

Country Report: Germany



2021
Update

Acknowledgements & Methodology

This report was written by Paula Hoffmeyer-Zlotnik, independent researcher and was edited by ECRE. The previous updates of this country report were written by Michael Kalkmann, Coordinator of Informationsverbund Asyl und Migration.

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.

The information in this report is up-to-date as of 31 December 2021, 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 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey, the United Kingdom) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Glossary

AnKER centre	<i>Ankunfts-, Entscheidungs-, Rückführungszentrum</i> (also <i>Ankunft, Entscheidung- kommunale Verteilung und Rückkehr</i>) – Initial reception centre where conceptually all actors of the asylum procedure and return are concentrated. AnKER centres were set up a pilot project in Bavaria, Saxony and Saarland in 2018. Other centres adjusted to the AnKER concept have been rolled out as of 2021 in five additional Federal States (Baden-Württemberg, Hamburg, Brandenburg, Mecklenburg-Vorpommern and Schleswig-Holstein) under different names. AnKER centre is not a legal term.
Arrival centre	<i>Ankunftszentrum</i> – Centre where various authorities are concentrated to streamline processes such as registration, identity checks, interview and decision-making in the same facility. Arrival centre is not a legal term.
Arrival certificate	<i>Ankunftsnachweis</i> – Certificate received upon arrival in the initial reception centre valid until the formal asylum application.
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 <i>Dependancen</i> .
Formal decision	Cases which are closed without an examination of the asylum claim's substance, e.g. because it is found that Germany is not responsible for the procedure or because an asylum seeker withdraws the application.
Geographical restriction	Also known as “residence obligation” (<i>Residenzpflicht</i>), this refers to the obligation placed on asylum seekers not to leave the district to which they have been assigned for a maximum period of three months, pursuant to Section 56 Asylum Act . An important exception applies to applicants who are obliged to stay in initial reception centres, the geographical restriction applies to them as long as they are staying in those centres (Section 59a Asylum Act).
Initial reception centre	<i>(Erst-)Aufnahmeeinrichtung</i> – Reception centre where asylum seekers are assigned to reside during the first phase of the asylum procedure.
Residence rule	<i>Wohnsitzregelung</i> – Obligation on beneficiaries of international protection to reside in the Federal State where their asylum procedure was conducted, pursuant to Section 12a Residence Act . This is different from the geographical restriction imposed on asylum seekers.
Revision	Appeal on points of law before the Federal Administrative Court.
Secondary application	Under Section 71a Asylum Act , this is a subsequent application submitted in Germany after the person has had an application rejected in a safe third country or a Dublin Member State.
Special officer	<i>Sonderbeauftragte*r</i> – Specially trained BAMF officer dealing with vulnerable asylum seekers.
Special reception centre	<i>Besondere Aufnahmeeinrichtung</i> – Reception centre where accelerated procedures are carried out in accordance with Section 30a Asylum Act .

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
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 (Computer based system for the distribution of asylum seekers)
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/VGH	Higher Administrative Court Oberverwaltungsgericht / Verwaltungsgerichtshof
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.

	Applicants in 2021	Pending at end 2021	Refugee status	Subsidiary protection	Rejection	Humanitarian protection (Removal ban)	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	190,816	108,064	32,065	22,996	35,071	4,787	33.8%	24.2%	5.0 %	36.9%

Breakdown by countries of origin of the total numbers

Syria	70,162	34,368	16,077	20,206	66	238	43.9%	55.2%	0.7%	0.2%
Afghanistan	31,721	27,846	1,575	461	1,516	2,272	27.0%	7.9%	39.0%	26.0%
Iraq	16,872	1,802	2,471	458	4,466	631	30.8%	5.7%	7.9%	55.6%
Turkey	7,873	4,939	2,458	35	3,288	18	42.4%	0.6%	0.3 %	56.7%
Stateless	5,764	3,605	2,189	321	515	62	71.3%	10.%	2.0 %	16.7%
Moldova	5,016	596	0	0	1,803	4	0.0%	0.0%	0.2 %	99.8%
North Macedonia	4,542	1,566	0	0	1,388	4	0.0%	0.0%	0.3 %	99.7%
Pakistan	1,962	700	163	11	733	50	17.0%	1.1%	5.2 %	76.6%
Albania	1,897	544	0	5	887	3	0.0%	0.6%	0.3 %	99.1%
Serbia	1,830	501	3	0	710	6	0.4%	0.0%	0.8 %	98.7%

Source: BAMF, *Asylgeschäftsstatistik* (01-12/21), available in German at: <https://bit.ly/3fvkrSI>. Inadmissibility decisions and ‘formal decisions’ are excluded from the statistics above.

In addition to refugee and subsidiary protection, applicants can be issued two types of national protection statuses: on the one hand, constitutional asylum, which gives rise to the same rights as the recognition of refugee status (the figures on refugee status thus include constitutional asylum),² and on the other hand, a “removal ban” for compelling humanitarian reasons. The figures presented in the table above represent the “adjusted protection rates” (*bereinigte Schutzquoten*). This means that “formal decisions” are not taken into account. There were 55,035 “formal decisions” in 2021, in which the applications were rejected as “inadmissible” or in which the asylum procedure was terminated for other reasons. In all of these cases, the substance of the case was not examined by the asylum authorities. In

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

² Constitutional asylum was granted in 1,226 cases in 2021.

contrast, official statistics usually represent the “overall protection rate” (*Gesamtsschutzquoten*), which is determined by including the formal decisions. The overall protection rates for 2021 are:

- ❖ Refugee rate: 21.4 %, Subsidiary protection rate: 15.3 %, “Removal ban”: 3.2%, Rejection: 23.4 %, Formal decisions: 36.7 %.

Gender/age breakdown of the total number of applicants: 2021 (first applications)

	Number	Percentage
Total number of applicants	148,233	100 %
Men (incl. children)	48,216	32.5 %
Women (incl. children)	26,736	18.0 %
Children	73,281	49.4 %
Unaccompanied children	2,760	N/A

Source: BAMF, Aktuelle Zahlen, December 2021, available in German at <https://bit.ly/3KBBaIG>, 8. Note that the number of unaccompanied children is valid as of 30 November 2021, as full year statistics were not available.

Comparison between first instance and appeal decision rates as of 30 November 2021 (“adjusted decision rates”, excluding formal decisions):

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	85,540	100%	41,702	100%
Positive decisions	53,975	64.4%	14,569	34.9%
<i>Refugee status (incl. asylum)</i>	30,173	35.3 %	5,020	12.0%
<i>Subsidiary protection</i>	20,794	24.3%	1,021	2.4%
<i>humanitarian status</i>	4,081	4.8%	8,528	20.4%
Negative decisions	31,565	36.9%	27,133	65.1%

Source: BAMF, *Asylgeschäftsstatistik (11-12/21)*, available at <https://bit.ly/3ubAUSO>, and Federal Government, Response to parliamentary question by The Left, 20/432, 14 January 2022, 21.

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 **July 2020**.

National context

The year 2021 was marked by the continuing impact of the Covid-19 pandemic, on the one hand, and the Federal elections in September on the other hand. In contrast to previous years, no major legal changes occurred in 2020 or 2021. The Federal elections on 26 September 2021 resulted in the formation of a government between the Social Democratic Party (SPD), the Green Party and the Liberal Free Democrats (FDP). The coalition agreement, presented on 24 November 2021, foresees the following measures and reforms in the area of asylum and international protection:³

New measures in the area of asylum and international protection stemming from the coalition agreement of 24 November 2021	
Asylum procedure	The new government has pledged to accelerate and improve the quality of asylum procedures. Revocation or cessation procedures should again be conducted on an ad-hoc basis only (i. e. when there is a reason to believe that the protection status should be revoked), instead of the systematic regular review. The asylum procedure counselling during the first instance procedure should be offered by independent organisations instead of the BAMF. Vulnerable applicants should be identified systematically.
Legal pathways	The coalition agreement announces that resettlement should be strengthened in line with needs reported by the UN Refugee Agency (UNHCR). A humanitarian admission programme will be established which should be used for Afghans. Furthermore the government plans to introduce humanitarian visa for persons at risk.
Reception	The new government pledges to “not pursue the concept of the AnKER centres further”.
Integration	Access to integration courses is to be granted immediately upon arrival. Courses should be “tailored and accessible”.
Family reunification	The restrictions on family reunification for beneficiaries of subsidiary protection should be removed. Minors who have received a protection status should be allowed to bring their siblings, and not only their parents as is currently the case.
Tolerated stay	Significant approvals are foreseen for persons with a tolerated status. People in situations of ‘chain toleration’ will now have access to a one-year residence permit after living in Germany for five years. People with tolerated status who are in formal training should also receive a residence permit. ⁴ Young people under 27 should have the opportunity to receive a legal status after three years, and other persons who undergo considerable integration efforts should also get the opportunity to get an equal status. Work bans for persons with a tolerated status are to be abolished, as is the newly introduced status of a “ Duldung light ”.
Return	The new government pledges a concerted effort on return while prioritising voluntary return and the forced removal of persons convicted of a crime or posing a risk. Counselling and financial support for voluntary return is to be expanded. The Federal government should lend more support to the Federal States with

³ SPD, BÜNDNIS 90/DIE GRÜNEN UND FDP, ‘Mehr Fortschritt wagen. Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit. Koalitionsvertrag 2021 – 2025 zwischen der Sozialdemokratischen Partei Deutschlands (SPD) und den Freien Demokraten (FDP)’, 137-142, available in German at: <https://bit.ly/3ITYqJZ>.

⁴ ECRE, ‘Germany: Incoming Coalition Agreement Signals Significant Change in Asylum and Integration Policy’, Weekly Bulletin 3/12/2021, available at <https://bit.ly/3GXQRRW>.

	regard to forced removals and should be empowered to order temporary removal bans for specific nationalities. Children and youth should not be put in detention as a matter of principle.
Cooperation at EU level	The agreement commits to fundamental reform of the European asylum system with the goal of fair distribution of responsibility for reception between member states. The coalition signals its intent to make progress on this with a coalition of willing member states. It calls for state-coordinated and EU-supported search and rescue capacity and for Frontex to be in charge of border management in a manner that is effective, transparent, compliant with the rule of law, and subject to parliamentary control.
Cooperation with third countries	The government outlines an ambition to conclude new practical and partnership-based agreements with major countries of origin in compliance with human rights standards. For this purpose, a Special Representative should be appointed. Decisions related to development funding should not be made conditional on the conclusion of possible cooperation agreements.

As regards the main changes in the German asylum system in 2021, there were as follows:

Asylum Procedure

- ❖ **Key asylum statistics:** In 2021, a total of 190,816 applications for international protection were lodged in Germany, mainly by Syrians (70,162), Afghans (31,721) and Iraqis (16,872). This marks an important increase compared to 122,170 applications in 2020. The overall recognition rate at first instance stood at 58% (i.e. 33.8% refugee status, 24.2% subsidiary protection and 5 % humanitarian protection). It reached 99.8% for Syrians, 74.0% for Afghans, but only 44.4% for Iraqis. Other nationalities such as Moldovans, Albanians or Serbians were nearly all rejected with a rejection rate around 99%. An additional 14,569 persons were granted international protection by Courts at second instance until the end of November 2021. The number of pending cases at the BAMF more than doubled from 52,056 at the end of 2020 to 108,064 at the end of 2021, mainly due to the de-prioritisation of applications from Afghan nationals and from Syrian nationals with a protection status in Greece.
- ❖ **Situation at the Polish-Belarussian border:** Due to the situation at the Polish-Belarussian border, increased border crossings have been observed from Poland into Germany in 2021. The Federal Police registered a total of 11,228 irregular migrants from Belarus crossing the German–Polish border in 2021, with the main nationalities being from Iraq, Syria, Yemen and Afghanistan, However the government did not introduce internal border controls in this context.
- ❖ **Temporary reintroduction of internal border controls at the Austrian border:** The 2018 practice of refusing access to the territory at the German-Austrian border (where temporary internal border controls are in place) to asylum seekers who have previously lodged an application in Greece and Spain was considered unlawful by the Administrative Court of Munich. The latter ordered interim measures in May 2021 while the final decision on the case is still pending. The competent government at the time declared that it did not intend to change its practice, but the practice has not been applied since May 2021 according to information provided by the Federal Police in April 2022.
- ❖ **Afghan nationals:** After the stop in removal operations caused by the Covid-19 outbreak, Germany reinitiated charter flights for removal again in December 2020, and continued to operate removals until July 2021. Following the takeover by the Taliban in summer 2021, the German government started an evacuation operation for German nationals in Afghanistan as well as Afghan nationals who had worked for German authorities, the military and “especially endangered persons”. Between 16 and 26 August 2021, a total of 5,300 persons were evacuated, out of which 4,400 Afghan nationals. The evacuees entered Germany via an emergency visa (based on Section 14 and 22 Residence Act).

Upon arrival, the BAMF then examined whether persons had already been granted permission for an admission from abroad (Section 22 Residence Act). If this was not the case, and if the Federal Government decided that such permission could not be granted, persons were informed of the possibility to apply for asylum in Germany. As of 10 December 2021, a total of 28,053 permissions for admission from abroad had been issued to Afghan nationals. However, only 8,014 persons had entered Germany as of the same date.

As regards Afghan asylum seekers, the BAMF decided to de-prioritise Afghan cases due to the uncertain situation in the country, except for cases in which international protection can be granted according to the guidelines in place or where the situation in Afghanistan was irrelevant for the decision. The government further declared that decisions continued to be taken on an individual, case-by-case basis. As a result, the number of pending applications by Afghan nationals significantly increased from 6,101 in 2020 to 27,846 at the end of 2021. The BAMF resumed its examination of Afghan cases in December 2021, prioritising cases which involve several persons (as opposed to individual applications) and vulnerable applicants. The overall protection rate increased slightly from 62% in 2020 to 74% in 2021.

- ❖ **Response to the situation in Ukraine as of 20 April 2022:** Ukrainian nationals are granted temporary protection in Germany since 4 March 2022, following the activation of the Temporary Protection Directive at the EU level.⁵ A letter was sent by the Federal Ministry of the Interior on 14 March 2022 to the Federal States to outline the conditions for temporary protection in Germany:⁶ temporary protection is awarded to Ukrainian nationals and their family members, which includes spouses, non-married partners, minor children and other close relatives if there is a “dependency relationship” that was already established prior to entering Germany. Temporary protection is granted to third country nationals holding a residence permit in Ukraine only if they are unable to return to their countries of origin. Beneficiaries of temporary protection are allowed to work and are entitled to social benefits similar to those for asylum seekers, under the Asylum Seekers Benefits Act. On 7 April, the conference of the heads of Federal state governments and the Chancellor decided that from 1 June onwards, Ukrainian refugees with a temporary protection status should be entitled to the same level of social benefits as beneficiaries of international protection.⁷ According to the BAMF; they also have access to integration courses.⁸ Refugees and other status holders in Ukraine that are fleeing the country have to apply to obtain the concurrent residence permit with the local foreigners’ authority. Once issued, all residence permits have a validity until 4 March 2024.⁹ Temporary protection and the granting of a status in the asylum procedure are mutually exclusive. Refugees are thus discouraged from applying for asylum in Germany. Since 16 March 2022, newly arriving refugees who are not hosted by friends or family or otherwise in private accommodation are distributed to the Federal States according to the “Königstein key” (see [Freedom of Movement](#)).¹⁰ This decision followed after the authorities in **Berlin** were overwhelmed by the number of new arrivals, since most trains and busses from Ukraine and its neighbouring countries arrive in the capital
- ❖ **Subsequent applicants:** The number of subsequent applicants more than doubled from 19,589 in 2020 to a total of 42,583 in 2021, especially those lodged by Syrian and Afghan nationals. This is due to the takeover by the Taliban in Afghanistan and, for Syrians, to a judgement of November 2020 in

⁵ Section 24 Residence Act.

⁶ Federal Ministry of the Interior, ‘Umsetzung des Durchführungsbeschlusses des Rates zur Feststellung des Bestehens eines Massenzustroms im Sinne des Artikels 5 der Richtlinie 2001/55/EG und zur Einführung eines vorübergehenden Schutzes’, 14 March 2022, available in German at: <https://bit.ly/3qGBTcY>.

⁷ Besprechung des Bundeskanzlers mit den Regierungschefinnen und Regierungschefs der Länder am 7. April 2022, available in German at: <https://bit.ly/38TtyMO>.

⁸ BAMF, ‘BAMF unterstützt bei der Aufnahme Geflüchteter aus der Ukraine’, 11 March 2022, available in German at: <https://bit.ly/38kYPIr>.

⁹ This is applicable as of 28 March 2022. As of this date, applications have to be launched until 23 May 2022.

¹⁰ PRO ASYL, ‘Hinweise für Geflüchtete aus der Ukraine’, last updated 18 March 2022, available in German at: <https://bit.ly/3wGG10n>.

which the CJEU considered that there is a “strong presumption” that the refusal to perform military services in the context of the Syrian civil war relates to one of the reasons to be granted refugee status.¹¹ As a result, many Syrians who had previously been granted subsidiary protection in Germany lodged subsequent applications in order to obtain a refugee status. Available statistics show that the majority of subsequent applications are being rejected as inadmissible, before the asylum procedure is reopened (75% of all subsequent applications in 2021), or the follow-up procedure is terminated later either for formal reasons or because the application is found to be inadmissible at this stage (12.5 % in 2021). However, when looking strictly at subsequent applications being assessed on the merits, it appears that almost 50% of them were successful (referring to a total of 2.919 positive decisions in 2021).

- ❖ **Beneficiaries of protection in another country who apply for asylum in Germany:** As of December 2021, around 39,000 asylum applications from persons who have already been granted international protection in Greece were pending in Germany. Following a decision of the Federal Constitutional Court which defined standards that have to be met for the authorities to be able to send those persons back to Greece, the BAMF has “de-prioritised”, and thus de facto stopped processing, asylum applications from that group. In 2021, two Higher Federal Administrative Courts declared removals to Greece of beneficiaries of protection to be unlawful due to the dire humanitarian situation in Greece. In July 2021, the German and Greek ministers of the Interior signed a memorandum of understanding aimed at improving the integration of beneficiaries of international protection in Greece regarding accommodation, health care and the provision of necessary goods through a project implemented by IOM and financed by EU and German funds.¹² In March 2022, it was reported that an agreement was reached, and that accordingly the BAMF was planning on starting to examine the pending cases, but it remains to be seen if this will be effectively implemented in practice.¹³
- ❖ **Data collection at registration stage:** In July 2021, a new law was adopted to amend the law on the Central Register of Foreigners (*Ausländerzentralregister (AZR)*). The law extends access to the register for more authorities and enlarges the type of data stored, including to highly sensitive data such as decisions on asylum applications or court decisions.¹⁴ The new law was criticised by the German Institute for Human Rights, PRO ASYL and the German Society for Civil Rights (GFF) for the risk of abuse and violations of data protection and security.¹⁵
- ❖ **Absconding in church asylum cases:** In 2020, the Federal Administrative Court confirmed a ruling by the Administrative High Court of Bavaria according to which persons who are subject to a transfer to another Member State but are given temporary sanctuary by churches cannot be considered as “absconding” if they declare this to the BAMF, meaning that the timeline of 18 months until Germany becomes responsible does not apply. As a result, the BAMF clarified in January 2021 that persons in “open church asylum” where their whereabouts are known are not considered to be absconding.¹⁶ This led to an increase of church asylum cases from 355 cases in 2020 up to 822 cases in 2021.

¹¹ CJEU, *E.Z.*, Case C-238/19, Judgment of 19 November 2020.

¹² Federal Ministry of the Interior, ‘*Gemeinsame Absichtserklärung zu Bemühungen um die Integration von Personen mit internationalem Schutzstatus in Griechenland*’, available in German at <https://bit.ly/3KeKziO>

¹³ Infomigrants, ‘Germany to process frozen asylum claims of refugees from Greece’, 21 March 2022, available online at: <https://bit.ly/3qH0fTN>.

¹⁴ Deutscher Bundestag, *Beschlussempfehlung und Bericht des Ausschusses für Inneres und Heimat (4. Ausschuss) zu dem Gesetzentwurf der Bundesregierung – Drucksache 19/28170 – Entwurf eines Gesetzes zur Weiterentwicklung des Ausländerzentralregisters, 19/29820*, 19 May 2021, available in German at <https://bit.ly/3tcRAZX>.

¹⁵ GFF, *Das Ausländerzentralregister – Eine Datensammlung außer Kontrolle*, 13 January 2022, available in German at <https://bit.ly/3stCIY1>; and FRA (European Union Fundamental Rights Agency), ‘Migration: Key Fundamental Rights Concerns’, Quarterly Bulletin 01.01.2021-30.06.2021, available at: <https://bit.ly/3qB3RHk>.

¹⁶ BAMF, ‘*Merkblatt Kirchenasyl im Kontext von Dublin-Verfahren*’, available in German at <https://bit.ly/3HY47WI>. See also PRO ASYL, *Bundesverwaltungsgericht entscheidet: Kein »Flüchtigsein« im offenen Kirchenasyl!*, available in German at: <https://bit.ly/3fi5Rhd>.

Reception conditions

- ❖ **COVID-19 vaccination:** Asylum seekers living in reception centres were among the priority groups to receive a vaccine against COVID-19. However, some reception centres reported a low uptake among asylum seekers, owing to several reasons including the lack of systematic and multilingual information and mistrust in the authorities.
- ❖ **Conditions in reception centres:** Conditions in reception centres continued to be impacted by the COVID-19 pandemic throughout 2021. Mass quarantines and suspension of services and activities in many centres have deteriorated conditions which had already been subject to criticism before the COVID-19 outbreak, as they have exacerbated difficulties to work or otherwise integrate asylum seekers who are isolated from the rest of the society. This has led a number of NGOs and welfare associations to call for the closure of AnKER centres and to prioritise decentralised accommodation of refugees.

Detention of asylum seekers

- ❖ **Places of detention:** In 2021, two new detention facilities opened in Glückstadt (Schleswig-Holstein) with a capacity of 60 places, and in Hof (Bavaria) with a capacity of 150 places (the second largest detention facility in Germany). Following a legal amendment of 2019, detention for the purpose of removal was considered possible in regular prisons until June 2022. This practice, introduced by the government on the grounds of an “emergency situation” and a shortage of detention places, has been ruled unlawful by the CJEU on 10 March 2022.¹⁷ The Court ruled that the courts issuing the detention order have to be able to assess whether such an emergency (justifying detention in regular prisons) exists or not. Furthermore, the court ruled that conditions in detention facilities must not be prison-like if they are to qualify as specialised detention facilities in the sense of the EU Return Directive.
- ❖ **Detention conditions:** Detention condition continued to be impacted by the COVID-19 pandemic throughout 2021. In several detention facilities, visits of relatives, supporters as well as civil society organisations continue to be severely restricted by access rules introduced during the first wave of the COVID-19 pandemic.

Content of international protection

- ❖ **Cessation and withdrawal procedures:** As in previous years, the BAMF continues to initiate a high number of revocation procedures. A total of 117,093 revocation procedures were initiated in 2021, which marks a decrease in comparison to the three previous years however. In 96.1 % of all cases, the BAMF ended up not revoking the protection status. Nevertheless, the status of 6,630 persons was revoked in 2021, mainly of nationalities from Syria, Iraq, Afghanistan and Iran (see detailed statistics under [Cessation and review of protection status](#)). 95,960 revocation procedures were still pending at the end of 2021.
- ❖ **Long term residence for beneficiaries of international protection:** Beneficiaries of internal protection are eligible for a permanent residence permit after five years (three years if they have a good command of the German language). A total of 70,705 beneficiaries of international were granted a permanent residence permit under these conditions in 2021, marking a sharp increase compared to 16,338 in 2020. This is likely caused by the high number of persons being granted refugee status in 2016, and who were then granted a permanent residence permit after five years.
- ❖ **Family reunification:** Family reunification for beneficiaries of subsidiary protection continues to be limited to 1,000 persons per month as a matter of policy. However, in 2021, only 5,958 visas were issued for family members of beneficiaries of subsidiary protection in practice, and thus only half of

¹⁷ CJEU, Case C-519/20, 10 March 2022, available in German at: <https://bit.ly/3NtZt6u>.

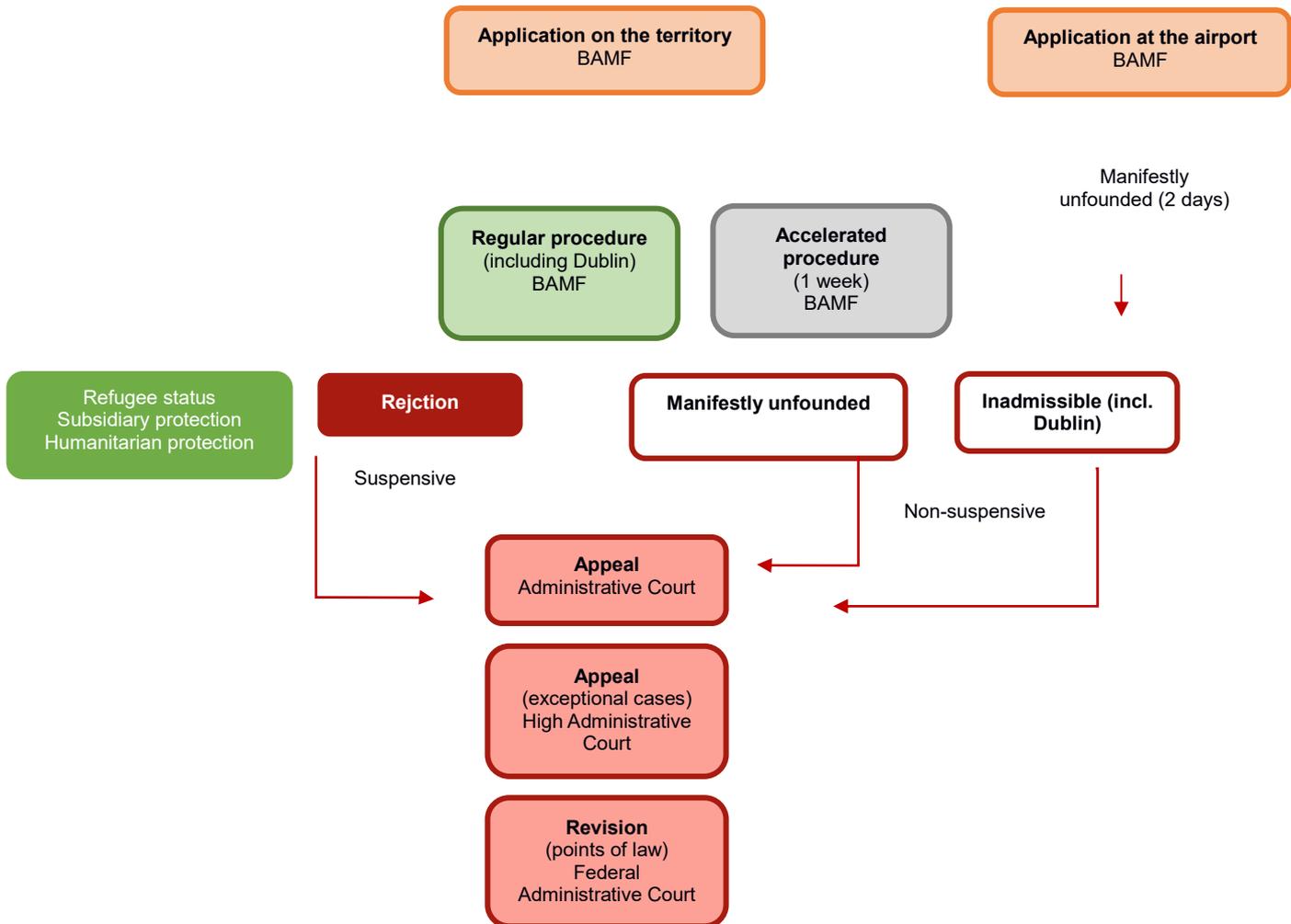
the foreseen quota was used. This is similar to previous years. Difficulties for family reunification continued to be exacerbated by long waiting periods at embassies.

- ❖ **Ad hoc family reunification programmes:** Several Federal States have initiated ad-hoc programmes for family members of Syrians living in Germany. Many of these programmes ended over the course of 2021. A number of Federal States decided to put similar family reunification programmes in place for family members of Afghan refugees, but these have not been authorised by the Federal Ministry of the Interior. The new Federal Government announced plans to set up a humanitarian admission programme on its own initiative in December 2021.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

- | | | |
|--|---|-----------------------------|
| ❖ Regular procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ¹⁸ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ¹⁹ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Dublin procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Admissibility procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Border procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Accelerated procedure: ²⁰ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

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

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

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

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

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Federal Office for Migration and Refugees (BAMF)	8,141 (about 3,326 full-time positions in various asylum departments)	Federal Ministry of Interior	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Source: Federal Ministry of the Interior, 'Bundesamt für Migration und Flüchtlinge', available in German at <https://bit.ly/3qTH0qt>; and Federal Government, Response to parliamentary question by The Left, 19/32678, 14 October 2021, p. 51?

¹⁸ For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

¹⁹ Accelerating the processing of specific caseloads as part of the regular procedure.

²⁰ Labelled as "accelerated procedure" in national law. See Article 31(8) recast Asylum Procedures Directive.

The BAMF is responsible for examining applications for international protection and competent to take decisions at first instance.

The BAMF has branch offices in all Federal States. The branch offices process the asylum procedures, but also carry out additional tasks (for instance, they function as contact points for authorities and organisations active in the area of integration of foreign nationals). In cooperation with the Federal States, the BAMF manages a distribution system for asylum seekers known as Initial Distribution of Asylum Seekers (*Erstverteilung der Asylbegehrenden*, EASY) system, which allocates places according to a quota system known as “*Königsteiner Schlüsse*” (see [Section 45](#) Asylum Act). The quota is based 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 an asylum seeker's country of origin.

As of September 2021, the BAMF had 3,326 positions or “full-time job equivalents” working on various aspects of asylum (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 on top of the asylum procedure (e.g. research, integration, migration for reasons other than asylum and return policies), not all staff members are working in the area of asylum. The overall number of positions is 8,141 according to the Federal Ministry of the Interior.²¹

The government provided the following numbers for positions in the relevant departments as of September 2021:²²

- ❖ asylum department (excluding revocation and Dublin procedures): 2,032.5 full-time equivalents
- ❖ revocation procedures: 400.1 full-time equivalents
- ❖ procedures (appeal procedures, representation of the BAMF in court): 362.2 full-time equivalents
- ❖ quality management: 176.3 full-time equivalents
- ❖ Dublin-procedures: 355.1 full-time equivalents

In total, this amounts to 3,326.2 full-time equivalents for jobs in the departments which deal with asylum procedures.

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. This was related, in part, to the high increase in personnel accompanied by shortened training phases, with some decision-makers not having received relevant training. As a result, the BAMF has undertaken several changes to the training provided to decision-makers since 2017. Information provided by the BAMF in 2019 suggests that these measures have significantly improved the qualification of staff in comparison to the situation in 2016 and 2017 (for more detailed information see the 2019 Update to the AIDA Country Report for Germany).²³

²¹ Federal Ministry of the Interior, ‘*Bundesamt für Migration und Flüchtlinge*’, available in German at <https://bit.ly/3qTH0qt>

²² Federal Government, Response to information request by The Left, 19/18498, 2 April 2020, 66.

²³ AIDA, *Country Report Germany - Update on the year 2019*, July 2020, available at: <https://bit.ly/34so09M>, pp. 20-21.

