revocation examination

³⁵⁰ BAMF, ‘Neue Rechtslage: Widerrufsprüfung ändert sich’, 13 August 2015, available in German at: <http://bit.ly/2mrAkM1>.

³⁵¹ Section 73(1) Asylum Act.

³⁵² Section 73(1) Asylum Act.

³⁵³ Federal Administrative Court, Decision 1 C 21/04 of 1 November 2015, asyl.net, M7834. See also Kirsten Eichler, *Leitfaden zum Flüchtlingsrecht* (Guideline to refugee law), 2nd edition (2016), 105.

³⁵⁴ Section 73(4) Asylum Act.

³⁵⁵ Federal Government, Reply to parliamentary question by The Left, 18/11262, 22 February 2017, 11; 19/633, 5 February 2018, 9.

procedures” were initiated. Most of these procedures were triggered with regard to refugees from Syria, Iraq and Afghanistan which had been granted protection status in former years, many of them on the basis of a written decision. The BAMF decided to examine these cases again in response to a case which has become known as the “Franco A. scandal” in 2017: In April 2017, two German soldiers and a German student were arrested for the alleged preparation of a terrorist attack. Following the arrest, it turned out that one of them, named as 28-year-old soldier Franco A., had managed to be granted subsidiary protection status after he had assumed a fake identity of a Syrian citizen. Media reported that the group had planned to carry out terrorist attacks on prominent German politicians. According to the reports, Franco A. had assumed the fake identity in order to shift responsibility for the planned attacks on refugees.³⁵⁶

The BAMF was criticised in the course of this affair for the handling of the asylum application of Franco A. who had managed to pose as a Syrian asylum seeker although he did not speak Arabic and apparently answered some of the questions in his interview in German. In response to this affair, the BAMF conducted a survey of 2,000 decisions and found that 480 of these decisions were “not plausible”, according to media reports. For this reason, the Ministry of Interior instructed the BAMF to carry out an examination of 80,000 to 100,000 asylum decisions, in particular those concerning male asylum seekers aged between 18 and 40. These re-examinations are carried out as “revocation examination procedures”, thereby explaining the high number of such procedures initiated in 2017.³⁵⁷

However, in spite of the record number of procedures which were initiated, the BAMF took only 2,517 decisions in the so-called “revocation examination procedures” in 2017. This number was slightly higher than in 2016 (2,207), but in comparison to 2015 (9,894) it still marked a very significant decrease in comparison to former years.³⁵⁸

421 (16.7%) of these procedures resulted in revocation or withdrawal of a protection status in 2017, in comparison to 17.9% in 2016 and only 3% in 2015.³⁵⁹ The comparably low number of procedures suggest that no group of beneficiaries of protection has been systematically targeted, although for some nationalities the numbers of revocations were distinctly above average (in particular Russian Federation and persons with unknown nationality). However, even with regard to these groups the overall number of revocation decisions was rather low and the majority of revocation tests did *not* result in a revocation of status. Therefore, it cannot be concluded that the cessation clause has been systematically applied to certain groups of beneficiaries.

Decisions on revocation of status per nationality: 2017				
Country	Refugee status revocation	Subsidiary revocation	No revocation	Total
Syria	72	20	787	879
Iraq	39	6	617	662
Afghanistan	6	50	145	201
Turkey	32	3	144	179
Russia	17	6	43	66
Iran	11	3	51	65
Undefined	28	4	26	58
Total	275	146	2,106	2,527

³⁵⁶ Deutsche Welle, ‘German soldier charged with plotting to kill politicians while posing as refugee’, 12 December 2017, available at: <http://bit.ly/2FVuyRy>.

³⁵⁷ Der Spiegel, ‘Bamf soll Zehntausende Asylbescheide prüfen’, 31 May 2017, available in German at: <http://bit.ly/2rENYm6>; See also Deutsche Welle, “”, 17 May 2017, available at: <http://bit.ly/2GV08w1>.

³⁵⁸ Federal Government, Reply to parliamentary question by The Left, 18/7625, 22 February 2016, 11-12; 18/11262, 22 February 2017, 11; 19/633, 5 February 2018, 9.

