aida
Asylum Information Database

Country Report: Germany

2018 Update

Informationsverbund ASYL & MIGRATION

ecre European Council on Refugees and Exiles

Acknowledgements & Methodology

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

This report 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. Information on the situation at airport (detention) facilities and on the newly established “AnkER centres” in Bavaria was added by ECRE following a visit in April 2019.

The information in this report is up-to-date as of 31 December 2018, 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.

This report is part of the Asylum Information Database (AIDA), funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative by the Network of European Foundations, and the European Union’s Asylum, Migration and Integration Fund (AMIF) and Horizon 2020 research and innovation programme (grant agreement No 770037). The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of EPIM or the European Commission.

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Glossary

AnkER centre	*Ankunfts-, Entscheidungs-, Rückführungzentrum* (also *Ankunft, Entscheidung- kommunale Verteilung und Rückkehr*) – Initial reception centre where all actors of the asylum procedure and return are concentrated. AnkER centres were set up in Bavaria, Saxony and Saarland in 2018. In Bavaria, AnkER centres replaced the "transit centres" (*Transitzentren*) operated in three locations in Bavaria (Manching/Ingolstadt, Regensurg, Deggendorf). Note that AnkER centre is not a legal term.
Arrival centre	*Ankunftszentrum* – Centre where various authorities are concentrated to streamline processes such as registration, identity checks, interview and decision-making in the same facility. Around 26 branch facilities of the BAMF operate as part of arrival centres. Note that arrival centre is not a legal term.
Arrival certificate	*Ankunftsnachweis* – Certificate received upon arrival in the arrival centre. This replaced the BÜMA in 2016.
Dependance	In Bavaria, an accommodation centre attached to an AnkER centre, which serves for the accommodation of asylum seekers. No steps of the asylum procedure are carried out in the *Dependancen*.
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" (*Residenzpflicht*), 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	*Aufnahmeeinrichtung* – Reception centre where the BAMF branch office is located and where asylum seekers are assigned to reside.
Residence rule	*Wohnsitzregelung* – 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	*Sonderbeauftragter* – Specially trained BAMF officer dealing with vulnerable asylum seekers.
Special reception centre	*Besondere Aufnahmeeinrichtung* – 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.

List of Abbreviations

AnKER	Arrival, Decision and Return | Ankunft, Entscheidung, Rückführung
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
EASY	Initial Distribution of Asylum Seekers | Erstverteilung der Asylbegehrenden
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
GGUA	Gemeinnützige Gesellschaft zur Unterstützung Asylsuchender
GU	Collective accommodation | Gemeinschaftsunterkunft
ILGA	International Lesbian and Gay Association
OVG	Higher Administrative Court | Oberverwaltungsgericht
VG	Administrative Court | Verwaltungsgericht
ZAB	Central Aliens Office | Zentrale Ausländerbehörde

Statistics

Overview of statistical practice

The Federal Office for Migration and Refugees (BAMF) publishes monthly statistical reports (*Aktuelle Zahlen zu Asyl*) 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: 2018

	Applicants in 2018	Pending at end 2018	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	185,853	58,325	41,368	25,055	9,548	75,395	27.3%	16.6%	6.3%	49.8%

Breakdown by countries of origin of the total numbers

Syria	46,146	16,748	18,245	17,411	274	69	50.7%	48.3%	0.8%	0.2%
Iraq	18,074	6,416	4,311	828	1,330	7,627	30.6%	5.9%	9.4%	54.1%
Iran	11,846	4,370	2,446	173	96	5,192	30.9%	2.2%	1.2%	65.7%
Nigeria	11,073	3,329	794	127	888	5,809	10.4%	1.7%	11.7%	76.2%
Turkey	10,655	5,264	3,666	47	59	4,307	45.4%	0.6%	0.7%	53.3%
Afghanistan	12,251	3,630	2,290	822	3,869	6,406	17.1%	6.1%	28.9%	47.8%
Eritrea	5,920	1,534	2,239	2,822	277	337	39.4%	49.7%	4.9%	6%
Somalia	5,754	1,870	1,920	795	655	1,749	37.5%	15.5%	12.8%	34.2%
Unknown	4,849	1,917	1,609	436	132	1,550	43.2%	11.7%	3.5%	41.6%
Russia	5,282	1,277	596	144	157	4,037	12.1%	2.9%	3.2%	81.8%

Source: BAMF, Asylgeschäftsbericht, December 2018: https://bit.ly/2T3P04i, 2; Asylgeschäftsstatistik, December 2018: https://bit.ly/2OYf3b9.

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

Gender/age breakdown of the total number of applicants: 2018 (first applications)

	Number	Percentage
Total number of applicants	161,391	-
Men (male)	91,854	56.7%
Women (female)	70,077	43.3%
Children (minors)	78,298	48.5%
Unaccompanied children	4,087	2.5%

Source: BAMF, Aktuelle Zahlen zu Asyl, December 2018: https://bit.ly/2VtzPDs, 7; Federal Government, Reply to parliamentary question by The Left, 19/8701, 25 March 2019: https://bit.ly/2OV0hmM.

Comparison between first instance and appeal decision rates: 2018

	First instance		Appeal	
	Number	**Percentage**	**Number**	**Percentage**
Total number of decisions	216,873	100%	171,905	100%
Positive decisions	75,971	35%	29,573	17.2%
• *Refugee status*	41,368	19.1%	15,215	8.9%
• *Subsidiary protection*	25,055	11.6%	2,588	1.5%
• *Humanitarian protection*	9,548	4.4%	11,770	6.8%
Negative decisions	75,395	34.8%	64,738	37.7%

Source: BAMF, Asylgeschäftsbericht, December 2018: https://bit.ly/2T3P04i, 2: Federal Government, Reply to parliamentary question by The Left, 19/8701, 25 March 2019, https://bit.ly/2OV0hmM, 43-44.

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 2018**.

- **Applications and decisions:** The number of first asylum applications dropped to 161,931 from 198,317 in 2017. In particular, fewer applicants were registered for several of the most important countries of origin of asylum seekers, such as Iraq, Afghanistan and Eritrea. About 35% of decisions resulted in a protection status for applicants, but an exceptionally high number of asylum procedures were abandoned without an examination of the substance of the case (either because the application was considered "inadmissibile" or because the procedure was discontinued for other reasons). If only those procedures in which a decision on the substance of the asylum claim took place are taken into account, the overall recognition rate was at 50.2% in 2018.

Asylum procedure

- **Information for asylum seekers:** With the start of operation of AnkER centres on 1 August 2018, a new practice of "independent counselling" for asylum seekers was initiated. However, these counselling services are now provided by dedicated BAMF officials. This raises concerns with regard to the independence of the counselling services. In practice, counselling by the BAMF consists of group sessions providing general information on obligations and rights in the asylum procedure.

- **Dublin:** The BAMF issued 54,910 outgoing Dublin requests and implemented 9,209 transfers, most of which to Italy. As of early 2019 in certain reception centres, the applicant is informed of the date of the transfer and required to be in his or her room during a specificed time pick-up by the police in view of the transfer. If the applicant fails to be present for that appointment, the BAMF extends the transfer deadline from 6 to 18 months on grounds of "absconding", and material reception conditions can be reduced.

- **Deportations after refusal of entry:** In 2018 a new procedure was introduced which enables the Federal Police to refuse entry at the Austrian-German land border. The aim of the new approach is to facilitate the immediate removal of "Dublin cases" to the Southern European countries. However, these returns are taking place without a Dublin procedure, as they are not based on the Dublin Regulation but on refusal of entry implemented through administrative arrangements with other EU Member States. At the beginning of 2019, only two of these agreements had been concluded with Spain and Greece and only 11 forced returns had taken place on the basis of the new approach, 9 to Greece and 2 to Spain.

Reception conditions

- **Initial reception centres:** The new federal coalition government announced plans for a restructuring of the asylum procedure in March 2018. According to the coalition agreement, all asylum seekers should spend the first phase of their procedures in so-called "Arrival, Decision and Return" (AnkER) centres. However, most Federal States refused to implement the concept, claiming that existing institutions (especially the "arrival centres") already fulfilled the purposes that had been set out in the coalition agreement. At the end of 2018, only three Federal States (Bavaria, Saxony and Saarland) had agreed to establish AnkER centres, in most cases just by renaming their existing facilities. Asylum seekers may be required to stay for up to 24 months in AnkER centres if their applications are rejected as manifestly unfounded or inadmissible, with limitations on freedom of movement and no access to the labour market.

Detention of asylum seekers

- **Detention capacity:** Different Federal States have increased the number of pre-removal detention places. Bavaria has set up two new pre-removal centres, one in Erding and one at Munich Airport ("Hangar 3"), with 35 and 30 places respectively.

Content of international protection

- **Withdrawal:** Following several "scandals" surrounding decision-making processes at the BAMF, mass re-examinations of asylum decisions from former years took place. In 2018, the BAMF initiated more than 192,500 "revocation examination procedures" in 2018 for decisions in which a protection status had been granted, especially in cases which had been decided under a written procedure. It concluded 85,502 of these procedures and found in almost 99% of cases that the status should be upheld. Only in 1.2% of cases was status revoked or withdrawn.

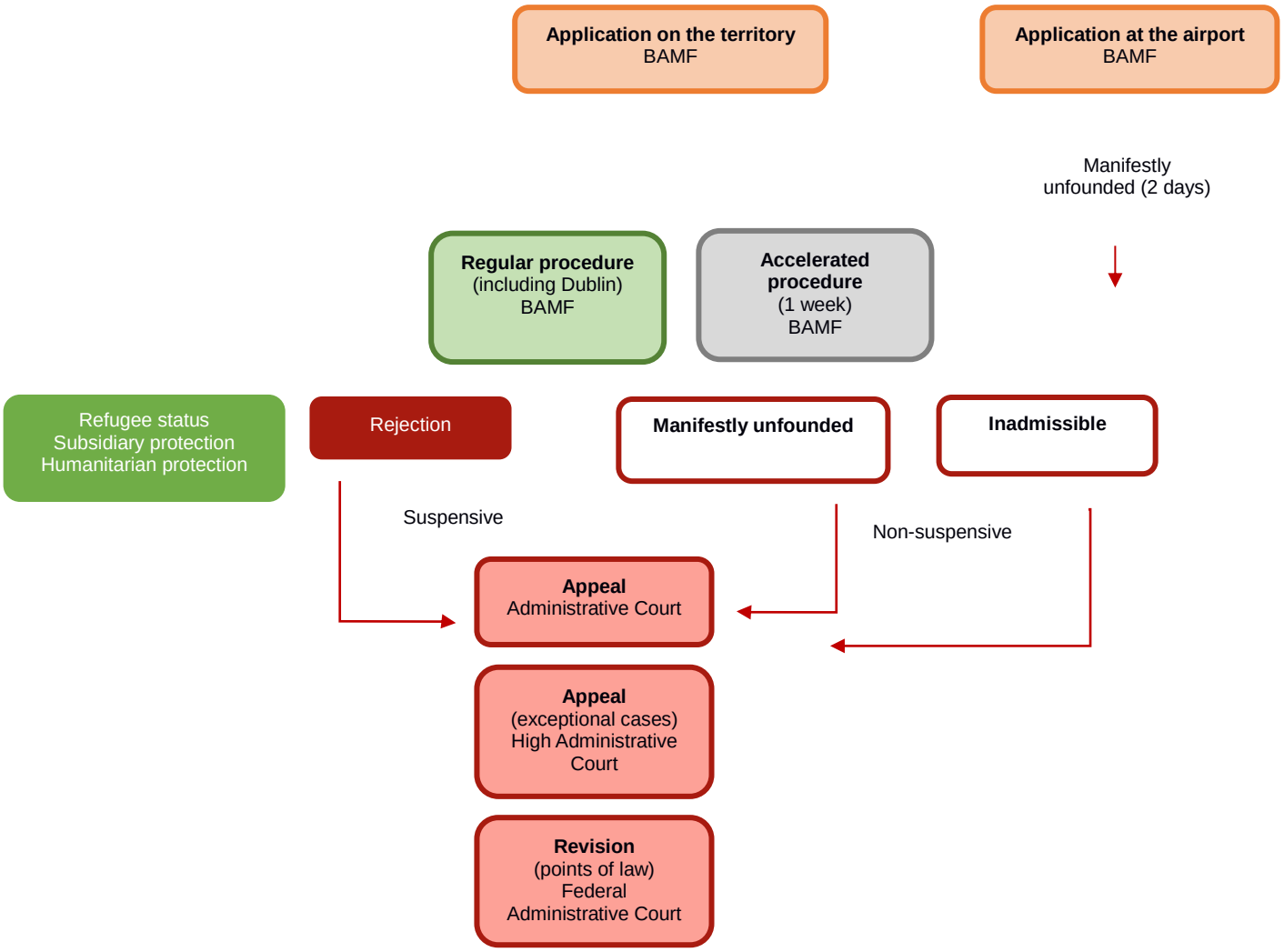
  Following new legislation entering into force in December 2018, beneficiaries of protection are now obliged to cooperate fully with authorities in revocation and withdrawal procedures. Before December 2018, refugees were only given an opportunity to submit a written reply. The new law now authorises the BAMF to place on refugees obligations which are almost identical with obligations applicable during the asylum procedure. This includes: the obligation to attend an interview, the obligation to cooperate with authorities in clarifying identity, including the obligation to hand over identity documents or other certificates; the obligation to undergo other identification measures to clarify their identities, especially photographs and fingerprints.

- **Family reunification:** Entitlement to family reunification has been abolished for beneficiaries of subsidiary protection as of August 2018. Instead, 1,000 family members of beneficiaries of subsidiary protection shall be granted a visa to enter Germany each month, according to the new law.

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:	☒ Yes	☐ No
▪ Prioritised examination:[2]	☒ Yes	☐ No
▪ Fast-track processing:[3]	☒ Yes	☐ No
❖ Dublin procedure:	☒ Yes	☐ No
❖ Admissibility procedure:	☒ Yes	☐ No
❖ Border procedure:	☒ Yes	☐ No
❖ Accelerated procedure:[4]	☒ Yes	☐ 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	Federal 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 • First appeal • Second appeal • Final appeal	• Administrative Court • High Administrative Court • Federal Administrative Court	• Verwaltungsgericht • Oberverwaltungsgericht or Verwaltungsgerichtshof • Bundesverwaltungsgericht
Subsequent application (admissibility)	Federal Office for Migration and Refugees (BAMF)	Bundesamt für Migration und Flüchtlinge (BAMF)

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

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Federal Office for Migration and Refugees (BAMF)	6,680	Federal Ministry of Interior	☐ Yes ☒ No

On 19 February 2019, the BAMF registered 6,680 positions or “full time job equivalents” (meaning that the actual number of staff is likely to be much higher, since many of these positions are shared by people working part-time.) Since the office is responsible for several other tasks apart from the asylum procedure (e.g. research, integration), not all staff members are working in the area of asylum.

[2] For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

[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) recast Asylum Procedures Directive.

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 Federal 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.

Since August 2018, asylum seekers can also be denied entry at the Austrian-German land border if the authorities are able to demonstrate within 48 hours that they have already applied for asylum in Greece or Spain. In these cases, the transfer to the concerned Member state is not based on the Dublin Regulation but on individual administrative arrangements that Germany adopted.[5] As of March 2019, agreements had been concluded only with Greece and Spain. Between August 2018 and February 2019, only 11 forced returns took place on the basis of these agreements.

Asylum seekers who arrive at an international airport without the necessary documents may be subject to the **airport procedure** (*Flughafenverfahren*), dependent on whether the necessary facilities exist at the airport. It is then 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).

Regular procedure

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" are a form of initial reception centres set up in different locations in Germany, where various authorities are located on the same premises processes such as registration, identity checks, the interview and the decision-making are "streamlined".

In addition, "arrival, decision and return" (*Ankunft, Entscheidung, Rückführung*, AnkER) centres were established on 1 August 2018 following the coalition agreement between the CDU/CSU and the SPD of 12 March 2018 The main purpose is to centralise all activities at one location and to shorten the asylum procedure, which is a concept that was already applied in "arrival centres" across Germany and in "transit centres" set up in three locations in Bavaria (Manching/Ingolstadt, Regensburg, Deggendorf). Most Federal States have not participated in the AnkER centres scheme. At the end of 2018, only three Federal States (**Bavaria**, **Saxony** and **Saarland**) had agreed to establish AnkER centres, in most cases

[5] ECRE, *Bilateral Agreements: Implementing or Bypassing the Dublin Regulation?*, December 2018; available at: https://bit.ly/2GgVoEf.

simply by renaming their existing facilities. While it remains unclear how AnkER centres differ from "arrival centres", it appears that in Bavaria, the two institutions carry out different tasks.[6]

In any case, both arrival centres and AnkER centres are legal concepts and it is therefore up to the Federal States and the BAMF to define in individual agreements how these centres operate. This means that there are no general standards, but the common feature is that various processes such as registration, identity checks, the interview and the decision-making are supposed to be "streamlined" both in the arrival centres and the AnkER-centres. However, fast-tracking of procedures therein must not be confused with the accelerated procedure which was introduced in March 2016 in the law.

Accelerated procedure

An 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, where a decision must be taken by the BAMF within seven days. However, at the end of 2018, the two special reception centres existing in Bamberg and Manching/Ingolstadt had been transformed into AnkER centres, and it is not clear whether the accelerated procedure continues to be applied therein. No figures were provided by the authorities as to how many accelerated procedures had been carried out.

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 high number of cases, which amounted to 65,507 (30.2%) cases in 2018, a "formal decision" – including inadmissibility decisions – was taken, which means that the case was closed without an examination of the asylum claim's substance.[7] In many instances such formal decisions are issued because another state was found to be responsible for the asylum application under the Dublin Regulation. Furthermore, decisions not to carry out follow-up procedures in cases of second or further asylum applications are qualified as inadmissibility decisions since 2016.

Appeal

An appeal against the rejection of an asylum application has to be submitted to a regular Administrative Court (*Verwaltungsgericht*, VG). The responsible Administrative Court is the one with regional

[6] In the coalition agreement, "AnKER" had actually been used as an acronym for "*Ankunft, Entscheidung, kommunale Verteilung und Rückführung*" (arrival, decision, local distribution and return), but for the Bavarian centres the designation of the centres (and the meaning) seems to have been altered.

[7] In the previous years the numbers were as follows: 109,476 (18.1%) in 2017; 87,697 (12.6%) in 2016 and 50,297 (17.8%) in 2015.

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 one 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

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.

In practice, difficulties with registration have been reported in connection with the refusal of entry at the borders. In previous years, it was reported that asylum seekers were arrested by Federal Police in the immediate vicinity of a branch of the BAMF 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.[10]

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.[11] In response to an information request, the Federal 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 Federal 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 Federal 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 Federal Police also claimed that procedural guarantees, in particular access to an effective remedy as regulated in the Dublin Regulation, were

8 Section 18(2) Asylum Act and Sections 14 and 15 Residence Act.
9 Section 13(2) Residence Act.
10 Refugee Council Brandenburg, ‘Das Recht auf ein Asylverfahren endet in Eisenhüttenstadt’, 17 July 2013, available in German at: http://bit.ly/1PBzQzm.
11 See e.g. ZDF, ‘Ein Jahr Grenzkontrollen in Deutschland’, 13 September 2016, available in German at: http://bit.ly/2nG9y3u.

adhered to in these return procedures.[12] The government clarified in 2017 that Dublin procedures at the borders are conducted by the BAMF (see Dublin: Procedure).

In 2018 a new procedure was introduced which enables the Federal Police to refuse entry at the border. This procedure is based on administrative regulations only; no legislative changes were implemented. It is only applied to the Austrian-German border, as it is the only border where there are currently controls. The aim of the new approach is to facilitate the immediate removal of persons who have already applied for asylum in a southern European country with which Germany had concluded an agreement; this includes Spain and Greece at the moment. According to the Federal Ministry of the Interior, refusals of entry are possible if it can be immediately established with the help of a Eurodac "hit" that the person trying to cross the border and seeking protection in Germany has already applied for asylum elsewhere. An immediate return then has to take place within 48 hours.[13] These returns are therefore not based on the Dublin Regulation, but on a refusal of entry under the (national) notion of "safe third countries" in combination with administrative arrangements concluded with other EU Member States. At the beginning of 2019, only two of these readmission agreements had been concluded with Spain and Greece and only 11 forced returns had taken place on the basis of the new approach, 9 to Greece and 2 to Spain.[14]

At the time of writing, no further details could be ascertained as to how this new procedure is carried out in practice. The legality of the new procedure has been questioned by legal experts,[15] and it has been reported that some deportations to Greece, which took place on the basis of the new readmission agreements, were challenged in domestic courts and the European Court of Human Rights (ECtHR),[16] but no court decisions concerning this issue have been published at the beginning of 2019.

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?

2.1. Making and registering the application

Irrespective of special regulations which apply in the border region only, most applications are made 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 BAMF. Alternatively, they can report to a police station or to an office of the foreigners' authorities.[17] 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

12 Information provided by the Federal Police Head Office, 23 February 2017.
13 Federal Ministry of the Interior, ‚Zurückweisung an der Grenze', 9 August 2018, available in German at: https://bit.ly/2T5vHHL.
14 Migazin, 'Elf Zurückweisungen an der Grenze seit August 2018', 11 March 2019, available in German at: https://bit.ly/2XY4PgD.
15 A collection of statements by various experts and institutions can be found at: https://bit.ly/2zwUPTs. See also Constantin Hruschka, 'Kontrolle oder Chaos? Zur Rechtswidrigkeit der Zurückweisung von Schutzsuchenden an den europäischen Binnengrenzen', 18 June 2018, available in German at: https://bit.ly/2B56Iyq; ECRE, *Bilateral Agreements: Implementing or Bypassing the Dublin Regulation?*, December 2018; available at: https://bit.ly/2GgVoEf.
16 AIDA, Country Report Greece, 2018 Update, March 2019, available at: https://bit.ly/2I3P95L, 69.
17 Section 13 Asylum Act.

not have the legal status of asylum seekers as long as they have not arrived at the responsible "arrival centre" (*Ankunftszentrum*) 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.[18]

After identity and security checks have been conducted at the arrival centre, the initial reception centre (*Aufnahmeeinrichtung*) 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 Initial Distribution of Asylum Seekers (*Erstverteilung der Asylbegehrenden*, EASY) system. This distribution system allocates places according to a quota system known as "*Königsteiner Schlüssel*" 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 BAMF deals with the asylum seeker's country of origin (see section on Freedom of Movement).[19] Problems with delayed registration of applications have not been reported in 2017 and 2018.

Asylum seekers whose application is registered have to be issued an "arrival certificate" (*Ankunftsnachweis*). The arrival certificate replaced the "confirmation of reporting as asylum seeker (*Bescheinigung über die Meldung als Asylsuchender*, BÜMA) issued in 2015 and 2016. As soon as the responsible branch office of the BAMF is determined based on the EASY system, they are transported to the facility or are provided with tickets to travel there on their own.

2.2. Lodging the application

Once they arrive in the responsible branch office of the BAMF, which may be a part of an arrival centre or an AnkER centre, asylum seekers lodge their application with the BAMF. Following the lodging of the application, they are issued a "residence permit for asylum seekers" (*Aufenhaltsgestattung*). With this document, the arrival certificate ceases to be valid and has to be retracted by the authorities.