5. Short overview of the asylum procedure

Access to the territory and registration

If migrants report at the border while trying to enter Germany without the necessary documents, entry to the territory may be refused on the grounds that the migrant has travelled through a “safe third country”. However, if they apply for asylum, they would in most cases have to be referred to the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF).

Since August 2018, asylum seekers can also be denied entry at the Austrian-German land border if the authorities are able to demonstrate that they have already applied for asylum in Greece or Spain. In these cases, the transfer to the concerned Member state is foreseen to take place within 48 hours. There is no basis for such transfers in the Dublin Regulation and is based on administrative arrangements with Spain and Greece. The practice was ruled unlawful by the administrative court of Munich in May 2021 and has not been applied since (see [Access to the territory and push backs](#) for more details).²⁴

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 (for details see [Border procedure \(border and transit zones\)](#)).

Once persons seeking protection are on the territory, the law obliges asylum seekers to “immediately” report to a “reception facility” (*Aufnahmeeinrichtung*). Alternatively, they can report to a police station or to an office of the foreigners’ authorities.²⁵ Once asylum seekers have reported to the reception facility, they have to be issued an “arrival certificate” (*Ankunftsnachweis*). Afterwards, the responsible branch office of the BAMF is determined with the help of distribution system known as Initial Distribution of Asylum Seekers (*Erstverteilung der Asylbegehrenden*, EASY). It is possible that the EASY-system assigns a place in the facility to which asylum-seekers have reported. In this case, they are referred to the BAMF office, often located on the same premises or nearby, for the registration of the asylum application. If the EASY-system assigns a facility located in another region, asylum-seekers are transported to this facility or are provided with tickets to travel there on their own. 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. Once they arrive in the responsible branch office of the BAMF, asylum seekers lodge their application with the BAMF. Following the lodging of the application, they are issued a “permission to stay for asylum seekers” (*Aufenthaltsgestattung*). With this document, the arrival certificate ceases to be valid and has to be retracted by the authorities.

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 as part of the international protection under the Qualification Directive; or
4. Other forms of protection, called prohibition of removal (*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

²⁴ ECRE, *Bilateral Agreements: Implementing or Bypassing the Dublin Regulation?*, December 2018; available at: <https://bit.ly/2GgVoEf>.

²⁵ Section 13 Asylum Act.

provision to instances of “extreme risk” for all cases not related to ill health, 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 55,035 cases in 2021 (28.8%), a “formal decision” – including inadmissibility decisions – was taken, which means that the case was closed without an examination of the asylum claim’s substance.²⁶ 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.

If an application for international protection is rejected, the notice of rejection also includes a removal warning, which is equivalent to a return decision under EU law.²⁷

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 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
2. Is there a border monitoring system in place? Yes No
3. Who is responsible for border monitoring? National authorities NGOs Other
4. How often is border monitoring carried out? Frequently Rarely Never

Arrival at the border and border controls

The law states that asylum seekers who apply for asylum at the border have to be referred to an initial reception centre for asylum seekers.²⁸ 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.²⁹

²⁶ In the previous years the numbers were as follows: 36,015 (29.5 %) in 2020, 59,591 (32.9%) in 2019, 65,507 (30.2%) in 2018, 109,476 (18.1%) in 2017; 87,697 (12.6%) in 2016 and 50,297 (17.8%) in 2015.

²⁷ Section 34 (1) Asylum Act.

²⁸ Section 18 (1) Asylum Act.

²⁹ Section 18(2) Asylum Act and Sections 14 and 15 Residence Act.

Since 2013, asylum seekers should not be sent back to neighbouring countries without their applications for international protection having been registered. It is not clear, however, whether this practice is 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 Law on the Federal Police (based on the Schengen Borders Code) - they have not necessarily entered the territory,³⁰ and it is possible that a removal to the neighbouring state (*Zurückweisung*) is still carried out at this point.

With the outbreak of the Covid-19 pandemic, the German government has introduced temporary border controls at internal Schengen borders at various points in time. The first introduction of border controls on 15 March 2020 applied to the borders with Austria, France, Denmark, Luxemburg and Switzerland.³¹ After the lifting of these general border controls in June 2020, controls have again been introduced with Austria and the Czech Republic in the spring of 2021. While the border controls at the borders with the Czech Republic have been lifted, the border controls with Austria were prolonged until 11 May 2022 at the time of writing of this report.³² According to the Federal government, the border controls have not affected the possibility to apply for asylum at German borders.³³

Independently of the pandemic situation, Germany has regularly re-introduced border controls at its borders with Austria since 2015. In 2018, following a heated political debate, a new procedure was introduced which enables the Federal Police to refuse entry at the border and send persons back to Greece and Spain within 48 hours if they have previously applied for asylum there.³⁴ This procedure is based on administrative regulations and special administrative readmission agreements with the two countries. 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. Since 2019, it was only applied to the Austrian-German border, as this was the only border where controls continue to take place.

The legality of the new procedure has been questioned by legal experts,³⁵ and forced returns that took place on its basis were subject to court challenges, including requests for interim measures to bring back the forcibly returned applicants. The responsible court – the administrative court of Munich – has granted interim measures and has ordered the German Federal Police to bring back the asylum seeker from Greece in two cases in 2019 and 2021.³⁶ While the two cases are still pending, the 2021 decision on interim measures states that the Dublin regulation has to be applied instead of the procedure foreseen by the administrative regulations agreements, and that the removal cannot take place without an examination by the Federal Office for Migration and Refugees, which is the competent authority for the Dublin procedure. In May 2021, the Federal Ministry of the Interior stated it did not intend to change the practice nor its legal assessment in light of the court decision of May 2021.³⁷ However, according to the Federal Police, no refusals of entry have been carried out since May 2021 on the basis of the administrative

³⁰ Section 13(2) Residence Act.

³¹ See Lorenzo Piccoli, Leslie Ader, Paula Hoffmeyer-Zlotnik, Christina Mittmasser, Oliver Pedersen, Aurélie Pont, Frowin Rausis, Petra Sidler, *'Mobility and Border Control in Response to the COVID-19 Outbreak'*, nccr – on the move and GLOBALCIT, April 2021, available at: <https://tabsoft.co/33DRzWd>.

³² European Commission, *'Temporary Reintroduction of Border Control'*, available at: <https://bit.ly/3HLwSGd>.

³³ Pro Asyl, *'Newsticker Coronavirus: Informationen für Geflüchtete und Unterstützer*innen'*, available in German at <https://bit.ly/3n5bqEe>.

³⁴ The text of the German-Spanish Administrative Arrangement is available at: <http://bit.ly/2G2IZ7E>. The text of the German-Greek Administrative Arrangement is available at: <https://bit.ly/3HKJ4Nx>.

³⁵ A collection of statements by various experts and institutions can be found at: <https://bit.ly/2zwUPTs>. See also Anna Lübke, *Vereinbarkeit der Zurückweisungspraxis unter dem deutsch-griechischen »Seehofer-Abkommen« mit unionsrechtlichen Vorgaben zum effektiven Rechtsschutz*, 6 December 2018, available in German at: <https://bit.ly/2VyPGQq>; ECRE, *Bilateral Agreements: Implementing or Bypassing the Dublin Regulation?*, December 2018, available at: <https://bit.ly/2GgVoEf>.

³⁶ Administrative Court Munich, Decision M 22 E 21.30294, 4 May 2021 – see Asylmagazin 7-8/2021, 292, available in German at <https://bit.ly/3ID8113>; Decision M 18 E 19.32238, 8 August 2019 – see Asylmagazin 10-11/2019, 371; available in German at: <https://www.asyl.net/rsdb/m27488/>.

³⁷ Federal Ministry of the Interior, *Response to written question by Ulla Jelpke (The Left)*, 14 May 2021, available in German at: <https://bit.ly/3hmv2jp>.

arrangements with Greece and Spain.³⁸ In October 2021, the Ministry of Interior has declared its willingness to conclude a renewed agreement with Greece and to potentially reintroduce border controls at airports with flights from Greece.³⁹ However, the declaration occurred only weeks before the end of term of the Minister of Interior who had initiated the procedure. More information on the procedure and the legal challenges brought against it can be found in the 2019 Update to the AIDA Country Report for Germany as well as in ECRE's assessment of transfers of asylum seekers based on these agreements.⁴⁰

In any case, the introduction of the new procedure had little effect in practice: Between August 2018 and May 2021, only 50 persons were returned (46 returns to Greece and 4 to Spain) on the basis of the readmission agreements with these countries.⁴¹ Therefore, the political debate over the return procedures at the border, which had even triggered a government crisis in 2018, has been described as "absurd" in retrospect.⁴²

The humanitarian crisis at the Polish-Belarusian border also had effects on border-crossing in Germany. In 2021, the Federal Police registered 11,228 border crossings "with a connection to Belarus", with the highest number of crossings reported between September and November 2021.⁴³ According to the Federal Police, the main nationalities of persons crossing into Germany were from Iraq, Syria, Yemen and Afghanistan.⁴⁴ The Federal Government did not introduce temporary border controls, and refusals of entry at the German-Polish border are therefore not permitted. The Federal Police conducts "intensive search measures short of border controls" in the border area.⁴⁵ Out of all the persons arriving in Germany, many were initially housed in the reception facility in Eisenhüttenstadt, Brandenburg, near the Polish border. In October 2021, reception capacity was increased temporarily through the use of heated tents, and the situation was described as "tough" by the head of the city's refugee authority, also due to quarantine requirements in reception to prevent the spread of Covid-19.⁴⁶ In early November, the Federal Police opened a "registration centre" in Frankfurt/Oder, where persons asking for asylum are registered, and where a Covid test and security checks are done before the persons are referred to the responsible Federal State.⁴⁷ It should be further noted that, in light of the situation at the border, increased police operations were carried out to detect potential smuggling activities between Poland and Germany.⁴⁸

Legal access to the territory

On top of family reunification, there are two main ways for asylum seekers to legally access the German territory: via the Government's resettlement and humanitarian admission programmes and via relocation from other EU Member States. The Federal States also run admission programmes mainly for Syrian

³⁸ Information provided by the Federal Police, 6 April 2022.

³⁹ Federal Ministry of the Interior, 'Kabinett berät aktuelle Migrationslage', 20.10.2021, available in German at: <https://bit.ly/3J0JeUk>.

⁴⁰ AIDA, *Country Report Germany - Update on the year 2019*, July 2020, available at: <https://bit.ly/3GlpjEQ>, p. 20-21; See also: ECRE, *Bilateral Agreements: Implementing or Bypassing the Dublin Regulation?*, December 2018; available at: <https://bit.ly/2GgVoEf>.

⁴¹ Federal Ministry of the Interior, *Response to written question by Ulla Jelpke* (The Left), 14 May 2021, available in German at: <https://bit.ly/3hmv2jp>.

⁴² Süddeutsche Zeitung, *Der Streit war absurd*, 3 November 2019, available in German at: <https://bit.ly/3011Y8e>.

⁴³ Federal Police, *Illegale Migration aus Belarus über Polen nach Deutschland konstant auf niedrigem Niveau: 361 Feststellungen durch die Bundespolizei seit Jahresbeginn*, 2 February 2022, available in German at <https://bit.ly/3vfraJB>.

⁴⁴ Deutschlandfunk Kultur, 'Die neue Belarus-Route', 4 November 2021, available in German at: <https://bit.ly/3llgb4R>.

⁴⁵ Federal Police, *Illegale Migration aus Belarus über Polen nach Deutschland konstant auf niedrigem Niveau: 361 Feststellungen durch die Bundespolizei seit Jahresbeginn*, 2 February 2022, available in German at <https://bit.ly/3vfraJB>.

⁴⁶ Deutsche Welle, 'Germany sees sharp rise in migrants via Belarus route', 13 October 2021, available at: <https://bit.ly/3t88Hff>.

⁴⁷ Deutschlandfunk Kultur, 'Die neue Belarus-Route', 04 November 2021, available in German at: <https://bit.ly/3llgb4R>.

⁴⁸ Ndr.de, 'Neue Fluchtroute: Über Belarus und Polen nach MV', 20 August 2021, available in German at: <https://bit.ly/3M1LdAZ>.

nationals, but these are mostly geared towards family members of beneficiaries of international protection residing in the respective Federal States (see [Family Reunification](#)).

Germany adopted its first resettlement programme in 2012 in the form of a pilot programme where 300 refugees were admitted per year. The programme was made permanent in 2015, with a quota of 500 persons. Since 2016, the German resettlement programme is part of Germany's contribution to the EU resettlement scheme.⁴⁹ Next to the national quota, resettlement includes admissions of Syrian refugees from Turkey in the context of the so-called EU-Turkey statement. Resettled refugees. In addition, the Federal Government can decide on humanitarian admission programmes on an *ad-hoc*, temporary basis. Such a temporary humanitarian admission programme was in place for 20,000 Syrian refugees between 2013 and 2015.⁵⁰

In 2019, the German government introduced an additional private sponsorship programme in the form of a pilot scheme with 500 additional places. In the programme called "*Neustart im Team (NesT)*" groups of at least 5 persons commit to accompany and support resettled refugees for at least one year and to pay for their rent during two years. As of 23 November 2021, 92 persons had been resettled with the new pilot programme.⁵¹

In the resettlement programme, the BAMF is responsible for the selection process together with the UNHCR. Once resettled refugees arrive in Germany, they first stay in the reception of **Friedland** (Lower Saxony) for up to two weeks, and are then allocated to a municipality, where they are issued a residence permit which is equivalent in rights to residence permits granted to recognised refugees.⁵²

As a result of the Covid-19 pandemic, all admission to Germany were suspended in mid-March 2020.⁵³ The first resettlement flight after the suspension took place on 29 September 2020, relocating Syrian refugees from Turkey.⁵⁴

Year	Resettlement places pledged	Persons admitted
2016 / 2017	1,600	1,600
2018 / 2019	10,200	8,000
2020	5,500	1,178 (due to Covid-related suspension)
2021	6,800 (referring to 4,300 persons not admitted in 2020 and 2,500 additional places)	-

Source: Federal Ministry of the Interior, '*Resettlement und humanitäre Aufnahmen*', available in German at <https://bit.ly/3H4rqhK>. Note that the website www.resettlement.de provides more detailed statistics (under "current admissions") on every arrival that was processed through Friedland since 2015 and until the end of 2021. However the counting differs from the Ministry of Interior, since the national and state-level humanitarian admission / family reunification programmes are also included.

In 2021, the coalition agreement further announced that resettlement should be strengthened in line with needs reported by the UN Refugee Agency (UNHCR). A humanitarian admission programme will be established which should be used for Afghans.

⁴⁹ Federal Ministry of the Interior, '*Resettlement und humanitäre Aufnahmen*', available in German at: <https://bit.ly/3H4rqhK>.

⁵⁰ [resettlement.de](http://www.resettlement.de), '*Humanitarian admission programmes*', available at: <https://bit.ly/3fSx62o>.

⁵¹ BAMF, '*Migrationsbericht 2020 der Bundesregierung*', December 2021, available in German at: <https://bit.ly/3nTDv1J>, p.23.

⁵² [resettlement.de](http://www.resettlement.de), '*Resettlement*', available at <https://bit.ly/3qVMD7P>.

⁵³ Pro Asyl, '*Newsticker Coronavirus: Informationen für Geflüchtete und Unterstützer*innen*', available in German at: <https://bit.ly/3n5bqEe>.

⁵⁴ [resettlement.de](http://www.resettlement.de), '*Current Admissions*', available at: <https://bit.ly/3GZyM5M>.

As regards relocation, Germany also relocated a (small) number of asylum seekers from other EU Member states on the basis of temporary and ad-hoc agreements in 2020 and 2021. In March 2020, Germany agreed to admit 243 minors from Greece based on an agreement of a “coalition of the willing” at EU level. Following the fire in the Moria camp on the Greek island of Lesbos, the government agreed to admit an additional 150 unaccompanied minor refugees and 1,553 persons in family groups.⁵⁵ A total of 210 unaccompanied minors from Greece were relocated to Germany in 2020.⁵⁶ In total, 2,812 persons were admitted between April 2020 and the end of 2021.⁵⁷

According to the EU Visa Code, a visa with limited territorial validity can be issued by Member States when they consider it necessary on humanitarian grounds, for reasons of national interest or because of international obligations even if the conditions for issuing a uniform Schengen visa are not fulfilled (Article 25 paragraph 1a of the Visa Code). Germany however does not issue humanitarian visas in the context of asylum applications.

2. Registration of the asylum application

Indicators: Registration

1. Are specific time limits laid down in law for making an application? Yes No
❖ If so, what is the time limit for lodging an application?
2. Are specific time limits laid down in law for lodging an application? Yes No
❖ If so, what is the time limit for lodging an application?
3. Are registration and lodging distinct stages in the law or in practice? Yes No
4. Is the authority with which the application is lodged also the authority responsible for its examination? Yes No
5. Can an application be lodged at embassies, consulates or other external representations? Yes No

1.1. 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 “reception facility” (*Aufnahmeeinrichtung*). Alternatively, they can report to a police station or to an office of the foreigners’ authorities.⁵⁸ At this stage of initial registration, personal data including photographs and fingerprints are collected and stored in the “Central Register of Foreigners” (*Ausländerzentralregister (AZR)*), to which a number of public authorities have access.⁵⁹ Following this first contact with the authorities, the asylum application has to be filed “immediately”. 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.

⁵⁵ BAMF, *Migrationsbericht 2020 der Bundesregierung*, December 2021, available in German at <https://bit.ly/3nTDv1J>, p.22.

⁵⁶ Reply of the Parliamentary State Secretary for the Ministry of the Interior to a question by Gökay Akbulut (The Left), 19/25159, 11 December 2020, available in German at <https://bit.ly/3FXPlsn>, p.11.

⁵⁷ BAMF, *Migrationsbericht 2020 der Bundesregierung*, December 2021, available in German at <https://bit.ly/3nTDv1J>, p.22.

⁵⁸ Section 13 Asylum Act.

⁵⁹ BAMF, *Arrival and registration*, available at: <https://bit.ly/3ltgFpW>.

Once asylum seekers have reported to the “reception facility” mentioned above, they have to be issued an “arrival certificate” (*Ankunftsnachweis*). Afterwards, the responsible branch office of the BAMF is determined with the help of distribution system known as Initial Distribution of Asylum Seekers (*Erstverteilung der Asylbegehrenden*, EASY). This distribution system allocates places according to a quota system known as “*Königsteiner Schlüsse*” based on the reception capacities of the Federal States. These capacities are determined by taking into account the size and the economic strength of the Federal States. Furthermore, the EASY-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](#)).⁶⁰ It is possible that the EASY-system assigns a place in the facility to which asylum-seekers have reported. In this case, they are referred to the BAMF office, often located on the same premises or nearby, for the registration of the asylum application. If the EASY-system assigns a facility located in another region, asylum-seekers are transported to this facility or are provided with tickets to travel there on their own.

While the BAMF is responsible for the processing of the asylum application, responsibility for the reception and accommodation of asylum-seekers lies with the Federal States. Therefore, the regional branch offices of the BAMF are usually assigned to an initial reception centre managed by the Federal State. Both branch office and initial reception centre may in turn be parts of an “arrival centre” (*Ankunftszentrum*) or of an “AnkER-centre” (*AnkER-Zentrum*). The organisational structure and the denomination of these institutions depends on the way the Federal States have organised the reception system and how they cooperate with the BAMF at the respective location.

Only the BAMF is entitled to register an asylum application. Hence asylum seekers reporting to the police or to another authority will be referred to the BAMF and they do not have the legal status of asylum seekers as long as they have not arrived at the responsible branch office of the BAMF and until their applications have been lodged. However, persons with an arrival certificate (*Ankunftsnachweis*) are also entitled to minimum benefits according to the Asylum Seekers' Benefits Act. 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.⁶¹ Problems with delayed registration of applications for which the authorities were responsible have not been reported in recent years.

1.2. 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 “permission to stay for asylum seekers” (*Aufenthaltsgestattung*). With this document, the arrival certificate ceases to be valid and has to be retracted by the authorities.

While the application generally has to be lodged in person, the outbreak of the Covid-19 pandemic has brought about significant changes in the application procedure. From 23 March 2020, the BAMF stopped in-person applications and allowed applications to submit their application for asylum by filling a form instead.⁶² Application forms could be filled in in initial reception centres and sent to the German Federal Office for Migration and Refugees (BAMF). Asylum interviews were reduced to a minimum in order to adapt the branch office facilities to hygiene and protection standards.⁶³ From May 2020, German

⁶⁰ BAMF, *Asylum and refugee protection*, available at: <http://bit.ly/1O5qPus>.

⁶¹ Sections 20, 22 and 23 Asylum Act.

⁶² Information provided by the BAMF, 10 March 2022, see also Pro Asyl, ‘*Newsticker Coronavirus: Informationen für Geflüchtete und Unterstützer*innen*’, available in German at <https://bit.ly/3n5bqEe>. According to the BAMF, the application via a form does not constitute a written application in the sense of Section 14 para.2 Asylum Act, since this would mean applicants would not be obliged to live in a reception centre, see BAMF, *Entscheiderbrief 04/2020*, 5, available in German at <https://bit.ly/3JXluYx>

⁶³ Information provided by the BAMF, 10 March 2022.

authorities resumed registration and relevant services in person when the conditions in branch offices allowed for it.⁶⁴ Nonetheless, applications via written form are still possible as of early 2022 if this is necessary to comply with infection protection regulations.⁶⁵ For the subsequent applications, the written registration of applications was possible until 1 October 2021.⁶⁶ As of January 2022, BAMF facilities can be entered showing a “3 G certificate” proving vaccination, recovery from Covid-19 or a negative test.⁶⁷

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

- | | |
|--|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: | None |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance of 31 December 2021: | 108,064 |
| 4. Average length of the first instance procedure in 2021: | 6.6 months |

The competent authority for the decision-making in asylum procedures is the BAMF. Next to asylum, its functions and duties include coordination of integration courses, voluntary return policies, and other tasks such as research on general migration issues. The BAMF also acts as national administration office for European Funds in the areas of refugees, integration and return (see [Number of staff and nature of the first instance authority](#)).

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.⁶⁸

In 2021, procedures at the BAMF took 6.6 months on average.⁶⁹ In 2020, the average duration was 8.3 months. The average time of asylum procedures until a final decision is issued (i.e. including possible court procedures) was 25.9 months in 2020, and 24 months in the first half of 2021.⁷⁰ According to the Federal government, the length of procedures has risen significantly due to the impact of Covid-19 on asylum procedures. As a response to the first lockdown in March 2020, the BAMF had stopped issuing

⁶⁴ ECRE, *Information Sheet 28 May 2020: Covid-19 Measures Related to Asylum and Migration Across Europe*, available at: <https://bit.ly/3IMPtZD>; ECRE, *Information Sheet 7 December 2020: Covid-19 Measures Related to Asylum and Migration Across Europe*, available at: <https://bit.ly/3dDxnop>, p.3.

⁶⁵ Information provided by the BAMF, 10 March 2022.

⁶⁶ BAMF, 'Weitere Themen (Stand: 20.12.)'. Informationen zu den Auswirkungen des Corona-Virus (COVID-19), die im Zusammenhang mit dem Bundesamt für Migration und Flüchtlinge (BAMF) stehen. Available in German at <https://bit.ly/3GirutF>

⁶⁷ BAMF, 'Weitere Themen (Stand: 20.12.)'. Informationen zu den Auswirkungen des Corona-Virus (COVID-19), die im Zusammenhang mit dem Bundesamt für Migration und Flüchtlinge (BAMF) stehen. Available in German at <https://bit.ly/3GirutF>

⁶⁸ Section 24(4) Asylum Act.

⁶⁹ Federal Government, Response to parliamentary question by The Left, 20/940, 7 March 2022, 10.

⁷⁰ Federal Government, Response to parliamentary question by The Left, 20/940, 7 March 2022, 12, and 19/30711, 15 June 2021, 3.

negative decisions until 11 May 2020 to account for the difficulties in lodging appeals against negative decisions or to contact lawyers and NGOs during this time.⁷¹ This has increased the length of procedures, as the length is counted from the time of lodging the application until the decision is issued to the applicant. In addition, the BAMF has prioritised decisions on cases which had been pending for longer during the time in which in-person activities were largely impossible.⁷²

For the period 2013 to 2021, statistics show significant variation in length of procedures, depending on the countries of origin of asylum seekers and on the decision practice in the BAMF. In 2017, the average duration was higher as the BAMF dealt with a high backlog of cases on which it eventually decided in 2017.⁷³

Average duration of the procedure (in months) per country of origin									
	2013	2014	2015	2016	2017	2018	2019	2020	2021
All countries	7.2	7.1	5.2	7.1	10.7	7.5	6.1	8.3	6.6
Serbia	2.1	4	4.2	8.9	:	3	1.8	3.5	3.2
Afghanistan	14.1	13.9	14.0	8.7	11.9	10.6	6.6	8.5	6.4
Syria	4.6	4.2	3.2	3.8	7.0	4.9	5.3	6.0	4.8
Iraq	9.5	9.6	6.8	5.9	9.1	6.0	6.0	8.6	7.6
North Macedonia	2.4	5.3	4.5	:	:	2.6	1.8	4.0	2.0
Iran	13	14.5	17.1	12.3	10.3	6.3	5.7	11.5	11.8
Pakistan	15	15.7	15.3	15.5	13.9	10.6	5.7	9.1	6.8
Russia	5.6	10	11.8	15.6	15.7	12.9	9.0	13.3	12.1

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; 19/13366, 19 September 2019, 19/23630, 23 October 2020, 20/940, 7 March 2022, 10.

The overall number of pending applications at the BAMF was 108,064 at the end of 2021.⁷⁴ This is twice as much compared to 2020 (52,056)⁷⁵ and significantly higher and in previous years (57,012 in 2019 and 58,325 in 2018).⁷⁶ Most of the pending applications are by Syrian (31.8 % of all pending cases) and Afghan nationals (25.8 % of all pending cases). The main reasons for this increase include the de-prioritisation of applications from Afghan nationals and from Syrian nationals holding a protection status in Greece (see Sections [Differential treatment of specific nationalities](#) and [Suspension of transfers](#)).⁷⁷

1.2. Prioritised examination and fast-track processing

After the first registration of the intention to seek asylum, applicants are directed towards an “initial reception centre”. While the organisation of reception facilities is under the auspices of the Federal States, two types of initial reception centres have been established across Germany both for first arrival and for prioritised and fast-track processing. These are the “arrival centres” first established in 2015, on the one

⁷¹ Federal Government, Response to written question No. 8 by Luise Amtsberg (The Greens), 19/19363, p. 5, available in German at <https://bit.ly/3qdXmdy>, 5.

⁷² Federal Government, Response to parliamentary question by The Left, 19/30711, 15 June 2021, 3.

⁷³ Federal Government, Response to parliamentary question by The Left, 19/1371, 22 March 2018, 42; 18/11262, 21 February 2017, 13.

⁷⁴ BAMF, *Asylgeschäftsstatistik (statistics on applications, decisions and pending procedures)*, 1-12/2021, available in German at: <https://bit.ly/38DEdQJ>.

⁷⁵ BAMF, *Asylgeschäftsstatistik (statistics on applications, decisions and pending procedures)*, 1-12/2020, available at: <https://bit.ly/3rnIEzR>.

⁷⁶ BAMF, *Aktuelle Zahlen*, December 2019, available in German at: <https://bit.ly/2XL4gsp>.

⁷⁷ Information provided by the BAMF, 10 March 2022.

hand, and the “AnkER centres” established in several States since 2018, on the other (see also Section [Types of accommodation](#)).

Arrival centres (*Ankunftscentren*)

The arrival centres (*Ankunftscentren*) were introduced in December 2015 with the aim of fast-tracking procedures. For this purpose, federal authorities (in particular, the branch offices of the BAMF) and regional authorities shall closely cooperate in the centres. At the beginning of 2022, 18 out of 58 branch offices of the BAMF were integrated in arrival centres in 12 different Federal States.⁷⁸ The concept of arrival centres is not based in law but has been developed by business consultants under the heading “integrated refugee management”.⁷⁹ Accordingly, this method for fast-tracking of procedures must not be confused with the introduced law in March 2016.

In the arrival centres, tasks of various authorities are “streamlined”, such as the recording of personal data, medical examinations, registration of the asylum applications, interviews and decision-making. Apart from a general concept for the “streamlining” of procedures, there is no detailed country-wide concept for the handling of procedures in arrival centres. Rather, the way the various authorities cooperate in the centres is based on agreements between the respective Federal States (responsible for reception and accommodation), the BAMF branch office (responsible for the asylum procedure) and other institutions present in the facilities (such as medical and social services).

The procedure, as it was developed at the **Berlin** arrival centre, was 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 was supposed to lead to a decision within four days.⁸⁰ The report illustrates how asylum seekers go through the various stages of the reception procedure and the asylum procedure within a few days and thus is still typical of a procedure in an arrival centre, although the conditions may differ at other centres.

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

Day 2 Asylum seekers have to report to 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

⁷⁸ BAMF, *Locations*, <https://bit.ly/3dFTd8w>, lists 58 “branch offices” and “regional offices”, with some offices having both functions. Some of the centres listed as “arrival centres” are also considered functionally equivalent to “AnkER-centres”, according to the BAMF (see BAMF, *Evaluation of AnkER Facilities and Functionally Equivalent Facilities*, Research Report 37 of the BAMF Research Centre, 2021, 17 and 22, available in English at <https://bit.ly/3FgxXnq>).

⁷⁹ 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>.

⁸⁰ Flüchtlingsrat Berlin, *Das Schnellverfahren für Asylsuchende im Ankunftszentrum Berlin*, November 2017, available in German at: <http://bit.ly/2HdSDzb>.

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 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 again have to report to 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.

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. This is dependent on how the Federal States and the BAMF have organised the procedure in the respective centres.

Since 2019, the BAMF is obliged by law to offer a basic counselling service, consisting of general information on the procedure which is supposed to be provided before the asylum application is registered. During the procedure, asylum seekers shall also be given an opportunity to make individual appointments with a BAMF staff member or with a welfare organisation for advice on the procedure (see [Provision of information on the procedure](#))

AnKER centres (*AnKER-zentren*)

The concept of AnKER centres was introduced in 2018. As of August 2018, three Federal States (**Bavaria**, **Saxony** and **Saarland**) started conducting a pilot project organising the procedure and accommodation in AnKER centres where not only activities relating to the asylum procedure, but also return procedures (in case of a rejection of the asylum application) are centralised. In 2019 and 2020, the concept was expanded to other Federal States, with the opening of “functionally equivalent facilities” in **Mecklenburg-Western Pomerania**, **Schleswig-Holstein** and **Brandenburg** in 2019 and in Hamburg and in **Baden-Württemberg** in 2020. As of May 2021, a total of 16 AnKER or functionally equivalent centres were established in Germany.⁸¹ In 2020, around 27 % of all asylum applications were examined in an AnKER centre or functionally equivalent facility.⁸²

In **Bavaria**, where the majority of AnKER centres have been set up, asylum seekers are first registered in a so-called “arrival centre”⁸³ in Munich and are transported to an AnKER centre if the responsibility of Bavaria has been established under the EASY system. A similar system has been established in the other Länder where AnKER centres are operating.