³⁵⁹ *Ibid.*

In 2017, 15 appeals against revocation or withdrawal decisions by the BAMF were successful (12.2%), which marks a similar rate to the year 2016 (11.8% successful appeals between January and November 2016). It has to be taken into account, however, that a high percentage (44.3%) of these appeal procedures were abandoned e.g. because the appeal was withdrawn by the claimant, or because a settlement out of court took place.³⁶⁰

6. Withdrawal of protection status

Indicators: Withdrawal

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

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

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

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

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

³⁶⁰ Federal Government, Response to parliamentary question by The Left, 19/1371, 22 March 2018, 41; 18/11262, 22 February 2017, 64.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

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

Persons with **refugee status** enjoy a privileged position compared to other foreign nationals in terms of family reunification, since they do not necessarily have to cover the cost of living for themselves and their families and they do not have to prove that they possess sufficient living space. In order to claim this privilege, refugees have to notify the authorities within 3 months after the refugee status has become incontestable (final) that they wish to be reunited with a close family member.³⁶¹ The application has to be handed in at the embassy of the country where the family members are staying. In addition, the local authorities at the place of residence of the refugee living in Germany should be notified that an application for a visa for the purpose of family reunification has been filed at the embassy.

Persons eligible for family reunification under this provision are:

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

If refugees are entitled to family reunification under this provision, the local authorities usually have to declare that they have no objections against the issuance of a visa to the family members. The German embassy in the country where the family members are staying then has to issue the necessary visa.

If family members of refugees apply for family reunification later than 3 months after status determination has become final, “normal rules” for family reunification apply. In particular, refugees living in Germany have to prove that they can cover the cost of living for themselves and their families and that they have sufficient living space.³⁶² For family reunification of spouses, a further requirement is that both spouses have to be at least 18 years of age.³⁶³

One important privilege applies regardless of whether the procedure for family reunification is initiated within the three-month period or at a later date: Spouses of refugees who wish to immigrate to Germany by means of family reunification do not have to prove that they have basic German language skills.³⁶⁴

Family reunification has been suspended for those beneficiaries of **subsidiary protection** who have been granted the residence permit based on this status after 17 March 2016,³⁶⁵ until July 2018; the suspension was planned until March 2018 but a law introduced ‘at the last minute’ in March 2018 prolonged this until

³⁶¹ Section 29(2)(1) Residence Act.

³⁶² Sections 27(3) and 29 Residence Act.

³⁶³ Section 30(1)(1) Residence Act.

³⁶⁴ Section 30(1)(1) Residence Act.

³⁶⁵ This means that suspension of family reunification also applies to persons who have been granted the status before 17 March 2016, but have been issued the residence permit after this date.

July 2018.³⁶⁶ The suspension came into effect only eight months after beneficiaries of subsidiary protection had been given the same privileged position as refugees in terms of family reunification. The government argues that suspension of family reunification was necessary “to safeguard the integration of those people who are moving to Germany [under family reunification rules].”³⁶⁷ Now family members of beneficiaries of subsidiary protection are not entitled to visas for family reunification either under the “privileged” or under the “normal” regulation. Following 18 March 2018, the privileged regulation shall apply again, meaning that family members of beneficiaries of subsidiary protection will then have three months’ time to apply for a visa for family reunification under the easier conditions outlined above. Only in a few cases were visas granted on exceptional humanitarian grounds.

According to the new law taking effect on 16 March 2018, the right to family reunification is to be severely restricted for subsidiary protection holders from August 2018 onwards, when the outright suspension runs out. After this date, family reunification for those persons is to be limited to a monthly quota of 1,000 relatives who shall be granted a visa to enter Germany.³⁶⁸ This also means that the privileged conditions for family reunification have effectively been abolished for beneficiaries of subsidiary protection and replaced by a “humanitarian clause”.