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?	☒ Yes ☐ No
3.	Backlog of pending cases at first instance of 31 December 2018:	58,325

The competent authority for the decision-making in asylum procedures is the BAMF. Its functions and duties include coordination of integration courses or research on general migration issues. The BAMF also acts as national administration office for European Funds in the areas of refugees, integration and return.

[18] Sections 20, 22 and 23 Asylum Act.
[19] BAMF, *Asylum and refugee protection*, available at: http://bit.ly/1O5qPus.

Quality

The quality of BAMF asylum decisions has been much debated in recent years given the high number of appeals filed at the courts, but also because of "scandals" which prompted extensive media coverage. In 2017, one of these cases became known as the "Franco A. scandal". It concerned a German soldier had successfully posed as a Syrian refugee, allegedly preparing a terrorist attack.[20] In 2018, alleged irregularities at a branch office of the BAMF in the Federal State of Bremen triggered the "BAMF-affair": According to allegations (partly from staff members of the Bremen branch office), the office had taken over a high number of cases for which it had not been responsible and had unlawfully granted refugee status to up to 1,200 asylum seekers. These reports resulted in re-examinations of tens of thousands of decisions. According to preliminary results of the revision, it appears that the allegations in the "BAMF-affair" have been wildly exaggerated: out of 43,298 cases which were re-examined in the first half of 2018, only 309 (0.7%) resulted in a revocation of a protection status, while the original decision taken by the BAMF was confirmed in more than 99% of cases (see Cessation and Review of Protection Status).[21]

In the course of the debate on the quality of BAMF decisions, it turned out that many decision-makers had not been fully qualified as they had not completed the training modules which the BAMF provides as part of its in-house training programme. 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 as of February 2018 had not completed the full training programme.[22] In July 2018, a leading member of the BAMF staff council (a body of staff representatives) stated that deficiencies in the training of decision-makers were persistent, with new staff members only being trained in "crash courses" and getting basic training only after they have started their job (and therefore after they had already been deciding on asylum cases). The BAMF management acknowleged that training measures were ongoing, with 489 decision-makers undergoing "ongoing training" and a further 45 decision-makers being trained by colleagues who have more experience.[23]

Time limits

The law does not set a time limit for the BAMF to decide on an application. If no decision has been taken within 6 months, the BAMF has to notify asylum seekers upon request about when the decision is likely to be taken.[24]

The overall number of pending applications at the Federal Office was 58,325 at the end of 2018. This represents a decrease of 14.5% from 68,245 applications pending at the end of 2017.[25]

In 2018, the average time of procedures at the BAMF was around 8 months. This average time is similar to previous years, with the exception of the year 2017 during which the average time was 10.7 months. The BAMF had explained that the increase in 2017 was due to the backlog of cases, which were

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

21 Federal Government, Reply to parliamentary question by The Left, 19/3451, 19 July 2018, available in German at https://bit.ly/2O4R3nV; Süddeutsche Zeitung, 'Nur wenige Flüchtlinge haben Bleiberecht erschlichen', 20 August 2018, available in German at https://bit.ly/2MsHLED.

22 Wirtschaftswoche, 'Eine Behörde arbeitet für die Statistik', 4 February 2018, available in German at: http://bit.ly/2oSbU2f.

23 Merkur, '"Das ist verantwortungslos...": Bamf-Mitarbeiter nennt massive Wissenslücken bei Asyl-Entscheidern', 17 July 2018, available in German at https://bit.ly/2T5WPpZ.

24 Section 24(4) Asylum Act.

25 BAMF, *Asylgeschäftsbericht*, December 2018, available in German at: https://bit.ly/2T3P04i.

eventually processed in 2017.[26] As regards the average time of asylum procedures until a final decision is issued (i.e. court procedures), it was 16.8 months in 2018 according to the government.[27] In mid-2017 the average time was 12.6 months.[28] The increase results from a large number of appeals which are pending in courts since 2016.

For the years 2013 to 2018, 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 2018
All countries	**7.2**	**7.1**	**5.2**	**7.1**	**10.7**	**7.9**
Serbia	2.1	4	4.2	8.9	:	:
Afghanistan	14.1	13.9	14.0	8.7	11.9	11.3
Syria	4.6	4.2	3.2	3.8	7.0	5.0
Iraq	9.5	9.6	6.8	5.9	9.1	6.1
North Macedonia	2.4	5.3	4.5	:	:	:
Iran	13	14.5	17.1	12.3	10.3	6.8
Pakistan	15	15.7	15.3	15.5	13.9	11.7
Russia	5.6	10	11.8	15.6	15.7	13.5

Source: Federal Government, Reply 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, 19/1631, 13 April 2018; 19/7552, 6 February 2019.

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.[29] "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.[30]

1.2. Prioritised examination and fast-track processing

Arrival centres (*Ankunftszentren*)

The arrival centres (*Ankunftszentren*) were introduced in December 2015 with the aim of fast-tracking procedures. 23 out of approximately 38 branch offices of the BAMF were functioning as arrival centres at the beginning of 2019.[31] The concept of arrival centres is not based in law but has been developed by business consultants under the heading "integrated refugee management".[32] Accordingly, this method for fast-tracking of procedures must not be confused with the Accelerated Procedure introduced into law in March 2016.

26 Federal Government, Response to parliamentary question by The Left, 19/1371, 22 March 2018, 42; 18/11262, 21 February 2017, 13.
27 Situation as of mid-year 2018.
28 Federal Government, Response to parliamentary question by The Left, 19/7552, 6 February 2019, 5; 19/1631, 13 April 2018, 5.
29 Federal Government, Response to parliamentary question by The Left, 18/9415, 17 August 2016, 23.
30 Information provided by the BAMF, 23 January 2018.
31 BAMF, *Locations*, 14 March 2019, available at: http://bit.ly/2nvMMQs, lists about 45 "branch offices" and "regional offices" (including the arrival centres), with some offices having both functions.
32 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.

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 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:[33]

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 Registration).

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.

Day 3 Asylum seekers are again transported by bus to the central office of the arrival centre where the asylum application is now lodged with the BAMF. The arrival certificate is then replaced with the “permission to stay” (*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.

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

The "direct procedure" described here shall only apply in "clear-cut" cases, in which protection can be 'easily' recognised or rejected. 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.

These stages of the procedure are carried out within a few days. After that, a decision is usually handed out within a period of few weeks up to several months. 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(see Access and forms of reception conditions). 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.

While the government claimed that the duration of asylum procedures could be significantly reduced in arrival centres, latest statistics do not seem to support this claim. In the first nine months of 2018, the government reported that asylum procedures in arrival centres took an average time of 7.0 months.[34] Thus, the processing of asylum procedures in the arrival centres took almost as long as in any other type of procedure where the average time is 7.9 months. This shows that a significant number of cases were not fast-tracked in arrival centres. This has been justified by the fact that arrivel centres increasingly take over "more complicated" cases in which a decision cannot be taken within a few days.

AnkER centres (*AnkER-zentren*)

Since August 2018, three Federal States (**Bavaria**, **Saxony** and **Saarland**) further established the so-called AnKER centres where all the activities relating to the asylum procedure are centralised. Specifically in **Bavaria**, where the majority of AnkER centres have been set up, asylum seekers registered a so-called "arrival centre"[35] in Munich are transported to an AnkER centre if the responsibility of Bavaria has been established under the EASY system.

In a 2018 report on the situation in the AnkER centre in **Bamberg**, Bavaria, corroborated by findings from the AnkER centres in in **Regensburg** and **Manching/Ingolstadt**, Bavaria in 2019,[36] the procedure has been described as follows:[37]

Step 1 The registration is carried out by the regional authorities. If no identity documents exist, mobile phones are confiscated and checked to determine the asylum seeker's origin. A

34 Federal Government, Response to parliamentary question by The Left, 19/7552, 6 February 2019, 12.

35 This form of "arrival centre" seems to a Bavarian institution, not to be confused with the arrival centres in other Federal States which operate as a combination of reception facilities and BAMF branch offices.

36 ECRE, *Report on AnkER centres*, April 2019, forthcoming.

37 Markus Kraft: "Die ANKER-Einrichtung Oberfranken", Asylmagazin 10-11/2018, 352-353.

room on the premises of the AnkER centre is assigned and medical examinations are scheduled .

Step 2 The asylum application is lodged at the BAMF. Usually prior to this, counselling on the asylum procedure by staff members of the BAMF is provided, which consists of general information on the asylum procedure to groups of people, while individual appointments have to be requested.

Step 3 Interview with the BAMF, usually conducted within 2-3 days of lodging. This is followed by the decision.

The average duration of the first instance procedure in the AnkER centres in 2019 has been estimated at two months.[38] As the name of the institution suggests, the AnkER centres are also supposed to implement returns of rejected asylum seekers more efficiently, especially by establishing return counselling services in the facilities and also by obliging rejected asylum seekers to stay in these facilities for a period of up to 24 months.[39] However, these measures are not unique features of the AnkER centres and similar arrangements exist in other facilities as well. It also appears that (rejected) asylum seekers stay in these facilities for prolonged periods (see Freedom of Movement).

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.[40] Only in exceptional cases may the interview be dispensed with, where:

(1) The BAMF 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;[41]
(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;[42] or
(4) The applicant fails to appear at the interview without an adequate excuse.[43]

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

38 ECRE, *Report on AnkER centres*, April 2019, forthcoming.
39 Markus Kraft: "Die ANKER-Einrichtung Oberfranken", Asylmagazin 10-11/2018, p. 355.
40 Sections 24 and 25 Asylum Act.
41 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.
42 Section 24(1) Asylum Act.
43 Section 25 Asylum Act.

refugee status and subsidiary protection status in the written procedures, this practice was cancelled in 2016.[44]

Interpretation

The presence of an interpreter at the interview is required by law.[45] 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".[46] In other reports, the quality of some translations at BAMF interviews was described as "shockingly bad".[47]

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.[48]

In addition the BAMF has published a code of conduct for interpreters.[49] According to this document, interpreters at the BAMF have to commit to various principles, such as "integrity", "qualification" and "professional and financial independence" (including neutrality, an obligation to provide full and correct translations, and to clarify misunderstandings immediately). Following the introduction of the new concept and the code of conduct in 2017, more than 2,100 interpreters have been declared unfit for further employment by the BAMF, most of them apparently due to insufficient language skills. In 30 cases, interpreters were declared unfit because they were found to be in breach of the code of conduct.[50]

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

44 Asylmagazin, 'Änderungen in der Entscheidungspraxis des BAMF', No 4-5/2016, 97.
45 Section 17 Asylum Act.
46 Südddeutsche Zeitung, 'Wenn das Schicksal von Flüchtlingen in der Hand des Dolmetschers liegt', 31 August 2016, available in German at: http://bit.ly/2lpvMp5.
47 Die Zeit, 'Noch immer viele unbearbeitete Asylanträge', 29 March 2017, available in German at: https://bit.ly/2UCu8m9.
48 BAMF, 'Online-Videotraining für Sprachmittler gestartet', 28 September 2017, available in German at: http://bit.ly/2oWwbTH.
49 BAMF, *Verhaltenskodex für Sprachmittler*, June 2017, available in German at https://bit.ly/2XZADBF.
50 Federal Government, Response to parliamentary question by The Left, 19/1631, 13 April 2018, 40-41, available in German at: https://bit.ly/2F2kvqq.

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").[51]

Interviews at the BAMF have frequently been criticised for being too superficial and not sufficiently aiming to establish the facts of the case. In particular, it has been reported that no further questions are asked in cases of inconsistencies in the asylum seekers' accounts.[52] For this reason, it is impossible to establish in later stages of the procedure whether inconsistencies result from contradictions in the asylum seekers' statements or merely from misunderstandings or translation errors.

Video recordings of interviews do not take place. Video conferencing was used, albeit rarely,[53] 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?	☒ Yes	☐ No
	❖ If yes, is it	☒ Judicial	☐ Administrative
	❖ If yes, is it suspensive		
	- Rejection	☒ Yes	☐ No
	- Rejection as manifestly unfounded	☐ Yes	☒ 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 (*Verwaltungsgericht*, VG). 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:

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51 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.

52 Uwe Berlit, *Sonderasylprozessrecht – Zugang zu gerichtlichem Rechtsschutz im Asylrecht*, Informationsbrief Ausländerrecht 9/2018, 311.

53 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.

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*): 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", the timeframe for submitting appeals is reduced to one week. Since appeals do not have (automatic) suspensive effect in these cases, both the appeal and a request to restore suspensive effect have to be submitted to the court within 1 week (7 calendar days). The request to restore suspensive effect has to be substantiated.

The short deadlines in these rejections are often difficult to meet for asylum seekers and it might be impossible to make an appointment with lawyers or counsellors within this timeframe. Therefore it has been argued that the 1-week period does not provide for an effective remedy and might constitute a violation of the German Constitution.[54] 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 2018, the average processing period for appeals was 12.5 months, up from 7.8 months in 2017,[55] although a high number of appeal procedures (45.5%) was 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 was reached between the asylum seeker and the BAMF. Therefore, it has to be assumed that the average period for appeals is considerably longer than 12.5 months, if the court decides on the merits of the case.

The average duration of appeal procedures thus has increased significantly due to a dramatic increase in the number of appeals filed in 2017. At the end of the year 2017, 361,059 cases were pending before the Administrative Courts. This backlog of cases only could be slightly reduced by courts in 2018, with 310,959 cases pending at the end of 2018.[56]

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.

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

55 Federal Government, Response to parliamentary question by The Left, 19/8701, 25 March 2019, 48; 19/1371, 22 March 2018, 42.

56 Federal Government, Response to parliamentary question by The Left, 19/8701, 25 March 2019, 43; 19/1371, 22 March 2018, 34.

1.4.2. Onward appeal

The second appeal stage is the High Administrative Court (*Oberverwaltungsgericht*, OVG 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.

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.[57] In some initial reception centres (including the arrival centres and AnkER 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.

1.5.1. Legal assistance at first instance

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.

1.5.2. Legal assistance in appeals

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, and is reportedly applied strictly in many parts of Germany.[58] 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.

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57 A database of advice services for asylum seekers is available at: https://bit.ly/2Ho73Az.

58 For a recent overview of practice in **Regensburg**, Bavaria, see ECRE, *Report on AnkER centres*, April 2019, forthcoming.

2. Dublin

2.1. General

Dublin statistics: 2018

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	54,910	9,209	**Total**	25,008	7,580
Italy	17,286	2,848	France	10,328	978
Greece	7,079	6	Netherlands	3,193	875
France	4,445	753	Italy	2,215	136
Spain	3,790	577	Greece	2,139	3,495
Sweden	3,476	681	Belgium	1,648	260
Switzerland	2,230	503	Switzerland	1,339	447
Austria	2,161	586	Austria	1,292	667
Poland	2,070	691	United Kingdom	939	30
Netherlands	2,061	493	Sweden	425	157
Bulgaria	1,437	43	Luxembourg	352	116
Denmark	1,195	216	Denmark	337	134
Romania	1,014	109	Ireland	100	1
Belgium	903	403	Czechia	85	32
Finland	762	276	Norway	81	60
Norway	753	234	Poland	72	42
Lithuania	592	183	Bulgaria	68	22
Hungary	585	0	Finland	63	30
Czechia	540	199	Iceland	60	15
Portugal	477	185	Portugal	43	2
Slovenia	430	53	Hungary	34	27
Croatia	375	29	Slovenia	31	10
Malta	342	20	Liechtenstein	30	6
Latvia	298	29	Romania	27	13
Slovakia	256	22	Malta	27	2
United Kingdom	118	29	Cyprus	26	5
Estonia	94	23	Lithuania	20	10
Luxembourg	68	11	Croatia	19	2
Cyprus	31	0	Slovakia	9	5
Iceland	26	7	Spain	5	1
Ireland	10	0	Estonia	1	0
Liechtenstein	6	0	Latvia	0	0

Source: Federal Government, Response to parliamentary question by The Left, 19/8340, 13 March 2019: https://bit.ly/2HRUBsk, 19.

The number of outgoing requests decreased in 2018, but it was still high in comparison with previous years:

Outgoing Dublin requests from Germany						
Year	2013	2014	2015	2016	2017	2018
Requests	35,280	35,115	44,982	55,690	64,267	54,910

Source: BAMF.

Application of the Dublin criteria

The majority of outgoing Dublin requests was based on so-called "Eurodac hits" (65.4% in 2018, in comparison to 65.1% in 2017, 69.2% in 2016, 76% in 2015, 68.5% in 2014, 66.7% in 2013 and 72.8% in 2012).[59] Details on the criteria used for requests are only available for the outgoing requests which were based on "Eurodac hits". Statistics for 2018 refer to a total of 35,900 requests based on Eurodac, out of which:

- 27,752 (77.3%) after an application for international protection (CAT 1);[60]
- 5,775 (16.1%) after apprehension upon illegal entry (CAT 2);[61]
- 2,373 (6.6%) after apprehension for illegal stay (CAT 3).[62]

The number of transfers from other European countries to Germany decreased from 8,754 in 2017 to 7,580 in 2018. This decrease was particularly notable in the numbers of transfers from the United Kingdom (only 30 transfers in 2018 compared to 171 in 2017) and Sweden (only 157 transfers in 2018 compared to 438 in 2017). On the opposite, the Member State that transferred the most Dublin cases to Germany was Greece, with a total of 3,495 transfers in 2018 compared to 3,164 in 2017.[63] Almost all transfers from Greece were carried out on the basis of the family unity provisions of the Dublin Regulation. The German government provided following details on the transfers carried out from Greece:

Incoming Dublin transfers from Greece: 2018	
Criterion	Number of transfers
Unaccompanied children with family members or relatives: Article 8	270
Family members of beneficiaries of international protection: Article 9	1,283
Family members of asylum seekers: Article 10	1,597
Dependent persons: Article 16	32
Family reunification based on the humanitarian clause: Article 17(2)	281
Others	32
Total	**3,495**

Source: Federal Government, Response to parliamentary question by The Left, 19/8340, 13 March 2019, 26.

One of the reasons behind the high number of transfers from Greece is the backlog of family reunification cases that were pending the previous years. In February 2018 for example, some 3,100 asylum seekers for whom Germany had already accepted "take charge" requests were still waiting to be transferred to Germany.[64] Their transfers have reportedly been carried out in December 2018 and no "unprocessed cases" from former years are remaining, according to a communication from the Greek

59 Federal Government, Response to parliamentary question by The Left, 19/8340, 13 March 2019, 2; 19/921, 26 February 2018, 19; 18/11262, 21 February 2017, 35; 18/7625, 22 February 2016, 32.
60 Article 9 recast Eurodac Regulation.
61 Article 14 recast Eurodac Regulation.
62 Article 17 recast Eurodac Regulation.
63 Federal Government, Response to parliamentary question by The Left, 19/8340, 13 March 2019, 19.
64 Federal Government, Response to parliamentary question by The Left, 19/921, 26 February 2018, 22-24.

authorities cited by the German government.[65] Family reunification cases processed under the Dublin Regulation are now supposed to take place within the timeframes of the Dublin Regulation.

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 7,809 cases in 2018 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.[66]

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. Furthermore, Germany does not submit take charge requests to Greece for vulnerable persons.[67] In 2018, the BAMF also decided not to transfer children under the age of 3 and their families to Italy, however this policy was terminated in March 2019.[68]

During the year 2015, Syrian nationals had been exempt from transfers under the Dublin Regulation. However, given that there is no more distinction made between Syrians and other nationalities as far as Dublin procedures are concerned, 549 Syrians were transferred to other countries in 2018 (representing 6% of all transfers).[69]

It is not clear in which the humanitarian clause is used. However, since summer 2018, the BAMF has relied on the humanitarian clause for transfers of asylum seekers in the context of *ad hoc* relocation arrangements following disembarkation in Italy and Malta.

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.[70] 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 and as such a part of the regular procedure. Thus, in the legal sense, the term "Dublin procedure" does not refer to a separate procedure in the German context, but merely to the shifting of responsibility for an asylum application within the administration (i.e. takeover of responsibility by the "Dublin Units" of the BAMF).

Fingerprints are usually taken from all asylum seekers on the day that the application is registered and they are subjected to Eurodac queries on a routine basis. Eurodac queries are the major ground 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.

In principle, only the BAMF is responsible for conducting the Dublin procedure. However, there are indications that there have also been Dublin procedures managed by the Federal Police in 2016 (see

65 Federal Government, Response to parliamentary question by The Left, 19/8340, 13 March 2019, 32.
66 *Ibid,* 10-14.
67 *Ibid*, 24.
68 *Ibid*, 21.
69 *Ibid*, 15.
70 Section 29(1)(a) Asylum Act.

Access to the Territory).[71] The German government confirmed in August 2017 that Dublin procedures had been taking place at the border.[72] However, in contrast to earlier reports, the government explained in this statement that these Dublin procedures were not carried out by the Federal Police. According to the statement, the Federal 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. A possible forced return to the responsible Member State is carried out by the Federal Police. The Federal 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 Federal Police for the whole duration of the Dublin procedure. Furthermore, in 2018 a new procedure was introduced at the Austrian-German border which enables the Federal Police to refuse entry at the border without applying the Dublin Regulation. It is not clear whether this new procedure has now replaced the practice of Dublin procedures managed by the Federal Police as described above.

In a ruling of the CJEU in *Mengesteab* 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.[73]

Since the *Mengesteab* judgment, the BAMF counts the time limits for issuing a "take charge" request from the moment of registration and issuance of an "arrival certificate", not the moment when the application is lodged. It applies the same interpretation to incoming "take charge" requests and has often rejected such requests on the basis that the deadlines of the Regulation have been exceeded.

Individualised guarantees

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, or to ensure separate accommodation of families in cases of domestic violence.[74]

Even before the ECtHR's ruling in the case of *Tarakhel v. Switzerland*,[75] 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.[76] The BAMF therefore had to request individual guarantees for these families from the Italian authorities.

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

72 *Ibid.*

73 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.

74 Information provided by the BAMF, 1 August 2017.

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

76 BVerfG, Decision 2 BvR 1795/14, 17 September 2014, Asylmagazin 10/2014, 341, available at: http://bit.ly/1I0LpIo.

According to the Federal Government, no transfers to Italy were carried out in 2018 when they concerned families and children aged less than three-years-old.[77] However, this policy has been terminated as of March 2019 following the latest Circular of the Italian Dublin Unit dated 8 January 2019, which informed all Member States that families with children are accommodated in the same first reception centres and temporary reception centres as other asylum seekers.[78]

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.[79] Similar decisions were issued in 2018. In the last quarter of 2018, some courts ruled that requests for individual guarantees had to be submitted for vulnerable persons, especially because the situation in Italy had become less predictable for Dublin returnees in the light of the 2018 legislative reform.[80] However, the High Administrative Court of Bavaria recently held that a pregnant woman would not be at risk of inhuman or degrading treatment following her transfer to Italy, hereby confirming the ruling of the Administrative Court of Munich.[81]

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.[82] This policy has led to a standstill in transfers to **Hungary** since May 2017, as the Hungarian authorities have not submitted individual guarantees.[83] As regards **Greece**, a great number of take charge requests being rejected by the Greek authorities: as outlined above, 97.4% of German requests were denied by the Greek authorities in 2018, due to a lack of reception capacity.[84] Out of the 7,079 transfer requests submitted to Greece, only 6 transfers were carried out in 2018.[85]

Transfers

Transfers under the Dublin Regulation are usually carried out as deportations since no deadline is set for "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.