In a 2018 report on the situation in the AnKER centre in **Bamberg**, Bavaria, corroborated by findings from the AnKER centres in **Regensburg** and **Manching/Ingolstadt**, Bavaria in 2019,⁸⁴ as well as by an evaluation of AnKER centres carried out by the BAMF,⁸⁵ the procedure has been described as follows:⁸⁶

- Step 1** The registration is carried out by the regional authorities. Since Federal State authorities and the BAMF are both present in AnKER centres, several measures to establish the asylum seeker’s identity and possible previous applications (such as fingerprints) are taken already before the application for asylum is officially lodged with the BAMF. If no identity documents exist, mobile phones are confiscated and checked to determine the asylum seeker’s origin. A 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. According to the BAMF evaluation, the time between first registration and lodging of the application is 3 days longer on average in AnKER centres. This is attributed to the upstreaming of measures to establish identity and the group counselling sessions.⁸⁷
- Step 3** The interview with the BAMF is conducted. This is followed by the decision. While the reports based on AnKER centres in Bavaria find that the interview is usually conducted within 2-3 days of lodging, the BAMF evaluation finds that on average, the time between

⁸¹ Federal Government, Response to parliamentary question by The Left, 19/30711, 15 June 2021, 28.

⁸² Federal Government, Response to parliamentary question by The Left, 19/30711, 15 June 2021, 31.

⁸³ This form of “arrival centre” seems to be 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.

⁸⁴ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

⁸⁵ BAMF, *Evaluation of AnKER Facilities and Functionally Equivalent Facilities*, Research Report 37 of the BAMF Research Centre, 2021, available in English at <https://bit.ly/3FgxXnq>

⁸⁶ Markus Kraft: “Die ANKER-Einrichtung Oberfranken”, *Asylmagazin* 10-11/2018, 352-353.

⁸⁷ BAMF, *Evaluation of AnKER Facilities and Functionally Equivalent Facilities*, Research Report 37 of the BAMF Research Centre, 2021, 28, available in English at <https://bit.ly/3FgxXnq>

lodging the application and the interview is 12 days, both in AnKER centres and in other branch offices.⁸⁸

The average duration of the first instance procedure in the AnKER centres as 6.6 months in 2020, compared to 8.3 months for all procedures. In the first quarter of 2021, the average duration was 5.3 months in AnKER centres and 6.5 months in all first instance procedures. In the BAMF evaluation of AnKER centres, a comparison between procedures in AnKER centres and other procedures leads to the conclusion that procedures are only marginally faster in AnKER centres.⁸⁹

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 after the stay in the initial reception centre.⁹⁰ However, these measures are not unique features of the AnKER centres and similar arrangements exist in other facilities as well. The BAMF evaluation finds that residents of AnKER centres and equivalent facilities who have their application rejected are more likely to decide to return “voluntarily”. However, the rate of absconding is also higher among rejected applicants living in AnKER centres, and the rate of forced removals has been found to be lower.⁹¹ 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?
❖ If so, are interpreters available in practice, for interviews? Yes No Yes No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? Yes No
3. Are interviews conducted through video conferencing? Frequently Rarely Never
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender?
❖ If so, is this applied in practice, for interviews? Yes No Yes No

In the regular procedure, the BAMF conducts an interview with each asylum applicant.⁹² 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](#),⁹³

⁸⁸ BAMF, *Evaluation of AnKER Facilities and Functionally Equivalent Facilities*, Research Report 37 of the BAMF Research Centre, 2021, 30, available in English at <https://bit.ly/3FgxXnq>

⁸⁹ The evaluation is based on asylum procedures regarding first-time cross border asylum applications that were finished within one calendar year and carried out between 01.8.2019 and 31.03.2020. The evaluation finds that such procedures took 77 days in AnKER centres and equivalent facilities, compared to 82 days in other BAMF branch offices. Source: BAMF, *Evaluation of AnKER Facilities and Functionally Equivalent Facilities*, Research Report 37 of the BAMF Research Centre, 2021, 23, 30, available in English at <https://bit.ly/3FgxXnq>

⁹⁰ Markus Kraft: “Die ANKER-Einrichtung Oberfranken”, *Asylmagazin* 10-11/2018, 355.

⁹¹ BAMF, *Evaluation of AnKER Facilities and Functionally Equivalent Facilities*, Research Report 37 of the BAMF Research Centre, 2021, 52-53, available in English at <https://bit.ly/3FgxXnq>

⁹² Sections 24 and 25 Asylum Act.

⁹³ 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.

- (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;⁹⁴ or
- (4) The applicant fails to appear at the interview without an adequate excuse.⁹⁵

Since 2016, the law also contains a provision according to which officials from other authorities may conduct interviews, “if a large number of foreign nationals applies for asylum at the same time”.⁹⁶ This provision has not been applied in 2020 and 2021.

During the first wave of the Covid-19 outbreak between mid-March and mid-May 2020, interviews were suspended for the most part. Only in special cases, particularly those related to security issues, have interviews continued with mobile teams. In person interviews have gradually resumed since May 2020, with protective measures such as distancing, masks, transparent shields and ventilation in place.⁹⁷

The updated version of the BAMF’s internal directive for asylum procedures of July 2021 foresees the possibility of video interviews for the Dublin interview, for border procedures as well as for subsequent applications and revocation procedures, but not in the regular asylum procedure.⁹⁸ The document specifies that the directives concerning video interviews are only applicable during the Covid-19 pandemic. Video interviews still require the presence of all involved persons on BAMF premises, albeit in different rooms or locations. Consent of the applicant is not required.⁹⁹ Video conferencing equipment for interviews has been installed in all BAMF branch offices. However, there are no statistics as to how often this possibility was used in practice.¹⁰⁰

In previous years, video conferencing was used on a very rare basis until 2013, but its use seems to have been abandoned completely since then.¹⁰¹ Audio or video recording or video conferencing is not used in appeal procedures either.

Interpretation

The presence of an interpreter at the interview is required by law.¹⁰² The BAMF recruits its own interpreters on a freelance basis. The BAMF has introduced the possibility of videoconferences for interpretation in 2016. In these cases, interpreters sit in a different branch office than the one in which the interview is taking place or participate via a so-called “interpretation-hub”, ensuring that all transmission is via a secure internal network. Video interpretation is regarded as complementary to in-person interpretation, and should be used mainly for rare languages, when travel costs would be very high or in a situation with an unusually high number of interviews.¹⁰³ Video interpretation does not require consent by the applicant.¹⁰⁴ Video conferencing was used in 1,019 interviews in 2021 and 1,359 interviews in 2020, compared to around 2,500 interviews in 2019.¹⁰⁵ Thus, the Covid-19 outbreak did not lead to more use of video

⁹⁴ Section 24(1) Asylum Act.

⁹⁵ Section 25 Asylum Act.

⁹⁶ Section 24(1a) Asylum Act.

⁹⁷ ECRE, *Information Sheet 28 May 2020: Covid-19 Measures Related to Asylum and Migration Across Europe*, available at: <https://bit.ly/3IMPtZD>; ECRE, *Information Sheet 7 December 2020: Covid-19 Measures Related to Asylum and Migration Across Europe*, 3, available at: <https://bit.ly/3dDxnop>.

⁹⁸ BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), 03 August 2021, 104

⁹⁹ BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), 03 August 2021, 104

¹⁰⁰ Information provided by the BAMF, 10 March 2022. See also EASO, ‘COVID-19 emergency measures in asylum and reception systems. Issue No. 3, 7 December 2020, available at <https://bit.ly/3FBPZ3Y>

¹⁰¹ 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.

¹⁰² Section 17 Asylum Act.

¹⁰³ BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), Sprachmittlung, 23 August 2019. 17, available in German at <https://bit.ly/3r5I76x>

¹⁰⁴ BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), 03 August 2021, 101

¹⁰⁵ Information provided by the BAMF, 10 March 2022 and 8 April 2022.

interpretation. According to the BAMF, this is due to the fact that distancing measures and contact avoidance were also implemented in the interpretation hub, leading to an overall lower number of interviews.¹⁰⁶

Following discussions about the quality of translations during interviews, the BAMF has revised the procedures for the deployment of interpreters since 2017. For example, a new training programme of online modules and in-house trainings was established. Both experienced and newly employed interpreters are now 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”. 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 in 2017.¹⁰⁷ The complaint management system was revised in 2020 and involves a multi-stage procedure at the end of which a termination of contractual relations with the interpreter is possible.¹⁰⁸

In addition, the BAMF has published a code of conduct for interpreters.¹⁰⁹ 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). Since the introduction of the new concept and the code of conduct in 2017 and until April 2018, 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.¹¹⁰ However, no re-assessment of the decisions where these interpreters were involved has taken place.¹¹¹ Between 2017 and February 2022, a total of 926 complaints were signalled to the BAMF via its complaint management system.¹¹²

The quality of interpretation also seems to vary between interviews at the BAMF and court hearings: whereas in court, interpreters must take an oath to accurately reflect the applicants’ position, this is not the case for interviews conducted with the BAMF or the Border Police. Reportedly, taking oath in Court proceedings results in better translation services and cases being taken “more seriously”.¹¹³ Interpreters at court are, however, also generally paid more than interpreters contracted by the BAMF, and courts require higher levels of qualifications.

Transcript of the interview

The transcript of the interview consists of a summary of questions and answers (i.e. it is not a verbatim transcript). It is usually taken from a tape recording of the interview and it is only available in German. The interpreter present during the personal interview will also be responsible for translations of the transcript. The applicant has the right to correct mistakes or misunderstandings. By signing the transcript, the applicant confirms that he or she has had the opportunity to present all the important details of the case,

¹⁰⁶ Information provided by the BAMF, 8 April 2022.

¹⁰⁷ BAMF, ‘Online-Video training für Sprachmittler gestartet’, 28 September 2017, available in German at: <http://bit.ly/2oWwbTH>.

¹⁰⁸ Information provided by the BAMF, 10 March 2022.

¹⁰⁹ BAMF, *Verhaltenskodex für Sprachmittler*, June 2017, available in German at <https://bit.ly/2XZADBF>.

¹¹⁰ Federal Government, Response to parliamentary question by The Left, 19/1631, 13 April 2018, available in German at: <https://bit.ly/2F2kvqq>, 40-41.

¹¹¹ PRO ASYL, ‘*Stellungnahme von PRO ASYL zum Antrag für ein umfassendes Qualitätsmanagement beim Bundesamt für Migration und Flüchtlinge (BT-Drs. 19/4853) sowie zum Entwurf eines Gesetzes zur Änderung des Asylgesetzes zur Beschleunigung von Verfahren durch erweiterte Möglichkeit der Zulassung von Rechtsmitteln (BT-Drs. 19/1319) 21*’, available in German at <https://bit.ly/34Ge2Sy>

¹¹² Information provided by the BAMF, 10 March 2022. This is out of a total of 3,971 messages to the system, which also include positive or neutral messages.

¹¹³ Information provided by an attorney-at-law, 31 August 2020.

that there were no communication problems and that the transcript was read back in the applicant's language. Video recordings of interviews do not take place.

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 (or digital) recording of the interview is deleted.

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 there are instances where no further questions are asked in cases of inconsistencies in the asylum seekers' accounts.¹¹⁴ In such cases, 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.

1.4. Appeal

Indicators: Regular Procedure: Appeal

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

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

 - ❖ If yes, is it

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Some grounds	<input type="checkbox"/> No
<input type="checkbox"/> Yes	<input type="checkbox"/> Some grounds	<input checked="" type="checkbox"/> No
 - ❖ If yes, is it suspensive

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Some grounds	<input type="checkbox"/> No
<input type="checkbox"/> Yes	<input type="checkbox"/> Some grounds	<input checked="" type="checkbox"/> No
 - Rejection
 - Rejection as manifestly unfounded
2. Average processing time for the appeal body to make a decision: 26.4 months¹¹⁵

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, at least 48 of which are competent to deal with appeals in asylum procedures.¹¹⁶ The responsible court is the one with regional competence for the asylum seeker's place of residence. Procedures at the administrative court generally fall into 2 categories, depending on the type of rejection of the application:

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

¹¹⁴ Uwe Berlit, *Sonderasylprozessrecht – Zugang zu gerichtlichem Rechtsschutz im Asylrecht*, Informationsbrief Ausländerrecht 9/2018, 311.

¹¹⁵ For the period until 30 September 2021. Source: Federal Government, Response to parliamentary question by The Left, 20/432, 14 January 2022, 22. A full-year figure was not available in 2021. By way of comparison, the average processing time for the appeal body in 2020 was 24.3 months.

¹¹⁶ In the Federal State of Rhineland-Palatinate, the Administrative Court of Trier is competent for all asylum appeal procedures, therefore the other three Administrative Courts in the Federal State only deal with asylum matters on an ad hoc basis.

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. Furthermore, applications from so-called safe countries of origin are legally assumed to be manifestly unfounded (Section 29a Asylum Act) requiring a higher burden of proof on the part of the applicant of their reasons for needing protection.¹¹⁷ 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.¹¹⁸ 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).

Until September 2021, the average processing period for appeals was 26.4 months (compared to 24.3 months in 2020).¹¹⁹ This is significantly longer than in previous years which had already seen a rising trend (17.6 months in 2019 compared to 12.5 months in 2018 and 7.8 months in 2017).¹²⁰ The high increase in 2020 and 2021 is likely related to the Covid-19 pandemic, as administrative courts had cancelled hearings, treated only urgent cases or did not allow public access especially during the first wave of the pandemic in spring 2020.¹²¹ The increase in previous years can still be traced back to a significant increase in the number of appeals filed in 2017, following a sharp increase in BAMF decisions especially in 2016 and 2017.¹²² At the end of the year 2017, 361,059 cases were pending before the Administrative Courts. It appears that courts are still trying to address this backlog, with 165,367 cases pending as of August 2021 (compared to 191,110 pending cases at the end of 2020 and 252,250 at the end of 2019).¹²³ According to the UNHCR, PRO ASYL as well as the spokesperson of the Higher Administrative Court of Lower Saxony, courts have been understaffed and have lacked the capacity to effectively deal with the backlog for years.¹²⁴

¹¹⁷ Der Paritätische Gesamtverband, *Grundlagen des Asylverfahrens*, überarbeitete 5. Auflage 2021, available in German at <https://bit.ly/33c4uhF>, p.26.

¹¹⁸ See more references in Dominik Bender and Maria Bethke. “‘Dublin III’, Eilrechtsschutz und das Comeback der Drittstaatenregelung.”, *Asylmagazin* 11/2013, 362.

¹¹⁹ Federal Government, Responses to parliamentary question by The Left, 20/432, 14 January 2022, 22, 19/28109, 30 March 2021, 39.

¹²⁰ Federal Government, Responses to parliamentary question by The Left, 19/18498, 2 April 2020, 47; 19/8701, 25 March 2019, 48; 19/1371.

¹²¹ By way of example see the website of the Administrative Court of Stuttgart as of 11 April 2020: <https://bit.ly/34ITHvU> and of the Administrative Court of Berlin as of 1 April 2020: <https://bit.ly/3K43Kfa> .
BAMF, *Das Bundesamt in Zahlen 2020*, 37.

¹²² Federal Government, Response to parliamentary question by The Left 19/28109 , 14 October 2021, 30, 19/28109, 30 March 2021, 38, 19/18498, 2 April 2020, 47; 19/8701, 25 March 2019, 43; 19/1371, 22 March 2018, 34.

¹²⁴ FRA (European Union Fundamental Rights Agency), ‘Migration: Key Fundamental Rights Concerns’, Quarterly Bulletin 01.01.2021-30.06.2021, 14, available at: <https://bit.ly/3qB3RHk>.

Over the last years, the BAMF has put efforts into digitalising communication with the courts, partly to shorten the times for appeal procedures. According to the BAMF, “files and documents from all the branch offices can be sent to the administrative courts electronically, by legally-compliant means as well as encrypted”, via the so-called ‘Electronic Court and Administration Mailbox EGVP’. The administrative courts can in turn address file requests to a central office of the BAMF in Nuremberg. “An average of approx. 1,800 files and documents are sent by electronic means every day.” According to the BAMF, “the rapid dispatch of files requested, on the same day in most cases, enables administrative court judges to recognise a clear time benefit when it comes to processing cases”.¹²⁵

It should be noted that a high number of appeal procedures (46.3 % in 2020¹²⁶) is terminated without an examination of the substance of the case, and therefore often without a hearing at the court. These terminations of procedures take place, for instance, if the appeal is withdrawn by the asylum seeker or if an out-of-court settlement is reached between the asylum seeker and the BAMF. Therefore, it has to be assumed that the average period for appeals is considerably longer than the averages referred to above, if the court decides on the merits of the case.

If the appeal to the Administrative Court is successful (or partly successful), the court obliges the authorities to grant asylum and/or refugee status or to declare that removal 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.

Until the end of November 2021, approximately 18 % of all court decisions led to the granting of a form of protection to the applicant. If formal decisions (without examination of the substance) are not taken into account, the success rate for appeals was at 35 %. This is slightly higher than in previous years (in 2020, the rates were 17 % of all appeal decisions and 31 % if formal decisions are not taken into account; the rates for 2019 were 15 % and 27 %).¹²⁷

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.

¹²⁵ BAMF, *Digitalisation of the asylum procedure*, 2020 available at: <https://bit.ly/3pFFITU>.

¹²⁶ Federal Government, Response to parliamentary question by The Left, 19/28109, 30 March 2021, 38.

¹²⁷ Federal Government, Responses to parliamentary question by The Left 20/432, 14 January 2022, 21 19/28109, 30 March 2021, 38, 19/18498, 02 April 2020, 45.

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?

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

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

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

1.5.1. Legal assistance at first instance

Legal assistance at first instance is not systematically available to asylum seekers in Germany. 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.¹²⁸ Consequently, asylum seekers are rarely represented by a lawyer at the initial stage of the asylum procedure and/or during the interview.

With the so-called “Orderly-Return-Law”, in force since 21 August 2019, a “voluntary independent state-run” counselling service with a two-stage approach was introduced (Section 12a Asylum Act): the first stage consists of group sessions with basic information on the asylum procedure as well as on return procedures; the second stage consists of individual counselling sessions. While the law stipulates that the counselling can be carried out either by the Federal Office or by welfare organisations, in practice it is

¹²⁸ In theory, there is the possibility to apply for free legal counselling under a general scheme for legal counselling (Beratungshilfe). However, the fees paid by the state for this counselling are so low that there are only few lawyers who accept to give counselling under this scheme. Moreover, the scheme that is available to all persons in Germany who do not have enough funds to avail themselves of legal counselling is hardly known in general.

the BAMF which provides counselling. Government advice covers the period from the lodging of the asylum application to the explanation of a first instance decision. To avoid conflict with provisions covering legal advice in Germany, it is not aimed at providing counselling at the appeal stage. The government has also pointed out that the counselling service on asylum procedures is “definitely not legal advice”.¹²⁹ (see chapter [Provision of information on the procedure](#)). The new coalition government has announced in November 2021, however, that legal assistance should be offered by independent organisations instead of the BAMF.¹³⁰ It remains to be seen if this will be implemented in practice.

Once asylum seekers have left the initial reception centres and have been transferred to other accommodation, the access to legal assistance depends 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.

1.5.2. Legal assistance at second instance

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 by many Courts.¹³¹ 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.

¹²⁹ „Die Asylverfahrensberatung des BAMF ist gerade keine Rechtsberatung“, Federal government, response to information request by The Left, 19/19535, 26 May 2020, 17.

¹³⁰ SPD, BÜNDNIS 90/DIE GRÜNEN UND FDP, „Mehr Fortschritt wagen. Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit. Koalitionsvertrag 2021 – 2025 zwischen der Sozialdemokratischen Partei Deutschlands (SPD) und den Freien Demokraten (FDP)“, 137-142, available in German at: <https://bit.ly/3ITYqJZ>.

¹³¹ For an overview of practice in **Regensburg**, Bavaria, see ECRE, *The AnkER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

2. Dublin

2.1. General

In 2021, Germany sent a total of 42,284 outgoing requests to other Member States, mainly to Greece (10,427) Italy (6,623) and France (4,416). Germany received 15,744 requests, mainly from France (7,810), Belgium (1,730) and the Netherlands (1,441). This marks a slight increase compared to 2020 where Germany had sent a total of 30,135 outgoing requests and received 17,253 incoming requests.

As regards transfers, they significantly decreased during COVID-19 due to the relevant restrictions. In 2021, a total of 2,656 outgoing transfers were carried out, and Germany received a total of 4,274 incoming transfers. This marks a slight decrease compared to 2020 where Germany had carried out 2,953 transfers and received 4,369 transfers.¹³²

Dublin statistics: 2021

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	42,284	2,656	Total	15,744	4,274
Greece	10,427	1	France	7,810	1,850
Italy	6,623	287	Belgium	1,730	219
France	4,416	455	Netherlands	1,441	477
Romania	2,869	118	Switzerland	932	392
Poland	2,579	121	Italy	875	91

Source: Federal Government, Response to parliamentary question by The Left, 20/861, 24 February 2022, 22.

Application of the Dublin criteria

The majority of outgoing Dublin requests was based on so-called “Eurodac hits” in 2020 (71.8%) and 2021 (69.9 %), compared to 64.6% in 2019.¹³³ Details on the criteria used for requests are only available for the outgoing requests which were based on “Eurodac hits”. In 2021 they referred to a total of 29,450 requests based on Eurodac, out of which:

- 20,442 (69.4%) after an application for international protection (CAT 1);¹³⁴
- 4,365 (14.8%) after apprehension upon illegal entry (CAT 2);¹³⁵
- 4,643 (15.8%) after apprehension for illegal stay (CAT 3).¹³⁶

The number of transfers from other European countries to Germany was 4,274 in 2021, similar to 2020 (4,369) but a decrease in comparison to previous years (6,087 in 2019; 7,580 in 2018). Before and during the outbreak of Covid-19, there has been a particularly notable decrease in the numbers of transfers from **Greece** (531 transfers in 2021, 423 transfers in 2020 and 730 transfers in 2019 compared to 3,495 in 2018). The overwhelming majority of transfers from Greece (414 out of 423) 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:

¹³² BAMF, *Aktuelle Zahlen, December 2021*, 10, available in German at <https://bit.ly/3KBBaIG>. Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 32

¹³³ Federal Government, Responses to parliamentary question by The Left, 20/861, 24 February 2022, 2, 19/30849, 21 June 2021, 3, 19/17100, 20 February 2020, 3. For the preceding years, the numbers were 65.4% in 2018, 65.1% in 2017, 69.2% in 2016, 76% in 2015, 68.5% in 2014, 66.7% in 2013 and 72.8% in 2012, see 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.

¹³⁴ Article 9 recast Eurodac Regulation.

¹³⁵ Article 14 recast Eurodac Regulation.

¹³⁶ Article 17 recast Eurodac Regulation.

Incoming Dublin transfers from Greece: 2021	
Criterion	Number of transfers
Unaccompanied children with family members or relatives: Article 8	224
Family members of beneficiaries of international protection: Article 9	92
Family members of asylum seekers: Article 10	60
Dependent persons: Article 16	6
Family reunification based on the humanitarian clause: Article 17(2)	145
Total	531

Source: Federal Government, Response to parliamentary question by The Left, 20/861, 24 February 2022, 29.

One reason for the decrease in transfers from Greece in recent years is that the BAMF has been handling applications for family reunification under the Dublin regulation more restrictively in comparison to former years. In 2020, a total of 1,289 requests were sent from Greece, and 1,036 were rejected.¹³⁷ It has been reported that requests are often rejected for formal reasons (supposed expiry of deadlines for the request, alleged lack of evidence for family relationships etc.). In many cases, families therefore had to appeal to courts in order to oblige the BAMF to accept a transfer request from Greece.¹³⁸ In 2020, in 743 cases Greece remonstrated the rejection by the BAMF. In the same year, the BAMF accepted 328 of such remonstrations.¹³⁹ In 2021, the rejection rate decreased, with 377 out of 701 incoming requests being rejected. In 249 cases, Greece remonstrated the rejection, and in 174 cases the BAMF accepted responsibility after such a remonstrations in 2021.¹⁴⁰

The dependent persons and discretionary clauses

In 2021, the sovereignty clause was applied in 665 cases (compared to 1,083 cases in 2020), resulting in an asylum procedure being carried out in Germany.¹⁴¹ Since government statistics on previous years do not contain exact information on the number of cases in which the humanitarian clause or the sovereignty clause has been used, a comparison over time is difficult. For 2019, available information only refers to 3,070 cases in 2019 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.¹⁴²

2.2. Procedure

Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications?
 Yes No
2. 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.¹⁴³ The examination of whether another state is responsible for carrying out the asylum

¹³⁷ Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 44.

¹³⁸ Anne Pertsch, „Dublin reversed“ vor Gericht. Aktuelle Rechtsprechung zu Dublin-Familienzusammenführungen. Asylmagazin 8-9/2019, available at: <https://bit.ly/2W0I8tM>, 287-294.

¹³⁹ Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 46. The number of remonstrations and acceptances cannot be seen in direct relation to each other since both refer to the number of remonstrations and acceptances within the year.

¹⁴⁰ Federal Government, Response to parliamentary question by The Left, 20/861, 24 February 2022, 30.

¹⁴¹ Federal Government, Response to parliamentary question by The Left, 20/861, 24 February 2022, 10, 19/30849, 21 June 2021, 9.

¹⁴² Federal Government, Response to parliamentary question by The Left, 19/17100, 20 February 2020, 12.

¹⁴³ Section 29(1)(a) Asylum Act.

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 [Access to the Territory](#)).¹⁴⁴ The German government confirmed in August 2017 that Dublin procedures had been taking place at the border.¹⁴⁵ 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 removal 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. Following a ruling by the Federal Court that detention is illegal for refusal of entry in the case of internal border controls, the Federal Police has adapted its practice and only orders detention when there is a “heightened risk of absconding”, according to the Federal Government.¹⁴⁶ 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. This procedure is based on administrative agreements with Spain and Greece, but it has been contested in courts and has not been applied in many cases (see [Access to the territory and push backs](#)).

In a ruling of the CJEU in *Mengesteab* on 26 July 2017, an important element concerning the time limits in the Dublin procedure has been clarified with an important impact on the handling of Dublin procedures by German authorities. Before this decision, German authorities held that the time limit for sending a request to another country would start with the formal lodging of an asylum application (and not the initial registration of the intention to apply for asylum, see section ‘[Making and registering the 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.¹⁴⁷

Since the *Mengesteab* judgment, the BAMF bases the time limits for issuing a “take charge” request on the moment of registration and the issuance of an “arrival certificate”, not the moment when the application

¹⁴⁴ Federal Government, Response to parliamentary question by The Left, 18/13428, 18 August 2017, 23-24.

¹⁴⁵ *Ibid.*

¹⁴⁶ Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 50-51. The Federal Court decision is available in German at <https://bit.ly/3rfbXV9>.

¹⁴⁷ 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.

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.¹⁴⁸

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.¹⁴⁹ For an analysis of the examination of individualised guarantees and suspension of transfers in relation to specific countries see [0](#)

¹⁴⁸ BAMF, *Entscheiderbrief* (newsletter for decision-makers) 9/2021, 5-6.

¹⁴⁹ Information provided by the BAMF, 1 August 2017.

Transfers

Transfers under the Dublin Regulation are usually carried out as removals 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,¹⁵⁰ dates of removals 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. In 2019, a deviation from this general practice has been observed in AnKER centres in **Bavaria**. Following the issuance of the Dublin 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. In August 2021, the Federal Administrative Court ruled this practice unlawful, as a sole absence at the time when the aliens’ office has ordered an applicant to be present cannot be interpreted as amounting to “absconding”. Rather, all circumstances of a case have to be taken into account.¹⁵¹

The extension of the deadline to 18 months in case of absconding has been heavily debated in the context of “church asylum” (*Kirchenasyl*), the temporary sanctuary offered by religious institutions to protect people facing removal from undue hardship. 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.¹⁵² 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.¹⁵³ This was confirmed by a ruling of the Federal Administrative Court in 2020.¹⁵⁴ The BAMF has adapted its practice and has clarified in January 2021 that persons in “open church asylum” where their whereabouts are known are not considered to be absconding.¹⁵⁵ This led to an increase in reported cases: in 2021, a total of 822 cases of “church asylum” have been reported to the BAMF, up from 335 cases in 2020. In nine cases, the BAMF has decided to apply the sovereignty clause of the Dublin regulation and to conduct the asylum procedure in Germany.¹⁵⁶

¹⁵⁰ Section 59(1) Residence Act.

¹⁵¹ Federal Administrative Court (BverwG), *Decision 1 C 55.20*, available in German at <https://bit.ly/3rgh2wA>

¹⁵² ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

¹⁵³ 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>.

¹⁵⁴ Federal Administrative Court (BverwG), *Decision 1 B 19.20*, available in German at <https://bit.ly/33k6qEK>

¹⁵⁵ BAMF, ‘*Merkblatt Kirchenasyl im Kontext von Dublin-Verfahren*’, available in German at <https://bit.ly/3HY47WI>. See also PRO ASYL, ‘*Bundesverwaltungsgericht entscheidet: Kein »Flüchtigsein« im offenen Kirchenasyl!*’, available in German at <https://bit.ly/3fi5Rhd>.

¹⁵⁶ Federal Government, Response to parliamentary question by The Left, 20/861, 24 February 2022, 18, 19/30849, 21 June 2021, 25.

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”.¹⁵⁷

“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](#).¹⁵⁸

Practices as to detention before and during the Dublin procedure vary among the Federal States. Not all Federal States differentiate between Dublin transfers and removals to countries of origin in their detention statistics. Among those which do collect the data, between 1.5 % and 50 % of all Dublin transfers involved a form of detention in 2020.¹⁵⁹ 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 removal. 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 (in the same manner as in other cases of detention pending removal). It can be assumed, based on the comparable low number of places which are available in detention facilities, that most Dublin transfers take place within one day and therefore are preceded only by short-term arrests, in contrast to detention in a specialised facility which has to be ordered by a judge (see also [Detention](#)).

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 2018.¹⁶⁰ 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.¹⁶¹ For 2020, the Federal government reports that 129 Dublin transfers involved use of means of physical restraint by the police.¹⁶²

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

¹⁵⁷ CJEU, Case C-163/17 *Jawo*, Judgment of 19 March 2019, para 70.

¹⁵⁸ ECRE, *The AnkER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

¹⁵⁹ Federal Government, Response to parliamentary question by The Left, 19/31669, 04 August 2021, 117 et seq

¹⁶⁰ See Federal Government, Response to parliamentary question by The Left, 19/7401, 29 January 2019, available in German at: <https://bit.ly/2HwaiQQ>.

¹⁶¹ ECRE, *The AnkER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

¹⁶² Federal Government, Response to parliamentary question by The Left, 19/27007, 25 February 2021, 38

Before the outbreak of Covid-19, a personal interview was mandatory for the admissibility interview.¹⁶³ The updated version of the BAMF's internal directive for asylum procedures of July 2021 foresees the possibility of video interviews for the Dublin interview, for border procedures as well as for subsequent applications and revocation procedures.¹⁶⁴ Video interviews still require the presence of all involved persons on BAMF premises, albeit in different rooms or locations. There is no information as to whether video interviews were carried out in practice in 2020 and 2021. There is no consistent practice for interviews in Dublin procedures. For the authorities a Dublin procedure means that responsibilities are referred to the "Dublin units" 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 removal to another Dublin state could be impeded (e.g. existence of relatives in Germany).

2.4. Appeal

Indicators: Dublin: Appeal

Same as regular procedure

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

<ul style="list-style-type: none"> ❖ If yes, is it ❖ If yes, is it suspensive 	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Judicial <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Administrative <input checked="" type="checkbox"/> No
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Dublin decisions are inadmissibility decisions under Section 29 of the Asylum Act.

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 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

¹⁶³ *Entscheiderbrief*, 9/2013, 3.