The suspension of family reunification for beneficiaries of subsidiary protection coincided with a steep rise in decisions in which asylum applicants were granted subsidiary protection instead of refugee status. At the same time, suspension of family reunification resulted in tens of thousands of beneficiaries of subsidiary protection appealing against the authorities’ decisions in order to gain refugee status (“upgrade-appeals”), with a success rate of more than 75% in 2016 (see [Differential Treatment of Specific Nationalities in the Procedure](#)). 71,084 cases of such appeals were pending at the end of 2017.³⁶⁹

For Syrian refugees who have been staying in Germany for more than three months, 15 out of 16 Federal States had issued directives according to which they could apply to be reunited with family members under “relaxed” conditions (e.g. without a certificate for basic German language skills). However, most of these directives foresaw that refugees living in Germany had to declare that they take over all the living costs for their relatives and that they pay for the health insurance for all family members. These requirements proved impossible to fulfil in many cases. Accordingly, only 160 persons were granted leave to move to relatives living in Germany at the end of October 2013 under these conditions.³⁷⁰ In response to that situation, several Federal States introduced new regulations to facilitate an easier family unification. In October 2015, 9 out of 16 Federal States had dispensed with the requirement to pay for the health insurance for all family members.³⁷¹ In 2016, several of the regulations issued by the Federal States ran out, but in five Federal States (**Berlin, Brandenburg, Hamburg, Schleswig-Holstein, Thuringia**) they were replaced by new directives, so the regional programmes remained in place in these states in 2017.³⁷²

Nevertheless, the biggest obstacle for family reunification remains the length of the procedure. Even if Syrian refugees and their family members fulfil all the criteria for reunification, it takes several months at least to get an appointment at the German representations in the neighbouring countries. For example, at the German embassy in Beirut the average waiting period is 9-11 months according to the embassy’s homepage.³⁷³

The German Foreign Office has tried to react to the situation by expanding the capacities of the embassies and consulates in the region. The impact on waiting periods for appointments has been limited, but there has been progress in terms of visa applications processed by the diplomatic missions. According to one

³⁶⁶ Section 104(13) Residence Act, as amended by the Law of 8 March 2018.

³⁶⁷ Federal Government, Response to parliamentary question by The Left, No 18/9992, 17 October 2016, 5.

³⁶⁸ Section 104(13) Residence Act.

³⁶⁹ Federal Government, Reply to parliamentary question by The Left, 19/1371, 22 March 2018, 44.

³⁷⁰ Save me Kampagne, (*Federal States’ Regulations on family reunification of Syrian refugees*), 2 December 2013.

³⁷¹ GGUA Flüchtlingshilfe, *Die Privatisierung der Humanität*, October 2015.

³⁷² An overview of regional programmes can be found at: <http://resettlement.de/aktuelle-aufnahmen/>.

³⁷³ Federal Government, Response to parliamentary question by The Left, No 18/9992, 17 October 2016, 8-9.

report, the number of visas issued for family reunification purposes to Syrian and Iraqi nationals doubled between 2015 (around 25,000) and 2016 (around 50,000) and continued to increase in 2017 (17,000 in the first quarter of 2017).³⁷⁴

The German embassy in Kabul was closed after being severely damaged in an attack on 31 March 2017. The embassy had not been reopened at the end of 2017. Applications for visas for family reunification which had already been submitted at the time of the closure are now processed at the Foreign Office in Berlin. New applications for visa for family reunification purposes have to be submitted to one of the German embassies in India or in Pakistan.³⁷⁵

2. Status and rights of family members

If family members are already in Germany and have applied for asylum at the same time as the person granted protection, they are usually granted the protection status at the same time, often as part of the same decision, within the concept of “family asylum”. These provisions apply to refugees and beneficiaries of subsidiary protection accordingly.³⁷⁶

Family members who immigrate to Germany by means of family reunification are entitled to a residence permit with validity of at least one year. The maximum period of validity must not exceed the period of validity of the residence permit held by the beneficiary of protection.³⁷⁷ At first, the right of residence is generally dependent on the status of the beneficiary of protection, so residence permits of family members are prolonged as long as this person enjoys protection status. However, after a period of three years, spouses may gain entitlement to a right of residence which is independent of the beneficiary of protection. Accordingly, they can be issued a residence permit of their own in case of a divorce.³⁷⁸