Generally, in line with the Residence Act,[86] dates of deportations were not previously announced to asylum seekers in Dublin procedures. The police performed unannounced visits to places of residence e.g. reception centres with a view to apprehending the person and proceed to the transfer.

As of early 2019, there seems to be a change in practice in Federal States such as **Bavaria** with the emergence of AnkER centres. Following the issuance of the decision of the BAMF, the competent Central Aliens Office (*Zentrale Ausländerbehörde*, ZAB) notifies the applicant of the date and destination of the transfer and instructs him or her to be present in his or her room in the reception centre at a specified time for pick-up by the police, usually between 03:30 and 05:00. If the applicant is not found in his or her room at that time, the ZAB deems the person to have "absconded" and informs the BAMF accordingly in order for the extension of the transfer deadline from 6 to 18 months to be ordered under Article 29(2) of the Dublin Regulation.

77 Federal Government, Response to parliamentary question by The Left, 19/8340, 13 March 2019, 21-22.
78 Informationsverbund Asyl und Migration, 'BAMF führt Überstellungen nach Italien wieder "uneingeschränkt" durch', 29 March 2019, available in German at: https://bit.ly/2Uobbqu.
79 Administrative Court Trier, Decision 5 L 1846/17.TR, 16 March 2017, asyl.net, available at: http://bit.ly/2FupouH.
80 Administrative Court Arnsberg, Decision 5 L 1831/18.A, 29 November 2018; Administrative Court Braunschweig, Decision 1 B 251/18, 16 October 2018.
81 High Administrative Court of Bavaria, Decision 10 CE 19.67, 9 January 2019.
82 Information provided by the BAMF, 1 August 2017.
83 Federal Government, Response to parliamentary question by The Left, 19/8340, 13 March 2019, 35.
84 *Ibid*, 24.
85 *Ibid*, 13 March 2019, 19.
86 Section 59(1) Residence Act.

The extension of the deadline to 18 months has been heavily debated in the context of "church asylum" (*Kirchenasyl*), the temporary sanctuary offered by religious institutions to protect people facing deportation from undue hardship. The new guidelines of the Federal Office for Migration and Refugees (BAMF) which took effect on 1 August 2018 state that an extension of the transfer deadline to 18 months for reasons of "absconding" can be ordered under a number of circumstances, including where: (a) church asylum is not notified on the day it is provided; (b) the file is not transmitted to the BAMF within a four-week period to justify grounds of hardship; or (c) church asylum was only provided after a negative decision from the BAMF.[87] These measures have been criticised by religious and refugee-supporting organisations, and run counter to the approach taken by courts. In a 2018 ruling, the Administrative High Court of Bavaria held, in line with the dominant position of domestic case law, that a person receiving church asylum whose whereabouts are reported to the BAMF cannot be considered as "absconding" from the Dublin procedure.[88]

In its recent ruling in *Jawo*, the CJEU clarified that absconding "may be assumed that that is the case where the transfer cannot be carried out due to the fact that the applicant has left the accommodation allocated to him without informing the competent national authorities of his absence, provided that he has been informed of his obligations in that regard".[89]

"Absconding" from the Dublin procedure also has repercussions on Reduction and Withdrawal of Reception Conditions, which are systematically applied in AnkER centres in **Bavaria** in such cases, and can also constitute a ground for ordering Detention.[90]

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 continue to be often ignored by authorities and courts in Dublin cases.

The use of excessive force, physical restraints, separation of families, humiliating treatment and sedative medication by police authorities in Dublin transfers were denounced in **Berlin** and **Lower Saxony** in 2018.[91] More recent observations from **Bavaria** corroborate coercive practices in the enforcement of Dublin transfers, including police raids with dogs in AnkER centres and handcuffing of asylum seekers, including pregnant women.[92]

In 2018, Germany carried out 9,209 Dublin transfers, compared to 7,102 in 2017 and 3,968 in 2016. The average duration of the Dublin procedure from the request until the issuance of the decision was 1.5 months in 2018, down from 2.3 months in 2017.[93]

87 ECRE, *Report on AnkER centres*, April 2019, forthcoming.

88 AIDA, 'Germany: Measures restricting "church asylum" contradict case law', 31 August 2018, available at: https://bit.ly/2V1pSg4; Informationsverbund Asyl und Migration, 'Rechtsprechungsübersicht zum Kirchenasyl in Dublin-Fällen', 27 February 2019, available in German at: https://bit.ly/2F1XP9K.

89 CJEU, Case C-163/17 *Jawo*, Judgment of 19 March 2019, para 70.

90 ECRE, *Report on AnkER centres*, April 2019, forthcoming.

91 See Federal Government, Response to parliamentary question by The Left, 19/7401, 29 January 2019, available in German at: https://bit.ly/2HWaiQQ.

92 ECRE, *Report on AnkER centres*, April 2019, forthcoming.

93 Federal Government, Response to parliamentary question by The Left, 19/8340, 13 March 2019, 25.

2.3. Personal interview

Indicators: Dublin: Personal Interview
☐ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure? ☒ Yes ☐ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No

2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

A personal interview is mandatory.[94] 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 Dublin and regular procedure are carried out simultaneously, therefore a regular interview is conducted according to the standards of the Regular Procedure: Personal Interview. 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 personal interview.

If a Dublin procedure is initiated before the "regular" interview, 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? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☐ Yes ☒ 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.[95] 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; suspensive effect can be restored only upon request 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

94 *Entscheiderbrief*, 9/2013, 3.
95 Section 34a(1) Asylum Act.

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.[96]

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.[97]

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 2018. A decision to grant an interim measure does not necessarily mean that the court suspended a transfer because of serious individual risks or because of systemic deficiencies in another Dublin state. In many cases, interim measures can also be granted for formal or technical reasons (expiry of time-limits, formal errors in the authorities' decision etc.).

Decisions on requests for suspensive effect in Dublin appeals: 2018		
Country	Granting suspensive effect	Refusing suspensive effect
Belgium	51	334
Bulgaria	247	148
Denmark	33	328
Estonia	3	33
Finland	29	273
France	127	1,185
Greece	46	62
UK	2	11
Ireland	0	0
Iceland	2	10
Italy	2,371	6,141
Croatia	14	142

96 Dominik Bender and Maria Bethke, "'Dublin III', Eilrechtsschutz und das Comeback der Drittstaatenregelung." Asylmagazin 11/2013, 362.

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

Latvia	6	90
Lithuania	36	325
Luxemburg	1	10
Malta	26	76
Netherlands	50	551
Norway	34	262
Austria	19	478
Poland	177	1,184
Portugal	21	299
Romania	157	400
Sweden	98	810
Switzerland	29	500
Slovakia	6	96
Slovenia	12	187
Spain	137	1,046
Czechia	40	286
Hungary	17	60
Cyprus	1	7

Source: Federal Government, Response to parliamentary question by The Left, 19/8340, 13 March 2019, 22.

2.5. Legal assistance

Indicators: Dublin: Legal Assistance

☒ Same as regular procedure

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

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

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

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

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

Hungary: According to information provided by the BAMF, any Dublin request to the Hungarian authorities is accompanied by a request of individualised guarantees, i.e. that Dublin returnees will be treated in accordance with the Reception Conditions Directive and the Asylum Procedures Directive.[98] As a result, no Dublin transfers to Hungary have taken place since 11 April 2017.[99] The German government informed Parliament in March 2019 that no individual guarantees had been provided by the Hungarian authorities. Hence, it can be concluded that the policy of seeking individual guarantees have led to a standstill in transfers to Hungary in practice. However, this has not led to a formal suspension of transfers or to a change of policy: German authorities continue to submit take charge requests to their Hungarian counterparts and 585 such requests were sent to Hungary in 2018.

Greece: A formal suspension of transfers to Greece, which had been in place for several years, ended in March 2017. The formal suspension of Dublin transfers to **Greece** which had been in place since January 2011 ended in March 2017. In 2018, the German authorities submitted 7,079 outgoing requests to Greece, but Greece accepted responsibility for the asylum procedure only in 183 cases. This means that 97.4% of German requests were denied by the Greek authorities, on the grounds that no accommodation would be available for the persons concerned or because the German authorities had not submitted sufficient evidence demonstrating their responsibility under the Dublin Regulation. The high number of refusals to take charge therefore seems to result from Germany's attempt to seek individual guarantees from the Greek authorities, e.g. regarding reception and accommodation in the course of Dublin procedures.[100] Only six transfers to Greece took place in 2018.[101] In addition, nine persons were deported to Greece between August 2018 and January 2019 on the basis of an administrative agreement between Germany and Greece (see Access to the Territory).

Italy: The BAMF stated in March 2019 that it now carries out Dublin transfers to Italy without obstacles, after discontinuing a previous policy of requesting individual guarantees for families with children below the age of three.[102] Transfers to Italy are systematically ordered, including for vulnerable persons such as pregnant women or persons with severe mental health conditions.[103]

In addition, several hundred court cases have resulted in suspension of transfers to other countries by means of issuance of interim measures. At the same time, however, other courts have 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:

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

99 High Administrative Court of North Rhine-Westphalia, Decision 11 A 585/17.A, 8 December 2017, asyl.net, available at: http://bit.ly/2Ftaa9l. This information has been confirmed in Federal Government, Response to parliamentary question by The Left, 19/8340, 13 March 2019, 35.

100 *Ibid*, 24.

101 *Ibid*, 19.

102 Informationsverbund Asyl und Migration, 'BAMF führt Überstellungen nach Italien wieder "uneingeschränkt" durch', 29 March 2019, available in German at: https://bit.ly/2Uobbqu.

103 ECRE, *Report on AnkER centres*, April 2019, forthcoming.

Examples of Administrative Court rulings on Dublin transfers: 2018		
Country	Halting transfer	Upholding transfer
Bulgaria	VG Sigmaringen, Decision A 3 K 6441/17, 22 March 2018 VG Magdeburg, Decision 4 B 761/17 MD, 16 January 2018	VG Berlin, Decision 23 L 503.17 A, 12 July 2017
Italy	VG Hannover, Decision 4 B 2211/18, 23 March 2018 VG Frankfurt/Main, Decision 9 L 9366/17.F.A, 29 January 2018 VG Frankfurt/Main, Decision 3 L 9712/17.F.A, 19 January 2018	OVG Lower Saxony, Decision 10 LB 201/18, 21 December 2018 VG Göttingen, Decision 3 B 220/18, 15 May 2018 VG Darmstadt, Decision 3 K 2690/16.DA.A, 6 March 2018
Malta	VG Hannover, Decision 10 B 921/18, 23 February 2018	

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.

It has to be noted that many court decisions which have been published in 2018 were dealing with cases of persons who had been granted international protection in Bulgaria, Greece or Italy. In many of these cases, transfers were suspended by courts on the grounds that a risk of inhuman or degrading treatment could not be excluded for beneficiaries of international protection in these countries. However, similarly to existing the case law on "systemic deficiencies", the case law on this issue was not consistent and other courts upheld transfers of beneficiaries of international protection to Bulgaria, Greece or Italy. These decisions have not been included to the list above as the cases do not fall under the Dublin Regulation. A list of such cases can be found online.[104]

2.7. The situation of Dublin returnees

Germany received 7,580 incoming transfers in 2018. Dublin transfers are usually carried out individually through commercial flights. Exceptions to this concern: (a) Transfers in the context of *ad hoc* relocation arrangements following disembarkation and in Malta and Italy, except for unaccompanied children; and (b) Dublin returns from the United Kingdom, which are implemented through charter flights preceded by detention and physical restraints. These cases arrive in **Munich Airport**. Upon arrival, returnees are transferred to the "waiting room" (*Warteraum*) in **Erding** managed by the BAMF and the German Red Cross, where they receive accommodation and assistance for a period of 72 hours before being distributed to different regions in the country.[105] The same procedure was applied to persons who arrived through relocation from Greece and Italy until 2017.

In addition, as mentioned in General, a high number of transfers to Germany took place from Greece under the family unity provisions of the Dublin Regulation. To deal with the backlog of such cases, the German and Greek authorities organised two charter flights in 2018 with more than 170 passengers on each plane.[106] Upon arrival in Germany, persons are sent to the place where their relatives are staying and local authorities provide them accommodation and other related reception services.

104 The website is available in German at: https://www.asyl.net/recht/dublin-entscheidungen/. Search with the keyword "Anerkannte" (recognised persons).
105 ECRE, *Report on AnkER centres*, April 2019, forthcoming.
106 Federal Government, Response to parliamentary question by The Left, 19/8340, 13 March 2019, 32.

There have been no reports of Dublin returnees facing difficulties in re-accessing an asylum procedure or facing any other problems after having been transferred to Germany. There is no uniform procedure for the reception and further treatment of Dublin returnees. If they had already applied for asylum in Germany, they are usually obliged to return to the region to which they had been assigned during the former asylum procedure in Germany. If their application had already been rejected by a final decision, it is possible for them to be placed in pre-removal detention upon return to Germany.[107]

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:[108]

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;[109]
4. A country that is not an EU Member State and is willing to readmit the foreigner is regarded as "another third country";[110]
5. The applicant has made a subsequent,[111] or secondary,[112] application.

The BAMF took the following inadmissibility decisions in 2018:

Inadmissibility decisions: 2018	
Ground	Number
Applicability of the Dublin Regulation	33,904
International protection in another EU Member State	10,719
Safe third country	76
Another third country	37
Secondary application (after procedure in a safe third country)	3,795
Subsequent application (after procedure in Germany)	13,482

Source: Compilation of the author from quarterly statistics on "abandonment of procedures for other reasons" ("sonstige Verfahrenserledigungen") by the Federal Government, in: Response to parliamentary requests by The Left, 19/3148, 3 July 2018, 7; 19/4961, 12 October 2018, 6; 19/6786, 2 January 2019, 7: 19/8701, 25 March 2019, 7. There are deviations from the overall number on "abandonment of procedures for other reasons" in the annual statistics, likely due to double counting and/or later corrections in the quarterly statistics.

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.[113] "Another third country" may refer to any country which

107 ECRE, *Report on AnkER centres*, April 2019, forthcoming.
108 Section 29(1) Asylum Act.
109 Section 29(1)(3) Asylum Act, citing Section 26a Asylum Act.
110 Section 29(1)(4) Asylum Act, citing Section 27 Asylum Act.
111 Section 29(1)(5) Asylum Act, citing Section 71 Asylum Act.
112 Section 29(1)(5) Asylum Act, citing Section 71a Asylum Act.
113 Maria Bethke und Stephan Hocks, *Neue „Unzulässigkeits"-Ablehnungen nach § 29 AsylG*, Asylmagazin 10/2016, 336-346 (343).

is not defined a Safe Third Country under German law.[114] 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.

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? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☐ Yes ☒ No

The appeal procedure in cases of inadmissible applications (i.e. 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.

[114] "Safe third countries" are all member states of the European Union plus Norway and Switzerland: Section 26a Asylum Act and addendum to Asylum Act.

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, although as part of the reintroduction of border controls, a refusal of entry and return procedure has been installed on the German-Austrian border for cases of persons who have previously sought asylum in Spain and Greece (see Access to the Territory). The following section refers to the **airport procedure** (*Flughafenverfahren*).

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.[115] 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 (detention) facilities exist in the airports of **Berlin** (Schönefeld), **Düsseldorf**, **Frankfurt/Main**, **Hamburg** and **Munich**, although the BAMF does not have a branch office assigned in all of those (see Place of Detention).

The airport procedure 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

[115] Section 18a(1) Asylum Act.

those who come from a "safe country of origin".[116] In practice, it was not applied to unaccompanied children in 2018,[117] although its applicability to unaccompanied children is not excluded.

In 2018, the airport procedure was applied in 564 cases, of which 475 at **Frankfurt/Main Airport**, 88 at **Munich Airport** and 1 at **Düsseldorf Airport**. No procedures were applied at **Berlin Airport** and **Hamburg Airport**. As the statistics show, the vast majority of procedures continue to take place at Frankfurt/Main Airport.

The countries of origin of persons subject to the airport procedure in 2018 were as follows:

Applicants subject to the airport procedure: 2018	
Nationality	Number
Iran	98
Syria	41
Turkey	38
Afghanistan	30
Iraq	30
Russia	23
Somalia	13
Unknown	11
Eritrea	4
Nigeria	2
Others	274
Total	**564**

Source: Federal Government, Response to parliamentary question by The Left, 19/8701, 25 March 2019, 42

Potential outcomes of airport procedures are as follows:

1. The BAMF decides within 2 calendar days that the application is "manifestly unfounded" and entry to the territory is denied. A copy of the decision is sent to the competent Administrative Court.[118] The applicant may ask the court for an interim measure against deportation within three calendar days;

2. In theory, the BAMF can decide within the 2 calendar days that the application is successful or it can reject the application as "unfounded". In these cases, entry to the territory and, if necessary, access to the legal remedies of the regular procedure would have to be granted. However, this option seems to be irrelevant in practice since the BAMF 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 BAMF 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;[119] or

4. The BAMF has not taken a decision within 2 calendar days following the application. Entry to the territory and to the regular procedure is granted.

116 Section 18a(1) Asylum Act.
117 Federal Government, Response to parliamentary question by The Left, 19/8701, 25 March 2019, 41.
118 Section 18a(2)-(4) Asylum Act.
119 Section 18a(6) Asylum Act.

In practice, the third option is the most common outcome, including in cases where the Dublin Regulation is considered to be applicable. The outcome of airport procedures in 2018 was as follows:

Outcomes of airport procedures: 2018		
Airport	No decision within two days	Manifestly unfounded
Frankfurt/Main	253	214
Munich	0	15
Düsseldorf	0	0
Berlin	0	0
Hamburg	0	0
Total	**253**	**229**

Source: Federal Government, Response to parliamentary question by The Left, 19/8701, 25 March 2019, 42.

Whereas in previous years, the majority of airport procedures were halted because the BAMF notified the Federal Police that no decision would be taken within the timeframe required by law (264 out of 444 in 2017; 191 out of 273 in 2016, 549 out of 627 in 2015), a notable increase in decisions rejecting the application as manifestly unfounded was seen in 2018. In the case of **Munich Airport**, the airport procedure led to rejection as manifestly unfounded in all cases according to government statistics.

Concerns persist regarding the quality of decision-making in the airport procedure in 2018 and 2019. The assessment of applications by the BAMF seems to be more restrictive in the airport procedure compared to procedures elsewhere, resulting in "manifestly unfounded" rejections even for nationalities such as Afghanistan, Iran, Turkey or Iraq which benefit from significant recognition rates nationwide. At **Frankfurt/Main Airport**, the BAMF reportedly places considerable emphasis on potential contradictions and inconsistencies in the applicant's statements, and often relies on the report of the initial interview with the Federal Police upon arrival, even though the asylum seeker receives no copy thereof. At **Munich Airport**, concerns are expressed with regard to the lack of risk assessment prior to rejections of applications as manifestly unfounded, even in cases where asylum seekers bring forth evidence such as political activity in the country of origin.[120]

In addition, 82 cases are not accounted for in the government statistics, of which 73 for **Munich Airport**, 8 for **Frankfurt/Main Airport**, 1 for **Düsseldorf Airport**.

Finally, it should be highlighted that at **Munich Airport**, where the BAMF decides within the time limit of 2 days, it occurs that the notification of the decision to the applicant can take up to a week.[121]

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? ☒ Yes ☐ No
   - ❖ If so, are questions limited to nationality, identity, 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

In the airport procedure, the Federal Police may conduct a preliminary interview which includes questions on the travel route and on the reasons for leaving the country of origin. Practice varies from

120 ECRE, *Report on border procedures*, May 2019, forthcoming.
121 *Ibid*.

one airport to another. At **Frankfurt/Main Airport**, the person is interviewed by the Federal Police in the airport terminal and subsequently upon arrival at the detention facility, whereas at **Munich Airport** the only interview with the Federal Police takes place upon arrival at the facility, usually late at night. Where interpretation is needed for the Federal Police interview, it is ensured by phone. The asylum seeker does not receive a copy of the report of these interviews.[122]

The relevant interview for the purpose of admission to the territory is carried out by the BAMF in person, with the presence of an interpreter. Whereas the BAMF has a branch office in the facility of **Frankfurt/Main Airport**, for procedures at **Munich Airport** officials travel to the facility from Munich when interviews need to be conducted.

The standards for this interview are identical to those described in the context of the regular procedure (see Regular Procedure: Personal Interview). However, quality concerns have been raised at **Munich Airport** vis-à-vis the lack of interpretation and lack of proper understanding of the interview report prior to signature.[123]

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?

	☒ Yes	☐ No
❖ If yes, is it	☒ Judicial	☐ Administrative
❖ If yes, is it suspensive	☐ Yes	☒ No

Manifestly unfounded decisions are generally subject to restrictions in legal remedy, but in the airport procedure the law has placed even stricter timeframes 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.[124]

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.[125] 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.[126]

122 ECRE, *Report on border procedures*, May 2019, forthcoming.

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

124 Section 18a(4) Asylum Act.

125 Section 18a(4) Asylum Act.

126 Section 18a(6) Asylum Act.

4.4. Legal assistance

Indicators: Border Procedure: Legal Assistance

☐ Same as regular procedure

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

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

During the first instance procedure before the BAMF, legal assistance is only made available through lawyers funded by Pro Asyl for **Frankfurt/Main Airport**, subject to limited capacity.

For legal aid in appeals before the Administrative Court, the association of lawyers of the airport's region coordinates a consultation service with qualified lawyers. If an applicant wants to speak to a lawyer, the Federal Police contacts one of the lawyers on the list of the association as soon as the rejection of the asylum application is issued. However, it has been pointed out by NGOs that the short timeframe foreseen in the airport procedure hinders effective access to a lawyer (see Access to Detention Facilities).[127]

Consultation with the lawyer following a decision of the BAMf in the airport procedure 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. In this regard, the airport procedure is the only procedure in Germany in which asylum seekers are entitled to a form of free legal assistance. This requirement does not have a basis in legislation but results from a decision of the Federal Constitutional Court.[128] 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: Legal Assistance.

5. Accelerated procedure

An accelerated procedure exists since March 2016. According to 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:[129]

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;

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

128 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.

129 Section 30a(1) Asylum Act.

4. Have filed a subsequent application, in case they have left Germany after their initial asylum procedure had been concluded;[130]
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 of 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).[131] 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.[132]

During an accelerated procedure, asylum seekers are obliged to stay in the special reception centres.[133] 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 asylum procedure.[134] This may lead to the termination of their asylum procedure and rejection of their application.

From 1 August 2018 onwards, the "special reception centres" existing in **Bamberg** and **Manching/Ingolstadt** were renamed as AnkER centres.[135] The accelerated procedure does not seem to have been applied therein since then. The BAMF does not collect statistics on the use of the accelerated procedure.[136] ABy and large, it can be concluded that introduction of the accelerated procedure under Section 30a of the Asylum Act 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.