¹⁶⁴ BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), 03 August 2021, 104

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.¹⁶⁵

In May 2017, the Federal Constitutional Court established some general standards for the appeal procedure in Dublin cases and cases of removals 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 removal 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 removal. 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.¹⁶⁶

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 between January and November 2021. 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 as of 30 November 2021		
Country	Granting suspensive effect	Refusing suspensive effect
Belgium	10	120
Bulgaria	49	85
Denmark	8	71
Estonia	0	7
Finland	2	9
France	54	474
Greece	56	14
Iceland	0	2
Italy	707	835
Croatia	81	198
Latvia	6	11
Lithuania	29	135
Luxemburg	0	16
Malta	8	15
Netherlands	27	114
Norway	3	7
Austria	26	261
Poland	89	226
Portugal	12	13
Romania	97	436

¹⁶⁵ Dominik Bender and Maria Bethke, “‘Dublin III’, Eilrechtsschutz und das Comeback der Drittstaatenregelung.” Asylmagazin 11/2013, 362.

¹⁶⁶ BverfG, Decision 2 BvR 157/17, 8 May 2017, asyl.net, available at: <http://bit.ly/2G6rw9X>.

Sweden	48	290
Switzerland	11	50
Slovakia	1	9
Slovenia	9	53
Spain	48	222
Czech Republic	3	23
Hungary	2	2
Cyprus	0	3

Source: Federal Government, Response to parliamentary question by The Left, 20/861, 24 February 2022, 25-26.

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?

Dublin transfers during the Covid-19 pandemic

With the outbreak of Covid-19, the BAMF first suspended Dublin transfers to Italy on 25 February 2020. On 23 March 2020, all Dublin transfers were suspended due to the numerous travel restrictions within the European Union. With the reopening of intra-European borders on 15 June 2020, transfers were gradually taken up again. A decree of the Federal Ministry of the interior provided that in a first step, transfers via land routes to neighbouring countries should be carried out, whereas flight transfers to other Member States would follow at a later stage. The BAMF has issued revocations to its previous suspension decision accordingly, for transfers to neighbouring countries in June and for further countries, including Greece and Italy, in July.¹⁶⁷ As of June 2021, transfers were still not taking place to Bulgaria, Slovenia and Latvia. Since 7 December 2021, transfers to and from Germany are only possible for persons with a negative Covid-19 test.¹⁶⁸

With the suspension of transfers, the BAMF also suspended the time limit within which the transfer has to take place in order for Germany to not be responsible for the application.¹⁶⁹ This suspension was contested by the European Commission, stating that the Dublin regulation provides no legal basis for such a suspension,¹⁷⁰ as well as by neighbouring countries and German administrative courts. As of 4 August 2020, the BAMF decided to no longer hold on to the suspension. Persons whose transfer period had expired due to the Covid-19 related travel restrictions can enter the national asylum procedure. This did not apply however to applicants with an ongoing appeal procedure.¹⁷¹ As of 20 May 2021, the transfer period had expired for a total of 9,329 persons due to the Covid-19 pandemic.¹⁷² As a result of the suspensions, the number of transfers was significantly lower in 2020 compared to 2019, with 2,953 transfers in 2020 compared to 8,423 in 2019.

Suspension of transfers and individualised guarantees for specific Member States

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.¹⁷³ 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 to send requests to Hungary also in 2021. Whereas no Dublin transfers to

¹⁶⁷ PRO ASYL, 'Newsticker Coronavirus: Informationen für Geflüchtete und Unterstützer*innen', available in German at <https://bit.ly/3n5bqEe>

¹⁶⁸ Transfers to Croatia took place "in limited ways only" according to the Federal Government, see Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 48, 49.

¹⁶⁹ ECRE, *Information Sheet 28 May 2020: Covid-19 Measures Related to Asylum and Migration Across Europe*, available at: <https://bit.ly/3IMPtZD>

¹⁷⁰ European Commission, 'COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement', 8, available at <https://bit.ly/33gfTgl>

¹⁷¹ Pro Asyl, 'Praxishinweise zur aktuellen Aussetzung von Dublin-Überstellungen und Überstellungsfristen', available in German at <https://bit.ly/3zV65EG>

¹⁷² Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 47.

¹⁷³ Federal Government, Response to parliamentary question by The Left, 19/921, 26 February 2018, 19.

Hungary have taken place between 11 April 2017 and the end of 2020,¹⁷⁴ one person was transferred to Hungary in 2021, with an individualised guarantee issued by the Hungarian authorities.¹⁷⁵ No further information is available on the case and it is unclear whether this presents a general change in practice on the side of either the German or the Hungarian authorities.

Greece: A formal suspension of transfers to Greece, which had been in place for several years, ended in March 2017.¹⁷⁶ Between 2010 and 2021, Germany sent a comparably high number of take charge requests to Greece (6,737 in 2020 and 10,427 in 2021, which represents 24.6 % of all outgoing requests of 2021).¹⁷⁷ However, only 4 transfers were carried out in 2020 and only one in 2021 (compared to 20 in 2019).¹⁷⁸ In addition, 46 persons were transferred to Greece between August 2018 and May 2021 after apprehension at the German-Austrian border, on the basis of an administrative agreement between Germany and Greece (see [Access to the Territory](#)). The government asserts that vulnerable people are not being transferred since Dublin transfers have been taken up again in March 2017, and that individualised guarantees are sought for every case regarding reception, accommodation and the asylum procedure.¹⁷⁹ The BAMF was informed by the Greek authorities that all persons transferred were issued a temporary residence permit upon arrival in Greece and were accommodated either in reception centres (Camp Eleonas, Camp Shisto) or in private apartments. For transfers of persons who have received a protection status in Greece, see below.

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.¹⁸⁰ Transfers to Italy are systematically ordered, including for vulnerable persons such as pregnant women or persons with severe mental health conditions.¹⁸¹

With reference to the CJEU decision in the case of *Jawo vs. Germany*, the Federal Constitutional Court reiterated in October 2019 that courts are obliged to consult objective, reliable and up-to-date sources of information when deciding on the legitimacy of Dublin transfers.¹⁸² The Constitutional Court overruled two decisions by the Administrative Court of Würzburg in which transfers to Italy had been declared permissible. The Constitutional Court pointed out that the lower court had not sufficiently examined the reception conditions in Italy and the possible risks upon return which might result from homelessness and from possible systemic deficiencies in the asylum system.

Furthermore, 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 asylum system amount to “systemic deficiencies” or not, or whether the situation of Dublin returnees in Italy calls for individualised guarantees or not. Jurisprudence regarding transfers to Italy has remained inconsistent as of 2021.¹⁸³

¹⁷⁴ Preliminary remark to Federal Government, Response to parliamentary question by The Left, 19/17100, 20 February 2020, 1.

¹⁷⁵ Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 47.

¹⁷⁶ Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 27.

¹⁷⁷ Federal Government, Response to parliamentary question by The Left, 20/861, 24 February 2022, 22., 19/30849, 21 June 2021, 3.

¹⁷⁸ Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 11, 19/17100, 20 February 2020, 59-60.

¹⁷⁹ Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 27.

¹⁸⁰ Informationsverbund Asyl und Migration, ‘BAMF führt Überstellungen nach Italien wieder „uneingeschränkt“ durch’, 29 March 2019, available in German at: <https://bit.ly/2Uobbqu>. For more information on the practice in previous years and corresponding jurisprudence see AIDA, *Country Report Germany – Update on the year 2019*, July 2020, available at: <https://bit.ly/3hCWYOF>, 36-37.

¹⁸¹ ECRE, *The AnkER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

¹⁸² Bundesverfassungsgericht (BverfG), *Decision 2 BvR 1380/19*, 10 October 2019, asyl.net: M27757.

¹⁸³ Informationsverbund Asyl & Migration, ‘Das »Dublin-Verfahren«. Die Zulässigkeitsprüfung im Asylverfahren bei »Dublin-Fällen« und »Anerkannten«’, Available in German at <https://bit.ly/3K4StLy>

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. By way of illustration, recent decisions concerning transfers of asylum seekers and beneficiaries of international protection to selected Member States are listed below:

Examples of Administrative Court rulings on Dublin transfers and transfers of persons with protection status in another European country: 2021		
Country	Halting transfer	Upholding transfer
Bulgaria	Administrative Court of Hannover, 3 A 5416/19, 24 March 2021 Administrative Court of Freiburg, A 14 K 58/18, 5 July 2021 Administrative Court of Freiburg, A 14 K 1284/20, 07 September 2021 Administrative Court of Freiburg, A 14 K 1924/18, 17 September 2021 Administrative Court of Freiburg, A 14 K 1088/19, 22 September 2021	Administrative Court of Bayreuth, B 7 K 20.31318, 10 February 2021 Administrative Court of Bayreuth, B 7 K 20.30929, 10 February 2021 Administrative Court of Stuttgart, A 4 K 213/20, 25 February 2021
Italy	Administrative Court of Frankfurt, 9 K 5051/18.F.A, 20 August 2021 Administrative Court of Trier, 6 L 2133/21.TR, 1 July 2021 Administrative Court of Giessen, 8 L 4949/19.GI.A, 28 April 2021, 8 L 4540/19.GI.A, 6 May 2021 Administrative Court of Bremen, 6 K 1114/20, 23 April 2021 VGH (High Administrative Court) of Hesse, 3 A 539/20.A, 11 January 2021	Administrative Court of Saarland, 5 L 1624/21, 29 December 2021 Administrative Court of Berlin, 31 K 718.18 A, 22 February 2021, 28 K 84.18 A, 19 May 2021
Romania	Administrative Court of Munich, A 13 K 183/19, 19 February 2021 Administrative Court Administrative Court of Cologne, 20 K 653 / 21.A, 19 April 2021 Administrative Court of Freiburg A 14 K 6699/18, 27 September 2021	Administrative Court of Düsseldorf, 12 L 3 / 21.A, 14 January 2021 Administrative Court of Munich, M 30 S 21.50060, 26 January 2021 Administrative Court of Ansbach, AN 17 S 21.50015, 23 February 2021

Source: Publicly available caselaw databases. See also the database of asyl.net.

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.

Suspension of transfers for beneficiaries of international protection in other Member States

Many court decisions which have been published in recent years were dealing with cases of persons who had been granted international protection in other European states such as 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 the existing 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.

In October 2019, the Federal Constitutional Court has defined some important standards concerning transfers of persons who have already been granted international protection in Greece, ruling that it is necessary to take into account the situation of an asylum seeker in **Greece** not only during the asylum procedure, but also after the possible granting of protection status. The Constitutional Court in the present case saw “concrete indications” that persons with protection status might be at risk of treatment which might violate Article 4 of the European Charter of Fundamental Rights. In line with the CJEU’s ruling in the case of *Jawo*,¹⁸⁴ the court held that authorities and courts in Germany had to examine this point when deciding about the possibility of a transfer.¹⁸⁵

Since 2019, the BAMF has “de-prioritised” cases from applicants who had already been granted international protection in Greece, leaving applicants in legal limbo. In 2021, the Higher Administrative Courts of Lower Saxony and of North Rhine Westphalia ruled that persons with a protection status cannot be sent back to Greece as this would amount to inhuman or degrading treatment.¹⁸⁶ The Higher Administrative Court of Lower Saxony ruled that the applicants, two unmarried sisters, were likely to be homeless upon return to Greece due to the lack of state and non-state assistance regarding housing, the lack of access to social benefits and the high administrative and practical hurdles to find gainful employment. The Higher Administrative Court of North Rhine Westphalia ruled that it would be highly unlikely for the applicants to find accommodation and gainful employment in Greece and that access to social benefits was only possible after two years of residence proven with a tax declaration. Regarding the threshold for human or degrading treatment, the Federal Administrative Court ruled in September 2021 that all available support to individuals, including support by NGOs and other non-state actors and the applicants’ own efforts are to be taken into account for the assessment of each individual situation.¹⁸⁷

The Federal government states that it does not know whether actual removals are taking place since the Federal States are in charge of them.¹⁸⁸ As of December 2021, approximately 39,000 asylum applications of persons who are likely to already have a protection in Greece were pending at the BAMF.¹⁸⁹ 19,805 applications for international protection were filed in 2021 by persons who had already been granted protection in Greece. Syrians and Afghans make up more than two thirds of these applicants.¹⁹⁰ In July 2021, the German and Greek ministers of the Interior signed a memorandum of understanding aimed at improving the integration of beneficiaries of international protection in Greece regarding accommodation, health care and the provision of necessary goods through a project implemented by the IOM and financed by EU and German funds.¹⁹¹ In March 2022, it was reported that an agreement was reached, and that accordingly the BAMF was planning on starting to examine the pending cases.¹⁹² A list of court cases dealing with transfers of beneficiaries of international protection can be found online.¹⁹³

¹⁸⁴ CJEU, *Judgment in case C-163/17, Jawo*, 19 March 2019, available at: <https://bit.ly/304sXA2>.

¹⁸⁵ Federal Constitutional Court, decision of 7 October 2019 – 2 BvR 721/19 – Asylmagazin 1-2/2020, S. 37 f. – asyl.net: M27758.

¹⁸⁶ Higher Administrative Court of North Rhine West-Phalia, *Decisions 11 A 1564/20.A and 11 A 2982/20.A of 21 and 26 January 2021* and Higher Administrative Court of Lower Saxony, *Decisions 10 LB 244/20 and 10 LB 245/20*, 19 April 2021, see also PRO ASYL, ‘*Bett, Brot, Seife – Ein ferner Traum für Flüchtlinge in Griechenland*’, available in German at <https://bit.ly/3FzB4Y9>

¹⁸⁷ Federal Administrative Court, Decision 1 C 3.21 of 07 September 2021, available in German at: <https://bit.ly/3pnuXk2>.

¹⁸⁸ Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 23, 24.

¹⁸⁹ Information provided by the BAMF, 10 March 2022.

¹⁹⁰ Federal Government, Response to parliamentary question by The Left, 20/861, 24 February 2022, 17.

¹⁹¹ Federal Ministry of the Interior, ‘*Gemeinsame Absichtserklärung zu Bemühungen um die Integration von Personen mit internationalem Schutzstatus in Griechenland*’, available in German at <https://bit.ly/3KeKziO>

¹⁹² Infomigrants, ‘Germany to process frozen asylum claims of refugees from Greece’, 21 March 2022, available online at: <https://bit.ly/3qH0FTN>.

¹⁹³ The website is available in German at: <https://www.asyl.net/recht/dublin-entscheidungen/>. Search with the keyword “Anerkannte” (recognised persons).

2.7. The situation of Dublin returnees

Germany received 4,274 transfers in 2021, compared to 4,369 in 2020 and 6,087 in 2019. Dublin transfers are usually carried out individually through commercial flights.

In 2020, the highest number of incoming requests towards Germany occurred from France, the United Kingdom and the Netherlands.¹⁹⁴ 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. 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.

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.¹⁹⁵

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:¹⁹⁶

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;¹⁹⁷
4. A country that is not an EU Member State and is willing to readmit the foreigner is regarded as “another third country”;¹⁹⁸
5. The applicant has made a subsequent,¹⁹⁹ or secondary,²⁰⁰ application (see [Subsequent Applications](#)).

Statistics on admissibility decisions for the entire year of 2021 were not yet available at the time of writing of this report. The BAMF took the following inadmissibility decisions until the end of November 2021:

Inadmissibility decisions as of 30 November 2021	
Ground	Number
Applicability of the Dublin Regulation	10,591
International protection in another EU Member State	2,489
Safe third country	27

¹⁹⁴ Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 31.

¹⁹⁵ ECRE, *The Anker centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

¹⁹⁶ Section 29(1) Asylum Act.

¹⁹⁷ Section 29(1)(3) Asylum Act, citing Section 26a Asylum Act.

¹⁹⁸ Section 29(1)(4) Asylum Act, citing Section 27 Asylum Act.

¹⁹⁹ Section 29(1)(5) Asylum Act, citing Section 71 Asylum Act.

²⁰⁰ Section 29(1)(5) Asylum Act, citing Section 71a Asylum Act.

Another third country	4
Secondary application (after procedure in a safe third country)	2,950
Subsequent application (after procedure in Germany)	30,591
Removal before decision	1
Application not treated further	2
"Non pursuit" on the applicant's side or granting of temporary protection	2,452
No decision required (Dublin)	240
Other reasons (not specified)	2,233
Total	36,015

Source: Statistics on "abandonment of procedures for other reasons" ("*sonstige Verfahrenserledigungen*") by the Federal Government, Response to parliamentary question by The Left, 20/432, 14 January 2022, 6.

Of practical importance is the situation of persons who have been granted international protection in another EU Member State and then move to Germany to apply for international protection there. This often concerns persons with a status in Greece, or other EU Member States where it is difficult for beneficiaries of protection to access certain services and secure adequate living standards. In such cases, the BAMF usually decides that the asylum application is inadmissible. Depending on the situation in the Member State which first granted protection, it might issue a removal ban for said Member State, however. The Federal Administrative Court, in a decision of 20 May 2020, has ruled that in line with a CJEU ruling, an application for asylum cannot be deemed inadmissible on the grounds that another Member State has already granted protection if the situation the application would face in this Member State amounts amount to inhuman or degrading treatment, and thus be in violation of Art. 4 of the EU Charter on Fundamental Rights.²⁰¹ In these cases, the BAMF would have to carry out a regular asylum procedure. The BAMF has stopped processing applications from persons with a protection status in Greece since 2019, meaning that the concerned persons retain the status of asylum applicant. Processing of applications is due to be taken up again as of March 2022 (see [Suspension of transfers for beneficiaries of international protection in other Member States](#)).

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.²⁰² "Another third country" may refer to any country which is not defined a [Safe Third Country](#) under German law.²⁰³ 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.

²⁰¹ Federal Administrative Court, Decision 1 C 34.19 of 20 May 2020, available in German at: <https://bit.ly/3hvFzsN>. The CJEU decisions to which the BVerG refers are decisions C-297/17 and C-540/17.

²⁰² Maria Bethke und Stephan Hocks, *Neue „Unzulässigkeits“-Ablehnungen nach § 29 AsylG*, Asylmagazin 10/2016, 336-346 (343).

²⁰³ "Safe third countries" are all member states of the European Union plus Norway and Switzerland: Section 26a Asylum Act and addendum to Asylum Act.

3.2. 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 Some grounds 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 grant suspensive effect to the appeal. The latter request has to be substantiated.

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

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

As in the regular procedure, asylum seekers can be represented by lawyers at 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. Where is the border procedure mostly carried out? Air border Land border Sea border
3. Can an application made at the border be examined in substance during a border procedure? Yes No
4. 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
5. Is the asylum seeker considered to have entered the national territory during the border procedure? Yes No

In Germany, the border procedure is a so-called “airport procedure” regulated in Section 18a of the German Asylum Act and applied in international airports. 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 thus refers to the **airport procedure** (*Flughafenverfahren*).

Legal framework

The airport procedure is legally defined as an “asylum procedure that shall be conducted prior to the decision on entry” to the territory.²⁰⁴ 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, **Düsseldorf, Frankfurt/Main, Hamburg and Munich**, although the BAMF does not have a branch office assigned to all of those places. The airport of Berlin (*Schönefeld*), which ceased to operate in 2020, also disposed of the facilities for the airport procedure. The newly opened airport in Berlin (*BER*) will also host an “arrival and departure centre” with facilities for the airport procedure as well as for returns (see [Place of Detention](#)).²⁰⁵

The German Asylum Act foresees the applicability of the airport procedure where the asylum seeker arriving at the airport:²⁰⁶

- Comes from a “safe country of origin”;
- Is unable to prove his or her identity with a valid passport or other means of documentation.

The second ground merits particular consideration. German law triggers the airport procedure as soon as it is established that the asylum seeker is unable to prove identity by means of a passport or other documentation. It does not condition the applicability of the procedure upon requirements of misleading the authorities by withholding relevant information on identity or nationality, or destroying or disposing of an identity or travel document in bad faith.²⁰⁷ The scope of the airport procedure in Germany is therefore not consistent with the boundaries set by the recast Asylum Procedures Directive.²⁰⁸

²⁰⁴ Section 18a(1) Asylum Act.

²⁰⁵ Information provided by the BAMF, 10 March 2022.

²⁰⁶ Section 18a(1) German Asylum Act.

²⁰⁷ Article 31(8)© and (d) recast Asylum Procedures Directive.

²⁰⁸ See also Dominik Bender, *Das Asylverfahren an deutschen Flughäfen*, May 2014, p. 41.

Yet, practice suggest that the second ground is most often used for activating the airport procedure. As demonstrated in countries of origins of applicants in the procedure, many applicants in the airport procedure in 2019 came from Syria, Iraq, and Turkey, as well as other countries such as Afghanistan, Iran or Somalia (see table below). These are all countries which are not considered as “safe” and which have a relatively high chance of recognition at national level. *A fortiori*, this means that the airport procedure is mostly activated on the second legal ground, when a person is unable to present proof of identity.

The BAMF reported that the formal examination of the application of the Dublin regulation lies with the Federal Police (and the Dublin-Unit of the BAMF). If there are reasons to believe that another Member State is responsible for the application, the responsible BAMF unit takes the decision of inadmissibility without an additional interview, based on the information provided during the first interview with the federal police (see [Personal interview](#)).²⁰⁹ The Frankfurt/Main Airport Refugee Service reported that persons falling under the responsibility of another country are usually held in the airport facility in Frankfurt/Main until their transfer. One exception applies to persons falling under the responsibility of Greece, who have been reportedly granted entry to the territory after a few days.²¹⁰

Number of airport procedures

From January 2021 to the end of November 2021, 161 airport procedures had taken place. In 2020 the airport procedure was applied in 145 cases, compared to 489 cases in 2019. This decrease is likely due to the COVID-19 pandemic and the reduced air traffic. Out of the 161 procedures carried out until end of November 2021, 107 procedures took place at the **Frankfurt/Main Airport**, 15 at the **Munich Airport**, and 39 at the **Berlin Airport**. No airport procedures took place at the Düsseldorf airport in 2020 or 2019. At Hamburg airport, no procedure took place in 2021 while in 2020, 3 procedures took place. As the statistics show, the overwhelming majority of procedures have been taken place at Frankfurt/Main Airport over the last years.²¹¹ However, in Germany, the number of airport procedures remains very low compared to the total number of applications:

Countries of origin of persons subject to the airport procedure

The countries of origin of persons subject to the airport procedure in 2020 were as follows:

Applicants subject to the airport procedure: 2020-2021		
Nationality	2020	2021 (until 30.11.2021)
Iran	24	28
Syria	20	19
Iraq	14	10
Yemen	12	3
Egypt	7	4
Congo (Dem. Republic)	7	8
Turkey	6	19
Afghanistan	5	10
Morocco	5	-
Cuba	4	-
Total	145	97

²⁰⁹ See PRO ASYL, 'ABGELEHNT IM NIEMANDSLAND. Vom Flughafenverfahren zum »New Pact on Migration and Asylum« – Warum Asylgrenzverfahren unfair und mangelhaft sind', June 2021, available in German at <https://bit.ly/31XOpvv>, p.8.

²¹⁰ Information provided by the Frankfurt Airport Church Refugee Service, 25 August 2020.

²¹¹ Federal Government, Response to parliamentary question by The Left, 19/32678, 14 October 2021, p. 28 and 19/28109, 30 March 2021, p. 37.

Source: Federal Government, Response to parliamentary question by The Left, 19/32678, 14 October 2021, p. 28 and 19/28109, 30 March 2021, available at: <https://bit.ly/3ftiZQw>, p.37.

Two out of the three main countries of origin of applicants in Germany in 2020 (Iran, Syria and Iraq) were among the main nationalities in the airport procedure in 2021 (until 30 November). The top three nationalities in the airport procedure were Iran, Syria and Turkey. Other countries represented in the airport procedure in 2021 included Afghanistan, Iraq, Russia (9 persons), the Democratic Republic of Congo, Bangladesh, Egypt and Armenia.²¹² Overall, between 2015 and 2021, Syrians and Iranians were systematically part of the top 3 nationalities represented in the airport procedure.²¹³

In contrast to previous years, in 2020 and 2021 there seems to be more divergence between the top nationalities in airport procedures and among all asylum applications. However, this might be related to the overall lower number in 2020 and 2021 and fewer flights as a result of the Covid-19 pandemic. The top nationalities further indicate that so-called “safe countries of origin” are not among the 10 most frequent nationalities in the airport procedure.

Time limits in the airport procedure

The maximum duration of the airport procedure is 19 days:

- The BAMF examines the application for international protection, carries out the personal interview and decides within 2 days whether the applicant can enter the country, or if the application is to be rejected as manifestly unfounded;²¹⁴
- In the case of rejection, applicants can lodge an appeal within 3 days to the competent Administrative Court and request an interim measure (i.e. the granting of suspensive effect to the appeal);
- If the Administrative Court grants the provisional measure or if it does not rule within 14 days, the applicant can enter the territory of Germany.²¹⁵

These time limits are thus much shorter than the 4-week time limit laid down in the recast Asylum Procedures Directive.²¹⁶ Nevertheless, where the BAMF decides to examine an application for international protection under the airport procedure, the two-days time limit is always respected in practice. If the application cannot be rejected as manifestly unfounded within two days, the applicant is granted access to the territory and enters the regular asylum procedure (see also below).

Outcome of the border procedure

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.²¹⁷ The applicant may ask the court for an interim measure against removal 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

²¹² Federal Government, *Response to parliamentary question by The Left*, 20/432, 14 January 2022, 20.

²¹³ Information provided by the BAMF, 11 September 2020; for 2020: Federal Government, *Response to parliamentary question by The Left*, 19/28109, 30 March 2021, available at: <https://bit.ly/2FSXg67>, p.37.

²¹⁴ Section 18a(6)(1) and (2) German Asylum Act.

²¹⁵ Section 18a(4) and (6) German Asylum Act.

²¹⁶ Article 43(2) recast Asylum Procedures Directive.

²¹⁷ Section 18a(2)-(4) Asylum Act.

procedure to be carried out in a regular procedure if an application is not rejected as manifestly unfounded;²¹⁸

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;²¹⁹ 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.

In practice, the third option has been the most common outcome, including in cases where the Dublin Regulation is considered to be applicable. Whereas prior to 2018 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,²²⁰ a notable increase in decisions rejecting the application as manifestly unfounded was reported since 2018.

According to available statistics, manifestly unfounded decisions rose from around 10% in 2015 up to 50% in 2019 and have remained at ca. 45 % in 2020 and 2021.²²¹

The increase of manifestly unfounded decisions in the context of the airport procedure has been subject to particular scrutiny in Germany. A study analysed the decisions issued by BAMF's branch office at the Frankfurt/Main, which is responsible for the majority of airport procedures in Germany. It was demonstrated that, compared to the rejection rates recorded at national level, the rejection rates of the Frankfurt/Main Branch office were much higher. For asylum seekers from Iraq, the protection rate at the branch office Frankfurt/Main in 2019 was only 18.3%, compared to 51.8% at national level; for Afghanistan: 50% compared to 63.1%; for Iran: 16.2% compared to 28.2%; for Nigeria: 4.1% compared to 14.5%; for Turkey: 30.2% compared to 52.7%.²²² In addition, as a result of the set-up of the airport procedure, rejections as manifestly unfounded are much more likely than "regular" rejections. By way of example, and according to a study by PRO ASYL, 67 % of all applications from Iranian nationals were rejected as manifestly unfounded in the airport procedure in 2020, whereas the overall rate of rejection s as manifestly unfounded of Iranian applicants was 3.7 %.²²³

The difference in the rejection rate at national level and in the airport procedure may be linked to a variety of objective factors, such as the profile of applicants and individual circumstances of the asylum applications. Nevertheless, these figures seem to indicate that BAMF has a more restrictive approach to claims in the airport procedure compared to procedures elsewhere in Germany, a practice that has been criticised by various stakeholders,²²⁴ and confirms EASO's analysis according to which recognition rates

²¹⁸ This practice of granting access to the regular procedure rather than protection even in clear cut protection cases is rooted in the administrative framework for dealing with asylum procedures. The granting of protection to persons that have not been assigned to a specific Federal State (and accommodation facility) is not foreseen in the administrative framework and would therefore lead to administrative challenges for the authorities involved.

²¹⁹ Section 18a(6) Asylum Act.

²²⁰ 264 out of 444 in 2017; 191 out of 273 in 2016, 549 out of 627 in 2015.

²²¹ This increase is even more striking when comparing with numbers of the year 2013: between 2013 and 2019, the rejection rate in the airport procedure have increased tenfold, from 5.1% in 2013 to 52.7% in 2019. For 2020 and 2021 figures see Federal Government, Response to parliamentary question by The Left, 19/32678, 14 October 2021, p. 28 and 19/28109, 30 March 2021, p. 37.

²²² Dr. Thomas Hohlfeld, *Vermerk zur Antwort der Bundesregierung auf die Kleine Anfrage der LINKEN (Ulla Jelpke u.a.) zur ergänzenden Asylstatistik für das Jahr 2019 (BT-Drs. 19/18498)*, Newsletter of 6 April 2020.

²²³ See PRO ASYL, 'ABGELEHNT IM NIEMANDSLAND. Vom Flughafenverfahren zum »New Pact on Migration and Asylum« – Warum Asylgrenzverfahren unfair und mangelhaft sind', June 2021, 9, available in German at <https://bit.ly/31XOpv>

²²⁴ Ibid. See also,; PRO ASYL, Allein in Abschiebungshaft: Jugendlicher als Letzter am Frankfurter Flughafen, 11 April 2020,; Bistum Limburg, 'Caritas und Diakonie wollen Aus für Flughafen-Asylverfahren', 30 October 2018, ECRE, *Airport procedures in Germany: Gaps in quality and compliance with guarantees*, pp. 11-12; See

are prone to be lower in the border procedure than in the regular procedure.²²⁵ The difference in recognition rates is particularly worrying taking into consideration that many asylum seekers at airports in Germany originated from countries of origin with high recognition rates nationwide (i.e. Syria and Turkey).²²⁶ In addition, the lack of access to the outside world, the tight time limits and the fact that there is no systematic screening for vulnerable applicants on the side of authorities means that vulnerabilities are less likely to be detected during the airport procedure.²²⁷ 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.²²⁸ 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.²²⁹

As regards the outcome of airport procedures in 2020 and in the first half of 2021 between the different airports, it was as follows:

Outcomes of airport procedures: 2020				
Airport	2020		2021 (as of 31.08.2021)	
	No decision within two days	Manifestly unfounded	No decision within two days	Manifestly unfounded
Frankfurt/Main	67	58	35	29
Munich	6	6	6	2
Berlin	2	3	7	13
Hamburg	3	0	0	0
Total	78	67	48	44

Source: Federal Government, Response to parliamentary question by The Left, 19/32678, 14 October 2021, p. 28 and 19/28109, 30 March 2021, 37, available at: <https://bit.ly/3ftiZQw>, p.37.

4.2. Personal interview

Indicators: Border Procedure: Personal Interview

Same as regular procedure

- 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
- Are interviews conducted through video conferencing? Frequently Rarely Never

PRO ASYL, 'ABGELEHNT IM NIEMANDSLAND. Vom Flughafenverfahren zum »New Pact on Migration and Asylum« – Warum Asylgrenzverfahren unfair und mangelhaft sind', June 2021, available in German at <https://bit.ly/31XOpvv>

²²⁵ EASO, *Border Procedures for Asylum Applications in EU+ Countries*, September 2020, p.20.

²²⁶ BAMF, *Das Bundesamt in Zahlen 2019, 2020*, p.56.