C. Movement and mobility

1. Freedom of movement

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

However, since August 2016, refugees and beneficiaries of subsidiary protection are generally obliged to take up their place of residence within the Federal State in which their asylum procedures have been conducted. This has been regulated by the newly introduced “residence rule” of Section 12a of the Residence Act.³⁷⁹

Furthermore, authorities can impose further restrictions and oblige beneficiaries to take up a place of residence in a specific municipality within the Federal State. According to a study by the Technical University of Dresden, this further obligation is now applied in seven Federal States: **Bavaria, Baden-**

³⁷⁴ Die Welt, ‘17.000 Visa für Nachzug von Irakern und Syrem erteilt’, 1 June 2017, available in German at: <http://bit.ly/2puTTGI>.

³⁷⁵ Informationsverbund Asyl und Migration, ‘Bearbeitung von Visaanträgen afghanischer Staatsangehöriger’, available in German at: <http://bit.ly/2GfN3zh>.

³⁷⁶ Section 26(5) Asylum Act.

³⁷⁷ Section 27(4) Residence Act.

³⁷⁸ Section 31 Residence Act.

³⁷⁹ Not to be confused with the “geographical restriction” or “residence obligation” (*Residenzpflicht*) as described above. The residence rule is part of the so-called Integration Act of 31 July 2016, Official Gazette I no. 39 (2016) of 5 August 2016, 1939.

Württemberg, North Rhine-Westphalia, Hesse, Saarland, Saxony (to be introduced on 1 April 2018) and **Saxony-Anhalt**. Furthermore, the Federal State of **Lower Saxony** introduced “negative” regulations in 2017 according to which refugees can be asked *not* to move to certain municipalities. This regulation is effective for three towns (Salzgitter, Delmenhorst and Wilhemshaven) which are faced with structural economic difficulties and already house a comparably high number of migrants and refugees. The “city states” (Berlin, Hamburg, Bremen) and several smaller Federal States (Brandenburg, Mecklenburg-Vorpommern, Rhineland-Palatinate, Schleswig-Holstein, Thuringia) apparently have not introduced such further obligations.³⁸⁰

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

The regulation of Section 12a of the Residence Act only applies to beneficiaries of protection who have been granted a residence permit based on protection status at a date from 1 January 2016 onwards. The residence rule shall not apply if a beneficiary of protection (or one of his or her family members) can take up a job in another place, if this job provides for a sufficient income to cover the cost of living. It also has to be lifted, if a beneficiary of protection takes up vocational training or university education in another place. Furthermore, the rule shall not apply if family members (spouses, registered partners or minor children) live in another place.³⁸¹

According to the official explanatory memorandum, the residence rule is supposed to promote sustainable integration by preventing segregation of communities.³⁸² However, it has been questioned whether the way in which the provision has been put into effect is suitable for achieving the intended aim.³⁸³ A study by the Technical University of Dresden on existing “residence rules” was published in March 2018. The author points out that it will take more time to assess the positive or negative effects of the regulations introduced in 2016. At the same time, she concludes that the new measures should not be expected to have too many regulatory effects on the labour and housing markets and on integration efforts of refugees. This is because the number of persons affected by the new regulations was rather low in comparison to the overall migrant and refugee communities in Germany. Furthermore, she argues that integration processes are generally difficult to regulate by law.³⁸⁴

2. Travel documents

Persons with **refugee status** are entitled to “travel documents for refugees” (“*Reiseausweis für Flüchtlinge*”) in accordance with Article 28 of the 1951 Refugee Convention. The travel document for refugees is either automatically issued together with the residence permit after status determination has become final, or it is issued upon application. The document shall adhere to European standards³⁸⁵ and therefore has to include a storage medium with the facial image, fingerprints etc.³⁸⁶

The duration of the travel document for refugees is “up to three years”. Alternatively, it can be issued as a preliminary travel document, i.e. without an electronic storage medium, for “up to one year”.³⁸⁷ A

³⁸⁰ Nona Renner, *Die Wohnsitzauflage als Mittel deutscher Integrationspolitik? Das Beispiel Sachsen*, MIDEM-Policy Paper 01/18, Dresden, available at: <http://bit.ly/2HSpzgM>.