130 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.
131 Section 30a(2) Asylum Act.
132 Section 30a(2)-(3) Asylum Act.
133 Section 30a(3) Asylum Act.
134 Section 33(2)(3) Asylum Act.
135 Markus Kraft, Die ANKER-Einrichtung Oberfranken, Asylmagazin 10-11/2018, p. 351-353.
136 Information provided by the BAMF, 1 August 2017.

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.[137]

A 2016 amendment to the German Asylum Act has introduced wording relevant to the identification of vulnerable asylum seekers.[138] 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."[139]

All asylum seekers should undergo a medical examination, which usually takes place shortly after the registration of the asylum application in the arrival centre. However, this examination is focussed on the detection of communicable diseases and 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.[140] 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.[141]

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137 Information provided by the BAMF, 1 August 2017.

138 Section 8(1b) Asylum Act.

139 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.

140 Berliner Modell für die frühzeitige Identifizierung besonders schutzbedürftiger Flüchtlinge.

141 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.

Furthermore, standard procedures in the arrival centre 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.[142] 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.[143] Recent practice shows that when an asylum seeker needs special procedural guarantees, the BAMF simply assigns "special officers" for the interview (see Special Procedural Guarantees). Apart from that, the regular procedure is carried out and the interview may take place within a few days. NGOs have criticised the fact that special procedural needs of asylum seekers are not taken into account (i.e. the lack of support and time to prepare for an interview.[144]

Other projects to improve the identification of vulnerable groups have been established in reception centres in Friedland, **Lower Saxony**, in **Brandenburg** and **Rhineland-Palatinate**.[145] In the latter, the regional governent has adopted a protection concept which also includes methods for the identification of vulnerabilities.[146] This includes the following measures:

- Obligation to check for possible vulnerabilities in the reception centres during the initial stages of the reception process and the asylum procedure;
- Intensification of communication between various actors and authorities involved in the reception system and in the first steps of the asylum procedure;
- Documentation of possible vulnerabilities in a data system used by all authorities involved in the reception process and in the asylum procedure;
- Training measures for persons employed by the Federal State in the reception centres to raise awareness on the different forms of vulnerabilities.

However, there are considerable variations to the procedure in the different arrival centres, AnkER centres etc. There is no common approach on access to social services or other counselling institutions and, in many centres, this access does not even exist. This depends on how the Federal States and the BAMF have organised the procedure in the respective centres. While other Federal States have also adopted measures for the protection of violence in accommodation centres,[147] the guidelines from Rhineland-Palatinate seem to be the only example offering detailed measures for the identification and accommodation of vulnerable persons, as defined in EU legislation.[148]

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

143 Nina Hager and Jenny Baron, 'Verfahrensgarantien für psychisch Kranke oder Traumatisierte', Asylmagazin 7–8/2017, 17-26, 22.

144 Manuel Armbruster, Georg Classen und Katharina Stübinger, 'Neue Verfahrensabläufe im Ankunftszentrum Berlin', Asylmagazin 10-11/2018, 350.

145 Nina Hager and Jenny Baron, 'Verfahrensgarantien für psychisch Kranke oder Traumatisierte', Asylmagazin 7–8/2017, 17-26, 22.-*24.*

146 Konzept zum Gewaltschutz und zur Identifikation von schutzbedürftigen Personen in den Einrichtungen der Erstaufnahme in Rheinland-Pfalz, available in German at: https://bit.ly/2FsmG7V.

147 A list of six of such protection concepts has been compiled by the Bundesinitiative „Schutz von geflüchteten Menschen in Flüchtlingsunterkünften" (Federal Initiative for the protection of asylum seekers/refugees in accommodation centres"); available in German at: https://bit.ly/2uAMF7t.

148 For example, the protection concept for the Federal State of North-Rhine Westphalia refers to the concept of vulnerable persons in general terms and it specifies detailed standards for accommodation facilities, but it does not contain any guidelines for the identification of vulnerable groups. See: Landesgewaltschutzkonzept für Flüchtlingseinrichtungen des Landes Nordrhein-Westfalen (Regional concept for protection from violence in refugee facilities of the Federal State of North Rhine-Westphalia), March 2017, available in German at https://bit.ly/2ul7CCQ.

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.[149]

With the exception of unaccompanied children, the BAMF does not collect statistics on the number of vulnerable persons applying for asylum in Germany.[150]

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.[151] 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.[152]

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.[153] 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.[154]

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.[155] 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.

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149 FRA, *Monthly data collection: Key highlights – Trafficking*, May 2016, available at: http://bit.ly/2kLHSd9, 8.
150 Information provided by the BAMF, 1 August 2017.
151 Section 42f Social Code (SGB), Vol. VIII.
152 Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, *Vorläufige Inobhutnahme – Was ändert sich zum 1.11.2015?*, October 2015, 2-3.
153 Administrative Court Berlin, Decision 18 L 81.16, 19 April 2016, asyl.net, available at: http://bit.ly/2mJm85c.
154 High Administrative Court Bavaria, Decision 12 CS 16.1550, 16 August 2016, asyl.net, available at: http://bit.ly/2m2hP0w.
155 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".[156] The BAMF guidelines stipulate that the following cases shall be handled in a particularly sensitive manner and, if necessary, by specially-trained decision-makers:[157]

- 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.[158] More recent figures are not available.

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. 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.

Furthermore, the BAMF has introduced "special officers for security issues", who do not necessarily take part in interviews but are supposed to be contact points for staff members whenever security-related issues arise in an asylum procedure.[159] 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.[160]

Lawyers have reported that the introduction of the special officers has led to some improvement in the handling of "sensitive" cases, but there have also been 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.[161]

It has been noted that the BAMF seems to operate with a very limited understanding of "adequate support" for vulnerable groups.[162] 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

156 Federal Government, Reply to parliamentary question by The Left, 18/12001, 20 April 2017, 3.
157 BAMF, *DA-Asyl (Dienstanweisung Asylverfahren) – Belehrungen,* 2010, 139.
158 Information provided by the BAMF, 1 August 2017.
159 Bundeszentrale für politische Bildung, 'Als Sonderbeauftragte für geschlechtsspezifische Verfolgung sollte man sensibel und einfühlsam sein', 13 November 2018, available in German at: https://bit.ly/2TpH25C.
160 Federal Government, Reply to parliamentary question by The Left, 18/12752, 16 June 2017, 9-13.
161 See e.g. FRA, *Monthly data collection: Highlights – Migrants with disabilities*, August 2016, available at: http://bit.ly/2kWFgLT, 14.
162 Nina Hager and Jenny Baron, 'Verfahrensgarantien für psychisch Kranke oder Traumatisierte', Asylmagazin 7–8/2017, 17-26, 19.

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 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 were not placed in the airport procedure in 2018. That said, the detention facility at **Frankfurt/Main Airport** contains dedicated rooms for unaccompanied boys and girls.[163]

The airport procedure is applied to other vulnerable groups such as pregnant women, persons acute medical conditions and victims of rape or other forms of violence. Recent cases have reported that the BAMF conducts interviews with pregnant women lasting several hours in the airport facilities.[164]

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.[165] 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".[166] 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.[167] 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.[168]

The length and level of detail of medical reports has created difficulties in their admissibility in practice. In Dublin cases in **Regensburg**, for example, medical reports stating that pregnant women were unfit to

163 ECRE, *Report on border procedures*, May 2019, forthcoming.
164 *Ibid*.
165 Section 24(1) Asylum Act.
166 Section 15(3) Asylum Act.
167 Section 60(7) Residence Act.
168 BAMF, *DA-Asyl (Dienstanweisung Asylverfahren)* – subsidiärer Schutz/Darlegungslast (Stand 7/14), and DA-Asyl – Krankheitsbedingte Abschiebungsverbote (Stand 1/2015).

travel by plane have been dismissed by the Administrative Court on the basis that they were not sufficiently detailed.[169]

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.[170] In spite of this the quality of medical reports on Post-Traumatic Stress Disorder remains a controversial issue, regardless of whether such reports are submitted by the applicants or whether they have been commissioned by authorities or courts.[171] 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).[172] 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."[173]

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.[174]

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.[175]

169 ECRE, *Report on AnkER centres*, April 2019, forthcoming.
170 Federal Administrative Court, Decision of 11 September 2007 - 10 C 8.07 – (asyl.net, M12108).
171 Melanie Glocker, Hans Wolfgang Gierlichs, Friedemann Pfäfflin, "*Zur Qualität von Gerichtsgutachten in aufenthaltsrechtlichen Verfahren*", *Recht und Psychiatrie* 2012 (30), 67.
172 *Psycho-social Centre for refugees Dusseldorf* is a centre providing consultation and therapy to traumatised refugees.
173 Section 60a(2c) Residence Act.
174 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.
175 See for example: Handreichung zum Umgang mit unbegleiteten minderjährigen Flüchtlingen in Nordrhein-Westfalen 2017 (recommendations for the treatment of unaccompanied minor refugees in North Rhine-Westphalia), available at: https://bit.ly/2JCSRpD.

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"[176] 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.[177] 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.[178]

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.[179] 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.[180] 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.[181]

176 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, 30.

177 *Ibid*, 27-28.

178 Stephan Hocks, 'Die Vertretung unbegleiteter minderjähriger Flüchtlinge', Asylmagazin 11/2015, 367-373.

179 Section 71 Asylum Act.

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

181 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.

Further requirements are that:[182]

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.[183] However, a deportation may proceed from the very moment that the Federal Office informs the responsible Foreigners' Authority that a new asylum procedure will not be initiated. If an enforceable deportation order already exists, a new deportation order or other notification is not required to enforce deportation.[184] The applicant may also be detained pending deportation until it is decided that a subsequent asylum procedure is carried out.[185]

The decision on admissibility of a subsequent application can be carried out without hearing the applicant.[186] This means that the BAMF 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 BAMF decides not to carry out a subsequent procedure, the application is rejected as "inadmissible".[187] 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 2018 (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.[188]

23,922 persons lodged subsequent applications and 28,073 decisions on subsequent applications were taken in 2018:

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182 Section 51(2) Administrative Procedure Act.

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

184 Section 71(5) Asylum Act.

185 Section 71(8) Asylum Act.

186 Section 71(3) Asylum Act.

187 Section 29(1)(5) Asylum Act.

188 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.

Subsequent applicants and decisions on subsequent applications: 2018						
Nationality	Applications	Decisions	Inadmissible	Admissible		
				Positive decision	Negative decision	Termination / inadmissibility
Afghanistan	2,309	3,131	1,233	857	263	788
Syria	1,997	2,019	825	976	22	196
Iraq	1,741	2,125	908	198	263	756
Iran	989	1,025	479	174	169	203
Nigeria	905	1,071	477	112	137	345
Total	**32,922**	**28,073**	**14,297**	**3,536**	**3,363**	**6,877**

Source: BAMF, Monthly asylum report, December 2018: https://bit.ly/2T3P04i, 2 and 7.

Out of the 3,536 "positive" decisions on the merits of subsequent applications, following status was granted:[189]

- Asylum or refugee status: 1,729
- Subsidiary protection: 389
- (National) humanitarian protection/prohibition of deportation: 1,418

Most successful subsequent applications were filed by Syrian nationals (48.6% resulting in refugee status or another protection status), Afghan nationals (27.5%) and Iranian nationals (17%). In contrast, only 10 out of 1,599 subsequent applications from Serbian nationals were successful. Out of these 10 cases, 3 obtained the refugee status or refugee protection, while the 7 other cases were granted (national) humanitarian protection.

F. The safe country concepts

Indicators: Safe Country Concepts

1. Does national legislation allow for the use of "safe country of origin" concept? ☒ Yes ☐ No
   - ❖ Is there a national list of safe countries of origin? ☒ Yes ☐ No
   - ❖ Is the safe country of origin concept used in practice? ☒ Yes ☐ No
2. Does national legislation allow for the use of "safe third country" concept? ☒ Yes ☐ No
   - ❖ Is the safe third country concept used in practice? ☒ Yes ☐ No
3. Does national legislation allow for the use of "first country of asylum" concept? ☒ Yes ☐ 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.[190] 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).

189 BAMF, Monthly asylum report, December 2018, available at: https://bit.ly/2T3P04i, 7.
190 Article 16a(2)-(3) Basic Law.

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".[191]

1.1. List of safe countries of origin

Member states of the European Union are by definition considered to be safe countries of origin.[192] 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;
- North Macedonia;
- Bosnia-Herzegovina;
- Albania;
- Kosovo;
- Montenegro.

Serbia, North Macedonia and Bosnia-Herzegovina were added to the list following the entry into force of a law on 6 November 2014.[193] Albania, Kosovo and Montenegro were added with another law which took effect on 24 October 2015.[194]

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.[195] 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.[196] Another attempt to add these countries to the list was made in 2018, but the draft bill was removed from the Bundesrat's agenda in February 2019 as it became obvious that it would be rejected again. Removal from the agenda does not mean that the bill has failed, but that it can be reintroduced at a later date.[197]

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.

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191 Article 16a(3) Basic Law.

192 Section 29a(2) Asylum Act.

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

194 Asylverfahrensbeschleunigungsgesetz, BGBl. I, 23 October 2015, 1722.

195 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.

196 Bundesrat, 'Keine Zustimmung: Gesetz zu sicheren Herkunftsstaaten', 10 March 2017, available at: http://bit.ly/1owVXpm.

197 Spiegel, 'Bundesrat verschiebt Abstimmung über sichere Herkunftsländer', 15 February 2019, available in German at: https://bit.ly/2urOtiw.

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"			
	2018	2017	2016
Albania	2,941	6,089	17,236
Serbia	2,606	4,915	10,273
North Macedonia	2,472	4,758	7,015
Kosovo	1,224	2,403	6,490
Bosnia and Herzegovina	870	1,438	3,109
Ghana	992	1,134	2,645
Montenegro	377	730	1,630
Senegal	366	378	767

Source: BAMF, Antrags-, Entscheidungs- und Bestandsstatistik, 2016, 2017 and 2018: https://bit.ly/2TSHvlO.

To illustrate the developments of protection rates of "safe countries of origin", the following table includes decisions on first applications from Albania, Serbia and North Macedonia. The figures include all cases in which refugee status, subsidiary protection or (national) humanitarian protection/prohibition of deportation was granted:

Recognition rates for nationals of selected "safe countries of origin"			
	2018	2017	2016
Albania	1.2%	1.8%	0.4%
North Macedonia	0.8%	1%	0.4%
Serbia	0.7%	1%	0.4%

Source: BAMF, Antrags-, Entscheidungs- und Bestandsstatistik, 2016, 2017 and 2018: https://bit.ly/2TSHvlO.

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.[198] 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

198 Section 26a(2) Asylum Act.

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.[199] 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.[200] Federal Police shall refuse entry if a foreigner, who has entered from a safe third country, requests asylum at the border. Furthermore, Federal Police shall immediately initiate removal to a safe third country if an asylum seeker is apprehended at the border without the necessary documents.[201] Asylum applications may not be accepted or referred to the responsible authority by the Federal 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. In practice, the provisions enabling the Federal Police to send asylum seekers back to the border have been largely ineffective for many years. This is due to the fact that no systematic border controls took place at land borders and because return can only be carried out under the Dublin regulation. However, in 2018 a new procedure was introduced which enables the Federal Police to refuse entry at the border. This procedure is based on administrative regulations only (i.e. no legislative changes were implemented). It is only applied at the Austrian-German border, since this is the only border where controls are in force at the moment (See Access to the Territory).

3. First country of asylum

The "first country of asylum" concept is not referred to as such in German law. However, Sections 27 and 29(1)(4) of the Asylum Act refer to cases where a person was already safe from persecution in "another third country" (*sonstiger Drittstaat*) as a ground for inadmissibility. Such safety is presumed where the applicant holds a travel document from that country,[202] or has resided there for more than 3 months without being threatened by persecution.[203]

Important restrictions to the application of the provision have been removed in 2016. In particular, the former provision could only be applied if return to the safe "other third country" was possible within 3 months. Although this qualification has been removed, the provision has been applied rarely, only 37 times in 2018 (see Admissibility Procedure).[204]

199 Federal Constitutional Court, Decision of 14 May 1996, 2 BvR 1938/93, 2 BvR 2315/93, BVerfGE 94, 49 (189).
200 Section 18 Asylum Act.
201 The border area is defined as a strip of 30 kilometres.
202 Section 27(2) Asylum Act.
203 Section 27(3) Asylum Act.
204 Federal Government of Germany, Response to a parliamentary question by Member of Parliament Volker Beck, No.1/6, 10 January 2017.

G. 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,[205] 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 an a date determined for the formal registration of the asylum application (*"Belehrung nach § 14 Abs. 1 und § 23 Abs. 2 AsylG"*);
- An instruction on the obligation to comply immediately with a referral to the initial reception centre (*"Belehrung nach § 20 Abs. 1 AsylG"*);
- An instruction on the obligation to comply with a decision to be referred to another reception centre, including the obligation to register with the authorities in case of such a referral (*"Belehrung nach § 22 Abs. 3 AsylG"*).

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

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

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.[206]

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".[207] In particular, they

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205 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.

206 *Ibid*.

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

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.[208]

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.

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.[209] 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.[210]

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.[211]

Furthermore, the Federal Government's coalition agreement referred to an independent counselling service which should be established in all AnkER centres. The Federal Ministry of Interior explained that this counselling service could be provided by staff members of the BAMF, whose "independence" is ensured as long as they are not involved in the decision-making process of caseworkers.[212]

In **Bavaria**, counselling by the BAMF has already been implemented since 1 August 2018 in all AnkER centres. This counselling takes the form of group sessions depending on the language and the availability of interpreters, while individual counselling is offered only to those who specifically ask for it.[213] In practice, however, individual counselling is not provided.[214]

The new BAMF "counselling" sessions represent an improvement compared to the situation prior to August (and the situation in other centres) where no information was systematically provided to asylum

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

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

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

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

212 Federal Government, Response to parliamentary question by Alliance 90/The Greens, 19/4248, 12 September 2018, available in German at: https://bit.ly/2O5YH1b, 7. See also Johanna Mantel, 'Auskünfte der Bundesregierung zur Asylverfahrensberatung in "AnkER-Zentren"', Asylmagazin 10-11/2018, 333.

213 Markus Kraft, 'Die ANKER-Einrichtung Oberfranken', Asylmagazin 10-11/2018, 353; See also Miriam Schader, Tim Rohmann und Sybille Münch, 'Ankunfts-, Entscheidungs- und Rückführungszentren (AnkER-Zentren) – Erwartungen und kritische Bestandsaufnahme', fluechtlingsforschung.net, 17 September 2018, available in German at: https://bit.ly/2UNG3xE.

214 ECRE, *Report on AnkER centres*, April 2019, forthcoming.

seekers.[215] Nevertheless, the new system is heavily criticised by NGOs as group counselling sessions tend to be organised within a very short period before the personal interview with the BAMF and the information provided is limited (i.e. the BAMF tends to provide general information on the asylum procedure, sometimes focusing only on asylum seekers' obligations).[216]

According to the Government, when further counselling services are provided by welfare organisations or NGOs such as Caritas in AnKER centres, they only constitute a supplementary service and the BAMF counselling service is expected to cooperate closely with them (see Access to NGOs and UNHCR).[217]

Finally, access to information at the airport is described as particularly difficult, *inter alia* due to the speed of the procedure. Asylum seekers reportedly undergo the airport procedure without understanding the applicable rules and steps.[218]

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) and some of these have already been closed or reorganised since then. This is one of the main reason why there is no uniform practice concerning the presence of NGOs and/or access to these centres. In many of the newly established centres, access to NGOs is made even more difficult as these do not have offices in the town or region where the new centres 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

215 Markus Kraft, 'Die ANKER-Einrichtung Oberfranken', Asylmagazin 10-11/2018, 353, available in German at https://bit.ly/2P36MEe.
216 ECRE, *Report on AnkER centres*, April 2019, forthcoming.
217 Federal Government, Response to parliamentary question by Alliance 90/The Greens, 19/4248, 12 September 2018, 7.
218 ECRE, *Report on border procedures*, May 2019, forthcoming.

interview.[219] In the light of these problems being described in the context of the exemplary "arrival centre" at Heidelberg, it can be concluded that access to NGOs is even more limited or may be excluded in many other locations where no similar structures exist. This is particularly the case for the possibilities to access NGOs before the interview, since fast-tracking of procedures is taking place at a growing number of "arrival centres".

Between 1 March and 31 May 2017, a pilot project in three branch offices of the BAMF (**Gießen**, **Lebach**, **Bonn**) foresaw free of charge provision of counselling to asylum seekers by the German Red Cross, Caritas and Diakonie. The organisations were assisted by lawyers who trained and supported counsellors. The findings of the evaluation of the project by the BAMF and the United Nations High Commissioner for Refugees (UNHCR) were never published by the Federal Ministry of Interior, but came to the conclusion that an independent, free-of-charge, qualified an individual counselling service which is provided before the interview has "numerous positive effects" on the asylum procedure.[220] A draft of the evaluation highlighted *inter alia* that: (a) the general information provided by the BAMF to asylum seekers is insufficient, as it is not tailored to their individual situation; (b) independent counselling is of great importance and ensures that all facts are correctly presented during counselling and the interview; (c) the speed of the asylum procedure hinders effective access to counselling, as only 40% of applicants covered by the project received counselling prior to their interview and only 25% prior to the lodging of their application.[221]

Following an initial period of up to 6 months in a reception centre (and in many cases much earlier than that period), asylum seekers are usually referred to accommodation centres or apartments in other places of residence (see Types of Accommodation). 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,[222] while certain Federal States have imposed an obligation to stay in initial reception centres for up to 24 months (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.

In AnkER centres in **Bavaria**, access of NGOs depends on the management of the centre. In the AnKER **Regensburg** for example, Caritas, Amnesty International, the Refugee law clinic Regensburg and Campus Asyl have access to the facility, while in **Manching/Ingolstadt**, only Caritas has established presence. In the experience of certain NGOs, asylum seekers are not systematically re-directed to NGOs for further information. In centres such as **Manching/Ingolstadt** and **Regensburg**, NGOs have further no way of ensuring systematic counselling sessions with every new arrival, since they do not receive the registration list of residents in the AnKER centre.[223]

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

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

221 Lower Saxony Refugee Council, *Evaluation des Pilotprojektes „Asylverfahrensberatung"*, Draft of 25 September 2017, available in German at: https://bit.ly/2P1DLsz; Pro Asyl, *Implementation by Germany of the Convention against Torture (CAT) – Parallel report*, March 2019.