²²⁷ See PRO ASYL, 'ABGELEHNT IM NIEMANDSLAND. Vom Flughafenverfahren zum »New Pact on Migration and Asylum« – Warum Asylgrenzverfahren unfair und mangelhaft sind', June 2021, 15, available in German at <https://bit.ly/31XOpvv>

²²⁸ ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

²²⁹ *Ibid.*

During the airport procedure, two interviews are carried out: first an interview with the border police upon apprehension at the airport, followed by a second interview with the BAMF. If the Dublin procedure applies, the BAMF does not carry out an additional interview.²³⁰

Interview with the border police

The Federal Police is the first authority involved in the airport procedure, as it is usually the first authority interviewing individuals apprehended at the airport. It may apprehend individuals either directly on the airport apron or in the airport terminal. The Border Police is responsible for assessing whether the case falls under the airport procedure and writes a report collecting detailed information (e.g. travel routes and modes of arrival in Germany) that will be shared with the BAMF.

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 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.²³¹

Concerns have been expressed regarding the level of detail in the interviews conducted by the border police. This includes lengthy questions on travel routes and on people met en route and/or the people who helped in the flight, as well as cases where the border police asked the exact date of issuance of a visa; the reason for not having declared the same amount of money during a first and second interview; and whether there would be objections against a potential removal to the country of origin etc.²³² Inconsistencies and/or contradictions between an applicant's statements during the personal interview with the determining authority and the interview with the border police may be used against the applicant, including on elements such as travel route, duration of stay in transit, and personal details of relatives.

In this regard, concerns have been raised that the determining authority would use even minor contradictions, to voice serious doubts about the credibility of the statements of applicant and would proceed to a rejection of the application as "manifestly unfounded". This is especially concerning since the two authorities conducting interview – the Federal Police and the BAMF – have very different mandates (border protection vs. refugee protection) and approaches that also reflect in the way the interview is conducted²³³

Interview with the BAMF

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 the airports of **Munich and Hamburg** officials travel to the facility from Munich when interviews need to be conducted. At the new airport in Berlin, opened in October 2020, an "entry

²³⁰ See PRO ASYL, 'ABGELEHNT IM NIEMANDSLAND. Vom Flughafenverfahren zum »New Pact on Migration and Asylum« – Warum Asylgrenzverfahren unfair und mangelhaft sind', June 2021, available in German at <https://bit.ly/31XOpvv>, p.8.

²³¹ ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

²³² These questions are examples deriving from transcripts of interviews conducted with the Border Police that have been obtained by lawyers. Information provided by an attorney-at-law, 31 August 2020.

²³³ See PRO ASYL, 'ABGELEHNT IM NIEMANDSLAND. Vom Flughafenverfahren zum »New Pact on Migration and Asylum« – Warum Asylgrenzverfahren unfair und mangelhaft sind', June 2021, 8, available in German at <https://bit.ly/31XOpvv>

and exit centre” is planned which would also accommodate BAMF staff for the airport procedure, according to the Federal Ministry of the Interior.²³⁴

The standards for this interview are identical to those described in the context of the regular procedure (see [Regular Procedure: Personal Interview](#)). However, the setting of the interview in the airport procedure increases the risk of problematic interviews. The situation of being detained at the airport during the procedure, with the first interview just after arrival and the lack of contact to the outside world, weighs heavily on applicants, who are frequently disoriented and anxious vis-à-vis the authorities.²³⁵ Similarly to the regular asylum procedure, caseworkers of the BAMF follow a specific questionnaire throughout the interview. As opposed to more experienced caseworkers, less experienced caseworkers tend to strictly follow the questionnaire, which results in prolonging the time of the interview and asking questions that may be irrelevant to the case concerned.²³⁶

While the average length is three to five hours, there have been cases lasting much longer, e.g. the interview of an Iraqi female applicant lasting about 6 hours or the interview of a Sri Lankan applicant taking up to 8 hours.²³⁷ While this could provide the opportunity for an in-depth assessment of the application for international protection, it seems that questions on individual circumstances are asked at a late stage of the interview, after a few hours. The first part of the interview largely focuses on basic information such as the travel route and identification, i.e. questions that have already been asked by the Border Police. This part of the interview may take up to several hours and aims to identify potential inconsistencies and contradictions with previous statements.²³⁸ It is only after this that the BAMF asks questions relating to the grounds for applying for asylum and the reasons for having fled from the country of origin. At this stage, asylum seekers are already very tired and stressed from the interview; yet the BAMF is reluctant to stop the interview given the tight deadlines within which it has to issue its decision. It thus generally tries to conduct the interview within the same day.²³⁹

As regards interpretation during the BAMF interview, interpreters are contracted by the BAMF. Interpretation has been highlighted as very problematic at the airports in Frankfurt/Main and Munich, where the majority of airport procedures are conducted (see statistics).²⁴⁰ When interpreters are not deemed fit for the interview at hand and need to be replaced, the BAMF at times calls for a replacement on the same day, prolonging the already long and stressful interviews even more.²⁴¹

The Border Police resorts to interpretation services via phone in most cases, especially during the first interview at the airport upon apprehension of the individual, and the BAMF often struggles to find adequate interpreters for the interview. There have been cases where the interview was conducted in a language not understood by the applicant,²⁴² or where it was clear that the interpreter was lacking the necessary terminology.²⁴³

²³⁴ Federal Ministry of the Interior, ‘*Gemeinsam genutztes Einreise- und Ausreisezentrum am Flughafen Berlin-Brandenburg*’, 23 September 2021, available in German at: <https://bit.ly/3FuMzQp>.

²³⁵ See PRO ASYL, ‘*ABGELEHNT IM NIEMANDSLAND. Vom Flughafenverfahren zum »New Pact on Migration and Asylum« – Warum Asylgrenzverfahren unfair und mangelhaft sind*, June 2021, 16, available in German at <https://bit.ly/31XOpvv>

²³⁶ Information provided by an attorney-at-law, 31 August 2020.

²³⁷ Information provided by an attorney-at-law, 31 August 2020.

²³⁸ In one case, the first part of the interview focusing on travel route and relevant questions took from 9:30am to 11:25am. It was followed by a short break, and at 11:40am it continued with questions on grounds for applying for asylum; as well as questions highlighting inconsistencies with previous statements. The interview finished at 3:30 pm; thus taking a total of around 6 hours; Information provided by an attorney-at-law, 31 August 2020.

²³⁹ Information provided by an attorney-at-law, 31 August 2020.

²⁴⁰ Information provided by the Munich Airport Church Service, 5 April 2019; an attorney-at-law, 15 April 2019; an attorney-at-law, 29 April 2019.

²⁴¹ See PRO ASYL, ‘*ABGELEHNT IM NIEMANDSLAND. Vom Flughafenverfahren zum »New Pact on Migration and Asylum« – Warum Asylgrenzverfahren unfair und mangelhaft sind*’, June 2021, 21, available in German at <https://bit.ly/31XOpvv>

²⁴² ECRE, *Airport procedures in Germany: Gaps in quality and compliance with guarantees*, p.10.

²⁴³ Information provided by an attorney-at-law, 31 August 2020.

4.3. Appeal

Indicators: Border Procedure: Appeal

Same as regular procedure

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

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

Manifestly unfounded decisions are generally subject to restrictions in legal remedy, but in the airport procedure the law has placed even stricter 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.²⁴⁴

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.²⁴⁵ The denial of entry, including possible measures to enforce a removal, 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.²⁴⁶

The number of requests for interim measures against removal in the context of the airport procedure increased tenfold between 2015 to 2019, rising from 20 to more than 200 requests during that period.²⁴⁷ This increase is linked to the increase in the number of manifestly unfounded decisions rather than to the number of airport procedures, as there were fewer applications lodged at airports in 2019 than in 2015. In 2020, out of 58 applications lodged at the court, 6 were granted and 55 rejected. As for the year 2021, full year figure were not yet available at the time of writing of this report. However, as of 30 November 2021, a total of 50 requests for interim measures were lodged, 7 of which were granted and 42 of which were rejected.²⁴⁸

The overwhelming majority of requests for interim measures have been systematically rejected by Administrative Courts in recent years, thus upholding the BAMFs' rejections as manifestly unfounded and refusals of entry into the territory. The number of interim measures granted did not exceed five in 2015, 2016 and 2017 respectively, while the chances of success was under 10% in 2018 and 2019 and just above 10 % in 2020 and 15 % 2021.²⁴⁹ This might also be partially attributed to the high standard required for a decision to halt a removal order. The enforcement of the BAMF decision may only be suspended if there are 'serious doubts about the legality' of the BAMF decision.²⁵⁰

NGOs have also reported that Administrative Courts do not provide a real opportunity to further clarify inconsistencies between the reports of the interviews conducted by the BAMF and the Federal Police.²⁵¹ The tight deadlines for the appeal make it extremely challenging to adequately prepare the necessary documentation, including translations of documents.²⁵² Moreover, where an application has been rejected

²⁴⁴ Section 18a(4) Asylum Act.

²⁴⁵ Section 18a(4) Asylum Act.

²⁴⁶ Section 18a(6) Asylum Act.

²⁴⁷ BAMF, *Das Bundesamt in Zahlen – 2019, 2020*, p. 60.

²⁴⁸ Federal Government, *Response to parliamentary question by The Left*, 20/432, 14 January 2022, 20.

²⁴⁹ BAMF, *Das Bundesamt in Zahlen 2019, 2020*, p.60 / 45.

²⁵⁰ Section 18a(4) Asylum Act in connection with Section 36(4) Asylum Act.

²⁵¹ Information provided by PRO ASYL, 1 April 2019; an attorney-at-law, 29 April 2019.

²⁵² See PRO ASYL, 'ABGELEHNT IM NIEMANDSLAND. Vom Flughafenverfahren zum »New Pact on Migration and Asylum« – Warum Asylgrenzverfahren unfair und mangelhaft sind', June 2021, 21, available in German at <https://bit.ly/31XOpvv>

as ‘manifestly unfounded’, the court has to decide on a request for an interim measure by written procedure, i.e. without an oral hearing and solely based on case-files.²⁵³ The right to appeal in the context of airport procedures has thus been described as severely limited in practice.

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

According to a decision of the Federal Constitutional Court (*‘Bundesverfassungsgericht’*), asylum seekers whose applications are rejected in the airport procedure are entitled to free, quality and independent legal assistance.²⁵⁴ This is the only procedure where asylum seekers are entitled to a form of free legal assistance in Germany.²⁵⁵ However, legal aid is made available only after a negative decision by the BAMF. This means that legal aid is not provided during the first instance airport procedure, i.e. prior to the interview with the BAMF.

In Frankfurt Airport for example, asylum seekers can not easily reach out to lawyers prior to their interview and must heavily rely on relatives or the support of Church Refugee Services to establish contact with a lawyer.²⁵⁶ Subject to available capacity, organisations such as PRO ASYL provide funding for lawyers to support asylum seekers from the outset of the procedure in individual cases, mostly for especially vulnerable applicants.²⁵⁷ This has led to about 80 to 90 cases being supported at first instance by PRO ASYL-funded lawyers in 2018.²⁵⁸ More recent figures are not available, but it has been confirmed that only a minority of asylum applicants have access to legal assistance at this stage of the procedure.²⁵⁹

Legal practitioners witness a notable difference in the procedure depending on whether they are present or not during the interview with the BAMF. When the interview is conducted without the presence of a lawyer, it has been reported that the interview may be shorter and that interviewer transcript display a tendency to make superficial assessments of the claim and to omit asking questions on important elements such as health conditions.²⁶⁰ NGOs and practitioners have thus highlighted that access to quality legal assistance prior to the BAMF interview in the airport procedure would increase the likelihood of a positive first instance decision by the BAMF.

As regards access to legal aid following a negative BAMF decision and potential requests appeals before the Administrative Court (*Verwaltungsgericht*, VG), the bar association of the airport’s region coordinates a consultation service with qualified lawyers. For example, the Bar Association of Frankfurt currently had

²⁵³ Section 36(3) Asylum Act.

²⁵⁴ German Federal Constitutional Court, Decision 2 BvR 1516/93, 14 May 1996.

²⁵⁵ AIDA, *Country Report Germa–y - Update on the year 2019*, July 2020p. 51.

²⁵⁶ Information provided by the Munich Airport Church Service, 25 August 2020.

²⁵⁷ See PRO ASYL, *‘ABGELEHNT IM NIEMANDSLAND. Vom Flughafenverfahren zum »New Pact on Migration and Asylum« – Warum Asylgrenzverfahren unfair und mangelhaft sind’*, June 2021, 16, available in German at <https://bit.ly/31XOpvv>

²⁵⁸ Information provided by the Frankfurt Airport Church Refugee Service, 1 April 2019.

²⁵⁹ Information provided by an attorney-at-law, 31 August 2020.

²⁶⁰ Information provided by an attorney-at-law, 29 April 2019.

a list of 43 lawyers dedicated to the airport procedure as of May 2019, who are on stand-by for free counselling with asylum seekers when needed, paid for by the BAMF on the basis of an agreement between the BAMF and the Frankfurt bar association.²⁶¹ In practice, however, the chances of success of appeals seem to be very low (see Appeal) and the scope of the legal assistance is limited. The lack of trust of asylum seekers towards lawyers who are appointed to them on the basis of this list has also been reported as problematic.²⁶²

NGOs have also very limited access to the airport procedure as they need to be accredited. At Frankfurt airport, the Church Refugee Service provides counselling prior to the asylum interview, and in practice is also represents the only possibility to identify especially vulnerable applicants before the interview with the BAMF.²⁶³ Presence of NGOs during the asylum interview conducted by the BAMF at Munich Airport is not clearly regulated. As a result, authorisation for the Church Refugee Service to attend the interview depends on the individual caseworker, which is usually allowed in the case of female applicants.²⁶⁴ On the other hand in Frankfurt Airport, the presence of the Church Refugee Service during the interview is not a problem if the BAMF has been informed beforehand. The Church Refugee Service further provides psychosocial assistance to asylum and helps reaching out to lawyers depending on available capacity. Access to other NGOs than the Church Refugee Service, however, remains limited in practice at the Frankfurt/Main Airport.²⁶⁵

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 asylum seekers who:²⁶⁶

1. Come from a **Safe Country of Origin**;
2. Have clearly misled the authorities about their identities or nationalities by presenting false information or documents or by withholding relevant documents;
3. Have in bad faith destroyed or disposed of an identity or travel document that would have helped establish their identities or nationalities, or if the circumstances clearly give reason to believe that this is so;
4. Have filed a subsequent application, in case they have left Germany after their initial asylum procedure had been concluded;²⁶⁷
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 removals;
6. Refuse to be fingerprinted in line with the Eurodac Regulation; or

²⁶¹ Information provided by an attorney-at-law, 3 May 2019; see also See PRO ASYL, ‘ABGELEHNT IM NIEMANDSLAND. Vom Flughafenverfahren zum »New Pact on Migration and Asylum« – Warum Asylgrenzverfahren unfair und mangelhaft sind’, June 2021, 22, available in German at <https://bit.ly/31XOpvv>

²⁶² Information provided by an attorney-at-law, 31 August 2020, see also PRO ASYL, ‘ABGELEHNT IM NIEMANDSLAND. Vom Flughafenverfahren zum »New Pact on Migration and Asylum« – Warum Asylgrenzverfahren unfair und mangelhaft sind’, June 2021, 22, available in German at <https://bit.ly/31XOpvv>

²⁶³ PRO ASYL, ‘ABGELEHNT IM NIEMANDSLAND. Vom Flughafenverfahren zum »New Pact on Migration and Asylum« – Warum Asylgrenzverfahren unfair und mangelhaft sind’, June 2021, 22, available in German at <https://bit.ly/31XOpvv>

²⁶⁴ Information provided by the Munich Airport Church Service 5 April 2019.

²⁶⁵ Information provided by the Frankfurt Airport Church Service, 25 August 2020.

²⁶⁶ Section 30a(1) Asylum Act.

²⁶⁷ 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.

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).²⁶⁸ 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.²⁶⁹

During an accelerated procedure, asylum seekers are obliged to stay in the special reception centres.²⁷⁰ 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.²⁷¹ 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.²⁷² The accelerated procedure does not seem to have been applied therein at the start. Asylum statistics show that the procedure under Section 30a Asylum Act is rarely applied.²⁷³ In 2020, the accelerated procedure was applied in 566 cases, out of a total of 122,170 asylum applications. In the first quarter of 2021, no accelerated procedures were carried out due to the Covid-19 pandemic.²⁷⁴ In 2020, the accelerated procedure was mainly applied in arrival centres or AnKER centres in **Bavaria** and **North Rhine-Westphalia**, but also within those it is the exception rather than the norm. The average length of the accelerated procedure differs greatly between BAMF branch offices, between 0.2 months and 6.3 months in 2020.²⁷⁵ By 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.

In the Federal State of **North Rhine-Westphalia**, a directive is in place which enables the regional government to establish „special reception centres“ in which persons, for whom an accelerated procedure under Section 30a Asylum Act has been carried out, should be accommodated.²⁷⁶ According to local media reports, a facility in the town of **Echtrop** has been designated a „special reception centre“ in April 2018.²⁷⁷ Since the BAMF does not have a branch office in this facility, it is not clear how accelerated procedures are actually carried out at this facility. Apparently, the main purpose of this facility does not seem to be the acceleration of procedures but to impose stricter sanctions (as described above) on certain groups of persons whose applications have been found to be „manifestly unfounded“. In 2020, North Rhine Westphalia was the only Federal State where accelerated procedures were carried out for applicants who are not from a “safe country of origin”.²⁷⁸

²⁶⁸ Section 30a(2) Asylum Act.

²⁶⁹ Section 30a(2)-(3) Asylum Act.

²⁷⁰ Section 30a(3) Asylum Act.

²⁷¹ Section 33(2)(3) Asylum Act.

²⁷² Markus Kraft, Die ANKER-Einrichtung Oberfranken, Asylmagazin 10-11/2018, p. 351-353.

²⁷³ Information provided by the BAMF, 1 August 2017.

²⁷⁴ Federal Government, Response to parliamentary question by The Left, 19/30711, 15 June 2021, 21 & 30.

²⁷⁵ Federal Government, Response to parliamentary question by The Left, 19/30711, 15 June 2021, 20-21.

²⁷⁶ Federal State of North Rhine-Westphalia, Verordnung über Zuständigkeiten im Ausländerwesen (ZustAVO), 10 September 2019 (last amendment), Section 11,

²⁷⁷ Soester Anzeiger, ZUE Echtrop n„n “besondere Aufnahmeeinricht“ng“, 18 May 2018, available at: <https://bit.ly/2ZSbkDs>.

²⁷⁸ Federal Government, Response to parliamentary question by The Left, 19/30711, 15 June 2021, 30.

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

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

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

1.1. Screening of vulnerability

There is no requirement in law or mechanism in place to systematically identify vulnerable persons in the asylum procedure, with the exception of unaccompanied children. The BAMF and the Federal Ministry of Interior drafted a “concept for the identification of vulnerable groups” in 2015, which was intended to be codified in law as part of the transposition of the recast Asylum Procedures and Reception Conditions Directives. However, the concept has not been implemented and instead has been only made available to BAMF staff as an internal guideline.²⁷⁹

The Federal Government states that the identification of vulnerable applicants as required by the Asylum Procedures Directive is the remit of the Federal States, who are responsible for reception and accommodation.²⁸⁰ A 2016 amendment to the German Asylum Act has introduced wording relevant to the identification of vulnerable asylum seekers.²⁸¹ 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.”²⁸²

The BAMF claims that the new counselling service for asylum-seekers, consisting of general information on the procedure as well as the opportunity to make individual appointments with BAMF staff (see [Provision of information on the procedure](#)) has led to vulnerabilities “being partially identified more often” as counsellors inform applicants about rights of vulnerable applicants during the procedure. BAMF counsellors can also transmit information on vulnerabilities to the BAMF staff responsible for the asylum procedure, if the applicants consents.²⁸³ However, no details were given concerning the number or the type of vulnerabilities which were identified in the course of the new advice service.

²⁷⁹ Information provided by the BAMF, 1 August 2017; see BAMF *Dienstanweisung Asyl* (internal directive for asylum procedures) – 2. *Identifizierung vulnerabler Personen*, 2021, 81.

²⁸⁰ See BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), – 2. *Identifizierung vulnerabler Personen*, 2021, 81.

²⁸¹ Section 8(1b) Asylum Act.

²⁸² 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.

²⁸³ see BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), – 2. *Identifizierung vulnerabler Personen*, 2021, 81-82

The lack of a systematic identification processes for vulnerable applicants has been described as especially problematic in the context of the airport procedure by NGOs (see [Border procedure \(border and transit zones\)](#)). With the exception of unaccompanied children, the BAMF does not collect statistics on the number of vulnerable persons applying for asylum in Germany.²⁸⁴

The procedures and practice of identification in reception centres, which are run by the Federal States, vary. Upon initial registration, 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 focused 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.

As of 2020, only three Federal States (**Berlin, Brandenburg and Lower Saxony**) had a structured procedure in place to identify particularly vulnerable asylum seekers. A number of States offer psychiatric or psychological consultations or refer to the general care infrastructure, while five Federal States (**Bavaria, Mecklenburg-Western Pomerania, Saxony, Schleswig-Holstein, Thuringia**) seem to have no structure in place to identify vulnerable applicants.²⁸⁵

In **Berlin**, a “Network for persons with special protection needs” has developed concepts for the identification of vulnerable persons and their needs since 2008. The network, which refers to itself as a unique project in Germany, consists of seven NGOs which cooperate with the social services of the regional government. The NGOs have special expertise in the support of the following groups: traumatised persons and victims of torture; LGBTI*; single women and pregnant women; children and unaccompanied children; persons with disabilities, with chronic diseases and older persons.²⁸⁶ The network has been involved in the development of guidelines for the social services to assist with the identification of vulnerable groups.²⁸⁷ The guidelines, published in August 2018, provide detailed information on how vulnerable persons can be identified and on the determination of special support needs. Social services at the arrival centre **Berlin** are instructed to systematically screen applicants for vulnerability in the reception procedure. If they find that an asylum seeker has special reception needs or requires special procedural guarantees, they try to take appropriate measures (including appointments with specialised institutions) and inform the BAMF and the State authority accordingly.²⁸⁸ In spite of these efforts, participating NGOs of the Berlin network have reported that measures to accelerate asylum 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.²⁸⁹

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,

²⁸⁴ Information provided by the BAMF, 1 August 2017.

²⁸⁵ See BafF, ‘*Identifizierung besonderer Schutzbedürftigkeit am Beispiel von Personen mit Traumafolgestörungen. Status quo in den Bundesländern, Modelle und Herausforderungen*’, June 2020, 24. Study available in German at <https://bit.ly/3GsdRSm>.

²⁸⁶ A list of the project partners of the „Berliner Netzwerk für besonders schutzbedürftige Flüchtlinge” can be found at: <https://bit.ly/3dR5CGU>

²⁸⁷ Leitfaden zur Identifizierung von besonders schutzbedürftigen Geflüchteten in Berlin. Für Mitarbeiter*innen des Sozialdienstes des Landesamts für Flüchtlingsangelegenheiten (LAF), available in German at: <https://bit.ly/38kBqme>

²⁸⁸ Flüchtlingsrat Berlin, *Das Schnellverfahren für Asylsuchende im Ankunftszentrum Berlin*, November 2017, available in German at: <http://bit.ly/2HdSDzb>; See BafF, ‘*Identifizierung besonderer Schutzbedürftigkeit am Beispiel von Personen mit Traumafolgestörungen. Status quo in den Bundesländern, Modelle und Herausforderungen*’, June 2020, 26. Study available in German at <https://bit.ly/3GsdRSm>

²⁸⁹ Nina Hager and Jenny Baron, ‘Verfahrensgarantien für psychisch Kranke oder Traumatisierte’, *Asylmagazin* 7–8/2017, 17-26, 22.

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).²⁹⁰ In addition, identification of a vulnerability by the social services does not entail a right to specific reception conditions, which can still be hard to obtain especially since social services and State authorities do not always work hand in hand.²⁹¹

In **Brandenburg**, a questionnaire is handed out upon registration in the initial reception centre to detect vulnerabilities and possible psychological disorders. If the questionnaire indicates a potential vulnerability, a screening interview takes place with the socio-psychological service of the immigration authority. Following the screening interview, if a vulnerability is detected applicants are referred to psychiatric counselling (which only takes place in Eisenhüttenstadt) and can be housed in a special house for vulnerable applicants. The vulnerability is also communicated to the BAMF. However, in 2016 this was the case for under 1 % of all asylum seekers, indicating that detection rates are very low compared to the estimated prevalence of psychological distress among asylum seekers. Furthermore, the special accommodation houses both single men with psychological difficulties and single women who might have been victims of sexual violence.²⁹²

In **Lower Saxony**, projects to improve the identification of vulnerable groups have been established in reception centres first in **Friedland** in 2012 and have since then expanded to all reception centres in the Federal State.²⁹³ Upon registration, all applicants are informed about special vulnerabilities and a further diagnosis is carried out in cases where there are indications of psychological disorders. While the authorities usually follow the recommendations which follow from the diagnosis, between 2015 and 2017 only very few people were referred for a diagnosis.²⁹⁴

In **Rhineland-Palatinate**²⁹⁵, the regional government has adopted a protection concept which also includes methods for the identification of vulnerabilities.²⁹⁶ 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.

²⁹⁰ Manuel Armbruster, Georg Classen und Katharina Stübinger, 'Neue Verfahrensabläufe im Ankunftszenrum Berlin', *Asylmagazin* 10-11/2018, 350.

²⁹¹ See BafF, '*Identifizierung besonderer Schutzbedürftigkeit am Beispiel von Personen mit Traumafolgestörungen. Status quo in den Bundesländern, Modelle und Herausforderungen*', June 2020, 26. Study available in German at <https://bit.ly/3GsdRSm>

²⁹² See BafF, '*Identifizierung besonderer Schutzbedürftigkeit am Beispiel von Personen mit Traumafolgestörungen. Status quo in den Bundesländern, Modelle und Herausforderungen*', June 2020, 28. Study available in German at <https://bit.ly/3GsdRSm>

²⁹³ See evaluation report of the project in Lower Saxony which was carried out between 2015 and 2018: Jenny Thomsen, Evaluation zur Früherkennung besonders Schutzbedürftiger im Aufnahmeverfahren, Umsetzung der EU-Aufnahmerichtlinie 2013/33/EU in Niedersachsen, July 2018, available at: <https://bit.ly/3dVoCnq> and See BafF, '*Identifizierung besonderer Schutzbedürftigkeit am Beispiel von Personen mit Traumafolgestörungen. Status quo in den Bundesländern, Modelle und Herausforderungen*', June 2020, 30. Study available in German at <https://bit.ly/3GsdRSm>

²⁹⁴ See BafF, '*Identifizierung besonderer Schutzbedürftigkeit am Beispiel von Personen mit Traumafolgestörungen. Status quo in den Bundesländern, Modelle und Herausforderungen*', June 2020, 31. Study available in German at <https://bit.ly/3GsdRSm>

²⁹⁵ Nina Hager and Jenny Baron, 'Verfahrensgarantien für psychisch Kranke oder Traumatisierte', *Asylmagazin* 7-8/2017, 17-26, 22.-24.

²⁹⁶ 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>.

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. This depends on how the Federal States and the BAMF have organised the procedure in the respective centres. Other Federal States have also adopted measures for the protection of violence in accommodation centres.²⁹⁷

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*).²⁹⁸ 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 overall impressions of two experienced staff members of the office, based on their assessment of the developmental state of the minor obtained during the conversation as well as their visual impression.²⁹⁹ 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.³⁰⁰

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.³⁰¹ 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, an age assessment that leads to the conclusion that the applicants is not a minor and that is 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 the conclusion based on such an assessment could only be warranted 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.³⁰²

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

²⁹⁷ 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>.

²⁹⁸ BAMF, *Dienstanweisung Asyl (internal directive for asylum procedures)*, 21 February 2019, available at <https://bit.ly/2C1XSVi>, 4/14.

²⁹⁹ Section 42f Social Code (SGB), Vol. VIII. See BumF, ‚Alles auf einen Blick. BumF-Basisinformationen‘, 11, available in German at <https://bit.ly/3nvWyi9>

³⁰⁰ Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, *Vorläufige Inobhutnahme – Was ändert sich zum 1.11.2015?*, October 2015, 2-3.

³⁰¹ Administrative Court Berlin, Decision 18 L 81.16, 19 April 2016, asyl.net, available at: <http://bit.ly/2mJm85c>.

³⁰² High Administrative Court Bavaria, Decision 12 CS 16.1550, 16 August 2016, asyl.net, available at: <http://bit.ly/2m2hP0w>.

have suspensive effect.³⁰³ 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.

In practice, though, the results of age assessment are rarely challenged and therefore not many court decisions on this issue have become known. A study by the NGO "Association for unaccompanied refugee minors" found that young persons affected by age assessments as well as staff of youth authorities often were not aware of the possibility to challenge age assessments. Moreover, young persons usually lose any entitlement to be supported in legal matters by the youth authorities once they are declared to be adults in the course of the age assessment.³⁰⁴

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.

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".³⁰⁵ The BAMF guidelines stipulate that the following cases shall be handled in a particularly sensitive manner and, if necessary, by specially-trained decision-makers:³⁰⁶

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

As of June 2019, the following numbers of special officers were working at the BAMF with these areas of responsibilities: Unaccompanied children (396), victims of gender-specific persecution (211) traumatised persons and victims of torture (218), victims of trafficking (151).³⁰⁷ More recent information is 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. According to recent information provided by the government, there is an obligation in cases of unaccompanied minors for special officers to take over responsibility for the asylum procedures. In other cases of other vulnerable groups, the special officer has to be consulted and there are two options

³⁰³ Section 42f(3) Social Code, Vol. VIII.

³⁰⁴ Nerea González Méndez de Vigo, *Alterseinschätzung – ein Irrgarten ohne Ausweg? Rechtlicher Rahmen und Verfahren der Alterseinschätzung in Deutschland*, *Asylmagazin* 6-7/2019, available in German at: <https://bit.ly/2VI0w9G>, 206-217.

³⁰⁵ Federal Government, Reply to parliamentary question by The Left, 18/12001, 20 April 2017, 3.

³⁰⁶ BAMF, *DA-Asyl (Dienstanweisung Asylverfahren) – Belehrungen*, 2010, 139.

³⁰⁷ The government notes that the figures cannot be added since some officers may have qualified in more than one area; furthermore, for unknown reasons branch offices did not report the number of their special officers if this was lower than 3; Federal Government, *Reply to parliamentary question by The Left*, 19/10733, 6 June 2019, 7-8.

for further procedures: Either the special officer adopts an advisory role or s/he takes over responsibility for the procedure.³⁰⁸ However, the BAMF does not record the number of cases in which special officers are consulted or in which procedures are delegated to special officers.³⁰⁹

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.³¹⁰

It has been noted that the BAMF seems to operate with a very limited understanding of “adequate support” for vulnerable groups.³¹¹ Thus, in a BAMF guideline for the establishment of arrival centres, vulnerable groups are defined as persons who should be interviewed by a special officer, “following a transposition of the relevant provisions of the Asylum Procedures Directive into German law.” It is not clear which transposition is referred to here, since the law does not contain any reference to the concept of “adequate support” at the moment. Furthermore, no other procedural guarantees for vulnerable groups are referred to in this document.

In August 2019, the BAMF provided the following information on “special officers”:³¹² Staff members who become „special officers“ have to complete a training module for the specialisation they want to achieve. There are training modules for the following areas:

- Unaccompanied minors;
- Gender-specific prosecution;
- Traumatized persons and victims of torture;
- security issues in asylum procedures.

Special officers for security issues are responsible for a whole range of issues and should be involved in asylum procedures whenever indications arise for instances of “extremism, terrorism, criminality, human trafficking, war crimes, crimes against humanity and smuggling of human beings”.³¹³ The special officers for security issues act as contact points between the BAMF and other authorities, but they do not necessarily take part in interviews or take over responsibility of particular asylum procedures.