³⁸¹ Section 12a(5) Residence Act.

³⁸² Explanatory memorandum, Bundestag Document no. 18/8614, 42-43.

³⁸³ Clara Schlotheuber and Sebastian Röder, *Integrative (?) Zwangsmaßnahme (!)*, *Die neue Wohnsitzregelung nach § 12a AufenthG*, *Asylmagazin* 11/2016, 364-373.

³⁸⁴ Nona Renner, *Die Wohnsitzauflage als Mittel deutscher Integrationspolitik? Das Beispiel Sachsen*, MIDEM-Policy Paper 01/18, Dresden, available at: <http://bit.ly/2HSpzgM>.

³⁸⁵ Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, OJ L385/1.

³⁸⁶ Section 4(4) Residence Regulation (*Aufenthaltsverordnung*).

³⁸⁷ Section 4(1) Residence Regulation.

prolongation of the document is not possible, so refugees have to apply for a new document once the old one has expired.

Beneficiaries of **subsidiary protection** can be issued with a “travel document for aliens” (“*Reiseausweis für Ausländer*”) if they do not possess a passport or a substitute document and if they cannot be reasonably expected to obtain a passport or a substitute document from the authorities of their country of origin.³⁸⁸ This is a general provision which applies to beneficiaries of subsidiary protection as well as to other aliens with residence status in Germany.

While it is generally accepted that refugees and their family members cannot be reasonably expected to obtain a passport from the authorities of their country of origin,³⁸⁹ this is not the case for beneficiaries of subsidiary protection. Guidelines by the Federal Ministry of Interior stipulate that persons who cannot be deported for legal or humanitarian reasons generally cannot be expected to travel to their countries of origin if this is necessary to obtain a passport.³⁹⁰ This applies to beneficiaries of subsidiary protection as well. However, if it is possible to obtain a passport from an embassy in Germany, beneficiaries of subsidiary protection are generally required to do so. If they argue that this is impossible for them, they have to apply for a “travel document for aliens” on individual grounds and have to demonstrate that they cannot be reasonably expected to get a passport on individual grounds.

The duration of the “travel document for aliens” is usually equivalent to the validity of the residence permit that a foreign citizen has in Germany.³⁹¹ For beneficiaries of subsidiary protection this is one year with an option of renewal(s) for two years (see [Residence Permit](#)).

D. Housing

Indicators: Housing

- | | |
|--|---------------|
| 1. For how long are beneficiaries entitled to stay in reception centres? | N/A |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2017 | Not available |

Neither refugees nor beneficiaries of subsidiary protection are obliged to stay in reception centres or other forms of collective accommodation centres. However, in many places, particularly in the big cities, it often proves very difficult for beneficiaries to find apartments after they have been granted protection status. Therefore, it has been reported that many beneficiaries stay in collective accommodation centres, including emergency shelters (such as gyms) for long periods. This can pose a problem for municipalities since it is not clear on which legal basis they are staying in those centres and which institution has to cover the costs.³⁹² According to Pro Asyl, the situation is particularly critical in **Berlin**, where up to 5,000 recognised refugees were estimated to stay in collective accommodation at the end of 2016 without a realistic perspective to move into apartments any time soon.³⁹³

A study by the Federal Institute for Research on Building, Urban Affairs and Spatial Development

³⁸⁸ Section 5(1) Residence Regulation.

³⁸⁹ Verfahrenshinweise der Ausländerbehörde Berlin (Guidelines for the Aliens Office Berlin), 12 September 2016, available at: <http://bit.ly/2m1sjCe>, 492.

³⁹⁰ Federal Ministry of Interior, *Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz* (General Administrative Guidelines for the Residence Act), 26 Oct. 2009, no. 3.3.1.3.

³⁹¹ Section 8 Residence Regulation.

³⁹² In most Federal States, the municipalities receive support for accommodation of asylum seekers from the Federal State's budget, but it is not regulated whether this applies to recognised refugees as well. According to a media report, the Federal State of **Thuringia** has declared that it will cover the municipalities' costs if refugees are housed in collective accommodation centres: mdr.de, 'Federal State opens accommodation centres for recognised refugees', 27 May 2017, available in German at: <http://bit.ly/2notjRc>.