222 Section 47(1a) Asylum Act.

223 ECRE, *Report on AnkER centres*, April 2019, forthcoming.

H. 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?[224] ☒ Yes ☐ No
   - ❖ If yes, specify which: Albania, Bosnia-Herzegovina, Ghana, North Macedonia, Montenegro, Senegal, Serbia

Prioritisation of applications from certain countries was revoked in the second quarter of 2016.[225] 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.[226] Since then, the branch offices of the BAMF and the arrival centres 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 been reached for newly arriving asylum seekers in 2017, for whom the average duration of asylum procedures at the BAMF was 2.3 months.[227]

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 to 35% in 2017. In 2018, 41.6% of Syrians had been granted refugee status. Conversely, the rate of Syrians being granted subsidiary protection rose from 0.1% in 2015 to 41.2% in 2016, 56% in 2017 and 39.7% in 2018. 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. Family reunification is now possible for beneficiaries of subsidiary protection since August 2018, but limited to a monthly quota of 1,000 visas for relatives of this group. Tens of thousands of beneficiaries of subsidiary protection have appealed against the authorities' decisions in order to gain refugee status ("upgrade-appeals"), with 30,358 pending appeals which have been filed by Syrians out of a total 40,053 pending upgrade appeals at the end of 2018.[228]

The Parliament recently indicated that the BAMF had updated its internal guidelines on Syria in March 2019, the update pending approval from the Federal Ministry of Interior.[229] Civil society organisations have expressed fears about a change in policy, based on several decisions which became known in March 2019. In these decisions, subsidiary protection has been refused on the ground that an internal armed conflict in all parts of the country no longer prevails. Instead, the applicants have been granted (national) humanitarian protection.[230]

224 Whether under the "safe country of origin" concept or otherwise.
225 Federal Government, Reply to parliamentary question by The Left, 18/9415, 17 August 2016, 23.
226 Information provided by the BAMF, 23 January 2018.
227 Information provided by the BAMF, 23 January 2018.
228 Federal Government, Response to parliamentary question by The Left, 25 March 2019, 49.
229 Bundestag, Reply to oral question by The Left, 3 April 2019.
230 Epoch, 'BAMF ändert Leitlinien zu Syrien-Flüchtlinge – Pro Asyl warnt vor „Panik" unter Schutzsuchenden', 10 April 2019, available in German at: https://bit.ly/2X08kSf.

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. However, the main part of the backlog of cases seems to have been cleared, and the number of decisions dropped to 18,627 in 2018, with 12,251 applications of Afghan asylum seekers being registered.[231] 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 and continued on a regular basis in 2018.

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.[232] Appeals at Administrative Courts against such decisions have frequently been successful, but many cases are still pending at Administrative Courts and High Administrative Courts.[233] In 2018, there were 11,261 successful or partially successful decisions and 62,208 pending decisions.[234] Out of the successful decisions, the examination of the substance of the appeal took place in 19,535 cases.

231 BAMF, *Asylgeschäftsbericht*, December 2018, 2.

232 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.

233 *Ibid*.

234 Federal Government, Response to parliamentary question by The Left, 25 March 2019, 41.

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	☐ Yes	☒ Reduced material conditions	☐ No
❖ Dublin procedure	☐ Yes	☒ Reduced material conditions	☐ No
❖ Admissibility procedure	☐ Yes	☒ Reduced material conditions	☐ No
❖ Border procedure	☐ Yes	☒ Reduced material conditions	☐ No
❖ Accelerated procedure	☐ Yes	☒ Reduced material conditions	☐ No
❖ Appeal	☐ Yes	☒ Reduced material conditions	☐ No
❖ Subsequent application	☐ Yes	☒ Reduced material conditions	☐ 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 these reception conditions as long as they have the status of an asylum seeker and are entitled to a permission to stay (*Aufenthaltsgestattung*). They formally gain this status upon registration of the asylum application and the document is usually handed out to them upon registration, usually a few days after they have arrived in the reception centre. The status of asylum seeker usually applies for 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 Asylum Seekers' Benefits Act 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.

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.[235] 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.

The assessment of resources

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.[236] This provision does not seem to be applied often in practice, however.

Asylum seekers are asked to hand over any money they have in cash when they report to the authorities as asylum seekers for the first time, i.e. before the application is formally lodged. They are

235 Section 10 and 10a Asylum Seekers' Benefits Act.
236 Section 7 Asylum Seekers' Benefits Act.

allowed to keep 200 € in cash at the most. It is also possible that the police carry out body searches and searches of other belongings at other opportunities (e.g. when reporting to the police as asylum seekers or upon apprehension by the police for other reasons, for security reasons, in reception centres) if authorities have reasons to assume that asylum seekers are in possession of documents or other information which might be essential for identification purposes. Cash money found at such opportunities is seized by the authorities, again with the exception of 200 € which asylum seekers are allowed to keep.

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 2019 (in original currency and in €):[237]
   - ❖ 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).[238] Furthermore, the necessary "benefits in case of illness, pregnancy and birth" have to be provided for.[239] 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.[240]

Revisions to the Asylum Seekers' Benefits Act have been passed in November 2014 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".[241] For asylum seekers in other (decentralised) collective accommodation centres, non-cash benefits "can" be provided "if this is necessary under the circumstances".[242] 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 is dependent on local conditions and policies whether (and to which extent) allowances are handed out as non-cash benefits-

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. The law foresees an annual adjustment of rates which the Federal Ministry of Labour and Social Affairs has to publish in the Official Gazette before 1 November for the following year.[243] However, the Ministry has repeatedly failed to do so. Allowances for asylum seekers therefore have not been changed since March 2016. This has led one Social Court (*Sozialgericht*) to conclude an adjustment to higher rates has to be made by local authorities, but so far this seems to

237 This includes hygienic items allowance and pocket money only.
238 Section 3 Asylum Seekers' Benefits Act.
239 Section 4 Asylum Seekers' Benefits Act.
240 Section 6 Asylum Seekers' Benefits Act.
241 Section 3(1) Asylum Seekers' Benefits Act.
242 Section 3(2) Asylum Seekers' Benefits Act.
243 Section 3 (4) 3rd sentence Asylum Seekers' Benefits Act.

represent an isolated legal opinion.[244] The monthly rates which are generally considered to be valid 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 an accommodation centre	€135	€122	€108	€76	€83	€79
Stay outside of an accommodation centre	€354	€318	€284	€276	€242	€214

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 on 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

Since 2016, the grounds for reduction of material reception conditions expressly include asylum seekers. Material reception conditions can be reduced to the point that only "irredeemably necessary" benefits are granted, for the following reasons:[245]

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:

244 Social Court Stade, Decision S 19 AY 15/18, 13 November 2018. See also Informationsverbund Asyl und Migration, 'SG Stade: Anspruch auf angepasste höhere Regelbedarfe nach dem AsylbLG', 13 December 2018, available in German at: https://bit.ly/2Ksd8i2; GGUA Flüchtlingshilfe, 'Rechtswidrige Höhe der Grundleistungen nach Asylbewerberleistungsgesetz: Jetzt Nachzahlung beantragen', 7 December 2018, available in German at: https://bit.ly/2FEpAFD.

245 Section 1a Asylum Seekers' Benefits Act.

- 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.[246]

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 for personal and health care.[247] In practice, cash benefits – often referred to as "pocket money" – is withdrawn in those cases.

When compared to the "standard" benefits granted under the Asylum Seekers' Benefits Act,[248] this would imply that in particular benefits for covering the costs of clothing and for "durable and non-durable consumer goods for the household" can be withdrawn. However, the law states that in case of "special circumstances in individual cases" other benefits can also be granted for asylum seekers whose benefits have been reduced.[249] This implies that clothing and household items would still have to be provided "in kind" and on an *ad hoc* basis, if necessary, but these costs are not included in the monthly benefits for the persons concerned.[250]

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,[251] there have been several courts decisions concluding that any reduction of benefits would be unconstitutional and therefore inadmissible, but these rulings do not represent general opinion.[252]

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 or protection in another EU country) and in whose cases no emergency legal protection has been granted. In the AnkER centres in **Bavaria**, for example, the monthly cash allowance ("pocket money") is withdrawn or substantially reduced if the person has "absconded", i.e. failed to be present at the appointment for pick-up by the police for the transfer (see Dublin: Procedure). In some cases, Social Courts have argued that a reduction of benefits could be unlawful as long as no final decision on a possible deportation (or transfer to another Dublin state) has been made at the Administrative Court.[253] However, such decisions are rare because only a few asylum seekers appeal against reductions of benefits upon rejection of their asylum application.

If benefits are reduced following a rejection of an application, they 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

246 Section 11(2a) Asylum Seekers' Benefits Act.
247 Section 1a(2) Asylum Seekers' Benefits Act.
248 Section 3(1) Asylum Seekers' Benefits Act.
249 Section 1a(2) Asylum Seekers' Benefits Act.
250 Cf. Regional social administration of the Federal State of Berlin, Directive no. 10/2015, 9 December 2015 (Rundschreiben Soz Nr. 10/2015 über Umsetzung des AsylbLG in der Fassung des Asylverfahrensbeschleunigungsgesetzes), available at: https://bit.ly/2I3Obav.
251 Federal Constitutional Court, Decision 1 BvL 10/10, 1 BvL 2/11, 18 July 2012.
252 Social Court Stade, Decision S 19 AY 19/17 ER, 10 May 2017.
253 Regional Social Court Berlin-Brandenburg, Decision L 15 AY 12/17 B ER, 19 July 2017; Social Court Lüneburg, Decision S 26 AY 35/17 ER, 12 September 2017.

turns out that a deportation proves impossible for reasons which cannot be held against the foreign national.

A directive issued in the Federal State of **Berlin** states that minors are generally exempt from reductions of benefits, because the alleged misconduct cannot be held against them (e.g. if their parents have failed to provide the authorities with information about their identities).[254] However, this policy is exceptional and in other Federal States it seems to be commonplace that reductions of benefits are imposed on whole families, including children.[255]

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

1.1. 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 permission to stay (*Aufenthaltsgestattung*) throughout the duration of the asylum procedure is generally limited to the area of the Federal State responsible for them.[256] 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.[257] 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;[258]
2. The geographical restriction may be re-imposed if the person has been convicted of a criminal offence or if deportation is imminent.[259]

The place of residence of asylum seekers is usually determined by the Initial Distribution of Asylum Seekers (*Erstverteilung der Asylbegehrenden*, 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.[260] Distribution of asylum seekers is determined by the following aspects:[261]

- Capacities of initial reception centres;
- Competence of the branch offices of the BAMF for the particular applicant's country of origin. This means that certain initial reception centres tend to host specific nationalities (see Differential Treatment of Specific Nationalities in Reception);

254 Cf. Regional social administration of the Federal State of Berlin, Directive no. 10/2015, 9 December 2015.
255 Information provided by GGUA, Münster, 19 June 2018.
256 Sections 55(1) and 56(1) Asylum Act.
257 Section 59a(1) Asylum Act.
258 Section 59a(1) Asylum Act.
259 Section 59b(1) Asylum Act.
260 BAMF, 'Initial Distribution of Asylum-Seekers (EASY)', 1 October 2016, available at: http://bit.ly/2DASJOS.
261 Section 46(2) Asylum Act.

- A quota system called "*Königsteiner Schlüssel*",[262] according to which reception capacities are determined for Germany's 16 Federal States. The *Königstein* key takes into account the tax revenue (accounting for $^2/_3$ of the quota) and the number of inhabitants ($^1/_3$) of each Federal State.

The quota for reception of asylum seekers in 2018 ("*Königsteiner Schlüssel*") in comparison to number of (first) asylum applications in 2018 was as follows:

Distribution of asylum seekers in Germany: 2018			
Federal State	Quota	(First) applications in 2018	Actual share in 2018
Baden-Württemberg	13.01%	16,062	9.01%
Bavaria	15.56%	21,911	16.70%
Berlin	5.13%	8,216	8.36%
Brandenburg	3.02%	4,679	2.94%
Bremen	0.96%	1,880	0.77%
Hamburg	2.56%	4,139	2.11%
Hesse	7.4%	12,865	5.78%
Mecklenburg-Vorpommern	1.98%	2,828	1.88%
Lower Saxony	9,41%	16,848	8.62%
North Rhine-Westphalia	21.09%	35,579	22.77%
Rhineland-Palatinate	4.82%	7,622	5.31%
Saarland	1.20%	2,685	0.56%
Saxony	4.99%	7,561	4.74%
Saxony-Anhalt	2.75%	4,283	4.04%
Schleswig-Holstein	3.41%	6,475	3.46%
Thuringia	2.65%	4,169	2.86%

Source: BAMF, Asylgeschäftsbericht, December 2018.

This shows that distribution of applicants has only roughly been in line with the "Königsteiner Schlüssel" in 2018. Deviations from the quota can (at least partially) be explained by the fact that the distribution of applicants 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 temporary 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.[263] 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.[264]

262 Section 45 Asylum Act.
263 Section 58(1) Asylum Act.
264 Section 58(2) Asylum Act.

1.2. Obligation to stay in initial reception centres

As a rule, 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 6 weeks but not exceeding 6 months.[265]

By way of derogation, applicants from a Safe Country of Origin are obliged to stay in the initial reception centre for the entire duration of their asylum procedure.[266]

Moreover, Federal States are allowed to impose an obligation on applicants to stay in initial reception centres for up to 24 months.[267] 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.[268]

The coalition agreement of the new Federal Government, which introduced the concept of AnkER centres in March 2018 referred to a period of 18 months which, "as a rule", should be the maximum period of stay in a reception centre.[269] However, this maximum period has not been implemented into federal law and has therefore no binding effect for Federal States.

In **Bavaria**, the obligation to stay in initial reception centres for up to 24 months under Section 47(1b) of the Asylum Act had already been introduced in 2017 in three "transit centres (Manching/Ingolstadt, Regensburg, Deggendorf).[270] All of these centres were renamed as AnKER centres in 2018, together with the other Bavarian reception centres. The Bavarian Reception Act in its latest version now generally obliges the following groups to stay in reception centres:

- All asylum seekers until the BAMF has decided upon their applications;
- Asylum seekers whose application has been rejected as manifestly unfounded or inadmissible until they leave the country or are deported, but limited to a maximum period of 24 months.[271]

In practice, the average duration of the process varies by nationality e.g. 3-4 months for Syrians, over 36 months for safe country of origin nationals who cannot be returned e.g. due to health reasons, and 10-11 months for others if they appeal a rejection.[272]

In **Saxony**, where an AnkER centre also exists, an obligation to stay in reception centres has been introduced in the state's Refugee Reception Act on 11 December 2018. According to this amendment, the obligation affects the following groups of asylum seekers:[273]

- Asylum seekers from a country of origin with a protection rate lower than 20% until the BAMF has decided upon their applications. They can stay for a maximum period of 24 months. This

265 Section 47(1) Asylum Act.
266 Section 47(1a) Asylum Act.
267 Section 47(1b) Asylum Act.
268 *Ibid*. This is also provided in Section 50(1) Asylum Act.
269 Coalition Agreement of the Christian Democratic Union, Christian Social Union, and Social Democratic Party, 12 March 2018, available in German at: https://bit.ly/2E76WV2, 107.
270 Bayerischer Flüchtlingsrat, 'Abschiebelager Manching/Ingolstadt', available in German at: http://bit.ly/2pnLtRg.
271 Section 2(2) Bavarian Reception Act (*Aufnahmegesetz*), as amended by the Act of 5 December 2017, available in German at: https://bit.ly/2uE71MT.
272 ECRE, *Report on AnkER centres*, April 2019, forthcoming.
273 Section 12 Lower Saxony Refugee Reception Act (*Flüchtlingsaufnahmegesetz*), as amended by the Act of 14 December 2018, available in German at: https://bit.ly/2VaJLkY.

depends on the list of countries of origin which the Federal State's government has to compile and publish as an official decree. At the beginning of 2019, this list had not been made public;

- Asylum seekers whose application has been rejected as manifestly unfounded or inadmissible until they leave the country or are deported. Here again, the maximum period of stay is 24 mpnths.

Asylum seekers may leave the premises of the initial reception centres (regardless of whether they are called AnkER centres or not) at any time, subject to no curfew or obligation to stay overnight, but in many centres they have to report to security personnel at the door upon leaving and re-entering. In some AnkER centres such as **Regensburg**, monitoring of entry and exit is carried out through a bar code card scanned by asylum seekers at the door.[274]

In general, people can travel freely within the town and district in which the reception centre is located, although the limited accessibility of certain initial reception centres by public transport raises questions concerning freedom of movement. For example, the authorities provide asylum seekers in the AnkER centres with subsidised public transport tickets. However, residents in accommodation centres attached to ank AnkER centre (*Dependancen*) located outside the municipality of the competent AnkER centre – e.g. **Schwandorf**, located 38km from **Regensburg**, or **Garmisch**, located 90km away from **Munich** – are only provided with public transport tickets to travel to the competent AnkER centre for official appointments such as interviews with the BAMF. Applicants have to cover their own travel costs for any other appointments, including meetings with NGOs or doctors, that are not present in *Dependancen*. The set-up and location of the *Dependancen* therefore poses an additional barrier to asylum seekers' access to essential services.[275] In most Federal States, applicants need a special permission to travel to other parts of the state or to other parts of Germany.

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 AnkER-centres;
- Collective accommodation centres;
- Decentralised accommodation.

Emergency shelters were used in particular in 2015 and 2016 but have mostly been closed down in 2017. One notable exception was the reception facility at the **Berlin** arrival centre which continued to operate on the premises of the former airport of Tempelhof where newly arrived asylum seekers were still accommodated, sometimes for several weeks, under conditions described as „inhumane" by NGOs. In December 2018, the Refugee Council of Berlin reported that 1,000 asylum seekers were still living in emergency shelters at the Tempelhof facility and in former army barracks, while more than a 1,000

274 ECRE, *Report on AnkER centres*, April 2019, forthcoming.
275 *Ibid*.

places in newly built facilities were not allocated to asylum seekers due to organisational problems.[276] The closure of the facility at Tempelhof was finally announced on 20 December 2018.[277]

Moreover, a waiting room (*Warteraum*) in **Erding** is a unique facility managed at federal level, which serves as a first arrival and distribution centre where persons can stay for 72 hours.

1.1. Initial reception centres

For a general period of up to 6 months after their application has been lodged, asylum seekers are generally obliged to stay in an initial reception centre (*Aufnahmeeinrichtung*).[278] An obligation to stay in these centres for a maximum of 24 months can be imposed by Federal States since July 2017.[279] As far as the author is aware, only **Bavaria** had made use of this provision in 2018. In the Federal State of **Saxony** a similar obligation was introduced in December 2018, but it did not have any impact during that year. Furthermore, asylum seekers from Safe Countries of Origin are obliged to stay there for the whole duration of their procedures (see Freedom of Movement).[280]

The Federal States are required to establish and maintain the initial reception centres.[281] Accordingly, there is at least one such centre in each of Germany's 16 Federal States with most Federal States having several initial reception facilities.

As of January 2019, the BAMF website listed 58 branch offices, regional offices and “arrival centres” in 50 locations (down from 68 offices in 64 locations at the beginning of 2018).[282] 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 or AnkER centre.

Arrival centres

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 22 arrival centres which are located across 16 Federal States as follows:[283]

- Bavaria: Bamberg
- Berlin
- Brandenburg: Eisenhüttenstadt
- Bremen
- Hamburg
- Baden-Württemberg: Heidelberg
- North Rhine-Westphalia: Bielefeld, Bonn, Dortmund, Mönchengladbach
- Saxony: Chemnitz, Dresden, Leipzig
- Lower Saxony: Bad Fallingbostel, Bramsche
- Saxony-Anhalt: Halberstadt
- Hessen: Gießen
- Mecklenburg-Vorpommern: Stern-Buchholz

276 Refugee Council Berlin, ‘Gesamtkonzept zur Integration und Partizipation von Geflüchteten in Berlin: Viel Worte statt Taten’, 17 December 2018, available in German at: https://bit.ly/2YDmkD3.
277 Berlin.de, ‘Senat beginnt Schließung des Flüchtlingszentrums Tempelhof’, 20 December 2018, available in German at: https://bit.ly/2uGkGCM.
278 Section 47(1) Asylum Act.
279 Section 47(1b) Asylum Act.
280 Section 47(1a) Asylum Act.
281 Section 44(1) Asylum Act.
282 BAMF, *Branch offices / regional offices*, available at: http://bit.ly/2kIPxMD.
283 BAMF, *Arrival centres*, available at: http://bit.ly/2IyOpmY.

- Thuringia: Suhl
- Rhineland-Palatinate: Trier
- Schleswig-Holstein: Neumünster
- Saarland: Lebach

Although Bamberg, Dresden and Lebach have now been renamed as AnkER centres, they are still listed by the BAMF as "arrival centres". This may be based on the individual agreements between the Federal States and the BAMF using different designations for the centres.

AnkER centres

Since August 2018, Bavaria has established and/or rebranded all facilities run by the seven districts of the Federal State as AnkER centres.[284] These include seven AnkER centres and a number of facilities attached thereto (*Dependancen*), the latter serving only for accommodation of asylum seekers to avoid overcrowding. All steps of the procedure are carried out in the main AnkER centres:

AnkER centres & *Dependancen* in Germany		
Federal State	AnkER centre	Location of AnKER Dependancen
Bavaria	Manching/Ingolstadt (Upper Bavaria)	Ingolstadt: Manchingerstraße Ingolstadt: Marie Curie Straße Ingolstadt: Neuburgerstraße Munich Garmisch Waldkraiburg Fürstenfeldbruck
	Deggendorf (Lower Bavaria)	Hengersberg Osterhofen Stephansposching
	Regensburg: Zeißstraße (Upper Palatinate)	Regensburg: Pionierkaserne Schwandorf
	Bamberg (Upper Franconia)	-
	Zirndorf (Middle Franconia)	Nuremberg Roth Neuendettelsau
	Schweinfurt (Lower Franconia)	-
	Donauwörth (Swabia)	Augsburg
Saxony	Dresden	**-**
Saarland	Lebach	**-**
Total	**9**	**16**

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*, GU).[285] These

[284] Süddeutsche Zeitung, Das sind die sieben neuen Ankerzentren in Bayern, 1 August 2018, available at https://bit.ly/2MeAYKy.

[285] Section 53 Asylum Act.

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.

Prior to the introduction of AnkER centres, when the Federal State of **Bavaria** operated "transit centres", practice had been reported whereby persons who had to be transferred out of the transit centre to GU were in reality not physically moved out of the centre. Instead a section of the facility was reclassified as GU and people stayed there; in some cases even the same room was requalified as such, which meant that they formally were considered to have left the transit centre. Nevertheless, they remained subject to the same house rules of the transit centre.[286]

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.[287] 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 2017, 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:

Recipients of asylum seekers benefits in the Federal States: 31 December 2017				
Federal State	Initial reception centres	Collective accommodation	Decentralised accommodation	Total
North Rhine-Westphalia	20,292	61,911	40,242	122,445
Bavaria	6,831	28,683	32,794	68,308
Baden-Württemberg	4,851	34,613	17,746	57,210
Lower Saxony	2,829	9,361	32,397	44,587
Hessen	3,029	19,902	10,582	33,513
Berlin	4,027	8,498	13,066	25,591
Saxony	1,653	14,192	7,196	23,041
Rhineland-Palatinate	3,420	2,398	13,307	19,125
Schleswig-Holstein	1,337	1,442	13,937	16,716
Brandenburg	1,449	9,076	4,741	15,266

286 ECRE, *Report on AnkER centres*, April 2019, forthcoming.
287 Section 10 Asylum Seekers' Benefits Act.

Hamburg	4,093	898	6,705	11,696
Sachsen-Anhalt	1,166	3,837	5,148	10,151
Thuringia	278	4,222	4,620	9,120
Mecklenburg-Vorpommern	708	2,847	2,795	6,350
Bremen	127	1,443	2,362	3,932
Saarland	52	819	686	1,557
Total	56,142	204,142	208,324	**468,608**

Source: Statistisches Bundesamt, Empfängerinnen und Empfänger nach Bundesländern: https://bit.ly/2UtNxZW. 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.[288] 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.[289]

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. There are substantial differences in the structure and living conditions, for example between the AnKER centres and the *Dependancen* in Bavaria. In **Regensburg** for example, the main AnKER centre was built recently and is relatively modern, while the *Dependancen* are old former barracks. Particular concerns have been voiced with regard to *Dependancen* such as **Schwandorf** and **Stephanposching**, which consists of large halls with no rooms In the *Dependance* of **Munich Funkkaserne**, a former barracks which hosted over 200 people at the end of March 2019, collapsing sinks, a damaged medical room and unsanitary

288 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.