2.2. Exemption from special procedures

The German Asylum Act exempts neither unaccompanied children nor persons with special procedural guarantees from the airport procedure, despite an express obligation under the recast Asylum Procedures Directive to provide for such exemptions under certain conditions.³¹⁴ It also makes no reference to “adequate support” which should be provided to those requiring special procedural guarantees.³¹⁵

With the exception of applications lodged by minors, there are no detailed available figures on the profile of applicants in airport procedures. In 2019 and 2020, there were respectively 86 and 13 minors in the

³⁰⁸ Federal Government, Reply to parliamentary question by The Left, 19/10733, 6 June 2019, 6-8.

³⁰⁹ BAMF, response to information request, e-mail from “Zentrale Ansprechstelle” (central contact point), 28 August 2019.

³¹⁰ See e.g. FRA, *Monthly data collection: Highlights – Migrants with disabilities*, August 2016, available at: <http://bit.ly/2kWFgLT>, 14.

³¹¹ Nina Hager and Jenny Baron, ‘Verfahrensgarantien für psychisch Kranke oder Traumatisierte’, *Asylmagazin* 7–8/2017, 17-26, 19.

³¹² BAMF, response to information request, e-mail from “Zentrale Ansprechstelle” (central contact point), 28 August 2019.

³¹³ BAMF, *Entscheiderbrief* (newsletter for decision-makers) 4/2020, 1.

³¹⁴ Articles 25(6)(b) and 24(3) recast Asylum Procedures Directive.

³¹⁵ Article 24(3) recast Asylum Procedures Directive.

airport procedure, representing around 19% of all applicants in 2019 and 9 % in 2020.³¹⁶ Information as to whether some of them were unaccompanied minors is not available. However, in practice, it seems that the BAMF contacts the youth welfare office (*Jugendamt*) in cases involving unaccompanied minors. Officials of the youth welfare office come to the airport facility to conduct an age assessment and unaccompanied minors are usually allowed entry to the territory for the purpose of the asylum procedure.³¹⁷ That said, the detention facility at **Frankfurt/Main Airport** contains dedicated rooms for unaccompanied boys and girls.³¹⁸ In any case, the exemption does not apply to children who arrive at the airport together with their parents (86 airport procedures were initiated for children in 2019).³¹⁹

The BAMF reported that, where a vulnerability has been identified prior to the application process (e.g. according to the report of the Federal Police, through information gathered by the State or by a legal representative) this will be taken into consideration.³²⁰ This includes appointing a specialised caseworker and/or an interpreter with a specific gender; as well as procedural guarantees during interviews such as longer breaks. Moreover, the BAMF stated that vulnerable persons receive the procedural guarantees to which they are entitled from the Federal state (e.g. medical care, possible psychological care, adequate accommodation and meals etc.). In practice, however, the airport procedure is also applied to other vulnerable groups such as pregnant women, persons with acute medical conditions and victims of rape or other forms of violence. It has also been reported that the BAMF conducts interviews with pregnant women lasting several hours in the airport facilities.³²¹

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?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> In some cases	<input type="checkbox"/> No
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2. Are medical reports taken into account when assessing the credibility of the applicant's statements?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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The BAMF is generally obliged to clarify the facts of the case and to compile the necessary evidence.³²² 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 removal to another country".³²³ 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.³²⁴ 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.

Based on these principles, the guidelines of the BAMF distinguish between two categories with regard to medical statements:

³¹⁶ (German) Federal Government, Response to parliamentary question by The Left, 19/20377, 23 July 2020, p.4; 19/28109, 2021, 20 March 2021, p. 37

³¹⁷ Information provided by an attorney-at-law, 31 August 2020.

³¹⁸ ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

³¹⁹ Federal Government, *Reply to parliamentary question by The Left, 19/18498*, 2 April 2020, 44.

³²⁰ Information provided by the BAMF, 11 September 2020.

³²¹ *Ibid.*

³²² Section 24(1) Asylum Act.

³²³ Section 15(3) Asylum Act.

³²⁴ Section 60(7) Residence Act.

- Persons claiming a “*past persecution*,” for whom a detailed (oral) submission is generally deemed sufficient. In addition (and with consent of the applicant), the BAMF may arrange for a medical examination to further corroborate or refute statements by the applicant. In these cases, the costs for the medical examination are covered by the BAMF.³²⁵
- Persons claiming a “future risk”: In contrast, these applicants must submit medical reports to substantiate their claim of future risks, defined as possible “serious concrete risks” upon return. According to the BAMF’s guidelines, such a medical report has to be issued by a qualified specialist. This means that, as a rule, statements by doctors who are not specialists in the respective medical area should not be accepted. Furthermore, the statements are only accepted if the specialist is entitled to use the title of “medical doctor” in Germany. This also means that statements by other health professionals (such as psychologists or psychotherapists) are generally not deemed sufficient, and that they may only provide a reason to further examine the applicant’s claim.³²⁶

The BAMF’s requirements for medical statements are based on legislation which has considerably tightened the rules for the substantiation of diseases in recent years. In 2016, stricter rules for medical statements were introduced with regard to the so-called “impediments to removal” which might result in a toleration (*Duldung*) based on national law.³²⁷ With the introduction of a new amendment in 2019, the same rules apply to asylum procedures in which medical reasons are presented which might result in a removal ban based on conditions in the country of return.³²⁸ At the same time, the requirements for medical certificates have been expanded: The law now stipulates that a medical certificate should in particular set out:³²⁹

- the actual circumstances which have led to the professional assessment of the applicant’s condition;
- the method of assessment;
- the professional-medical assessment of the clinical picture (diagnosis);
- the severity of the disease;
- the Latin name or the classification of the disease according to ICD-10;
- the consequences that are likely to result from the medical condition;
- necessary medications, including their active substances and their international name.

Even before the new law came into effect, there have been frequent debates 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.³³⁰ This ruling by the Federal Administrative Court still provides for an important standard in the asylum procedure: While authorities or courts may formally reject medical statements if they do not fully comply with the legal requirements, they cannot always disregard such statements completely. Rather, they may be obliged to make further enquiries. Nevertheless, lawyers have also pointed out that the requirements for medical statements have

³²⁵ BAMF, *DA-Asyl (Dienstanweisung Asylverfahren) – Medizinische Untersuchung bei Hinweis auf erlittene Verfolgung oder erlittenen ernsthaften Schaden in der Vergangenheit* (Stand 2/19), available at <https://bit.ly/3iFnYOF>.

³²⁶ BAMF, *DA-Asyl (Dienstanweisung Asylverfahren) – Krankheitsbedingte Abschiebungsverbote* (Stand 2/19), available in German at: <https://bit.ly/3iFnYOF>.

³²⁷ Section 60a IIc of the Residence Act.

³²⁸ Section 60 VI¹ 2nd sentence of the Residence Act.

³²⁹ Section 60a II^c 2nd and^d 3rd sentences of the Residence Act.

³³⁰ Federal Administrative Court, Decision of 11 September 20–7 - 10 C 8.07 – (asyl.net, M12108).

only slightly been loosened by the Federal Administrative Court and it is still difficult to meet these standards in practice.³³¹ For example, 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). In such cases, it may also prove highly difficult to even find a specialist to submit a medical opinion.³³²

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.³³³ In this stage of “preliminary taking into care”, the local youth welfare office examines which youth welfare office is ultimately responsible and whether the minor can be subjected to the federal distribution procedure (for details see Section

³³¹ Deutsches Rotes Kreuz und Informationsverbund Asyl und Migration, ed. Krankheit als Abschiebungshindernis. Anforderungen an die Darlegung von Abschiebungshindernissen aufgrund von Krankheit im Asyl- und Aufenthaltsrecht, author: Oda Jentsch, December 2017, 26.

³³² See also BafF, *Identifizierung besonderer Schutzbedürftigkeit am Beispiel von Personen mit Traumafolgestörungen. Status quo in den Bundesländern, Modelle und Herausforderungen*, June 2020, Study available in German at <https://bit.ly/3GsdrSm>.

³³³ 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.

Special reception needs of vulnerable groups).³³⁴

After the responsible youth welfare office has been determined, the regular taking into care procedure is initiated, which includes the appointment of a legal guardian and the 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.³³⁵

The role of the guardian in the asylum procedure has been described as “unclear”,³³⁶ 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, as some guardians in youth welfare offices are responsible for up to 50 minors at the same time. In the majority of cases, the youth welfare office acts as guardian for the minor.³³⁷ Another challenge is the lack of specific knowledge of asylum laws, especially among voluntary guardians but at times also in youth welfare offices.³³⁸ 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.³³⁹

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.³⁴⁰ 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.³⁴¹ According to this, a new asylum procedure is only initiated if:

³³⁴ See Julian Tangermann and Paula Hoffmeyer-Zlotnik, ‘Unaccompanied Minors in Germany – Challenges and Measures after the Clarification of Residence Status’, *Study by the German National Contact Point for the European Migration Network (EMN). Working Paper 80 of the Research Centre of the Federal Office for Migration and Refugees*, March 2018, p. 27, available in English at <https://bit.ly/3KcEEe6>

³³⁵ 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>.

³³⁶ 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.

³³⁷ See BumF, ‘Online-Umfrage 2020 zur Situation junger Geflüchteter: Auswertung und Ergebnisse’, April 2021, p. 49, available in German at <https://bit.ly/3A1BxB0>

³³⁸ Uta Rieger und Nerea González Méndez de Vigo, Kindgerechte Ausgestaltung des Asylverfahrens – Eine Bestandsaufnahme, in: Deutsches Kinderhilfswerk e.V. (ed.): *Sammelband Kindgerechte Justiz*, available at: <https://bit.ly/2DmVbTE>, 62-64, BumF, ‘Online-Umfrage 2020 zur Situation junger Geflüchteter: Auswertung und Ergebnisse’, April 2021, p. 50, available in German at <https://bit.ly/3A1BxB0>

³³⁹ Stephan Hocks, ‘Die Vertretung unbegleiteter minderjähriger Flüchtlinge’, *Asylmagazin* 11/2015, 367-373.

³⁴⁰ Section 71 Asylum Act. In line with the Dublin regulation,

³⁴¹ Section 51(1)-(3) Administrative Procedure Act (*Verwaltungsverfahrensgesetz*).

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.³⁴²

Further requirements according to the law are that:³⁴³

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. However, following an CJEU ruling indicating that such time limits are in violation of the EU Asylum Procedures Directive,³⁴⁴ the BAMF has declared it will no longer require this in practice.³⁴⁵

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. A subsequent application always has to be lodged by the applicant; the BAMF does not self-initiate new procedures to grant protection (as opposed to withdrawal procedures, see [Cessation and review of protection status](#)).

If the application for international protection was rejected in another EU Member State, Norway or Switzerland (i.e. not in Germany), the application in Germany is called a secondary application (*Zweitantrag*). In the case of such a secondary application, the same requirements for changed circumstances, new evidence or errors in the previous procedure apply. In addition, Germany must be responsible to carry out the asylum procedure.³⁴⁶

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 removal 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.³⁴⁷ For secondary applications, the tolerated status is foreseen by law.³⁴⁸ However, a removal 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 removal order already exists, a new removal order or other notification is not required to enforce removal.³⁴⁹ The applicant may also be detained pending removal until it is decided that a subsequent or secondary asylum procedure is carried out.³⁵⁰

³⁴² The relevant grounds for this third alternative are listed in Section 580 of the Code of Civil Procedure (“action for retrial of a case”), to which the Asylum Act makes a general reference. Serious errors according to this provision include false testimony by witnesses or experts. Apart from that, Section 580 of the Code of Civil Procedure contains several grounds which are either not relevant for the asylum procedure or are covered by the grounds referred to under the first and second alternatives mentioned here. Although it is conceivable that the third alternative may apply in certain cases, it hardly seems to be of significance in practice, cf. Kerstin Müller, AsylVfG § 71, para. 32, in Hofmann/Hoffmann, eds. *HK-AusIR (Handkommentar Ausländerrecht)*, 2008, 1826.

³⁴³ Section 51(2) Administrative Procedure Act.

³⁴⁴ CJEU, Case C-18/20, Judgement of 9 September 2021.

³⁴⁵ Asyl.net, *EuGH stärkt Rechte von Asylsuchenden bei Asylfolgeanträgen*, last update on 17 November 2021, available in German at: <https://bit.ly/3IB1tXA>.

³⁴⁶ BAMF, *Initial, follow-up and second applications*, available at: <https://bit.ly/3prAS83>.

³⁴⁷ Kerstin Müller, ‘AsylVfG § 71, para. 44’, in Hofmann/Hoffmann, eds., *HK-AusIR (Handkommentar Ausländerrecht)*, 2008, 1830.

³⁴⁸ Section 71a (3) Asylum Act.

³⁴⁹ Section 71(5) Asylum Act.

³⁵⁰ Section 71(8) Asylum Act, Section 71a (2) Asylum Act.

The decision on admissibility of a subsequent or secondary application can be carried out without hearing the applicant.³⁵¹ 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”.³⁵² 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 removal.

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.³⁵³

In terms of the asylum procedure, the law does not distinguish between situations in which the applicant has left Germany following a negative decision and situations where they remained on the territory. Differences exist regarding reception however: all subsequent applications have to be lodged in the BAMF branch office which was responsible for the first application, but persons who have left and re-entered Germany are subject to the regular distribution procedure and are obliged to stay in initial reception centres (see [Making and registering the application](#)),³⁵⁴ whereas applicants who stayed in Germany and who are no longer required to stay in an initial reception centre usually do not have to go back to an initial reception centre for the duration of the procedure, unless their subsequent applications are dealt with in the “accelerated procedure”, but this type of procedure is only applied in a few branch offices of the BAMF (see [Accelerated Procedure](#)).³⁵⁵

2021 was marked by a significant increase in subsequent applications. A total of 42,583 persons lodged subsequent applications in 2021, compared to 19,589 in 2020 and 23,429 in 2019. The number of subsequent applications increased substantially for Syrian nationals and was almost 6 times the number of 2020 for Afghans. For Afghanistan, this is likely related to the changing situation in Afghanistan with the withdrawal of international troops and the takeover of the Taliban (see Section [Differential treatment of specific nationalities in the procedure](#)). While the share of inadmissibility decisions has decreased for applications from Afghans nationals in 2021, statistics on decisions do not yet reflect the changed circumstances as the overall number of decisions (1,939) is much lower than the number of subsequent applications (8,445). Regarding Syrian applicants, the increase in 2020 and 2021 is related to a CJEU ruling of November 2020 according to which there is a “strong presumption” that refusal to perform military service in the context of the Syrian civil war relates to one of the reasons to be granted refugee status.³⁵⁶ As a result, many Syrians who had previously been granted subsidiary protection in Germany lodged subsequent applications. The statistics show that these were deemed inadmissible in most cases, however.³⁵⁷ Statistics do not distinguish between situations where applicants have remained in Germany

³⁵¹ Section 71(3) Asylum Act.

³⁵² Section 29(1)(5) Asylum Act.

³⁵³ Before the decision on admissibility, applicants usually have access to similar reception conditions since the law governing reception conditions (the Asylum Seekers benefits Act) also applies to persons with a tolerated status, see Section 1a of the Act. The exact conditions for access to housing, the labour market or social benefits depend on the duration of stay and the individual situation, however (see Chapter on Reception Conditions).

³⁵⁴ Section 71(2) Asylum Act

³⁵⁵ Kirsten Eichler, *Der Asylfolgeantrag. Zu den Voraussetzungen für die erneute Prüfung von Asylanträgen und zum Ablauf des Folgeverfahrens*, October 2018, available in German at: <https://bit.ly/3MbCfBj>

³⁵⁶ CJEU, Case C-238/19, Judgment of 19 November 2020.

³⁵⁷ See also BAMF, *Migrationsbericht 2020 der Bundesregierung*, December 2021, 37, available in German at <https://bit.ly/3nTDv1J>.

until lodging a subsequent application and situations where subsequent applications are lodged after the applicant has left Germany. However, there are statistics on the number of asylum applications lodged by persons who already have a protection status in Germany. 33,069 such applications were lodged until the end of November 2021.³⁵⁸ Around two thirds of the applicants had either a residence permit for political or humanitarian reasons (which includes international protection) or a tolerated status, suggesting that their application might be counted as a subsequent application.

The decisions on subsequent applications in 2021 were as follows:

Subsequent applicants and decisions on subsequent applications: 2021						
Nationality	Applications	Decisions	Inadmissible	Admissible		
				Positive decision	Negative decision	Termination / inadmissibility
Syria	15,259	19,446	18,381	716	28	321
Afghanistan	8,445	1,939	604	666	103	566
Moldova	2,626	2,583	2,234	0	62	287
Iraq	1,268	1,687	535	209	232	535
Serbia	986	940	732	2	110	96
Total	42,583	42,569	31,948	2,919	2,401	5,301

Source: BAMF, *Asylgeschäftsstatistik (statistics on applications, decisions and pending procedures)*, 1-12/2021, available at: <https://bit.ly/38DEdJ>.

The statistics show that the majority of subsequent applications are being rejected as inadmissible, before the asylum procedure is reopened (75 % in 2021, 48.5 % in 2020), or the follow-up procedure is terminated later either for formal reasons or because the application is found to be inadmissible at this stage (12.5 % in 2021, 28.6 % in 2020). However, when looking strictly at the subsequent applications decided on the merits, it appears that almost 50% of them were successful (2,919 decisions, equalling to 54.9 % in 2021, and 2,471 decisions in 2020 (49.1 %)).

The 2,919 “positive” decisions in 2021 resulted in the following status decisions:

- Asylum or refugee status: 1,284
- Subsidiary protection: 530
- (National) humanitarian protection/prohibition of removal: 1,105

F. The safe country concepts

Indicators: Safe Country Concepts

- 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
- 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
- Does national legislation allow for the use of “first country of asylum” concept? Yes No

³⁵⁸ Federal Government, *Response to parliamentary question by The Left, 20/432, 14 January 2022*, 9

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.³⁵⁹ The concept of “another third country”, akin to the “first country of asylum” concept, has been incorporated in the inadmissibility concept of the Asylum Act following the reform entering into force in August 2016 (see [Admissibility Procedure](#)).

1. Safe country of origin

The Constitution defines as safe countries of origin the countries “in which, on the basis of their laws, enforcement practices and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists”.³⁶⁰

1.1. List of safe countries of origin

Member states of the European Union are by definition considered to be safe countries of origin.³⁶¹ 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 2014.³⁶² Albania, Kosovo and Montenegro were added with another law which took effect on 24 October 2015.³⁶³

As explained in the previous updates of this report, several bills were tabled with the aim to add certain countries to the list of safe countries (such as Morocco, Algeria and Tunisia in April 2016) or Georgia 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.³⁶⁴ The bill was not reintroduced again before the federal elections of September 2021.

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.

³⁵⁹ Article 16a(2)-(3) Basic Law.

³⁶⁰ Article 16a(3) Basic Law.

³⁶¹ Section 29a(2) Asylum Act.

³⁶² 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.

³⁶³ Asylverfahrensbeschleunigungsgesetz, BGBl. I, 23 October 2015, 1722.

³⁶⁴ 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>; Bundesrat, ‘Keine Zustimmung: Gesetz zu sicheren Herkunftsstaaten’, 10 March 2017, available at: <http://bit.ly/1owVXpm>; 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). However, this is only possible in branch offices of the BAMF to which a “special reception centre” has been assigned, and in 2020 the procedure was only applied in arrival centres or AnkER centres in Bavaria and North Rhine-Westphalia (see [Accelerated Procedure](#)).

The number of applications from asylum seekers from safe countries of origin significantly decreased in recent years and have remained on a low level since 2019. The following table shows statistics for asylum applications by relevant nationalities:

Asylum applications by nationals of “safe countries of origin”						
	2016	2017	2018	2019	2020	2021
Albania	17,236	6,089	2,941	2,573	1,220	1,897
Serbia	10,273	4,915	2,606	2,718	1,292	1,830
North Macedonia	7,015	4,758	2,472	2,258	823	4,542
Kosovo	6,490	2,403	1,224	875	560	444
Bosnia and Herzegovina	3,109	1,438	870	633	401	1,538
Ghana	2,645	1,134	992	966	599	441
Montenegro	1,630	730	377	252	151	285
Senegal	767	378	366	365	187	144
Total	49,165	21,845	11,848	10,640	5,233	11,121

Source: BAMF, Asylgeschäftsstatistik (statistics on applications, decisions and pending procedures), 1-12/2010 and 2021, available in German at: <https://bit.ly/3rnEzR> (2020) and <https://bit.ly/3goPTTa> (2021).

It should be noted that many asylum applications of persons from safe countries of origin are subsequent applications (e.g. 36.2% for Albania, 53.9 % for Serbia in 2021). Hence the number of newly arriving asylum seekers from these countries is considerably lower than the numbers provided above.

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 removal was granted:

Recognition rates for nationals of selected “safe countries of origin”						
	2016	2017	2018	2019	2020	2021
Albania	0.4%	1.8%	1.2%	0.9%	0.4 %	0.4%
North Macedonia	0.4%	1%	0.8%	0.2%	0 %	0.1%
Serbia	0.4%	1%	0.7%	0.1%	0 %	0.4%

Source: BAMF, Antrags-, Entscheidungs- und Bestandsstatistik, 2016, 2017 and 2018 and Asylgeschäftsstatistik (statistics on applications, decisions and pending procedures), 1-12/2019, 1-12-/2020 and 1-12-2021.

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.³⁶⁵ In those countries the application of the 1951 Refugee Convention and of the European Convention on Human Rights (ECHR) has to be “ensured”. The list is an addendum to the Asylum Act and has to be adopted by both chambers of the German Parliament. The Federal Government is entitled to remove a country from that list if changes in its legal or political situation “give reason to believe” that the requirements for a safe third country are not met any longer. At present, the list of further safe third countries consists of **Norway** and **Switzerland**.

From its wording, the safe third country concept only applies to the German (constitutional) asylum, but the Federal Constitutional Court found in a landmark decision in 1996 that its scope extends to refugee protection and to other forms of protection as well.³⁶⁶

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.³⁶⁷ 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.³⁶⁸ 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 returns of asylum seekers can only be carried out under the Dublin regulation as a matter of principle. 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 and on agreements with Spain and Greece (i.e. no legislative changes were implemented). The practice has been discontinued since May 2021, after a court decision ruled it unlawful (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,³⁶⁹ or has resided there for more than 3 months without being threatened by persecution.³⁷⁰

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 24 times in 2020 and 3 times in 2021 (see [Admissibility Procedure](#)).³⁷¹

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

1. Provision of information on the procedure

³⁶⁵ Section 26a(2) Asylum Act.

³⁶⁶ Federal Constitutional Court, Decision of 14 May 1996, 2 BvR 1938/93, 2 BvR 2315/93, BVerfGE 94, 49 (189).

³⁶⁷ Section 18 Asylum Act.

³⁶⁸ The border area is defined as a strip of 30 kilometres.

³⁶⁹ Section 27(2) Asylum Act.

³⁷⁰ Section 27(3) Asylum Act.

³⁷¹ Federal Government, *Response to parliamentary question by The Left, 20/43219/28109, 14 January 2022, 6, 19/18498, 2 April 2020, 6*. The figures for 2021 are until 30 November 2021.

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.”

As a result of the outbreak of Covid-19, BAMF branch offices were closed to the public for several weeks in March and April 2020. The BAMF website contains information related to Covid-19 and different aspects of the BAMF's tasks, including the asylum procedure. This information was updated several times in 2020 and 2021.³⁷² A leaflet in German and dated 23 March 2020 can be found online which explains that the respective branch office is closed and that asylum applications can be filed through a written form in the meantime. However, it is not clear how systematically it was displayed at the BAMF branch offices.³⁷³ According to the BAMF, information on asylum procedures under pandemic conditions was provided in written form to applicants or their legal representatives.³⁷⁴

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,³⁷⁵ including the following:

- An information sheet on the rights and duties during the procedure and on the proceedings in general (“*Belehrung nach § 10 AsylG und allgemeine Verfahrenshinweise*”);
- An instruction on the obligation to comply immediately with a referral to the competent branch office of the BAMF and to appear in person immediately or on a date determined for the formal registration of the asylum application (“*Belehrung nach § 14 Abs. 1 und § 23 Abs. 2 AsylG*”);³⁷⁶
- An instruction on the obligation to comply immediately with a referral to the initial reception centre (“*Belehrung nach § 20 Abs. 1 AsylG*”);³⁷⁷
- 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*”).³⁷⁸

These information sheets are available in German and around 45 other languages. In BAMF branch offices in arrival centres, a video is shown to applicants explaining the asylum procedure as well as their rights and duties.³⁷⁹

³⁷² For the last version see <https://bit.ly/3A83Ca4>

³⁷³ BAMF, ‘*Covid-19: Wichtige Informationen zur Antragstellung für Asylbewerberinnen und Asylbewerber*’, 23 March 2020, available in German at <https://bit.ly/3A3QJ0o>.

³⁷⁴ Information provided by the BAMF, 10 March 2022.

³⁷⁵ 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.

³⁷⁶ Available on the BAMF website at <https://bit.ly/2U0lyyv>.

³⁷⁷ Available on the BAMF website at <https://bit.ly/39Lf2Cy>.

³⁷⁸ Available on the BAMF website at <https://bit.ly/2xyIVrx>.

³⁷⁹ The video is available in several languages on the BAMF website, <https://bit.ly/3tz57Nd>.

In addition, other leaflets and publications by the BAMF are available in several languages, although they are not necessarily handed out to all asylum seekers. These include:

- Information on the appointment for the interview in the asylum procedure (*Informationsblatt zum Anhörungstermin*),³⁸⁰
- Information on the asylum application (*Informationsblatt zur Asylantragstellung*).³⁸¹
- The stages of the German asylum procedure (Ablauf des deutschen Asylverfahrens).³⁸²

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.³⁸³

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”.³⁸⁴ In particular, they are not considered suitable to render the significance and content of questions during interviews sufficiently understandable to applicants. In the “Memorandum to enhance fair and diligent asylum procedures in Germany”, published by an alliance of 12 German NGOs in November 2016, several deficiencies were identified in the context of the right to information.³⁸⁵ Since autumn 2015, the BAMF has developed a number of new, more accessible information products, including information on the website, leaflets explainer videos and an app for newly arrived refugees.³⁸⁶

1.2. Oral information

Oral information for asylum applicants now mainly consists of the “voluntary independent state run counselling” that was introduced with the so-called “Orderly-Return-Law”, in force since 21 August 2019 (Section 12a Asylum Act).

Counselling consists of two stages: group sessions with basic information on the asylum procedure as well as on return procedures, followed by the second stage of individual counselling sessions. While the law stipulates that the counselling can be carried out either by the Federal Office or by welfare organisations, in practice it is the BAMF which provides counselling. Government advice covers the period from the lodging of the asylum application to the explanation of a first instance decision. According to the BAMF, the staff who offer the counselling undergo a one-week training and are “organisationally separated from the asylum area”.³⁸⁷

³⁸⁰ Available on the BAMF website at <https://bit.ly/2UjWc0k>.

³⁸¹ Available on the BAMF website at <https://bit.ly/3bok08E>.

³⁸² Available in English at <https://bit.ly/3drFPWF>.

³⁸³ *Ibid.*

³⁸⁴ Amnesty International et al., ed. *Memorandum zur derzeitigen Situation des deutschen Asylverfahrens (Memoranda on current situation of the German asylum procedure)*, 2005, 21.

³⁸⁵ Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland. Standards zur Integrate any of this? Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, 14.

³⁸⁶ Janne Grote, ‘The Changing Influx of Asylum Seekers in 2014-2016: Responses in Germany’. Focussed Study by the German National Contact Point for the European Migration Network (EMN), October 2017, p. 39, study available in English at <https://bit.ly/33iJA08>.

³⁸⁷ BAMF, ‘Voluntary, independent, state asylum procedure counselling’, available in English at <https://bit.ly/31VK6AU>

Procedure counselling was first introduced in a pilot project together with welfare associations.³⁸⁸ It was then established first in all AnKER and functionally equivalent centres and has been rolled out to the rest of the BAMF branch offices since 2020.³⁸⁹ As of March 2021, counselling was available in 44 BAMF branch offices³⁹⁰ with 120 full-time staff allocated to the service.³⁹¹ Counselling on the asylum procedure provided by the BAMF was suspended together with all in-person activities at branch offices on 23 March 2020.³⁹² According to the BAMF website, it was re-introduced from mid-May 2020 onwards.³⁹³ EASO reports that the group counselling sessions were also held online in 2020 and in especially equipped rooms in 2020.³⁹⁴ According to the BAMF, general information on the asylum procedure was given via telephone or digital means in individual cases.³⁹⁵ Over the course of 2020, stage 1 counselling was provided to 13,701 persons and stage 2 individual counselling to 1,141 persons. In 2021, the numbers increase substantially for stage 1 group counselling (25,784) but not to the same degree for stage 2 counselling (1,928).³⁹⁶

The BAMF counselling sessions represent an improvement compared to the situation prior to August 2019 when no information was systematically provided to asylum seekers.³⁹⁷ 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 and also on information which has nothing to do with the procedure, such as the so-called "return options").³⁹⁸

Welfare associations further criticise that counselling by the same authority which decides on the asylum application cannot be independent, especially since part of the counselling given by non-state actors also involves possibilities to appeal the BAMF decisions. Furthermore, they argue that many asylum seekers find it difficult to trust authorities based on experiences in their countries of origin, but that trust in the person and organisation providing the counselling is essential for effective advice.³⁹⁹

While the law does foresee the advice services of the second stage to be carried out by welfare organisations, the government has made it clear that it does not intend to commission NGOs to carry out an advice service on its behalf. Rather, it claims that welfare organisations are free to run their own services alongside the counselling offered by the BAMF.⁴⁰⁰ At the same time, NGOs have voiced concerns that funding of independent advice centers could be jeopardised as they might be replaced by the BAMF

³⁸⁸ For more background information on the introduction of asylum procedure counselling and the role of NGOs and welfare associations see the 2019 AIDA Update on Germany. The internal evaluation report of the pilot project is available online at <https://bit.ly/3FC8LYK>

³⁸⁹ BAMF, Evaluation of AnKER Facilities and Functionally Equivalent Facilities, Research Report 37 of the BAMF Research Centre, 2021, 41, available in English at <https://bit.ly/3FgxXnq>

³⁹⁰ BAMF, 'Voluntary, independent, state asylum procedure counselling', available in English at <https://bit.ly/31VK6AU>

³⁹¹ BAMF, Evaluation of AnKER Facilities and Functionally Equivalent Facilities, Research Report 37 of the BAMF Research Centre, 2021, 41, available in English at <https://bit.ly/3FgxXnq>

³⁹² PRO ASYL, 'Newsticker Coronavirus: Informationen für Geflüchtete und Unterstützer*innen', available in German at <https://bit.ly/3n5bqEe>.

³⁹³ BAMF, 'Weitere Themen (Stand: 20.12.). Informationen zu den Auswirkungen des Corona-Virus (COVID-19), die im Zusammenhang mit dem Bundesamt für Migration und Flüchtlinge (BAMF) stehen', available in German at <https://bit.ly/3GirutF>

³⁹⁴ EASO *Asylum Report 2021*, 169, available at: <https://bit.ly/3qzazNU>.

³⁹⁵ Information provided by the BAMF, 10 March 2022.

³⁹⁶ Information provided by the BAMF, 10 March 2022.

³⁹⁷ Markus Kraft, 'Die ANKER-Einrichtung Oberfranken', *Asylmagazin* 10-11/2018, 353, available in German at <https://bit.ly/2P36MEe>.