³⁹³ Münchner Merkur, 'Thousands of refugees do not find an apartment', 29 December 2016, available in German at: <http://bit.ly/2nov28Z>.

published in October 2017 deals *inter alia* with the housing situation of beneficiaries of international protection in 10 municipalities throughout Germany. The main findings of this study include the following:³⁹⁴

“Integration into the housing market does not equal integration into society:

In municipalities in which the placement of refugees in the regular housing market succeeds, there is often a lack of prospects for suitable jobs and training positions. In addition, it is difficult for refugees to overcome distances to integration courses, doctors, shopping facilities and friends, as they are dependent on public transport, which has shortcomings in rural regions. These factors complicate the sustainable integration of refugees into society...

A tense housing market situation impedes the integration of refugees on the housing market:

In large cities and university cities with tense housing markets, many refugees live in emergency and collective accommodation with no quality of living for long periods of time. The integration into the housing market is only successful to a certain extent and the construction of new social housing is progressing slowly. In many cities, the fluctuation reserves of the housing market are exhausted and the bottlenecks in part lead to a "black market" for finding accommodation in certain areas...

Placement in flats is not generally better than housing in collective accommodation:

The decentralised accommodation of refugees in flats contributes particularly to the integration into the housing market if the refugees can take over the rental agreements. In practice, it is not always an improvement over placement in collective accommodation. In some places the flats are occupied by many people who have not chosen to share rooms, bathroom and kitchen. The living standard is sometimes lower than in small hostels and privacy is severely limited.”

If refugees or beneficiaries of subsidiary protection cannot provide for the costs, the rent for a room or an apartment is covered by the local social welfare office or the local job centre, but only up to an “adequate” level. What is considered “adequate” depends on the local housing market, so beneficiaries of protection have to inquire with the local authorities to what amount rent will be reimbursed.

Many local organisations and initiatives try to support refugees in finding apartments. One initiative operating for the whole of Germany, “Refugees Welcome” (*Flüchtlinge willkommen*) runs an online platform providing assistance for people who want to share a flat with asylum seekers and refugees.

Since August 2016, refugees and beneficiaries of subsidiary protection are generally obliged to take up their place of residence within the Federal State in which their asylum procedures have been conducted. Furthermore, under Section 12a of the Residence Act authorities can oblige them to take up place of residence in a specific municipality within the Federal State (see section on [Freedom of Movement](#)). One of the provisions introduced in the context of the new law refers explicitly to refugees and beneficiaries of subsidiary protection who still live in a reception centre or another form of temporary accommodation after their status has been determined. They can be obliged to take up their place of residence in a “specific place” in order to provide themselves with “suitable accommodation”.³⁹⁵ The Federal States which have applied this regulation so far refer beneficiaries of international protection to a municipality, not to a particular apartment.

³⁹⁴ Bundesinstitut für Bau-, Stadt- und Raumforschung, *Integration von Flüchtlingen in den regulären Wohnungsmarkt*, 21/2017, October 2017, available in German at: <https://bit.ly/2IPH6HW>.

³⁹⁵ Section 12a(2) Residence Act.

E. Employment and education

1. Access to the labour market

Persons with refugee status and beneficiaries of subsidiary protection have unrestricted access to the labour market, including self-employment, under the same conditions as German citizens.³⁹⁶ They are entitled to all supportive measures offered by the labour agency. This includes qualification offers and training programmes, but also costs which may result from the need to have professional qualifications recognised.

Recognition of professional qualifications has been often described as a major practical obstacle for access to the labour market. This does not only affect refugees but other immigrants as well. The German government therefore has set up an information portal offering advice on the necessary procedures (“[Recognition in Germany](#)”).