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

conditions have been reported, far below standards.[290] Following public criticism, the authorities have started renovation works in the facility of early April 2019 and have transferred several residents to other facilities.[291]

Locations of centres vary significantly. While some of the initial reception centres, arrival centres and AnkER are situated in or close to big cities (e.g. **Berlin**, **Munich**, **Regensburg**, **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 (**Lebach** near Saarbrücken). Some initial reception centres (**Nostorf-Horst** in Mecklenburg-Vorpommern, **Deggendorf** or the *Dependancen* in **Garmisch** and **Waldkraiburg** in Bavaria) are located in isolated areas far away from the next town.[292]

Initial reception centres have at least several hundred places, while some facilities can host large numbers of persons. The AnkER centre of **Bamberg** in Bavaria has a capacity of 3,400 places, for example, although it has never accommodated more than 1,500 persons at one time.[293]

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.[294] 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.

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. The AnKER centre in **Manching/Ingolstadt** for example provides separate rooms for vulnerable persons.

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; in AnkER centres, for instance, cooking is not allowed. Refrigerators for the use of asylum seekers are available in some initial reception centres, but this seems to be the exception. In some centres, the management does not allow hot water boilers for asylum seekers as this would be forbidden by fire regulations. This poses an obstacle to mothers with infants.

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290 Süddeutsche Zeitung, '"Die Regierung muss hier sofort einschreiten"', 26 March 2019, available in German at: https://bit.ly/2OGa40d.

291 Süddeutsche Zeitung, 'Die Funkkaserne wird angeblich unter Hochdruck saniert', 5 April 2019, available in German at: https://bit.ly/2KA8Rcv.

292 Refugee Council Bavaria, 'Abschiebelager Manching/Ingolstadt', available in German at: http://bit.ly/2pnLtRg.

293 Markus Kraft, ANKER-Einrichtung Oberfranken – Grundlagen, Kritik und Alternative, Asylmagazin 10-11/2018, 352; ECRE, 'The Bamberg model and transit camp system in Germany – Op-ed by Aino Korvensyrjä', 2 February 2018, available at: http://bit.ly/2FIz6KP. See also Bayerischer Flüchtlingsrat, 'Abschiebelager Bamberg', available in German at: http://bit.ly/2IwD471.

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

2.2. Situation in collective accommodation centres and decentralised housing

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

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

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.[295] 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.[296]

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.[297]

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.[298]

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295 ProAsyl, ‘Ein Leben ohne Privatsphäre? Sammelunterbringung darf nicht zum Dauerzustand werden!’, 10 January 2017, available in German at: http://bit.ly/2kWyi5U.

296 *Ibid*.

297 *Ibid*.

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.[299] 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.[300] Nevertheless, NGO statistics also show 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.[301] Tensions have been frequently reported in **Bamberg** among other centres.[302]

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).[303]

2.4. Duration of stay

The duration of stay in initial reception centres such as AnkER centres varies according to the profile and origin of the applicant (see Freedom of Movement).

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.

298 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.

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

300 Mut Gegen Rechte Gewalt, ‘Chronik flüchtlingsfeindlicher Vorfälle’, 4 March 2018, available in German at: http://bit.ly/2I4P8jO.

301 ProAsyl, ‘Ein Leben ohne Privatsphäre? Sammelunterbringung darf nicht zum Dauerzustand werden!’, 10 January 2017, available in German at: http://bit.ly/2kWyi5U.

302 See e.g. Die Welt, ‘Ermittler sicher – Flüchtlinge in Ankerzentrum wollten Polizisten töten’, 11 December 2018, available in German at: https://bit.ly/2NhwAvx.

303 *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? ☒ Yes ☐ No
   - ❖ If yes, specify which sectors: No self-employment
4. Does the law limit asylum seekers' employment to a maximum working time? ☐ Yes ☒ No
   - ❖ If yes, specify the number of days per year
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.[304]

However, asylum seekers are barred from access to employment as long as they are under Obligation to Stay in Initial Reception Centres.[305] 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;[306] and (b) Federal States may impose a 24-month obligation to stay in initial reception centres since July 2017, this option has only been used by **Bavaria** and **Saxony** so far.[307]

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.

As a result, access to employment is impossible in initial reception centres, although in AnkER centres asylum seekers are sometimes allowed to take 0.80 € per hour jobs in the centre.

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 permission to stay (*Aufenthaltsgestattung*) does not qualify as such.[308]

304 Section 61(2) Asylum Act.
305 Section 61(1) Asylum Act.
306 Section 47(1a) Asylum Act.
307 Section 47(1b) Asylum Act.
308 Section 21(6) Residence Act.

1.2. Restrictions on access to the labour market

After the obligation to stay in an initial reception centre and 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 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.[309]

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.

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

309 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**.

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.[310]

Problems with access to the education system have particularly been reported with regard to initial reception centres renamed as AnKER centres in **Bavaria** in 2018. The general policy foresees the provision inside the AnkER centres of both schooling for children aged 6-16 and professional school (*Berufschule*) for persons aged 16-21. The AnKER centre in **Regensburg** is one of the only facilities allowing children up to the age of 16 to go to regular schools. This was originally onle made possible because the authorities did not manage to build the necessary facilities on time, but has stayed that way. However, persons aged 16-21 are provided education in containers in the centre, not at school.[311]

The AnKER centre in **Manching/Ingolstadt** does not allow access to regular schools and classes are therefore provided within the facility. The classes mainly focus on German language, but also cover maths and other subjects. A certificate is provided upon completion of the course. However, asylum seekers do not undergo examinations at the end of the year since people stay for shorter periods. If an asylum seeker wishes to access regular schools, a test assessing his or her capacity to attend classes in regular schools is conducted, namely to assess German language level.[312] This was done following successful litigation in March 2018, when Manching/Ingolstadt was a "transit centre", which led authorities to grant 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.[313]

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.[314] 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?
   ☒ Yes ☐ No
2. Do asylum seekers have adequate access to health care in practice?
   ☐ Yes ☒ Limited ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?
   ☒ Yes ☐ Limited ☐ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?
   ☒ Yes ☐ Limited ☐ No

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

310 See the campaign at: http://kampagne-schule-fuer-alle.de/.
311 ECRE, *Report on AnkER centres*, April 2019, forthcoming.
312 *Ibid*.
313 Süddeutsche Zeitung, 'Flüchtlingskinder aus Transitzentrum dürfen reguläre Schule besuchen', 9 March 2018, available in German at: http://bit.ly/2Dzi9fX.
314 Section 32(2)(1) Employment Regulation.

and support", including midwife assistance. Furthermore, vaccination and "necessary preventive medical check-ups" shall be provided.[315]

In addition, the law states that further benefits can be granted "if they are indispensable in an individual case to secure health".[316]

The term "necessary treatment" within the meaning of the law has not conclusively been defined but is often taken to mean that only absolutely unavoidable medical care is provided. However, the wording of the law suggests that health care for asylum seekers must not be limited to "emergency care" since the law refers to acute diseases or pain as grounds for necessary treatment. Accordingly, it has been argued that a limitation of treatment to acute diseases is not in accordance with the law, since chronic diseases are equally likely to cause pain. This latter opinion has been upheld by courts in several cases. Nevertheless, it has been reported that necessary but expensive diagnostic measures or therapies are not always granted by local authorities, which argue that only "elementary" or "vital" medical care would be covered by the law.[317]

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.[318] 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, Schleswig-Holstein** and **Thuringia** 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 it has not been implemented by all municipalities.[319] Other Federal States (e.g. **Bavaria** and **Baden-Württemberg**) have announced that they will not participate in the scheme.

It should be noted that in in **Bavaria**, access to health care is rendered extremly difficult for asylum seekers living in AnKER *Dependancen*. There is often no general practitioner in the *Dependancen* and residents have therefore to receive care in the main AnkER building, which can be located miles away. Moreover, the doctor present in an AnKER centre is usually a general practitioner and does not provide medical reports, while access to specialised doctors can only take place following a referral from the general practictioner.[320]

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).[321] 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

315 Section 4 Asylum Seekers' Benefits Act.
316 Section 6 Asylum Seekers' Benefits Act.
317 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.
318 *Ibid*, 7-8.
319 See overview of Federal States, see Gesundheit für Geflüchtete, *Regelung in den Bundesländern*, available at: https://bit.ly/2U7GRRL.
320 ECRE, *Report on AnkER centres*, April 2019, forthcoming.
321 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).

medical treatment has been the result of an emergency which has not existed at the time of arrival in Germany.[322]

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*).[323] Once people are entitled to the "standard" social benefits, this includes access to health care under the same conditions that apply to German citizens who receive social benefits.

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

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

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

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).

In **Rhineland-Palatinate**, the regional governent has adopted a protection concept which also includes methods for the identification of vulnerabilities.[324] This includes the following measures:

- Accommodation of possible vulnerable persons (i.e. persons who are suspected to have special needs) in separate areas of the reception centres where social services can provide better care and easily identify vulnerabilities;
- If special reception needs have been established, vulnerable persons shall be accommodated in designated (i.e. separate) "protection areas" with easy access to social services;
- If necessary, vulnerable persons shall be able to lock their rooms. Single women shall be accommodated in areas to which male residents have no access and where, if possible, social services and supervision are only carried out by female staff members;
- Separate rooms for LGBTI persons shall be provided upon request or if considered necessary by the reception centre's management staff,
- Persons with physical disabilities shall be accommodated in barrier-free parts of the centres and shall be provided with adequate equipment. If necessary, they shall be accommodated outside of the reception centres in specialised facilities for persons with disabilities.

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

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

323 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".

324 Konzept zum Gewaltschutz und zur Identifikation von schutzbedürftigen Personen in den Einrichtungen der Erstaufnahme in Rheinland-Pfalz, available in German at: https://bit.ly/2FsmG7V.

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".[325]

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.[326]

Latest available figures for unaccompanied minors reflect the situation in 2017: In that year, 22,492 newly arriving unaccompanied minors were taken into care of a youth welfare office (in comparison to 44.935 in 2016).[327] The total numbers of unaccompanied children and young adults under the care of youth authorities also decreased significantly during 2017, from 64,045 at the end of 2016 to 54,692 in December 2017.[328] 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 were 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.[329]

A 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.[330]

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

326 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/2plPPcu.

327 Federal Government: Bericht über die Situation unbegleiteter ausländischer Minderjähriger in Deutschland (Report on the situation of unaccompanied foreign minors in Germany), parliamentary report no. 19/4517, 19 September 2018, available at: https://bit.ly/2FQ6GNc, 13-14.

328 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/2tYI6Wz, 4.

329 Similar findings in Federal Government, *Bericht über die Situation unbegleiteter ausländischer Minderjähriger in Deutschland*, Parliamentary report 19/4517, 19 September 2018, available in German at: https://bit.ly/2FQ6GNc, 17-18.

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

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.[331] Regional guidelines for protection against violence in refugee accommodation centres regularly refer to LGBTI persons as a particularly vulnerable group. Special protection measures should be taken following an individual assessment of the situation. For example, the guidelines for the Federal State of **North Rhine-Westphalia** state that vulnerable persons, such as pregnant women, single women, families and LGBTI persons should be given priority when (single) rooms are allocated in accommodation centres. Furthermore, LGBTI persons toghether with victims of trafficking and persons who have suffered from severe violence, are listed among persons for whom „other accommodation“ (i.e. not in collective accommodation centres) can be necessary, again following an individual assessment of the situation.[332]

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. ”[333]

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.[334] Any restriction of access to reception centres for UNHCR would therefore be considered illegal.

There is no general rule for other third parties. Access of other organisations or individuals to reception centres can be restricted by house rules issued by the owner of the premises or by the management of

331 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/2DBL6rI.

332 Ministry of the Interior for North Rhine-Westphalia, Landesgewaltschutzkonzept für Flüchtlingseinrichtungen des Landes Nordrhein-Westfalen, March 2017, available at: https://bit.ly/2ul7CCQ.

333 Section 47(4) Asylum Act.

334 Section 9 Asylum Act.

the facilities. For instance, visits can generally be restricted to daytime hours, even for spouses in some facilities. In **Bavaria** for example, very strict visiting rules apply in some AnKER centres, whereby family members and lawyers must be announced 3 days in advance. There have also been cases in which NGOs staff or volunteers were banned from entering premises of reception or accommodation centres. In **Regensburg**, Bavaria for example, Amnesty International, the Refugee Law Clinic and Campus Asyl have access to the AnKER centre..

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. 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.

Moreover, given that the distribution of asylum seekers takes into account the capacities of the BAMF to process specific applications, people may be faced with different reception conditions due to their nationality. In Bavaria, for example, the AnkER centre of **Manching/Ingolstadt** accommodates nationals of Moldova, while nationals of Nigeria are usually accommodated in the *Dependancen* of **Garmisch** and **Munich Funkkaserne**, since their applications are processed by the BAMF in Munich. Moldovan asylum seekers are accommodated in the *Dependance* of **Schwandorf**, while Ethiopian nationals are accommodated in the **Regensburg Pionierkaserne** *Dependance*.[335]

[335] ECRE, *Report on AnkER centres*, April 2019, forthcoming.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention		
1.	Total number of asylum seekers detained in 2018:	Not available
2.	Number of asylum seekers in detention at the end of 2018:	Not available
3.	Number of pre-removal detention centres:	12
4.	Total capacity of detention centres:	598

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 a permission to stay (*Aufenthaltsgestattung*). 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 the legal status of asylum seekers, as the asylum seekers' permission to stay ceases to be valid once a deportation order becomes enforceable.[336] Accordingly, within the meaning of German law, detention is only ordered once an asylum application has been finally rejected. Therefore, detention pending deportation does not affect asylum seekers within the scope of the law.

However, it has to be noted that in Dublin cases, asylum applications are rejected without any examination of the substance of the case and applicants are referred to another Member State to carry out their asylum procedure. Detention of asylum seekers therefore occurs in Dublin cases in order to prepare the transfer to the responsible Member State. More precisely, transfers are usually preceded by arrests and police custody, which usually lasts for a very short period of time since many people are transferred on the same day. In 2018, 9,209 persons were transferred following a Dublin procedure, compared to 7,102 in 2017 (see Dublin).

Available statistics seem to confirm this assumption, as they indicate that the number of Dublin transfers preceded by detention is relatively low. For instance, the Federal State of **North Rhine-Westphalia** reported that 573 persons were held in its detention facility in Büren in the first half of 2018 for the prupose of deportation. In comparison, only 173 persons (30%) were detained following a Dublin transfer order.[337] In the Federal State of **Hamburg**, there were 101 persons in detention pending deportation in the first half of 2018, but only 12 Dublin detainees.[338] In the Federal State of **Lower Saxony**, between 1 January and 17 August 2018, only 29 persons had been detained piror to their Dublin transfer.[339] Since several Federal States do not distinguish between detention cases in Dublin procedures and detention based on other grounds, these figures do not necessarily represent the overall situation. While they show that Dublin cases account for a considerable number of detainees, they also indicate that the majority of persons in detention pending deportation are no longer asylum seekers at the time of detention.

One exception is the situation at the German-Austrian border, where detention orders seem to be ordered frequently by the Federal Police, including for Dublin cases. The available figures for these cases show that the Federal Police requested courts to issue 364 detention orders in Dublin cases between February and July 2017, of which 344 were issued by the courts.[340] In 2018, 418 Dublin

336 Section 67 Asylum Act.
337 Federal Government, Reply to parliamentary question by The Left, 19/5817, 16 November 2018, 7 and 10.
338 *Ibid*, 15 and 17.
339 *Ibid*, 12.
340 Federal Government, Reply to parliamentary question by The Left, 19/273, 14 December 2017, 27.

transfers were carried out without the concerned persons having applied for asylum in Germany. These cases were probably managed by the Federal Police, but it is not clear how many persons were detained prior to their transfer.

The number of deportations was 26,114 in 2018, compared to 23,966 in 2017, 25,375 in 2016 and 20,888 in 2015.[341] Although these figures show a rise in the number of deportations, an alleged "enforcement deficit" became the subject of a heated political debate and a "media obsession" in 2018.[342] According to media reports and statistics from the Federal Police, more than 57,000 deportations were scheduled by the authorities in 2018, but only 26,114 deportations were actually carried out. More than half of these scheduled deportations had to be cancelled because the authorities did not find the concerned persons who were supposed to be deported. However, the figures cited by the media also include cases in which deportation was aborted for other reasons (e.g. the lack of travel documents or the inability to travel for medical reasons).[343]

The alleged "enforcement deficit" was used to put pressure on the Federal States to make use of detention pending deportation. In February 2019, the Federal Ministry of the Interior announced that it had prepared a draft bill in order to increase the numbers. [344]The bill includes measures which could lead to increased detention if authorities consider that there may be a risk of absconding or if the persons concerned refuse to cooperate with the authorities. Furthermore, the Federal Ministry of the Interior proposes to make use of regular prisons for detention pending deportation.[345] At the time of writing, the bill has been presented to other departments of the government for comments and it is likely that changes will be made before it is submitted to parliament.

Specialised pre-removal detention facilities existed in eight Federal States at the beginning of 2019 (see Place of detention). [346] The capacity of these detention facilities was still relatively low at the end of 2018 and have not increased much since 2014, when the CJEU ruled that detention pending deportation must not be carried out in regular prisons (see Place of detention). The high number of deportations and the comparably low capacity of pre-removal detention facilities indicate that the vast majority of deportations and Dublin transfers are carried out within a few hours or during the same day. This enables the authorities to put persons who are obliged to leave the country in short-term custody and no formal detention order has to be issued by a court.

In 2018, several Federal States did not have pre-removal detention facilities and had therefore to transfer the concerned persons to other Federal States for that purpose. However, the Federal States of **Saxony-Anhalt** and **Schleswig-Holstein** have announced in 2018 that they plan to establish detention facilities in the near future. Others such as **Bavaria** expanded their detention capacity by opening new centres in 2018.

If an asylum application is filed after a person has been taken into detention pending deportation, this does not necessarily lead to a release and 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. There are no special rules applicable for an interview in detention and the asylum applicants have the same

341 Spiegel online, 'Mehr als die Hälfte aller Abschiebungen 2018 gescheitert', 24 February 2019, available in German at https://bit.ly/2tDb5we; Federal Government, Reply to parliamentary question by The Left, 18/7588, 18 February 2016, 18/11112, 9 February 2017, 19/800, 20 February 2018.

342 Deutsche Welle, How do deportations work in Germany?, 16 July 2018, available at: https://bit.ly/2Hhh3uM.

343 Deutsche Welle, 'More than half of deportees go missing',15 July 2018, available at: https://bit.ly/2unuSQS; Spiegel, 'Mehr als die Hälfte aller Abschiebungen 2018 gescheitert', 24 February 2019, available in German at https://bit.ly/2tDb5we.

344 Referentenentwurf für ein Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht – „Geordnete-Rückkehr-Gesetz", 13 February 2019, available in German at: https://bit.ly/2OYM5JQ.

345 Süddeutsche Zeitung, 'Darum geht es in Seehofers "Geordnete-Rückkehr-Gesetz"',15 February 2019, available in German at: https://bit.ly/2Elh3Hd.

346 Stefan Keßler, *Abschiebungshaft*, socialnet.de, 14 January 2019, available in German at: https://bit.ly/2TiNCji.

rights and obligations as any other interview carried out in a branch office of the BAMF. All interviews with detained applicants are conducted by the BAMF in person.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
   - ❖ on the territory: ☐ Yes ☒ No
   - ❖ at the border: ☐ Yes ☒ No

2. Are asylum seekers detained in practice during the Dublin procedure?
   ☐ Frequently ☒ Rarely ☐ Never

3. Are asylum seekers detained during a regular procedure in practice?
   ☐ Frequently ☐ Rarely ☒ Never

According to the 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, as 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 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.[347]

1.1. Pre-removal detention (*Abschiebungshaft*)

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.

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 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;

[347] Section 14(3) Asylum Act.

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) of the 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.

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".[348] This form of detention is limited to a period of 10 days and shall apply in cases in which a deadline for leaving the country has expired. The foreigner must further have "displayed behaviour which leads one to expect that he/she will make the deportation more difficult or impossible by continually violating his/her statutory obligation to cooperate or he/she has deceived the authorities regarding his/her identity or nationality."[349] Custody pending departure is subject to the same rules as the regular pre-removal detention procedure. A court order is therefore necessary and the detention can only be carried out in specialised facilities.[350] In 2018, custody pending departure has been carried out at the airports of **Hamburg** (8 cases in the first half of 2018),[351] **Hannover** and **Dresden** (no figures available).

1.3. *De facto* detention at the airport

Asylum seekers can be apprehended and *de facto* detained in the transit zone of an international airport. Although they are confined within the premises of a dedicated facility for the duration of the

348 Section 62b(2) Residence Act.
349 Section 62b (1) No 2 Residence Act, available at https://bit.ly/2ISa9hN.
350 Section 62b(3) Residence Act.
351 Federal Government, Reply to parliamentary question by The Left, 19/5817, 16 November 2018, 19.

airport procedure, according to the Federal Constitutional Court, being held at the transit zone is not considered as detention in terms of the law.[352]

In practice, the applicant receives a decision of placement in the facility. For example, persons placed in the detention centre of **Munich Airport** receive a "notification of residence in the airport facility" (*Bescheinigung für den Aufenthalt in der Flughafenunterkunft*) for the purpose of the airport procedure under Section 18a of the Asylum Act. This notification expressly states that this form of residence is not a freedom-restrictive measure. The fiction of non-entry into the territory is maintained, even if the person has been transferred to a hospital or to court. Police officers have to escort the person wherever he or she goes outside the facility for the fiction to be maintained.