³⁹⁸ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

³⁹⁹ Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege, 'Bundesgeförderte, qualifizierte und behördenunabhängige Asylverfahrensberatung (§ 12a Asylgesetz). Neue gesetzliche Aufgaben der Wohlfahrtsverbände', September 2019, 2, available in German at <https://bit.ly/3fyGqIq>

⁴⁰⁰ Federal government, response to information request by The Left, 26 May 2020, 19/19535, 3.

services. In a press release of November 2019, the “AMBA”-network,⁴⁰¹ which has been providing independent advice services in several reception centres in **Lower Saxony** for many years, referred to government officials who had stated that the BAMF was willing to cooperate with NGO advice services, but that public funding would not be available any longer for NGO advice services, since advice on asylum procedures was now considered to be a government task. In particular, funding which had been provided through the AMIF programme, was now at risk, according to AMBA.⁴⁰² The government confirmed in May 2020 that counselling services by NGOs would no longer be funded through the AMIF programme.⁴⁰³ Similarly, in **Saxony**, the German Red Cross stopped providing counselling services on 30 June 2020 due to lack of funding from the State government.⁴⁰⁴ As mentioned above, the new coalition proposal of November 2021 suggests that asylum procedure counselling should be offered by independent organisations instead of the BAMF (see [Overview of the Main Changes](#)), but it remains to be seen if this will be implemented in practice.

Another point of criticism is that the law does not specify when the individual counselling of the so-called second stage is supposed to take place. Thus, it is not guaranteed that the individual counselling will take place before the asylum interview. This may contradict the purpose of individual asylum counselling whose core function lies in the preparation of the asylum seeker for his or her interview.⁴⁰⁵

In addition to the counselling services as regulated by the asylum act, 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.⁴⁰⁶ 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.⁴⁰⁷

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.⁴⁰⁸

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

⁴⁰¹ AMBA (Aufnahmemanagement und Beratung für Asylsuchende in Niedersachsen) is a network of the welfare organisations Caritas, Diakonie, several local NGOs and the Refugee Council of Lower Saxony. Over the years, member organisation of the network have run advice services for asylum seekers in reception centres at Friedland, Braunschweig, Osnabrück, Oldenburg and Bramsche; further information available at: <https://bit.ly/31ZDwae>.

⁴⁰² Koordination AMBA: *Unabhängige Asylverfahrensberatung vor dem Aus?* 12 November 2019, available in German at <https://bit.ly/2W3ajY6>.

⁴⁰³ Federal Government, response to information request by The Left, 26 May 2020, 19/19535, 8.

⁴⁰⁴ Sächsischer Flüchtlingsrat, ‘Akuter Handlungsbedarf bei unabhängiger Asylverfahrensberatung in Sachsen’, 27 August 2020, available in German at <https://bit.ly/33rFF1p>

⁴⁰⁵ Wiebke Judith, Druck auf die Länder? Lex AnKER im „II. Hau-Ab-Gesetz“ in: Informationsverbund Asyl und Migration (ed), Das Migrationspaket: Beilage zum Asylmagazin 8-9/2019, September 2017, 76.

⁴⁰⁶ BAMF, *Das deutsche Asylverfahren – ausführlich erklärt. Zuständigkeiten, Verfahren, Statistiken, Rechtsfolgen (The German asylum procedures – an elaborate explanation. Responsibilities, Procedures, Statistics, Consequences)*, December 2012, 17.

⁴⁰⁷ Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland. Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, 14.

⁴⁰⁸ ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

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

Welfare organisations and other NGOs offer free advice services which include basic legal advice.⁴⁰⁹ However, 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. There is no mechanism at the federal level which ensures that asylum seekers are getting access to legal advice from an independent institution before the interview. Since the outbreak of Covid-19, many NGO-led advice centres have offered service remotely via online tools or telephone.⁴¹⁰ However, several NGOs reported that the Covid-pandemic has meant poor access to information for many refugees because of language barriers and limited internet access.⁴¹¹

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.⁴¹²

In other arrival or AnKER centres established since 2016, 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. A positive example is the arrival centre at **Heidelberg** where the Federal State of Baden-Württemberg has established an independent “qualified social and procedural advisory service” in cooperation with welfare organisations. Within this model, a social worker from an independent organisation functions as contact person for 100 asylum seekers and is explicitly commissioned to offer advice on the asylum procedure (while in many other reception centres social workers are not necessarily independent and/or they often are neither qualified nor entitled to offer counselling services on the asylum procedure). Even here, it has proven difficult for the social workers to effectively prepare asylum seekers for the interview in the asylum procedure since they are often approached with other urgent matters such as social support, family reunification etc.

Furthermore, interviews are scheduled at very short notice in the arrival centres, at a time when asylum seekers have to come to terms with other administrative regulations and with their new surroundings in general. In this situation, it has proven difficult to create an adequate setting for the preparation for the interview.⁴¹³ In the light of these problems being described in the context of the “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” and AnKER-centres.

⁴⁰⁹ A database of advice services for asylum seekers is available at: <https://bit.ly/2Ho73Az>.

⁴¹⁰ See for example Der Paritätische Gesamtverband, *‘Flüchtlingsberatung, psychosoziale und psychotherapeutische Behandlung von Geflüchteten’*, 4 March 2020, available in German at <https://bit.ly/3qyM2sk>

⁴¹¹ FRA (European Union Fundamental Rights Agency), *‘Migration: Key Fundamental Rights Concerns’*, Quarterly Bulletin 01.04.2020-30.06.2020, available at: <https://bit.ly/3sJrpuR>.

⁴¹² ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

⁴¹³ Johannes Moll, *‘Das verkürzte Asylverfahren im Ankunftszenrum Heidelberg. Ein Modell im Spannungsfeld von effizientem Verfahren und effektiven Rechtsschutz’*, Asylmagazin 12/2016, 412, 415-416.

Following an initial period in a reception centre, 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, since these costs would only be covered from public funds in exceptional cases. 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, a general residence obligation is imposed for asylum seekers from safe countries of origin for the whole duration of their procedures (see [Freedom of Movement](#)).⁴¹⁴ 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.

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?⁴¹⁵ Yes No
 ❖ If yes, specify which: Albania, Bosnia and Herzegovina, Ghana, Kosovo, North Macedonia, Montenegro, Senegal, Serbia

As a response to the high numbers of asylum applications in Germany in 2015 and 2016, the BAMF had prioritised applications from specific nationalities at different points in time. Prioritisation of applications from certain countries was revoked in the second quarter of 2016.⁴¹⁶ 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 2017.⁴¹⁷ Since then, the branch offices of the BAMF and the arrival centres decide on their own whether they set any priority in dealing with caseloads, in particular dependent on availability of staff members with the necessary country expertise and availability of interpreters. This also applied during the outbreak of Covid-19. However, during the first wave and when in-person applications and hearing were suspended, BAMF branch offices focussed on deciding cases which had been pending for a longer time and where the interview had already taken place.⁴¹⁸ Furthermore, according to the EU Fundamental Rights Agency, when hearing presumed the BAMF did not prioritise vulnerable applicants.⁴¹⁹ This information was not confirmed by the BAMF, however.

Similarly to previous years, in 2020, the average duration of procedures was significantly below the average of 8.3 months for asylum seekers from some of the European “safe countries of origin” and from Georgia:⁴²⁰

- Albania and North Macedonia: 4 months
- Montenegro: 4.2 months
- Kosovo: 8.1 months
- Bosnia and Herzegovina: 3 months
- Serbia: 3.5 months
- Georgia: 3.6 months

⁴¹⁴ Section 47(1a) Asylum Act.

⁴¹⁵ Whether under the “safe country of origin” concept or otherwise.

⁴¹⁶ Federal Government, *Reply to parliamentary question by The Left*, 18/9415, 17 August 2016, 23.

⁴¹⁷ Information provided by the BAMF, 23 January 2018.

⁴¹⁸ Information provided by the BAMF, 10 March 2022.

⁴¹⁹ FRA (European Union Fundamental Rights Agency), *Migration: Key Fundamental Rights Concerns*, Quarterly Bulletin 1.7.2020 - 30.9.2020, 31, available at: <https://bit.ly/3NuoiIC>.

⁴²⁰ Federal Government, Response to parliamentary question by The Left, 19/30711, 15 June 2021, 3.

This seems to imply that asylum applications from “safe countries of origin” are fast-tracked, however this does not seem to be the case for all “safe countries of origin” since procedures at the BAMF for asylum seekers from Kosovo, Ghana and Senegal were not faster than they were on average (9.1 months for Senegal, 10.6 months for Ghana, 8.1 months for Kosovo).

On the other hand, average duration of procedures was considerably above average for asylum seekers from these countries of origin:

- Iran: 11.5 months
- Nigeria: 12.6 months
- Russian Federation: 13.3 months
- Somalia: 11.1 months
- Guinea: 12.6 months
-

Since 2019, the BAMF has de-prioritised applications from persons who have already received a protection status in Greece, due to several court rulings that have declared transfers of these persons to Greece unlawful (see Section

Suspension of **transfers**).

1. Syria

Due to a policy change in the first months of 2016, the BAMF since then has granted subsidiary protection instead of refugee protection in a previously unrecorded 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. While the percentage rose again in the following years, 27.6 % of Syrian applicants were granted asylum or refugee protection in 2021 (compared to 2018: 41.6 %, 2019: 49.5 %, 2020: 48.1 %). Conversely, the rate of Syrians being granted subsidiary protection rose from 0.1% in 2015 to 41.2% in 2016, 56% in 2017. Since then, it has decreased to 34.7 % in 2021 (compared to : 2018: 39.7%, 2019_33.1%, 2020: 39.6 %).

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 again 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"). Courts decided upon 8,009 such cases in 2020. 835 upgrade-appeals were successful, with Administrative Courts granting asylum or refugee status. In 7,171 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**). 10,802 cases of such appeals were pending at the end of 2020.⁴²¹

A further increase in such "upgrade appeals" and in subsequent applications occurred in 2021 following a decision by the CJEU according to which there is a "strong presumption" that refusal to perform military service in the context of the Syrian civil war relates to one of the reasons to be granted refugee status.⁴²² Subsequent applications were deemed inadmissible in most cases, however (see also **Subsequent applications**).⁴²³

In April 2019 it was reported that the BAMF had in some cases only granted a so-called humanitarian status (under Section 60 V of the Residence Act) instead of subsidiary protection to Syrian nationals. These decisions were supposedly based on new internal guidelines by the BAMF, which had concluded that possible risks upon return would in many cases only result from the poor general circumstances in Syria, rather than from deliberate acts of certain parties.⁴²⁴ Following media reports, decisions in which this legal question was relevant, were suspended by the BAMF. The Ministry of the Interior announced that it would discuss the matter with the Foreign Office. Finally, the Ministry announced that the internal guidelines would remain unchanged, so decision-making practice would, as a rule, also remain the same as before April 2019 – meaning that subsidiary protection was again granted in most cases of Syrian nationals who were not recognised as refugees.⁴²⁵

Statistics for 2019 show, that the "humanitarian status" under Section 60 V of the Residence Act was indeed only granted in 489 cases of Syrian nationals in 2019, thus representing 3.2% of the total number of decisions. The overwhelming majority of Syrian applicants were granted asylum or refugee status (50.6%) or subsidiary protection (33.1%). Almost all rejections were rejections for formal reasons

⁴²¹ Federal Government, Reply to parliamentary question by The Left, 19/28109, 30 March 2021, 42-44.

⁴²² CJEU, Case C-238/19, Judgment of 19 November 2020.

⁴²³ See also BAMF, *Migrationsbericht 2020 der Bundesregierung*, December 2021, 37, available in German at <https://bit.ly/3nTDv1J>

⁴²⁴ asyl.net, 'BAMF setzt Entscheidungen über subsidiären Schutz bei syrischen Asylsuchenden aus', 29 April 2019, available in German at: <https://bit.ly/320Dmz1>.

⁴²⁵ zeit.de, 'Horst Seehofer will Asylpraxis für Syrer vorerst nicht ändern', 15 May 2019, available in German at: <https://bit.ly/2BIYU8X>.

(inadmissibility or termination of the case). This means that in cases, in which the substance of the case was examined, 99.9% of Syrian nationals were granted some kind of protection status in 2019.⁴²⁶ This tendency has continued in 2020, with 238 Syrians granted a “humanitarian status” in 2021 and 192 in 2020.

At the end of December 2020, the removal ban for Syria that had been in place since 2012 expired. The ban was based on a common decision of the Federal States and the Federal government, but could not be renewed due to disagreement regarding the possibility to remove criminals and “persons posing a risk” related to terrorist activities (“*Gefährder*”). This was heavily criticised by NGOs and organisations such as the German Institute for Human Rights, UNHCR and Caritas.⁴²⁷ The removal statistics for 2020 indicate that 248 removals of Syrian nationals took place. However Syria is not listed as a country of destination for removals in 2020, meaning that the removals of Syrian nationals took place to other countries, for example to other EU Member States in the form of Dublin transfers.⁴²⁸ As of October 2021, according to the government, an “examination procedure” was still ongoing in the BAMF regarding possible returns to Syria.⁴²⁹

2. Afghanistan

With the outbreak of Covid-19, the Federal Ministry of Interior stopped forced removals to Afghanistan on 27 March 2020, since the Afghan authorities refused to take back Afghan nationals in light of the pandemic.⁴³⁰ Removals started again after the first wave however, with one charter flight departing from Germany on 16 December 2020.⁴³¹ In total, 137 persons were forcibly removed to Afghanistan in 2020;⁴³² and 167 were removed in 2021, with the last charter flight departing from Germany on 6 July 2021.⁴³³ With the takeover of the Taliban on 15 August 2021, the German government started an evacuation operation for German nationals in Afghanistan as well as Afghan nationals who had worked for German authorities, the military and “especially endangered persons”. Between 16 and 26 August 2021, a total of 5,300 persons were evacuated, out of which 4,400 Afghan nationals. The evacuated persons have entered Germany via an emergency visa (based on Section 14 and 22 Residence Act).⁴³⁴

Upon arrival, the BAMF then examined whether persons had already been granted permission for an admission from abroad (Section 22 Residence Act). If this was not the case, and if the Federal Ministry decided no such permission could be granted, persons were informed of this and of the possibility to apply for asylum in Germany.⁴³⁵ As of 10 December 2021, a total of 28,053 permissions for admission from abroad had been issued to Afghan nationals. However, only 8,014 persons had entered Germany as of the same date.⁴³⁶

Over the whole year of 2021, the protection rate for Afghan nationals has only increased slightly, from 36.6 % in 2020 to 42.9 % in 2021. As of mid August 2021, the BAMF had de-prioritised decisions on asylum applications from Afghanistan due to the uncertain situation in the country except for cases in

⁴²⁶ Federal Government, *Response to parliamentary question by The Left*, 19/18498, 2 April 2020, 3.

⁴²⁷ FRA (European Union Fundamental Rights Agency), *Migration: Key Fundamental Rights Concerns*, Quarterly Bulletin 01.01.2021-30.06.2021, available at <https://bit.ly/3qB3RHK>.

⁴²⁸ Federal Government, *Response to parliamentary question by The Left*, 19/27007, 25 February 2021, 3;5.

⁴²⁹ Federal Government, *Responses to parliamentary question by The Left*, 19/32678, 14 October 2021, 31, 19/28109, 30 March 2021, 16.

⁴³⁰ PRO ASYL, *Newsticker Coronavirus: Informationen für Geflüchtete und Unterstützer*innen*, available in German at <https://bit.ly/3n5bqEe>.

⁴³¹ Federal Government, *Response to parliamentary question by The Left*, 19/27007, 25 February 2021, 28.

⁴³² Federal Government, *Response to parliamentary question by The Left*, 19/27007, 25 February 2021, 3.

⁴³³ Federal Government, *Reply to parliamentary question by The Left*, 20/890, 2 March 2022, 3, 47.

⁴³⁴ BAMF, *Aufnahme ehemaliger Ortskräfte und gefährdeter Personen aus Afghanistan*, 29 November 2021, available in German at <https://bit.ly/3nv6sjZ>.

⁴³⁵ BAMF, *Migrationsbericht 2020 der Bundesregierung*, December 2021, 38, available in German at <https://bit.ly/3nTDv1J>.

⁴³⁶ Deutscher Bundestag, *parliamentary question by The Left*, 20/791, 22 February 2022, 1.

which international protection can be granted according to the guidelines in place or where the situation in Afghanistan was irrelevant for the decision. The government further declared that decisions continued to be taken on an individual, case-by-case basis.⁴³⁷ As a result, the number of pending applications by Afghan nationals has risen considerably compared to 2020, to 27,846 at the end of 2021 (2020: 6,101). The BAMF has resumed decisions concerning Afghan nationals in December 2021,⁴³⁸ prioritising cases which involve several persons (as opposed to individual applications) and vulnerable applicants.⁴³⁹

In previous years, legal debates concerning decision-making practices on Afghanistan had focused on single male adults. The BAMF generally assumed 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 did 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.⁴⁴⁰

Appeals at Administrative Courts against such decisions had a comparably high success rate in the last years. From the start of 2021 until the end of November 2021, 5,726 Afghan nationals were granted a form of protection by courts, compared to 1,626 rejections of appeals. In total, 45.2 % of appeals were successful. If only decisions on the merits are counted, 77.8 % of appeals resulted in the granting of protection.⁴⁴¹ The success rate is higher compared to previous years: In 2020, 39.1% of all court decisions ended in the granting of some form of protection. If only decisions on the merits are counted, 60 % resulted in a form of protection (8,287 cases out of 21,168 court decisions). 27,0002 appeals of Afghan nationals were pending at the court at the end of 2020.⁴⁴²

In 2019, 8,649 Afghan nationals were being granted some form of protection in court procedures, in comparison to 9,103 rejections of appeals and 7,627 court procedures which were abandoned for formal reasons. This represents a rate of 48.7% of at least partially successful appeals in those cases, in which the substance of the matter was examined.

⁴³⁷ Federal Government, Response to parliamentary question by The Left, 19/32678, 14 October 2021, p. 18-19.

⁴³⁸ See PRO ASYL, ‘Steigende Asylzahlen? Ein Blick hinter die Schlagzeilen’, 14 January 2022, available in German at <https://bit.ly/3GMuoql>.

⁴³⁹ Federal Government, Response to written question by Clara Bünger (The Left), 20/765, 18.

⁴⁴⁰ 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>.

⁴⁴¹ Federal Government, Responses to parliamentary questions by The Left, 20/432, 14 January 2022, 21.

⁴⁴² Federal Government, Response to parliamentary question by The Left, 19/18498, 2 April 2020, 45.

Short overview of the reception system

In Germany, the Federal States are responsible for the reception of asylum seekers. Federal law provides the general legal framework for reception, including the obligation to stay in an initial reception centre, and the amount of material benefits, while the implementation as well as more detailed regulation is the remit of the Federal states. In general, the Asylum Act foresees a two-stage reception procedure. Initially, asylum seekers are housed in initial reception centres. In a second step, and if the asylum procedure is not terminated yet, asylum seekers are allocated to municipalities where they can be housed either in collective accommodation centres or in a decentralised manner, in flats.

According to the law, asylum seekers should be accommodated in an initial reception centre (*Aufnahmeeinrichtung*) for a maximum period of 18 months during the first stage of their asylum procedures. Many asylum seekers do not stay in the initial reception centres for the whole 18 months, since they are sent to other locations once a decision on the asylum application has been issued. As a general exception, however, asylum seekers from safe countries of origin are obliged to stay in initial reception centres for the whole duration of their procedures. Furthermore, Federal States may extend the maximum period to 24 months for certain groups of asylum seekers. The maximum period of stay for minors, their parents (or other adults entitled to custody) and their unmarried adult siblings is six months.

The initial reception centres are usually located on the same premises as the branch office of the BAMF. Following the initial reception period, most asylum seekers are 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 in August 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 the “arrival centres” across Germany and in “transit centres” set up in three locations in **Bavaria** (Manching/Ingolstadt, Regensburg, Deggendorf). Initially, most Federal States have not participated in the AnkER centres scheme with only three Federal States (**Bavaria, Saxony and Saarland**) participating in the pilot project to establish AnkER centres – in most cases simply by renaming their existing facilities. However, at the end of 2020, five additional Federal States (**Baden-Württemberg, Hamburg, Brandenburg, Mecklenburg-Vorpommern and Schleswig-Holstein**) had adjusted their reception facilities to the AnkER concept without necessarily using the politically contentious name ‘AnkER centre’ for these facilities.

In any case, both arrival centres and AnkER centres are part of administrative concepts which are not defined in the law 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 in this manner must not be confused with the accelerated procedure which was introduced in March 2016 in the law.

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions			
1.			
❖	Regular procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions <input type="checkbox"/> No
❖	Dublin procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions <input type="checkbox"/> No
❖	Admissibility procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions <input type="checkbox"/> No
❖	Border procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions <input type="checkbox"/> No
❖	Accelerated procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions <input type="checkbox"/> No
❖	Appeal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions <input type="checkbox"/> No
❖	Subsequent application	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions <input type="checkbox"/> No
2.	Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		

Asylum seekers are entitled to reception conditions from the moment they request asylum (*Asylgesuch*) in accordance with the Asylum Seekers' Benefits Act (*Asylbewerberleistungsgesetz*).⁴⁴³ They do not receive the full benefits, however, until they formally gain the status of an asylum seeker through the issuance of an arrival certificate (*Ankunftsnachweis*) at the reception centre to which they have been assigned to.⁴⁴⁴ In practice, this usually happens within a few days after they have reported to the authorities (see also

[Registration of the asylum application](#)).⁴⁴⁵

Foreigners remain entitled to these reception conditions, at a minimum, as long as they have the status of an asylum seeker. After a rejection, asylum seekers usually retain their status for the duration of the appeal proceedings. If the asylum application has been rejected as “manifestly unfounded” or “inadmissible”, however, and their request for suspensive effect is rejected, asylum seekers will lose their status and will instead be issued a temporary suspension of removal, also known as “tolerated stay” (*Duldung*). In spite of its title, the Asylum Seekers' Benefits Act does not only apply to asylum seekers, but also to people with a *Duldung* and even to certain groups of people who have been granted a temporary residence permit.⁴⁴⁶

Following the legislative reforms of August 2019, persons who have already been granted international protection in another EU Member State, whose asylum application in Germany has been rejected as inadmissible and whose obligation to leave the territory is enforceable (“*vollziehbar ausreisepflichtig*”), should be excluded from all social benefits after a transition period of two weeks (see [Withdrawal of Benefits](#) below).⁴⁴⁷

As a rule, asylum seekers receive both non-cash and cash financial benefits only in the town or district to which they have been assigned to.⁴⁴⁸ Accordingly, they will not be entitled to benefits in other parts of Germany, unless they get permission by the authorities to move there (see also [Freedom of movement](#)).

Assessment of resources

If asylum seekers have an income or capital at their disposal, they are legally required to use these resources before they can receive benefits under the Asylum Seekers' Benefits Act.⁴⁴⁹ This provision does not seem to be applied often in practice, however.

⁴⁴³ Section 1 (1a) Asylum Seekers' Benefits Act.

⁴⁴⁴ Section 11 (2a) Asylum Seekers' Benefits Act.

⁴⁴⁵ Section 63 (1) Asylum Act

⁴⁴⁶ Section 1 Asylum Seekers' Benefits Act.

⁴⁴⁷ Section 1 (4) Asylum Seekers' Benefits Act.

⁴⁴⁸ Section 10 and 10a Asylum Seekers' Benefits Act.

⁴⁴⁹ Section 7 Asylum Seekers' Benefits Act.

Asylum seekers are asked to hand over any cash they may possess at registration stage, i.e. before the application is formally lodged. They are allowed to keep a maximum of €200 in cash. It is also possible that the police carry out body searches on other occasions (e.g. when reporting to the police as asylum seekers, upon apprehension by the police for other reasons, or for security reasons, in reception centres) if they have reasons to believe that asylum seekers are in possession of documents or other information which might be essential for identification purposes. Cash that is found during such occasions is seized by the authorities, with the exception of the remaining €200 that 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 2022 (in original currency and in €):⁴⁵⁰

❖ Single adult in accommodation centre	€ 147
❖ Single adult outside accommodation centre	€ 467

Assistance under the Asylum Seekers' Benefits Act generally consists of “basic benefits” (*Grundleistungen*). These are meant to cover the costs for food, accommodation, heating, clothing, personal hygiene and consumer goods for the household (*notwendiger Bedarf*), as well as the personal needs of everyday life, such as public transport and mobile phones (*notwendiger persönlicher Bedarf*)⁴⁵¹ – the latter is often referred to as “pocket money”. In addition, the necessary “benefits in case of illness, pregnancy and birth” have to be provided.⁴⁵² “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.⁴⁵³

In 2019, the amount of benefits under the Asylum Seekers' Benefits Act was adjusted for the first time since March 2016, even though the law foresees an annual adjustment of rates. This resulted in a reduction of benefits for many asylum seekers, *inter alia* by excluding certain costs from the basic benefits which were considered to be unnecessary for asylum seekers compared to recipients of regular social benefits (e.g. expenditures for leisure, entertainment, culture). Additionally, asylum seekers who live in apartments on their own no longer receive an automatic reimbursement of costs related to electricity. Instead, they need to apply for such reimbursement individually. Benefits were also reduced for adults under 25 who live with their parents.⁴⁵⁴

One of the most controversial changes introduced in 2019 has been the adjustment of benefits for single adults who are required to stay in an accommodation centre. Whereas they used to be treated in the same manner as single adults living outside of these centres, they now only receive an allowance that amounts to benefits that one receives when living together with another adult, spouse or partner.⁴⁵⁵ As a result, their monthly allowance was increased by €1 only. To justify this change, the government argued that asylum seekers living in an accommodation centre can be expected to run a common household similarly to adult partners, which was heavily criticised by different actors. Several Social Courts have found this change of practice likely to be unconstitutional. In summary proceedings they have ordered the authorities to temporarily pay the same benefits as received by single adults outside of accommodation centres.⁴⁵⁶ In April 2021, the Social Court of Düsseldorf referred the question to the Federal Constitutional Court, and a decision is still pending as of January 2022.⁴⁵⁷

⁴⁵⁰ This includes hygienic items allowance and pocket money only.

⁴⁵¹ Section 3(1) Asylum Seekers' Benefits Act.

⁴⁵² Section 4 Asylum Seekers' Benefits Act; for access to health care see below.

⁴⁵³ Section 6 Asylum Seekers' Benefits Act.

⁴⁵⁴ Sections 3a(1)(3)(a) and 3a(2)(3)(a) Asylum Seekers' Benefits Act.

⁴⁵⁵ Sections 3a(1)(2)(b) and 3a(2)(2)(b) Asylum Seekers' Benefits Act.

⁴⁵⁶ Social Court of Frankfurt, Decision S 30 AY 26/19 ER, 14 January 2020; Social Court of Landshut, Decision S 11 AY 3/20 ER, 28 January 2020; Social Court of Freiburg, Decision S 5 AY 5235/19 ER, 20 January 2020; Social court of Hannover, Decision S 53 AY 107/19 ER, 20 December 2019.

⁴⁵⁷ See Informationsverbund Asyl & Migration, '*Rechtsprechungsübersicht: Niedrigere Leistungen für*

Authorities at the regional and local level have important discretionary powers when deciding in what form basic benefits should be provided. Therefore, the provision of benefits in cash depends on local conditions and policies. According to the law, asylum seekers who are accommodated in reception centres shall receive non-cash benefits only. This includes “pocket money” for their personal needs “as long as this is possible within the acceptable administrative burden”.⁴⁵⁸ In practice, however, they will often receive the pocket money in cash. For asylum seekers in other (decentralised) collective accommodation centres, non-cash benefits “can” be provided “if this is necessary under the circumstances”.⁴⁵⁹ The same applies for asylum seekers living on their own, with the exception that they have to be provided with pocket money in cash. For those living outside of reception centres, the costs for accommodation (rent), heating and household goods have to be provided on top of the above benefits as far as it is “necessary and reasonable”.⁴⁶⁰

As of January 2022, the monthly rates are as follows:

Basic benefits for asylum seekers							
	Single adult	Single adult in accommodation centre	Adult partners (each)	Member of household 18-24	Member of household 14-17	Member of household 6-13	Member of household 0-5
“Pocket money”	€163	€147	€147	€131	€111	€109	€105
Further basic benefits (excl. costs related to accommodation)	€204	€183	€183	€163	€215	€174	€144
Total	€367	€330	€330	€294	€326	€283	€249
Regular Social Benefits	€449	-	€404	€360	€376	€311	€285

Sources: Federal Ministry of Labour and Social Affairs, ‘Neue Leistungssätze nach dem Asylbewerberleistungsgesetz’, 16 November 2021, available in German at <https://bit.ly/3GFhjPX>; and Annex to Section 28 Social Code VII.

As indicated in the table above, rates under the Asylum Seekers’ Benefits Act amount to a level of about 80% of regular social benefits – and less than 75% for single adults living in accommodation centres.

Before the amendments were introduced in 2019, asylum seekers were usually granted access to regular social benefits after 15 months of benefits received under the Asylum Seekers’ Benefits Act. This meant that, after this period, higher benefits were paid and certain restrictions of the Asylum Seekers’ Benefits Act no longer applied, in particular the limited access to health care. However, the waiting period to access regular social benefits was extended by an additional 3 months in 2019.⁴⁶¹ Consequently, asylum seekers now have to wait up to 18 months before they are entitled to regular social benefits. Even when receiving regular social benefits, however, single adults in accommodation centres will continue to receive the lower rates for adult partners.⁴⁶²

Alleinstehende in Sammelunterkünften verfassungswidrig?, available in German at <https://bit.ly/3GFyvoJ>.

⁴⁵⁸ Section 3(2) Asylum Seekers’ Benefits Act.

⁴⁵⁹ Section 3(3) Asylum Seekers’ Benefits Act.

⁴⁶⁰ Section 3(3) 3rd Sentence Asylum Seekers’ Benefits Act.

⁴⁶¹ Section 2(1) Asylum Seekers’ Benefits Act.

⁴⁶² Section 2 (1) 4th Sentence Number 1 Asylum Seekers’ Benefits Act.