Available official statistics on unemployment only distinguish between nationalities, but not between residence statuses of persons concerned. Therefore, it is not possible to establish exactly how many beneficiaries of international protection have successfully integrated into the labour market. A study by the “Institute for Employment Research”, published in April 2017 was therefore based on statistics in combination with a survey among asylum seekers and refugees. For the group of persons with international protection or humanitarian status this study found that 11.8% of persons who had arrived in Germany in 2015 had been in employment one year later, and many of them only had low-paid “mini-jobs”. However, the rate of persons in employment rose considerably with the time spent in Germany: 23.8% of persons from this group who had been in Germany for two years and 35.6% of persons with a stay of three years were in employment, according to this study.³⁹⁷

2. Access to education

Persons with refugee status and beneficiaries of subsidiary protection are entitled to take up vocational training as well as school or university education, if they can prove that they have the necessary qualifications. They can also receive support for the costs of living for the duration of training or studies under the same conditions as German citizens.

F. Social welfare

Both refugees and beneficiaries of subsidiary protection are entitled to social benefits, in particular unemployment benefits, on the same level as German nationals.

Beneficiaries of international protection are entitled to benefits, starting from the first day of the month after the recognition of their status has become legally valid i.e. usually with the arrival of the decision by the BAMF. Problems with access to social benefits may occur during the period when persons have already been granted protection status but still only have the residence permit for asylum seekers (*Aufenthaltsgestattung*) because they have not yet received the residence permit (*Aufenthaltserlaubnis*) which officially confirms that they have protection status. This may lead responsible authorities to deny social services for the first couple of weeks following the recognition of the status. However, persons concerned would in any case be entitled to the (lower) asylum seekers’ benefits during this period and they can claim payments to which they would have been entitled at a later date.³⁹⁸

³⁹⁶ Section 25(2) Residence Act.

³⁹⁷ Herbert Brücker, Andreas Hauptmann and Steffen Sirries, *Arbeitsmarktintegration von Geflüchteten in Deutschland: Der Stand zum Jahresbeginn 2017*, April 2017, available in German at: <https://bit.ly/2fzZrMa>.

³⁹⁸ Georg Classen, *Ratgeber für Geflüchtete in Berlin*, 2nd ed., November 2017, available in German at: <https://bit.ly/2DOV0X5>, 156-157.

For persons who are registered as unemployed, the responsible authority is the “job centre” or Employment Agency. This institution is responsible for the disbursement of unemployment benefits as well as for the provision of other benefits and measures for integration into the labour market; job training measures, support with job applications, specific language courses etc. For persons who are not registered as unemployed (e.g. because they have reached the age of retirement or are unable to work on health grounds), the responsible authority is the Social Welfare Office.

Since August 2016, beneficiaries of protection are generally obliged to take up their place of residence within the Federal State in which their asylum procedures have been conducted for a maximum period of three years (see [Freedom of Movement](#)). In several Federal States beneficiaries of protection are also obliged to reside in a specific municipality, also for a maximum period of three years. This obligation can be lifted for certain reasons e.g. for family-related reasons or for education and employment purposes. As long as the obligation is valid, social benefits are generally only provided in the respective Federal State or in the respective municipality.

G. Health care

Persons with refugee status and beneficiaries of subsidiary protection have the same status as German citizens within the social insurance system. This includes membership in the statutory health insurance, if they have a job other than “minimal employment” (i.e. a low-paid part time job). If they are unemployed, the job centre or the social welfare office provides them with a health insurance card which entitles them to the same medical care as statutory health insurance.

ANNEX – Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	1 December 2013	Act for the Transposition of the Directive 2011/95/EU	http://bit.ly/1eVWZfC (DE)
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015	20 October 2015 6 August 2016	Asylum Procedures Acceleration Act Integration Act (provisions on inadmissibility only)	http://bit.ly/1PVCs9T (DE)
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	5 November 2014 20 October 2015	Act on classification of further states as safe countries of origin and on the facilitation of access to the labour market for asylum seekers and tolerated foreigners Asylum Procedures Acceleration Act	http://bit.ly/1RtIQIb (DE) http://bit.ly/1PVCs9T (DE)
Regulation (EU) No 604/2013 Dublin III Regulation	Directly applicable 20 July 2013	1 August 2015	Act on the redefinition of the right to stay and on the termination of stay	http://bit.ly/1IbaPmO (DE)

Note that the Asylum Procedures Directive and the Reception Conditions Directive have only partially been transposed by the corresponding acts referred to here.