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 pre-removal detention 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."[353]

In spite of this provision, lawyers and NGOs have frequently criticised that detention pending deportation is imposed by the responsible local courts "too often and too easily" and a high number of detention orders were overturned by higher courts upon appeal.[354] In court decisions, alternatives to detention are rarely discussed.[355]

Furthermore, the "geographical restriction" which normally applies to 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).[356] The law also contains a general provision according to which "further conditions and sanctions" may be imposed on foreigners who are obliged to leave the country.[357] In particular, these sanctions may consist of reporting duties, but also of an obligation to consult a counselling service for returnees.[358] Passports of foreigners obliged to leave the country can be

352 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.
353 Section 62(1) Residence Act.
354 Die Rechtsberaterkonferenz, *50 Forderungen zum Flüchtlings-, Aufenthalts, Staatsangehörigkeits- und Sozialrecht*, November 2017, available in German at: http://bit.ly/2HOWd2J, 32-34. See also preliminary remark of parliamentary group of The Left in Federal Government, Reply to parliamentary question by The Left, 19/5817, 16 November 2018, 2; See also the statistics of the pilot project of the Refugee Council of Lower Saxony at Judicial Review of the Detention Order.
355 Stefan Keßler, *Abschiebungshaft*, socialnet.de, 14 January 2019, available in German at: https://bit.ly/2TiNCji.
356 Section 61(1)(c) Residence Act.
357 Section 61(1)(e) Residence Act.
358 Section 46(1) General Administrative Regulations relating to the Residence Act.

confiscated.[359] The authorities may also ask foreigners who are obliged to leave the country to deposit a security to cover the costs of a possible deportation.[360] However, the law does not allow for security deposits which may be used as bail and confiscated in cases of "absconding".[361]

Responsibility for carrying out removal procedures lies with local or regional authorities or, when the person reaches the airport, with the Federal Police. Therefore, no common approach to the use of alternatives to detention could be adequately ascertained.[362]

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

According to 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 a Dublin transfer (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."

In 2017, 1,280 children were transferred to other Member States under the Dublin Regulation (which usually involves that they were taken into custody for a few hours on the day the transfer took place). In 2018, no figure were made available by the government. According to official statistics, one unaccompanied minor from Palestine was deported in 2018. Furthermore, 184 unaccompanied minors were returned to neighbouring countries after being refused entry on the territory. The immediate returns (*Zurückweisungen*) or removals (*Zurückschiebungen*) are usually preceded by an arrest and a short-term apprehension.

In response to a parliamentary question, most Federal States reported that they do not detain children as a matter of principle. According to available statistics, no children were detained between 2015 and the first half or 2018. Only the Federal State of **North Rhine-Westphalia** reported that one minor had been detained, but he was released immediately when his minority had been established.[363] As regards the reported cases of minors being detained in the State of **Lower Saxony**, it turned out to be an error, according to the regional government.[364] It is important to note, however, that statistics on detention of minors have not been provided by all Federal States for the period beteween 2015 and 2018. It should also be highlighted that Federal States which do not detain children proceed with family separations

359 Section 50(5) Residence Act.
360 Section 66(5) Residence Act.
361 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.
362 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.
363 Federal Government, Reply to parliamentary question by The Left, 19/5817, 16 November 2018, 14-15,
364 Neue Osnabrücker Zeitung, „Ministry reports false numbers on detention pending deportation", 29 November 2018, available in German at: https://bit.ly/2VDXpx5.

whereby parents are placed in detention while the child is taken into care. This is the case in **Bavaria**, for example.

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 and detain them in practice. The same applies to *de facto* detention at airport detention facilities, which is applied *inter alia* to pregnant women, victims of torture and persons with medical conditions.

4. Duration of detention

Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions):
   - ❖ Pre-removal detention — 18 months
   - ❖ Custody pending deportation — 10 days
2. In practice, how long in average are asylum seekers detained? — Not available

The maximum duration of pre-removal detention (*Abschiebungshaft*) is 6 months, subject to a possibility of extension to a total of 18 months if the person hinders removal.[365]

The maximum time limit for the duration of the custody pending departure (*Ausreisegewahrsam*) is 10 days.[366] This extension was considered necessary to make this form of detention more practicable. Nevertheless, custody pending departure is still not carried out in a widespread manner.

No systematic countrywide survey on the duration of detention is available, but Federal States provided the following data for the first half of 2018 in response to a parliamentary question:[367]

Average duration of pre-removal detention: 1 January – 30 June 2018							
	Detainees	< 2 weeks	2-6 weeks	6 weeks – 3 months	3-6 months	6-12 months	12-18 months
Bavaria	688	231	299	135	0	0	0
Berlin	6	6	0	0	0	0	0
Bremen	25	3	19	3	:	0	0
Hamburg	123	52	48	23	:	0	0
Lower Saxony	632	388	195	49	:	0	0
North Rhine-Westphalia	573	91	260	197	:	25	0
Rhineland-Palatinate	86	70	16	0	0	0	0
Saarland	31	12	13	6	0	0	0
Saxony	11	5	6	0	0	0	0
Saxony-Anhalt	36	18	16	1	1	0	0
Thuringia	6	1	5	0	0	0	0

Source: Federal Government, Response to parliamentary question by The Left, 19/5817, 16 November 2018, 14.

365 Section 62(4) Residence Act.
366 Section 62b(1) Residence Act, as amended by the Law of 20 July 2017.
367 Federal Government, Response to parliamentary question by The Left, 19/5817, 16 November 2018, 52-58.

Figures are not available in all Federal States and are not necessarily comprehensive (e.g. some states did not submit any statistics on detention between 3 to 6 months). The figures are further not always in line with available data on the number of detainees reported elsewhere in the same parliamentary response.[368] Nevertheless, they show that detention for a period of less than six weeks seems to be the rule, while cases of detention lasting longer than 6 months seem to be exceptional; only recorded in the Federal State of **North Rhine-Westphalia**.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☐ Yes ☒ No

2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☐ Yes ☒ No

1.1. Pre-removal detention centres

According to the law, detention shall take place in specialised detention facilities.[369] 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,[370] 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.

To this day, several pre-removal detention centres are former prisons turned into specialised facilities e.g. **Büren** in North Rhine-Westphalia, **Eichstätt** and **Erding** in Bavaria.

368 Information on number of detainees in the first half of 2018 deviates, for example, for the Federal States of Bavaria, Lower Saxony and Rhineland-Palatinate.

369 Section 62a(1) Residence Act.

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

At the end of 2018, facilities for detention pending deportation existed in nine Federal States:

Pre-removal detention facilities in Germany		
Federal State	Location	Maximum capacity
Baden-Württemberg	Pforzheim	36
Bavaria	Eichstätt	96
	Erding	35
	Munich Airport (“Hangar 3”)	30
Bremen	Bremen	20
Hamburg	Hamburg Airport	20
Hesse	Darmstadt-Eberstadt	20
	Frankfurt Airport	:
Lower Saxony	Hannover (Langenhagen)	68
North Rhine-Westphalia	Büren	175
Rhineland-Palatinate	Ingelheim am Rhein	40
Saxony	Dresden	58
Total	**12**	**598**

Source: Stefan Keßler, Abschiebungshaft, socialnet.de, 14 January 2019, available in German at: https://bit.ly/2TiNCji.

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 2018. Further pre-removal detention facilities are under construction in Hof and Passau in **Bavaria**, Dessau-Roßlau in **Saxony-Anhalt** and Glückstadt in **Schleswig-Holstein**.[371]

In addition, the Federal State of Berlin has established a specialised facility for “persons posing a risk” only (“*Gefährder*”, i.e. terrorist suspects) with a capacity of 8 to 10 places.

As regards custody pending deportation under Section 62b of the Residence Act, the pre-removal detention facilities existing in **Dresden**, **Hamburg**, and **Hannover-Langenhagen** are used for that purpose.[372]

1.2. Airport detention facilities

As mentioned in Grounds for Detention, asylum seekers subject to the airport procedure are *de facto* detained in facilities near the airport, as their stay is not legally considered to be deprivation of liberty. Since such facilities are managed by the different Federal States, they can differ in typology and even in name.[373]

For example, the airport detention facility at **Frankfurt Airport**, located in the the “Cargo City Süd”, a large complex of buildings in a restricted area near the airport, is entitled “initial reception centre” (*Erstaufnahmeeinrichtung*). The centre has a maximum capacity of 105 places. On the other hand, the facility at **Munich Airport** is located in the “visitors’ park” (*Besucherpark*) of the airport and its denomination is “airport facility” (*Flughafenunterkunft*).

371 Stefan Keßler, Abschiebungshaft, socialnet.de, 14 January 2019, available in German at: https://bit.ly/2TiNCji.

372 Stefan Keßler, Abschiebungshaft, socialnet.de, 14 January 2019, available in German at: https://bit.ly/2TiNCji.

373 ECRE, *Report on border procedures*, May 2019, forthcoming.

Detention facilities used for the airport procedure are not to be confused with pre-removal detention centres which may be located close to the airport e.g. **Munich Airport Hangar 3**.

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.[374] The Federal States are responsible for the organisation of these detention facilities.

The competent authorities for the management of the centres are the prison authorities under the Ministry of Justice or the (regional) police authorities. Therefore, members of staff are usually either prison staff or police officers or employees of the administrative part of the police or the prison services. By way of exception, the **Munich Airport Hangar 3** detention centre opened in September 2018 is directly managed by the newly funded Bavarian State Office for Asylum and Returns (*Bayerisches Landesamt für Asyl und Rückführungen*). No centre is managed by external companies but, in some cases e.g. **Munich Airport Hangar 3**, the authorities cooperate with private security companies to take over certain tasks.

As facilities vary greatly in terms of size and equipment, it is not possible to describe the overall conditions in the detention centres. The paragraphs below describe the situation of a few institutions only and do not claim to provide a comprehensive overview of the detention conditions in Germany:

Darmstadt-Eberstadt, Hesse: The facility was opened at the beginning of 2018 and only few reports about the conditions have been published. Right before the facility started operating, the State Parliament passed a law which sets out some basic principles for the facility.[375] These include the following: (a) Detainees are allowed to move freely within the facility during the day and they shall have access to open-air spaces. Restrictions of movement shall be possible only to uphold security and order in the facility; (b) The facility shall make all possible efforts to provide rooms and opportunities for spare time activities and also for work (which should be remunerated);

In June 2018, local activists accused the staff of the facility of brutality against detainees. They claimed that “ill-treatment, restraining of detainees and incommunicado detention” were “commonplace” at the facility. Authorities rejected these allegations and claimed that isolated incidents had been generalised and exaggerated by local activists. According to a police spokeswoman, physical violence had only been used in one case when a baton and pepper spray were employed to restrain a detainee.[376]

Büren, North Rhine-Westphalia: In January 2018, the facility of Büren was visited by the National Agency for the Prevention of Torture, an independent body monitoring places of detention in order to prevent violations of the UN Convention Against Torture. The National Agency published a report on 30 October 2018 in which it severely criticised the detention conditions in Büren.[377] Following issues were raised:

- “Restrictive basic approach”: The staff reported that a number of criminals and “persons posing a risk” (i.e. terrorist suspects) were amongst the detainees and they stated they did not have

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

375 Official Gazette for the Federal State of Hesse, Gesetz über den Vollzug ausländerrechtlicher Freiheitsentziehungsmaßnahmen(VaFG), 18 December 2017, available at: https://bit.ly/2Cael74.

376 Wiesbadener Tagblatt, ‚Critics of the detention centre in Darmstadt-Eberstadt – the police rejects allegations‘, available in German at https://bit.ly/2ITG4hW.

377 Nationale Stelle zur Verhütung von Folter. Unterbringungseinrichtung für Ausreisepflichtige Büren, Besuch vom 24./25. Januar 2018, available in German at https://bit.ly/2CQ6Bbl.

sufficient information on the possible risks that detainees might pose. According to the National Agency this has resulted in an extension of restrictive measures affecting all detainees. For instance, as opposed to the previous years, detainees were generally locked in their cells not only at night but also from 7 a.m. to 2 p.m. When they were allowed to leave their cells, the areas of the facility in which they were allowed to move freely were restricted. The National Agency noted that "a remarkable high number" of "special security measures" were in place at the Büren facility in comparison to the pre-removal detention facilities of other Federal States. The report concludes that the detention regime that is applied in Büren has become similar to the regime that is applied in a regular penal prison.

- At the time of the visit, several detainees, including two persons considered to be "persons posing a risk" (i.e. terrorist suspects), were kept in solitary confinement cells which are designed as regular prison cells. The National Agency highlighted that the current existing regulations for solitary confinement in the regular prison system cannot be applied to pre-removal detention facilities. Accordingly, the report concluded that the solitary confinement of the Büren facility did not have a legal basis in the Federal State's legislation.

- The National Agency also expressed concerns regarding the special security measures that are applied, as they are not based on a thorough individual assessment and do not offer sufficient safeguards to comply with the principles of necessity and proportionality.

- Other points raised in the National Agency's report related to the lack of privacy, the lack of psychological care and the lack of documentation of a case in which a detainee has been physically restrained.

The government of the Federal State of North Rhine-Westphalia had been given the opportunity to comment on the report's findings before its publication.[378] In that context, the government announced that some measures were taken to raise awareness of the facility's staff, but it rejected the report's allegations according to which special security measures had no legal basis or were disproportionate.

In December 2018, the regional parliament of North Rhine-Westphalia adopted a series of amendments to the Federal State's law on the enforcement of detention pending deportation.[379] The most important amendment consists of a detailed list of "regulatory measures", ranging from a temporary limitation or deprivation of the use of internet, TV and mobile phones to temporary limitations or suspension of freedom of movement within the facility (Section 19). Another new section of the law regulates "accommodation in special cases", which refers to persons considered to pose a risk and to which limitations can be imposed without any time-limit (Section 20). Furthermore, the use of mobile phones with a camera function was banned.

In a statement submitted to a parliamentary committee, the Refugee Council of North Rhine-Westphalia highlighted that the new restrictions are very similar to the applicable restrictions in the regular prison system.[380] The support group "Hilfe für Menschen in Abschiebehaft Büren" shared this view and further criticised that complaint mechanisms and legal measures to challenge these new security measures were insufficient.[381]

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378 Ministerium für Kinder, Familie, Flüchtlinge und Integration des Landes Nordrhein-Westfalen, Statement of 28 September 2018, available in German at: https://bit.ly/2EUuxgn.

379 Gesetz- und Verordnungsblatt des Landes Nordrhein-Westfalen (GV. NRW.), Ausgabe 2018, 18 December 2018, No. 32, 770, available in German at: https://bit.ly/2H2pmLu.

380 Flüchtlingsrat Nordrhein-Westfalen, Stellungnahme: Referentenentwurf Gesetz zur Änderung des Abschiebungshaftvollzugsgesetzes Nordrhein-Westfalen, 9 August 2018, available in German at https://bit.ly/2XxduGq.

381 Hilfe für Menschen in Abschiebehaft Büren, Stellungnahme zur Anhörung zum Abschiebungshaftvollzugsgesetz, 7 November 2018, available in German at https://bit.ly/2UmjGiG.

Pforzheim Baden-Württemberg: Upon the opening of a new detention facility in Pforzheim in April 2016, the authorities of the Federal State of Baden-Württemberg claimed that efforts had been made to minimise the resemblance of the facility with a regular prison. The detention conditions of the facility were described in a 2016 press release as follows: "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."[382]

Hannover-Langenhagen, Lower Saxony: The facility at Hannover-Langenhagen in the Federal State of Lower Saxony was referred to as a "prison of open doors" in a newspaper article in February 2015: "Conditions have changed drastically in recent months… [At the time of the report] six people were interned at the facility. Maximum duration of stay is six weeks. Each inmate has a room of his/her own… Each room has a TV set, a shelf, a wardrobe and a desk… Inmates often prepare their meals together. The door to the small kitchen is always open, like all other doors. The refugees decide on their own what is on the menu and they are allowed to request certain products… Pastoral care is available for all religions as well as social and psychological care or contact to the refugee council, if necessary."[383]

Given the considerable rise of detainees, media reports suggested that tensions in the facility had increased in the first half of 2018. The allegations according to which detainees had been ill-treated were dismissed by the authorities and could not be corroborated by the investigation of the public prosecutor.[384] In response to a parliamentary request, the regional government of Lower Saxony reported in January 2019 that, upon request of the authorities of another Federal State, a pregnant woman had been detained at the facility Hannover-Langenhagen in September 2018.[385] The regional government stated that it had reminded authorities of existing regulations, according to which vulnerable persons, including pregnant women, should not be detained.[386]

Ingelheim, Rhineland-Palatinate: Restrictive measures were introduced in the facility in 2018, including longer periods during which detainees are locked in their cells, more video surveillance and the erection of a higher fence with barbed wire.[387]

Eichstätt, Bavaria: The pre-removal detention centre (*Einrichtung für Abschiebungschaft*) of Eichstätt was converted from a prison, open since 1900, to a dedicated facility in 2016. Male and female quarters are separate. The female quarters are supervised by female security guards only. The living units are divided into rooms, including single rooms and rooms with a number of beds. There are common showers, in which detainees also do their own laundry. People are generally free to move within the facility, except during lunch and dinner. During lunch (starting 11:15 and until 13:00) and dinner, the men are locked in their rooms (a head count also takes place during dinner). Women are not locked in their rooms.

Self-harm is frequent, usually to prevent removal. Tensions were frequent but have reduced since the opening of additional detention facilities in Bavaria in 2018. Disciplinary measures can be taken if a person violates rules e.g. withdrawal of shopping rights, access to television etc. in accordance with

382 Federal State of Baden-Württemberg, 'Abschiebungshafteinrichtung in Pforzheim nimmt Betrieb auf', 1 April 2016, available in German at: http://bit.ly/2muUed9.

383 Neue Presse, 'Das Gefängnis der offenen Türen', February 2015, available in German at: http://bit.ly/2malquR.

384 Hannoversche Allgemeine Zeitung, ‚Abschiebehaft Langenhagen: Keine Belege für Misshandlung', 2 July 2018, available in German at: https://bit.ly/2SJK44f.

385 Niedersächsischer Landtag, Drucksache 18/2525, 9 January 2019.

386 Regional Ministry of the Interior Lower Saxony, Rechtliche Hinweise und verfahrensmäßige Vorgaben zur Organisation und Durchführung des Rückführungs- und Rücküberstellungsvollzugs (Abschiebung) und zur Beantragung von Abschiebungshaft (Rückführungserlass), 24 August 2016, available at https://bit.ly/2A8yqca.

387 Pro Asyl, ‚Haft ohne Straftat: Abschiebungshaft ist häufig rechtswidrig', 1. June 2018, available in German at: https://bit.ly/2UofcYM.

prison rules. Detainees can also be isolated for a certain period of time, for their own safety. However, where isolation is used, it is for very short periods of time.[388]

Munich Airport Hangar 3, Bavaria: "Hangar 3" was inaugurated on 10 September 2018 under a temporary contract running until 31 December 2019. The facility only hosts adult men. The detention centre is located inside a large hangar, previously used by Air Berlin for reparaing Airbus planes. The facility is surrounded by a 4-meter fenced with barber wire on the top, resembling a cage, inside the hangar.The living units are organised in blue containers and each set of containers is surrounded by a second fence within the fenced facility in the hangar. Immediately next to the hangar (at the front) there is a small open air space, again surrounded by a high fence. Detainees can access at any time of the day under escort, as the open air area needs is locked by key. Within the open space area there is one blue container which is completely empty.

There are 21 container rooms with two beds per container and a separate room for the toilet and showers. All container windows have metal bars. The container rooms have a picture of the detainee and his name on the front door. The showers and toilets were in good condition and clean during a visit of ECRE in April 2019. The policy of the management is to accommodate one person per container, but according to the social worker, whenever there is a fear or indication of possible self-harm they try to have such person accompanied by another detainee. The container rooms all have two beds.

In the middle of the facility, there is a common area with metal benches and tables, ping pong and baby soccer tables, a chess board, and a common room (container) with a small TV and a table without chairs and no decorations. A number of books are also available. The common area is open from 09:00 to 21:00. There are no other leisure activities available and people cannot purchase anything during their stay in the Hangar 3, given that detention is usually short. Anything they require e.g. cigarettes is provided to them if they so request.[389]

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

❖ Lawyers:	☒ Yes	☐ Limited	☐ No
❖ NGOs:	☐ Yes	☒ Limited	☐ No
❖ UNHCR:	☒ Yes	☐ Limited	☐ No
❖ Family members:	☐ Yes	☒ Limited	☐ No

3.1. Access to pre-removal detention centres

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." Access of NGOs to detention centres varies in practice:

Hannover-Langenhagen, Lower Saxony: Since August 2016, as part of a pilot project, the Refugee Council of Lower Saxony offers an independent advice service in the detention facility. This project was financed by the Federal State until summer 2018, but it is now financed by the welfare organisation Diakonisches Werk.[390]

Büren, North Rhine-Westphalia: The support group Hilfe für Menschen in Abschiebehaft Büren" reported in January 2018 that the general access to the detention centre, as well as the access to

388 ECRE, *Report on AnkER centres*, April 2019, forthcoming.
389 *Ibid*.
390 Flüchtlingsrat Niedersachsen, Press release of 5 December 2018, available in German at: https://bit.ly/2IVPcTk.

certain particular detainees, was "massively impeded" by the authorities.[391] The group reiterated its criticism in a statement to a parliamentary committee in November 2018.[392]

Pforzheim, Baden-Württemberg: Several welfare organisations are offering independent counselling services to detainees in the facility.[393]

Darmstadt-Eberstadt, Hesse: According to the law which sets out basic principles for the facility,[394] individuals are not allowed to use mobile phones with a camera function but should be allowed to make phone calls, receive and send letters, read books and papers, watch TV and listen to radio. However they have to pay for these services themselves if costs arise. Visitors are allowed during visiting hours, while lawyers and consular representatives may visit at all times.

Eichstätt, Bavaria: Amnesty International volunteers and the Jesuit Refugee Service visit the detention centre. Detainees are informed when the NGOs are present in the facility through announcements through the intercom. Moreover, every person is given a mobile phone without camera upon arrival, and has an allowance of 30 minutes per day for calls with numbers notified to the management of the centre. Calls with lawyers are exempted from the 30-minute rule.[395]

Munich Airport Hangar 3, Bavaria: The Munich Refugee Council has asked for permission to access the facilities on a weekly basis, but permission has not been granted yet. If detainees do not have a lawyer and want one, they can contact a lawyer by phone. There are 3 phones available for the detainees, which they can use for free for 30 minutes per day. However, no lists of lawyers who can be contacted seem to be available to the detainees. Lawyers can access the facility but have to announce their arrival in advance.[396]

3.2. Access to airport detention facilities

Access to airport detention facilities is also regulated by the relevant Federal State and is often difficult due to their location. At the "initial reception centre" (*Erstaufnahmeeinrichtung*) of **Frankfurt/Main Airport**, for example, the centre is located in a restricted area of the airport cargo. The Church Refugee Service (*Kirchlicher Flüchtlingsdienst am Flughafen*) run by Diakonie is present in the facility and provides psychosocial assistance to asylum seekers in the airport procedure, as well as reaching out to lawyers depending on available capacity.

At the "airport facility" (*Flughafenunterkunft*) of **Munich Airport**, the Church Service (*Kirchliche Dienste*) has access but no permanent presence in the premises; staff of the service travel thereto from the airport terminal based on need.[397]

391 Hilfe für Menschen in Abschiebehaft Büren, 'Schwere Menschenrechtsverletzungen in der Abschiebehaft Büren', 24 January 2018, available in German at: https://bit.ly/2pYgn3k.
392 Hilfe für Menschen in Abschiebehaft Büren, 'Stellungnahme zur Anhörung zum Abschiebungshaftvollzugsgesetz', 7 November 2018, available in German at: https://bit.ly/2UmjGiG.
393 For more information: https://bit.ly/2XAWPC5.
394 Official Gazette for the Federal State of Hesse, Gesetz über den Vollzug ausländerrechtlicher Freiheitsentziehungsmaßnahmen(VaFG), 18 December 2017, available at: https://bit.ly/2Cael74.
395 ECRE, *Report on AnkER centres*, April 2019, forthcoming.
396 *Ibid*.
397 ECRE, *Report on border procedures*, May 2019, forthcoming.

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?	☒ Yes	☐ 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.[398] Case law also states that the foreigner shall have sufficient time to prepare an answer to the content of the authorities' request. This means that it can be sufficient to hand out the request immediately before the hearing if the content is simple and easily understandable. In other cases, if the content is more complicated, it can be necessary that the foreigner is handed out the authorities' request in advance of the hearing.[399] 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.[400] 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.[401]

Other sources agree that local courts often do not sufficiently examine if the detention order is necessary and proportionate and it has been further reported that basic procedural standards were sometimes violated.[402] The Federal Supreme Court has therefore frequently ruled such detention orders

398 Federal Supreme Court, Decision V ZB 67/12, 18 April 2013.
399 Federal Supreme Court, Decision V ZB 141/11, 1 July 2011.
400 This is a recurrent concern. See Peter Fahlbusch, *Haft in Verfahren nach der Dublin II-Verordnung*, Asylmagazin 9/2010, 289-295.
401 Die Rechtsberaterkonferenz, *50 Forderungen zum Flüchtlings-, Aufenthalts, Staatsangehörigkeits- und Sozialrecht*, November 2017, available in German at: http://bit.ly/2HOWd2J, 32-34.
402 Stefan Keßler, *Abschiebungshaft*, socialnet.de, 14 January 2019, available in German at: https://bit.ly/2TiNCji.

as unlawful. Recent decisions of the Federal Supreme Court in which a detention order was ruled unlawful include cases where:

- A lawyer was not given the opportunity to attend a hearing;[403]
- The authorities were not able to justify the necessity and the proportionality of a 21 days pre-removal detention period;[404]
- The court had wrongfully assumed that a delay in presenting identity documents was in itself constituting a "risk of absconding".[405]

Dozens of other court decisions collected in 2018 in the case law database of asyl.net also demonstrate that court orders issued by local courts for detention pending deportation are frequently overturned by higher courts.[406]

The lawyer Peter Fahlbusch (from Hannover) has published statistics on the cases that were represented by his law firm. According to these numbers, half of the detention orders that had been issued by local courts had been overturned in further proceedings from 2011 to 15 November 2018. This concerned 1,675 cases and affected 832 persons who had been detained between one day and several months on grounds which were later found to be insufficient.[407]

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.[408] The Constitutional Court ruled in a recent case that barriers to a lawyer's access to Eichstätt, where the management of the centre advised her that the next available slot to contact her client was the day of deportation, were unconstitutional.[409]

However, 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.

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.

403 Federal Supreme Court, Decision V ZB 79/18, 6 December 2018, available in German at: https://bit.ly/2EQAPeO.
404 Federal Supreme Court, Decision V ZB 54/18, 22 November 2018, available in German at: https://bit.ly/2IWq4vP.
405 Federal Supreme Court, Decision V ZB 151/17, 13 September 2018, available in German at: https://bit.ly/2SL9wqg.
406 A collection of the most important court decisions in that regard can be found in German at: https://bit.ly/2HieAjB.
407 Statistics by Peter Fahlbusch, quoted in Stefan Keßler, *Abschiebungshaft*, socialnet.de, 14 January 2019, available in German at: https://bit.ly/2TiNCji.
408 Section 14(3) Asylum Act.
409 Federal Constitutional Court, Decision 2 BvQ 45/18, 22 May 2018.

Content of International Protection

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.[410] Therefore, residence permits have to be renewed as long as the reasons which have led to the first issuance persist. The refugee status, the subsidiary protection, and 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.[411]

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.[412]

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 permission to stay

410 Section 8(1) Residence Act.
411 Sections 73a to 73c Residence Act.
412 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.

(*Aufenthaltsgestattung*) in 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.[413]

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":[414]

- 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.[415] 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.[416]

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 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

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

414 Humboldt Law Clinic Grund- und Menschenrechte, *Geboren, registriert – und dann? Probleme bei der Geburtenregistrierung von Flüchtlingskindern in Deutschland und deren Folgen,* Working Paper 16/2018.

415 *Ibid*, 18.

416 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.

from the Humboldt Law Clinic refer to the following problems which have been reported in the course of 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.[417] 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.[418]

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.[419]

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:[420]

- 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.

417 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.

418 Deutsches Institut für Menschenrechte, Keine Papiere – keine Geburtsurkunde? Empfehlungen für die Registrierung von in Deutschland geborenen Kindern Geflüchteter, December 2018, available in German at: https://bit.ly/2FJynpL.

419 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.

420 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 2018:	Not available

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.[421]

- After three years, persons with refugee status can be granted a *Niederlassungserlaubnis* if they have become "outstandingly integrated" into society.[422] 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;[423]

- 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.

Under these provisions of the Residence Act, 1,807 persons were granted a *Niederlassungserlaubnis* in 2018.[424]

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"[425] 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.[426] Now the *Niederlassungserlaubnis* shall always be granted as long as the local authorities do *not* receive a notification from the BAMF.

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.[427] However, they have to meet all the legal requirements for the *Niederlassungserlaubnis*,[428] 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

421 Section 26(3) Residence Act.
422 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.
423 Section 26(3) Residence Act
424 Federal Government, Response to parliamentary question by The Left, 19/8258, 12 March 2019, 47.
425 Within this procedure the BAMF has to decide whether a proper revocation procedure is initiated or not.
426 BAMF, 'Neue Rechtslage: Widerrufsprüfung ändert sich', 13 August 2015, available in German at: http://bit.ly/2mrAkM1.
427 Section 26(4) Residence Act.
428 Section 9 Residence Act.

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

A total of 5,731 permanent residence permits were issued in 2018 based on this general provision, but the statistics do not indicate how many were issued spefically to persons with a protection or a humanitarian status.[429]

4. Naturalisation

Indicators: Naturalisation	
1. What is the waiting period for obtaining citizenship?	8 years
2. Number of citizenship grants to beneficiaries in 2018:	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:[430]

- 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 2017 and concerned around 112,000 persons, without differentiating between different residence and/or protection statuses.[431] The countries of origin of persons granted citizenship suggest that only a comparably small number of them were beneficiaries of international protection (e.g. 3,480 former Iraqi nationals, 2,689 former Iranian nationals, 2,400 former Afghan nationals).

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

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

431 Federal Statistical Office, "Einbürgerungen 2017 um 1,7 % gestiegen", 23 May 2018, available in German at: https://bit.ly/2OHp2Dd.

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.[432] This is not necessary anymore, so the BAMF can now summarily decide not to initiate revocation procedures for certain groups of refugees (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".[433] 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.[434] Case law has established that trauma or mental disorders which result from persecution constitute compelling reasons within the meaning of this provision.[435]

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.

As a consequence of the new legislation which has entered into force in December 2018, refugees (and persons with other protection statuses) are now forced to cooperate fully with authorities in revocation and withdrawal procedures. Prior to December 2018, refugees were notified if a revocation or withdrawal procedure had been initiated and were given the opportunity to submit a written reply. The new law now authorises the BAMF to impose obligations that are very similar to the obligations that apply during the asylum procedure. This includes:

- Obligation to attend a hearing (personal attendance is necessary, so representation by a lawyer is usually not sufficient),
- Obligation to cooperate with the authorities in clarifying identities (including obligation to hand over identity documents or other certificates);
- Obligation to undergo other identification measures to clarify identities (especially photographs and fingerprints);
- Obligation to accept storage of personal data by German authorities (in particular the Federal Criminal Police Office) and to accept transfer of data to other authorities both inside and outside Germany.[436]

The law expressly states that these measures have to be necessary and should be carried out only if the concerned person can be reasonably expected to undergo these measures. This is an important limitation as it is common sense that refugees and other beneficiaries of protection can not be expected to approach the authorities of their country of origin, i.e that they cannot obtain passports or other identification documents at embassies of their home country.

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

433 Section 73(1) Asylum Act.

434 Section 73(1) Asylum Act.

435 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.

436 Michael Kalkmann, 'Das Gesetz zur Einführung der Mitwirkungspflicht in Widerrufsverfahren', Asylmagazin 1-2/2019, 6.

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 lawyers 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 protection 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**.

Since 2017, the BAMF has initiated almost 270,000 "revocation examination procedures" or "revocation tests" (*Widerrufsprüfverfahren*), i.e. preliminary examinations on whether a formal revocation is to be carried out or not.[437]

This represents a dramatic increase in comparison to the years prior to 2017, when only a few thousand "revocation examination procedures" were initiated each year. The increase since 2017 was triggered by 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 public prosecutors, Franco A. had assumed the fake identity in order to shift responsibility for the planned attacks on refugees.[438] However, the High Regional Court of Frankfurt (Main) declined in August 2018 to initiate procedures against Franco A. on the ground of "preparation of a terrorist attack" because of a lack of sufficient evidence. If this decision is upheld by the Federal Supreme Court, the trial against Franco A. will be held at a lower court on minor charges.[439]

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.[440]

In 2018, re-examinations of asylum cases also took place following the so-called "BAMF scandal". In April 2018, it was reported that six staff members of the Bremen branch office of the BAMF, including the head of the office, were under investigation for corruption. The branch office had allegedly taken over up to 1,200 asylum cases for which it was not responsible and protection statuses had been

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

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

439 Spiegel Online, Bundesanwaltschaft beharrt auf Terrorverdacht im Fall Franco A., 20 June 2018, available in German at: https://bit.ly/2K5fJ1d.

440 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.

illegally granted. However, the results of the internal investigation carried out by the BAMF later demonstrated that the "scandal" had been largely overestimated. Although it was confirmed that the branch office had been entitled to take over cases from other regions, internal auditors had to retract a substantial part of the allegations they had made at the beginning of the investigation. In August 2018, results from the internal investigation were made public and showed that only 195 out of 18,300 audited decisions were considered to be seriously flawed.[441] Nevertheless, the "BAMF scandal" has largely triggered the increase of "revocation examination procedures".

While in 2017 there were 77,106 procedures initiated, this number increased to 192,664 procedures in 2018.[442] Likewise, the BAMF decided over 85,502 revocation examination procedures in 2018, compared to only 2,527 decisions in 2017. However, in 99% of these cases, the BAMF found no reason to revoke or withdraw the protection statuses:

Outcome of revocation examination procedures in 2018	
Revocation or withdrawal of protection status	761 (0.9%)
Revocation/withdrawal of prohibition of deportation	221 (0.3%)
No revocation or withdrawal	84,070 (98.8%)
Total	**85,502**

Source: BAMF, Asylgeschäftsbericht (monthly asylum report) December 2018, available in German at: https://bit.ly/2T3P04i, 8.

At the end of 2018, 183,332 revocation examination procedures were pending at the BAMF.

While cases of Syrians (53,541 decisions) and Iraqis (11,590) were predominantly re-examined in 2018, the overwhelming number of procedures did not result in the revocation or withdrawal of protection. The cessation clause has not been systematically applied to refugees from Syria or Iraq or to other groups of beneficiaries of protection.

Decisions on revocation of status per nationality: 2018					
Country	Refugee status revocation	Subsidiary protection revocation	National protection revocation	No revocation	Total
Syria	253	70	29	53,189	53,541
Iraq	154	33	14	11,389	11,590
Afghanistan	16	13	81	4,757	4,867
Eritrea	14	5	0	3,602	3,621
Undefined	16	8	2	3,119	3,145
Iran	13	1	2	1,773	1,789
Stateless	3	2	0	1,144	1,149
Somamia	7	8	3	1,153	1,171
Total	**577**	**184**	**221**	**84,079**	**85,052**

Source: Federal Government, Response to parliamentary question By The Left, 19/1217, 15 March 2018, 3.

In 2018, 19 appeals against revocation or withdrawal decisions by the BAMF were successful (12.6%), which is similar to the year 2017 (12.2% successful appeals). In 56 cases (37.1%), the BAMF decision to withdraw or revoke a protection status was upheld by the courts, and 76 (50.3%) of appeal

441 Deutsche Welle, Bremen migration office scandal much smaller than first thought, available at https://bit.ly/2WNXlvk.

442 BAMF, Asylgeschäftsbericht (monthly asylum report) December 2018, available at: https://bit.ly/2T3P04i, 8.

procedures were abandoned, e.g. because the appeal was withdrawn by the claimant, or because a settlement out of court took place.[443]

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.

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

[443] Federal Government, Response to parliamentary question by The Left, 19/8701, 25 March 2019, 47; 19/1371, 22 March 2018, 41.

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.[444] 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.[445] For family reunification of spouses, a further requirement is that both spouses have to be at least 18 years of age.[446]

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.[447]

Family reunification had been suspended for those beneficiaries of **subsidiary protection** who have been granted the residence permit based on this status after 17 March 2016,[448] until July 2018.[449] 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]."[450]

A new law of 16 March 2018 has abolished the right to family reunification for beneficiaries of subsidiary protection as of August 2018. Instead, the right to family reunification has been replaced with a provision[451] according to which 1,000 relatives shall be granted a visa to enter Germany each month.[452] This means that the privileged conditions that apply to family reunification have effectively been abolished for beneficiaries of subsidiary protection and have been replaced with a "humanitarian clause" which places family reunification at the discretion of the authorities.

444 Section 29(2)(1) Residence Act.
445 Sections 27(3) and 29 Residence Act.
446 Section 30(1)(1) Residence Act.
447 Section 30(1)(1) Residence Act.
448 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.
449 Section 104(13) Residence Act, as amended by the Law of 8 March 2018.
450 Federal Government, Response to parliamentary question by The Left, No 18/9992, 17 October 2016, 5.
451 Section 36a Residence Act.
452 Section 104(13) Residence Act.

Under the new Section 36a of the Residence Act, only members of the "immediate family" (spouses, registered partners, minor unmarried children, parents of unaccompanied children) are eligible for family reunification under the new provision. In order to be included in the monthly quota of 1,000 visa, "humanitarian reasons" shall be decisive, which are listed in the new law as follows:

- Long duration of separation of family members,
- Separation of families with at least one (minor) unmarried child,
- Serious risks to life, limb or personal freedom of a family member living abroad,
- Serious illness, need for care or serious disabilities of a family member living abroad.

In addition, welfare of the child and "integration aspects" (e.g. language skills, ability to provide for means of living) may be taken into account.[453]

The monthly quota for visa has not been reached in 2018, due to a complicated procedure involving three different authorities: 2,612 visa were granted to family members of beneficiaries of subsidiary protection in the period between August and December 2018, which means that only 52% of visa which could possibly have been granted under the law were issued. Numbers improved at the beginning of 2019, with 1,096 visa being granted in January 2019.[454] The government also reported that 36,000 appointments at embassies had been requested for the purpose of family reunification with beneficiaries of subsidiary protection. Since it is likely that many persons have asked for appointments several times, the actual number of persons applying for visa for this purpose is likely to be lower.[455] Nevertheless, the figures show that some family members of beneficiaries of subsidiary protection are facing a waiting period of more than two years, even if the monthly quota of 1,000 visa is fully used from now on.

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"). Around 10,000 upgrade-appeals were successful in 2018, with Administrative Courts granting asylum or refugee status. In around 26,500 cases upgrade-appeals were rejected by Administrative Courts or procedures were abandoned for other reasons (settlement out of court and/or withdrawal of appeal; see Differential Treatment of Specific Nationalities in the Procedure). 40,053 cases of such appeals were pending at the end of 2018.[456]

Concerning family reunification for persons with **refugee status**, one of the ongoing developments in 2018 included the progressive abolition of regional programmes for Syrian refugees. At the time of writing, only the states of **Berlin** (until 31 December 2019) and **Thuringia** (until 31 December 2020) still have ongoing regional programmes for family reunification to Syrian refugees.[457] Another substantial 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 can take several months to get an appointment at the German representations in the neighbouring countries.

As regards the number of visas granted for family reunification purposes, it decreased significantly in 2018: while in the first half of 2017, 31,247 of these visas had been granted for nationals of some of the main countries of origin of refugees (Syria, Iraq, Afghanistan, Iran, Eritrea, Yemen), only 18,451 visas were granted during the first half of 2018.[458]

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453 Detailed information on the legal requirements and the procedure can be found at: https://familie.asyl.net.

454 Federal Government, Reply to oral question by The Left, 20 February 2019, 9611.

455 *Ibid.*

456 Federal Government, Replies to parliamentary questions by The Left, 19/8701, 25 March 2019, 53-58, 19/1371, 22 March 2018, 44.

457 An overview of regional programmes can be found at: http://resettlement.de/aktuelle-aufnahmen/.

458 Migazin.de, Familiennachzug zu Flüchtlingen deutlich weniger als „Hunderttausende", 18 July 2018, available in German at: https://bit.ly/2uYf8DC .

The German embassy in Kabul was closed after being severely damaged in an attack on 31 March 2017. The embassy had only been exceptionally reopened at the end of 2018 but it was still not possible to apply for visas for family reunification purposes. Applications for visa for family reunification purposes have to be submitted to one of the German embassies in India or in Pakistan.[459]

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.[460]

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.[461] 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.[462]

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.[463]

Furthermore, authorities can impose further restrictions and oblige beneficiaries to take up a place of residence in a specific municipality within the Federal State. This obligation is now applied in eight Federal States: **Bavaria**, **Baden-Württemberg**, **North Rhine-Westphalia**, **Hesse**, **Saarland**, **Saxony** and **Saxony-Anhalt**. Furthermore, the Federal States of **Lower Saxony** and **Rhineland-Palatinate** introduced "negative" regulations according to which refugees can be asked *not* to move to certain municipalities. This regulation is effective for three towns in **Lower Saxony** (Salzgitter, Delmenhorst and Wilhemshaven) and one in **Rhineland-Palatinate** (Pirmasens) which are faced with structural economic difficulties and already house a comparably high number of migrants and refugees. The "city states"

459 Informationsverbund Asyl und Migration, 'Bearbeitung von Visaanträgen afghanischer Staatsangehöriger', available in German at: http://bit.ly/2GfN3zh.
460 Section 26(5) Asylum Act.
461 Section 27(4) Residence Act.
462 Section 31 Residence Act.
463 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.

(Berlin, Hamburg, Bremen) and several smaller Federal States (**Brandenburg**, **Mecklenburg-Vorpommern**, **Schleswig-Holstein**, **Thuringia**) have not introduced any further obligations.[464]

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.[465]

According to the official explanatory memorandum, the residence rule is supposed to promote sustainable integration by preventing segregation of communities.[466] However, it has been questioned whether the way in which the provision has been put into effect is suitable for achieving the intended aim.[467] 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.[468]

In a ruling of 4 September 2018, the High Administrative Court of North Rhine-Westphalia decided that the Federal State's regulation on the residence obligation for refugees was illegal. According to the court, the wording of the directive was too restrictive as it stated that refugees "should, as a rule" be obliged to reside in the town or district to which they had been accommodated during the asylum procedure.[469] Although the decision is restricted to North Rhine-Westphalia, it highlights that authorities have to conduct an individual assessment to determine whether a residence obligation is useful „to enhance the prospects of a sustainable integration". The ruling may therefore have an impact in other Federal States in the future.[470]

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 standards[471] and therefore has to include a storage medium with the facial image, fingerprints etc.[472]

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464 Melina Lehrian, Zwei Jahre Wohnsitzregelung nach Artikel 12a AufenthG – Ein Überblick zur Umsetzung der Regelung in den einzelnen Bundesländern. Asylmagazin 12/2018, 416-423.

465 Section 12a(5) Residence Act.

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

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

468 Nona Renner, *Die Wohnsitzauflage als Mittel deutscher Integrationspolitik? Das Beispiel Sachsen*, MIDEM-Policy Paper 01/18, Dresden, available at: http://bit.ly/2HSpzgM.

469 High Administrative Court North Rhine-Westphalia, Decision 18 A 256/18, 4 September 2018.

470 Claudius Voigt, 'Zum Urteil des OVG Nordrhein-Westfalen: Rechtswidrige pauschale Wohnsitzzuweisung', Asylmagazin 12/2018, 454-458.

471 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.

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

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".[473] A prolongation of the document is not possible, so refugees have to apply for a new document once the old one has expired.

Beneficiaries of **subsidiary protection** can be issued with a "travel document for aliens" ("*Reiseausweis für Ausländer*") if they do not possess a passport or a substitute document and if they cannot be reasonably expected to obtain a passport or a substitute document from the authorities of their country of origin.[474] 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,[475] 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.[476] 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.[477] 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 2018	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.[478]

473 Section 4(1) Residence Regulation.
474 Section 5(1) Residence Regulation.
475 Verfahrenshinweise der Ausländerbehörde Berlin (Guidelines for the Aliens Office Berlin), 12 September 2016, available at: http://bit.ly/2m1sjCe, 492.
476 Federal Ministry of Interior, *Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz* (General Administrative Guidelines for the Residence Act), 26 Oct. 2009, no. 3.3.1.3.
477 Section 8 Residence Regulation.
478 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.

In **Bavaria**, 27.7% of persons living in accomodation centres in January 2018 were considered to be "false occupants" (*Fehlbeleger*), which is the bureaucratic term for persons who are allowed to leave the centres, but have not found an apartment yet. This refers to 8,330 beneficiaries of international protection (out of a total of 30,075 persons living in accommodation centres throughout Bavaria on 31 January 2018) who, in theory, were not obliged to live in this type of accommodation.[479]

A study by the Federal Institute for Research on Building, Urban Affairs and Spatial Development 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:[480]

> "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

479 Bavarian Ministry for Labor, Social Affairs, Family and Integration, Faktenblatt Asyl, Januar 2018, available at: https://bit.ly/2G3J5ZQ.

480 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.

place of residence in a "specific place" in order to provide themselves with "suitable accommodation".[481] The Federal States which have applied this regulation so far refer beneficiaries of international protection to a municipality, not to a particular apartment.

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.[482] 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.[483]

A study of the BAMF from January 2019 also came to the conclusion that access to employment improves significantly for refugees after each year spent in Germany. The study is based on the "IAB-BAMF-SOEP-survey" (a long time study based on interviews with thousands of asylum seekers and refugees who have moved to Germany between 2013 and 2016). The results show that almost 35% of refugees who had arrived in Germany in 2015 had a job in October 2018, compared to 20% in 2017. [484] This is a significant increase.

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.

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481 Section 12a(2) Residence Act.

482 Section 25(2) Residence Act.

483 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.

484 BAMF. Language skills and employment rate of refugees improving with time, Brief Analysis by the Migration, Integration and Asylum Research Centre at the Federal Office for Migration and Refugees1/2019, available in English at: https://bit.ly/2Uub6BN.

According to the "brief analysis" by the BAMF mentioned in Access to the Labour Market, "approximately one tenth of refugees (who have moved to Germany since 2013) visited schools, vocational training institutions and universities in 2017, compared to 6% in 2016."[485]

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 asylum seeker's permission to stay (*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.[486]

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.

485 *Ibid.*

486 Georg Classen, *Ratgeber für Geflüchtete in Berlin*, 2nd ed., November 2017, available in German at: https://bit.ly/2DOV0X5, 156-157.

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.