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

Reduction of benefits

Since 2016, the grounds for reduction of material reception conditions expressly include asylum seekers. The amendments introduced to the Asylum Seekers' Benefits Act in 2019 further extended the possibilities to reduce benefits. As listed in Section 1a of the Asylum Seekers' Benefits Act, material reception conditions can now be reduced for the following categories of persons:⁴⁶³

Reduction of benefits in accordance with Section 1a Asylum Seekers' Benefits Act		
	Paragraph	Analysis
1	<i>Beneficiaries of benefits who have been asked to leave Germany until a certain date and have not left the country, although this would have been feasible</i>	This provision only applies to foreign nationals whose obligation to leave the territory is enforceable (<i>vollziehbar ausreisepflichtig</i>) – meaning that it does generally not affect asylum seekers as long as their asylum procedure is ongoing
2	<i>Beneficiaries of benefits who have entered Germany (solely) for the purpose of receiving benefits</i>	This provision only applies to persons whose obligation to leave is enforceable (<i>vollziehbar ausreisepflichtig</i>) or who are in possession of a “tolerated stay” (<i>Duldung</i>). Thus, it also does not affect asylum seekers as long as their asylum procedure is ongoing. Even after a negative decision, this provision does not generally apply to asylum seekers, as it can hardly be deduced that their only motivation for entering Germany was to claim benefits.
3	<i>Beneficiaries of benefits for whom removal procedures cannot be carried out due to reasons for which they are responsible</i>	This provision only applies to foreign nationals whose obligation to leave is enforceable (<i>vollziehbar ausreisepflichtig</i>) or whose stay is tolerated (<i>Duldung</i>). Asylum seekers can be affected after the asylum procedure, however, e.g. in cases where an application has been rejected as “inadmissible” following a Dublin procedure. Benefits for family members of beneficiaries must only be reduced if the family member him- or herself bears responsibility.
4(1)	<i>Beneficiaries of benefits who have been allocated to another European state within the framework of a European distribution mechanism</i>	This provision does not apply in the context of Dublin procedures, but refers to a European distribution mechanism which could be initiated on an <i>ad hoc</i> basis.
4(2)	<i>Beneficiaries of benefits who have been granted international protection in an EU Member State or Dublin State or have</i>	This provision only applies during the asylum procedure. Upon termination of the procedure, this category of person is totally excluded from benefits in certain situations (see below). Some Social Courts have ruled in summary proceedings that this provision is not applicable if a return to the Member State is not possible or

	<i>acquired a right of residence for other reasons in such a state.</i>	reasonable, e.g. for those who were granted international protection in Greece. ⁴⁶⁴
5	<i>Beneficiaries of benefits who have failed to cooperate with the authorities during a subsequent asylum procedure</i>	This paragraph refers to a number of other provisions in which the following acts are defined as “failure to cooperate”; <ul style="list-style-type: none"> - Failure to apply for asylum “immediately” after entry into the territory(Section 13 (3) Asylum Act) - Failure to present or hand over a passport or passport substitute to the authorities (Section 15 (2) no. 4 Asylum Act) ; - Failure to present or hand over other documents necessary for the clarification of his or her identity (Section 15 (2) no. 5 Asylum Act) ; - Failure to hand over data carriers such as smartphones that could be important for establishing identity and nationality (Section 15 (2) No. 6 Asylum Act); - Failure to undergo the required identification measures (especially taking of fingerprints, Section 15 (2) no. 7 Asylum Act); - Failure to keep the appointment for the formal registration of their application at the BAMF; or - Refusal to provide information about his or her identity or nationality in the course of the asylum procedure (Section 30 (3) no. 2 Asylum Act).
6	<i>Beneficiaries in the asylum procedure who violate their obligation to provide information about existing assets and fail to notify relevant changes immediately</i>	
7	<i>Beneficiaries of benefits whose asylum application was rejected as "inadmissible" on the grounds that another European country was responsible for the examination in accordance with the Dublin III Regulation</i>	This provision was introduced by the 2019 amendments. This category of persons will now receive reduced benefits following a negative decision from the BAMF, even if an appeal against the latter is still pending before the court. However, this does not apply (retroactively) if the court grants suspensive effect. Some Social Courts have questioned the constitutionality of this provision in summary proceedings as the reduction of benefits in such cases is not contingent on a wrongdoing on part of the beneficiary affected. ⁴⁶⁵ Others have ruled the opposite, however. ⁴⁶⁶ <p>In most cases, this provision has a relatively limited scope in practice: it only applies during the time between an inadmissibility decision in accordance with the Dublin III Regulation and the issuance of a <i>Duldung</i> (to which the affected persons will generally be entitled until the transfer to another European country takes place).</p>

⁴⁶⁴ Regional Social Court Nordrhein-Westfalen, Decision L 20 AY 20/20 B ER, 27 March 2020; Social Court Berlin, Decision S 50 AY 166/19 ER, 23 December 2019.

⁴⁶⁵ Social Court Landshut, Decision S 11 AY 79/19 ER, 23 January 2020; Social Court Oldenburg, Decision S 25 AY 3/20 ER, 20 February 2020; Social Court Cottbus, Decision S 21 AY 34/19 ER, 28 January 2020.

⁴⁶⁶ Social Court Osnabrück, Decision S 44 AY 76/19 ER, 27 January 2020.

On top of Section 1(a), the Asylum Seekers' Benefits Act provides for the reduction of benefits in several other provisions, *inter alia* for asylum seekers who failed to cooperate with the authorities and therefore are responsible for the fact that an "arrival certificate" could not be issued.⁴⁶⁷

This list of reduction grounds is exhaustive, meaning that benefits cannot be reduced for other reasons. If one of them is met, the law provides that asylum seekers should only be provided with accommodation, food and basic necessities, primarily as non-cash benefits. It is only "in special circumstances and individual cases" that further benefits can be granted on a discretionary basis.⁴⁶⁸ It has been estimated that this may result in the reduction of almost 50% of the benefits in many cases.⁴⁶⁹ Benefits covering the personal needs of everyday life ("pocket money") can be withdrawn entirely. Furthermore, asylum seekers are not entitled to benefits covering the costs of clothing and for "durable and non-durable consumer goods for the household". Clothes and household goods can only 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.⁴⁷⁰

Authorities are required to limit the reduction of benefits to a 6 months period. After this time, the decision to reduce benefits has to be reviewed and can only be extended if the ground for reduction is still applicable.⁴⁷¹ Even before the end of the 6-months time limit, benefits have to be restored to the standard level if the legal prerequisites for the reduction cease to apply. 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 turns out that a removal is not possible for reasons which cannot be held against the concerned person.

The decision to reduce or withdraw benefits can be appealed. In light of a decision of the Federal Constitutional Court of July 2012 on the Asylum Seekers' Benefits Act,⁴⁷² there have been several court decisions concluding that any reduction of benefits would be unconstitutional and therefore inadmissible, but these rulings do not represent the general opinion.⁴⁷³ The debate has been revived in November 2019 by another decision of the Federal Constitutional Court. In this decision, the Court did not comment on the Asylum Seekers' Benefits Act, but made some important observations on the legality of cuts in unemployment benefits and in the social support system in general.⁴⁷⁴ The court argued that temporary sanctions, even to the point of a complete withdrawal of benefits, could be lawful if an unemployed person did not undertake reasonable efforts to overcome the need for support. However, given the extraordinary burden resulting from such sanctions, the court also highlighted that legal provisions which reduce reductions of benefits have to be based on an analysis of their necessity, suitability and reasonableness of the regulations. Persons affected by cuts should be able to regain standard benefits once they comply with reasonable obligations. Moreover, individual circumstances must be taken into consideration. Sanctions which are imposed for a fixed period of time and regardless of individual circumstances have to be considered as violating the constitution, according to the Constitutional Court.

As a result of this decision, the legality of the Asylum Seekers' Benefits Act has been questioned again.⁴⁷⁵ In several decisions, the Regional Social Court of **Lower Saxony-Bremen** has ruled that it is "fundamentally debatable" whether Section 1a of the Asylum Seekers Benefits Act on the reduction of

⁴⁶⁷ Section 11(2a) Asylum Seekers' Benefits Act.

⁴⁶⁸ Section 1a(1) Asylum Seekers' Benefits Act.

⁴⁶⁹ Joachim Genge, 'Das geänderte Asylbewerberleistungsgesetz' in *Informationsverbund Asyl und Migration (ed), Das Migrationspaket: Beilage zum Asylmagazin 8-9/2019*, September 2017, 20.

⁴⁷⁰ 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>.

⁴⁷¹ Section 14(1) and (2) Asylum Seekers' Benefits Act.

⁴⁷² Federal Constitutional Court, Decision 1 BvL 10/10, 1 BvL 2/11, 18 July 2012.

⁴⁷³ Social Court Stade, Decision S 19 AY 19/17 ER, 10 May 2017.

⁴⁷⁴ Federal Constitutional Court, Decision 1 BvL 7/16, 5 November 2019.

⁴⁷⁵ Claudius Voigt, "Gesetzlich minimierte Menschenwürde. Das Sanktions-Urteil des Bundesverfassungsgerichts und seine Auswirkungen auf das AsylbLG", *Asylmagazin* 1-2/2020, 12-21.

benefits for certain groups is in line with the constitution”.⁴⁷⁶ Other courts have also questioned the legality of certain aspects of the Asylum Seekers’ Benefits Act.⁴⁷⁷ However, these questions have so far only been raised in provisional proceedings in which the claimants had asked for interim measures against certain sanctions. Therefore, these legal issues have only been raised but have not been decided upon by the courts. In any case, issues of constitutionality are a matter for the Federal Constitutional Court and so it has to be expected that it will take several years for suitable cases to be discussed at this level. A constitutional complaint about the reduction of benefits under the Asylum Seekers’ Benefits Act before the June 2019 amendment was rejected by the Federal Constitutional Court, who refused to treat the merits of the case.⁴⁷⁸

In practice, reduction of benefits rarely applies to asylum seekers as long as their asylum procedure is ongoing. It 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. For example, the monthly cash allowance (“pocket money”) is often 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 a “Dublin 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 removal (or transfer to another Dublin state) has been made at the Administrative Court.⁴⁷⁹ However, such decisions are rare because only a few asylum seekers appeal against reductions of benefits upon rejection of their asylum application.

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).⁴⁸⁰ However, this policy is exceptional and in other Federal States it seems to be commonplace that reductions of benefits are imposed on families as a whole, including children.⁴⁸¹

Withdrawal of benefits

Historically, the Asylum Seekers’ Benefits Act did not provide for a complete withdrawal of benefits. However, following the 2019 amendments, foreign nationals who have already been granted international protection in another EU Member State are excluded from all benefits under the Asylum Seekers’ Benefits Act.⁴⁸² Persons affected by this provision will only receive limited benefits for a maximum of two weeks and only once every two years (*Überbrückungsleistungen*). Further benefits may only be provided when necessary “in exceptional circumstances” to avoid particular hardship.⁴⁸³ With **Berlin** and **Rhineland Palatinate**, at least two Federal States have limited the scope of application for this rule to make sure the exclusion does not apply to minors and does not undermine the state obligation to provide a minimal subsistence level of benefits.⁴⁸⁴

⁴⁷⁶ Regional Social Court for the Federal States of Niedersachsen (Lower Saxony) and Bremen, decision of 19 March 2019 – L 8 AY 4/20 B ER asyl.net: M28258, <https://www.asyl.net/rsdb/m28258/>; decision of 4 December 2019 -- L 8 AY 36/19 B ER - asyl.net: M27897, <https://www.asyl.net/rsdb/m27897/>.

⁴⁷⁷ Social Court Landshut, S 11 AY 79/19 ER, decision of 23 January 2020, available in German at: <https://bit.ly/2BQW41q>; Social Court of Berlin, S 50 AY 166/19 ER, 23 December 2019, available in German at: <https://bit.ly/2O691an>.

⁴⁷⁸ Federal Constitutional Court, Case file number 1 BvR 2682/17, Decision of 12 May 2021, available in German at <https://bit.ly/3GltQ5f>.

⁴⁷⁹ 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.

⁴⁸⁰ Regional social administration of the Federal State of Berlin, Directive no. 10/2015, 9 December 2015.

⁴⁸¹ Information provided by GGUA, Münster, 19 June 2018.

⁴⁸² Section 1(4) Asylum Seekers’ Benefits Act.

⁴⁸³ Section 1(4) Asylum Seekers’ Benefits Act.

⁴⁸⁴ Der Paritätische Gesamtverband, *‘Arbeitsilfe zum Thema Flucht und Migration. Soziale Rechte für Flüchtlinge*, 3. aktualisierte Auflage, December 2019, available in German at <https://bit.ly/3fDooVv>.

This exclusion applies to persons whose asylum application in Germany has been finally rejected and whose obligation to leave the territory is enforceable (*vollziehbar ausreisepflichtig*). This can include persons whose appeal against a return decision is pending, if their request for suspensive effect has been rejected. The provision does not, however, cover situations in which a removal is impossible in fact or in law, e.g. if the Member State that has granted protection is not accepting the returnee or if necessary identity documents are missing. In such cases the person affected has to be issued a *Duldung* and remains entitled to benefits under the Asylum Seekers' Benefits Act.

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

The freedom of movement of asylum seekers is restricted and they 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*) is generally limited to the district of the foreigners' authority in which the responsible reception centre is located.⁴⁸⁵ This "residence obligation" (*Residenzpflicht*), legally called "geographical restriction" (*räumliche Beschränkung*), means that asylum seekers are not allowed to leave that area even for short periods of time without permission of the BAMF. However, Federal States have the possibility to extend this geographical restriction to the jurisdiction of other foreigners' authorities or the area encompassing a whole Federal State, or even to another Federal State, provided that there is agreement between the concerned Federal States.⁴⁸⁶ Asylum seekers in Brandenburg for example have the freedom to move in all of Brandenburg and Berlin.

As long as the residence obligation applies – i.e. during the initial period of the procedure in most cases – the applicant can also request permission to temporarily leave the assigned area for urgent public interest reasons, where it is necessary for compelling reasons or where refusal of permission would constitute undue hardship.⁴⁸⁷ 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 appointments with UNHCR or NGOs.⁴⁸⁸ Next to the residence obligation, freedom of movement is often constrained in practice through the remote location of many reception facilities and the lack of accessible public transport (see below, Section [Obligation to stay in initial reception centres](#)).

The law provides that the geographical restriction shall generally expire after 3 months.⁴⁸⁹ However, this rule is subject to two important derogations:

- The geographical restriction remains in force for persons who have an [Obligation to Stay in Initial Reception Centres](#).⁴⁹⁰ Given that the obligation to stay in these centres has been extended by the 2019 amendment of the Asylum Act, the geographical restriction has also been extended substantially.
- The geographical restriction may be re-imposed if the person has been convicted of a criminal offence or if removal is imminent.⁴⁹¹

⁴⁸⁵ Sections 55(1) and 56(1) Asylum Act.

⁴⁸⁶ Section 58(6) Asylum Act.

⁴⁸⁷ Section 58(1) Asylum Act.

⁴⁸⁸ Section 58(2) Asylum Act.

⁴⁸⁹ Section 59a(1) Asylum Act.

⁴⁹⁰ Section 59a(1) Asylum Act.

⁴⁹¹ Section 59b(1) Asylum Act.

The place of residence of asylum seekers is usually determined by the Initial Distribution of Asylum Seekers (*Erstverteilung der Asylbegehrenden*, EASY); a general distribution system whereby places for asylum seekers are at first allocated to the Federal States for the initial reception period. Within that Federal State, they are allocated to a particular municipality, usually the place of the initial reception centre at first and possibly another municipality when the obligation to live in the initial reception centre ends.⁴⁹²

Distribution of asylum seekers to the Federal States is determined by the following aspects:⁴⁹³

1. Capacities of initial reception centres;
2. 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](#));
3. A quota system called "*Königsteiner Schlüssel*",⁴⁹⁴ according to which reception capacities are determined for Germany's 16 Federal States. The *Königstein* key takes into account the tax revenue (accounting for $\frac{2}{3}$ of the quota) and the number of inhabitants ($\frac{1}{3}$) of each Federal State.

The quota for reception of asylum seekers in 2020 ("*Königsteiner Schlüssel*") in comparison to number of (first) asylum applications in 2020 was as follows:

Distribution of asylum seekers in Germany: 2020			
Federal State	Quota	(First) applications in 2020	Actual share in 2020
Baden-Württemberg	13.01 %	11,567	11.28 %
Bavaria	15.56 %	12,346	12.04 %
Berlin	5.14 %	6,432	6.27 %
Brandenburg	3.02 %	3,113	3.03 %
Bremen	0.96 %	1,038	1.01 %
Hamburg	2.56 %	2,637	2.57 %
Hesse	7.44 %	8,199	7.99 %
Mecklenburg-Vorpommern	1.98 %	1,716	1.67 %
Lower Saxony	9.41 %	10,994	10.72 %
North Rhine-Westphalia	21.09 %	21,875	21.32 %
Rhineland-Palatinate	4.82 %	5,415	5.28 %
Saarland	1.20 %	1,738	1.69 %
Saxony	4.99%	4,912	4.79 %
Saxony-Anhalt	2.75 %	3,552	3.46 %
Schleswig-Holstein	3.40 %	4,002	3.90 %
Thuringia	2.65 %	2951	2.88 %

Source: BAMF, *Das Bundesamt in Zahlen 2020*, 2021.

The above table demonstrates that the distribution of applicants has only roughly been in line with the "*Königsteiner Schlüssel*" in 2020. 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. In addition, transfers within Germany as a result of the EASY system had been suspended at least for some time during 2020.⁴⁹⁵ More recent statistics are not available.

⁴⁹² BAMF, 'Initial Distribution of Asylum-Seekers (EASY)', 1 October 2016, available at: <http://bit.ly/2DASJOS>.

⁴⁹³ Section 46(2) Asylum Act.

⁴⁹⁴ Section 45 Asylum Act.

⁴⁹⁵ BAMF, *Evaluation of AnKER Facilities and Functionally Equivalent Facilities*, Research Report 37 of the BAMF Research Centre, 2021, 88, available in English at: <https://bit.ly/3upgMyp>.

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 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.

1.2. Obligation to stay in initial reception centres

As a rule, asylum seekers are required to stay in the initial reception centre where they lodged their application for international protection. Initial reception centres can be designated as “arrival centres” (*Ankunftszentren*), AnKER-centres or as separate institutions, depending on the way reception is organised in the Federal States. Long term stays in these centres used to be the exception. In recent years, however, the obligation to stay there has been regularly extended. While the law initially foresaw a maximum stay of 3 months, the maximum was extended to 6 months in 2015. In 2019, the German legislature extended the maximum by another year – i.e. asylum seekers now may be obliged to stay in initial reception centres for up to 18 months.⁴⁹⁶

For some groups of asylum seekers, the maximum obligatory stay is even longer:

- Asylum seekers from safe countries of origin have to stay in initial reception centres until their asylum application has been decided upon and - in case of a rejection - until they leave the territory.⁴⁹⁷
- Since 2019, under certain circumstances, asylum seekers who have failed to cooperate with the authorities have to stay in initial reception centres indefinitely.⁴⁹⁸
- Federal States are allowed to impose an obligation on applicants to stay in initial reception centres for up to 24 months.⁴⁹⁹ As of November 2021, four Federal States had regulations in place that oblige asylum seekers to stay in initial reception centres for up to 24 months under Section 47(1b) of the Asylum Act (see below).

However, the obligation to stay in initial reception centres must be 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.⁵⁰⁰

Since 2019, the Asylum Act also provides for a maximum stay of 6 months in initial reception centres for families with minor children. This maximum time period applies to all asylum seekers with minor children pursuant to Section 47(1) of the Asylum Act, as well as to families from safe countries of origin pursuant to Section 47(1a) of the Asylum Act. However, it does not explicitly apply to asylum seekers subject to a Federal State regulation, which extends the stay in initial reception centres to 24 months pursuant to Section 47 (1b) Asylum Act. It has been argued that - because of the clear legislative intent to protect families with children - the maximum stay of 6 months must apply to these asylum seekers as well.⁵⁰¹ However, so far there have not been any court decisions addressing this issue, and as of November 2021 all Federal States which have introduced regulations to this regard do not apply it to families with minor children.⁵⁰²

⁴⁹⁶ Section 47(1) Asylum Act.

⁴⁹⁷ Section 47(1a) Asylum Act.

⁴⁹⁸ Section 47(1) 3rd Sentence Asylum Act.

⁴⁹⁹ Section 47 (1b) Asylum Act.

⁵⁰⁰ Section 47(1b) Asylum Act.

⁵⁰¹ Wiebke Judith, *Druck auf die Länder? Lex AnKER im „II. Hau-Ab-Gesetz“ in: Informationsverbund Asyl und Migration (ed), Das Migrationspaket: Beilage zum Asylmagazin 8-9/2019, September 2017, 74.*

⁵⁰² See JUMEN / terre des hommes, *‘Gutachten »Der Anspruch auf Entlassung aus einer Aufnahmeeinrichtung für minderjährige Geflüchtete und ihre Familien unter besonderer Berücksichtigung der Kinderrechte«*, November 2021, 13, available in German at: <https://bit.ly/328Hm30>.

The maximum stay in initial reception centres which the law provides for is not obligatory for the Federal States. They are entitled to release asylum seekers from these centres and allocate them to other places within the State. In fact, the obligation may be terminated at any time for reasons of public health, for other reasons of public security and order, e.g. to ensure accommodation and distribution, or for other compelling reasons.⁵⁰³ Moreover, the obligation has to be terminated if a threat of removal (*Abschiebungsandrohung*) is enforceable and removal is not possible within a reasonable period of time.⁵⁰⁴ The asylum seeker shall also be released from the initial reception centre if the administrative court granted suspensive effect, with the exception of Dublin cases and those already granted international protection in another Member state.⁵⁰⁵

In **Bavaria**, the obligation to stay in initial reception centres for up to 24 months had already been introduced in 2017 in three “transit centres” (Manching/Ingolstadt, Regensburg, Deggendorf).⁵⁰⁶ All of these centres were renamed as AnKER centres in 2018, together with the other Bavarian reception centres. The Bavarian Reception Act 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.

The latest version of the Act also clearly states that this obligation does not apply in cases in which Federal Law provides for a shorter duration of the obligation.⁵⁰⁷

In 2018, the average duration of the stay varied 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.⁵⁰⁸ According to the Bavarian authorities, the average duration has risen to 6.2 months as of July 2020 as a result of the first wave of Covid-19.⁵⁰⁹

Similarly, in **Saxony**, where three AnKER centres or functionally equivalent facilities exists, an obligation to stay in reception centres under Section 47(1b) Asylum Act had been introduced through the state’s Refugee Reception Act on 11 December 2018 in conjunction with the Saxon Residence Restriction Extension Decree (*Sächsische Wohnpflichtverlängerungsverordnung*). This obligation affects the following groups of asylum seekers:⁵¹⁰

- ❖ Asylum seekers from a country of origin with a protection rate lower than 20% until the BAMF has decided upon their applications. The Federal State’s government has published a list of 94 countries of origin which fall under this category.⁵¹¹
- ❖ Asylum seekers whose application has been rejected as manifestly unfounded or inadmissible until they leave the country or are deported.

In both cases, the maximum period of stay is 24 months and minor children and their parents are exempt.⁵¹²

⁵⁰³ Section 49(2) Asylum Act.

⁵⁰⁴ Section 49 (1) Asylum Act.

⁵⁰⁵ Section 50 (1) Number 1 Asylum Act.

⁵⁰⁶ Bayerischer Flüchtlingsrat, ‘*Abschiebelager Manching/Ingolstadt*’, available in German at: <http://bit.ly/2pnLtRg>.

⁵⁰⁷ Section 2(2) Bavarian Reception Act (Aufnahmegesetz), as amended by the Act of 23 December 2021, available in German at: <https://bit.ly/2uE71MT>.

⁵⁰⁸ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

⁵⁰⁹ BAMF, Evaluation of AnKER Facilities and Functionally Equivalent Facilities, Research Report 37 of the BAMF Research Centre, 2021, 65, available in English at <https://bit.ly/3FgxXnq>.

⁵¹⁰ Section 12(3) Saxon Refugee Reception Act (*Flüchtlingsaufnahmegesetz*), as amended by the Act of 14 December 2018, available in German at: <https://bit.ly/2VaJLkY>, in conjunction with Section (1) and (2) Saxon Residence Restriction Extension Decree (*Wohnpflichtverlängerungsverordnung*), as amended by the Act of 20 April 2020, available in German at: <https://bit.ly/2Zgcgku>.

⁵¹¹ Addendum to the Saxon Residence Restriction Extension Decree of 3 May 2019, available in German at <https://bit.ly/2CBBAKI>.

⁵¹² Section 3 Saxon Residence Restriction Extension Decree (*Sächsische Wohnpflichtverlängerungsverordnung*).

The Federal State of **North Rhine-Westphalia** extended the obligation to stay in initial reception centres to a maximum of 24 months for those whose application has been rejected as manifestly unfounded or inadmissible. Families and children are exempted from this regulation.⁵¹³ The latter will be applicable until 1 September 2024.

Finally, the Federal State of **Saxony Anhalt** has made use of Section 47(1b) of the Asylum Act, but extended the obligation to 18 months only. Additionally, the State did not only exempt families with children, but also single women, persons with severe physical and psychological illnesses, victims of torture and sexual violence, LGBTIQ and asylum seekers who belong to persecuted minorities.⁵¹⁴

Asylum seekers may leave the premises of the initial reception centres (regardless of whether they are called arrival centres, AnkER-centres or have a different denomination) 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.⁵¹⁵ The same is true, for example, for initial reception centres in Brandenburg, like **Eisenhüttenstadt** and **Doberlug-Kirchhain**. According to house rules, asylum seekers at these facilities are allowed to leave the premises for a maximum of 48 hours only (not including weekends). In the event of prolonged unannounced absence from the initial reception facility, the person concerned can be deregistered and payment of benefits can be suspended.

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 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.⁵¹⁶ In most Federal States, applicants need a special permission to travel to other parts of the state or to other parts of Germany (see *Residenzpflicht* above).

⁵¹³ Section(1) Implementing Act to Section 47(1b) of the Asylum Act, available in German at: <https://bit.ly/2BcfuO5>.

⁵¹⁴ Section(1a) Reception Act, as amended by the Act of 14 February 2019, available in German at: <https://bit.ly/2YAXTbC>.

⁵¹⁵ ECRE, *The AnkER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

⁵¹⁶ *Ibid.*

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 since. 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. The facility at Tempelhof was finally closed in 2019 and replaced by a new arrival centre in Berlin-**Reinickendorf**.⁵¹⁷ As of January 2022, it was reported that the State government plans to re-open the Tempelhof facility to accommodate refugees from Afghanistan, since the government decided in December to allow the entry and residence of 500 persons from Afghanistan for humanitarian reasons (see also Section on [Family Reunification](#)).⁵¹⁸

Moreover, a waiting room (*Warteraum*) in **Erding** was another unique facility, which served as a first arrival and distribution centre where persons could stay for 72 hours. It was closed at the end of 2019,⁵¹⁹ and permanently dismantled at the end of 2021, after having been in stand-by mode since start of 2020.⁵²⁰

1.1. Initial reception centres

Following the reform of June 2019, asylum seekers are generally obliged to stay in an initial reception centre for a period of up to 18 months after their application has been lodged (*Aufnahmeeinrichtung*).⁵²¹ An obligation to stay in these centres for a maximum of 24 months can be imposed by Federal States since July 2017 (see Section [Freedom of movement](#)).⁵²² Furthermore, asylum seekers from safe countries of origin are obliged to stay there for the whole duration of their procedures.

⁵¹⁷ Berlin.de ‚Neues Ankunftszenrum für geflüchtete Menschen im Berliner Bezirk Reinickendorf ab 29. April 2019‘, April 18 2020, available in German at: <https://bit.ly/3f5iDhs>.

⁵¹⁸ Rbb24, ‚Berliner Senat reaktiviert Containerdorf in Tempelhof für Geflüchtete‘, 6 January 2022, available in German at <https://bit.ly/3tDI194>

⁵¹⁹ Süddeutsche.de, ‚Warteraum Asyl außer Betrieb‘, 17 December 2019, available in German at: <https://bit.ly/38A98Eu>.

⁵²⁰ Süddeutsche Zeitung, ‚Warteraum Asyl wird aufgelöst‘, available in German at <https://bit.ly/3Kbdy6W>

⁵²¹ Section 47(1) Asylum Act.

⁵²² Section 47(1b) Asylum Act.

The Federal States are required to establish and maintain the initial reception centres.⁵²³ 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.

Initial reception centres are assigned to a branch office of the BAMF, or combined with a branch office to constitute an arrival centre or AnKER centre. At the beginning of 2022, out of 58 branch offices listed on the BAMF website 18 were integrated in arrival centres in 12 different Federal States, and eight were part of AnKER centres in three Federal States.⁵²⁴

Arrival centres

Since 2016, several reception centres have either been opened as arrival centres (*Ankunftscentren*) or existing facilities have been transformed into arrival centres. In these centres, the BAMF and other relevant authorities are grouped together and 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 and other relevant authorities. As of January 2022, the BAMF lists 18 arrival centres which are located across 12 Federal States (down from 22 in 2018):⁵²⁵

- Berlin
- Bremen
- Hamburg
- Baden-Württemberg: Heidelberg
- North Rhine-Westphalia: Bielefeld, Bonn, Mönchengladbach, Unna
- Saxony: Chemnitz, Leipzig
- Lower Saxony: Bad Fallingb., Bramsche
- Saxony-Anhalt: Halberstadt
- Hessen: Gießen
- Mecklenburg-Vorpommern: Schwerin
- Thuringia: Suhl
- Rhineland-Palatinate: Trier

AnKER centres

As of May 2021, a total of eight AnKER or were established in Germany in **Bavaria**, **Saxony** and **Saarland**. In addition, eight "functionally equivalent centres" existed, some of which are also classified as arrival centres ⁵²⁶

Since August 2018, Bavaria has established and/or rebranded all facilities run by the seven districts of the Federal State as AnKER centres.⁵²⁷ These included 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. The AnKER centre

⁵²³ Section 44(1) Asylum Act.

⁵²⁴ BAMF, *Locations*, available at <https://bit.ly/3dFTd8w>, lists 58 "branch offices" and "regional offices", with some offices having both functions. Some of the centres listed as "arrival centres" are also considered functionally equivalent to "AnKER-centres", according to the BAMF (see BAMF, Evaluation of AnKER Facilities and Functionally Equivalent Facilities, Research Report 37 of the BAMF Research Centre, 2021, 17 and 22, available in English at: <https://bit.ly/3FgxXnq>).

⁵²⁵ BAMF, *Locations*, available at: <https://bit.ly/2Z74Uko>.

⁵²⁶ Federal Government, Response to parliamentary question by The Left, 19/30711, 15 June 2021, 28.

⁵²⁷ Süddeutsche Zeitung, Das sind die sieben neuen Ankerzentren in Bayern, 1 August 2018, available at <https://bit.ly/2MeAYKy>.

in **Donauwörth** was closed at the end of 2019 after regional politicians in the district of Swabia opted for a more decentralised approach to accommodate of asylum seekers.⁵²⁸

AnKER centres & Dependancen in Germany		
Federal State	AnKER centre	Location of AnKER Dependancen ⁵²⁹
Bavaria ⁵³⁰	Manching/Ingolstadt (Upper Bavaria)	Ingolstadt: 3 locations Munich: 4 locations, incl. 1 „brief admission“ centre Garmisch- Partenkirchen Waldkraiburg Fürstenfeldbruck
	Deggendorf (Lower Bavaria)	Hengersberg Osterhofen Stephansposching
	Regensburg: Zeißstraße (Upper Palatinate)	Regensburg: 3 locations Schwandorf
	Bamberg (Upper Franconia)	-
	Zirndorf (Middle Franconia)	Nuremberg: 3 locations Neuendettelsau
	Geldersheim/Niederwerrn (Lower Franconia)	-
	Augsburg (Swabia)	Augsburg: 5 locations Mering
Saxony	Dresden	-
Saarland	Lebach	-
Total	8	17

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).⁵³¹ These accommodation centres are usually located within the same Federal State as the initial reception centre to which the asylum seeker was sent for the initial reception period.

Prior to the introduction of AnKER centres, when the Federal State of **Bavaria** operated “transit centres”, it had been reported that 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.⁵³²

⁵²⁸ Bayerischer Rundfunk, *Ankerzentren: Augsburger Flüchtlingsrat begrüßt neuen Kurs*, 28 June 2019, available at: <https://bit.ly/2NJxyC1>.

⁵²⁹ Anker-Watch.de, *ANKER-Zentren und Dependancen*, available at: <https://bit.ly/3ewPdbE>.

⁵³⁰ BAMF, *Evaluation of AnKER Facilities and Functionally Equivalent Facilities*, Research Report 37 of the BAMF Research Centre, 2021, 64-65, available in English at <https://bit.ly/3FgxXnq>.

⁵³¹ Section 53 Asylum Act.

⁵³² ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

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.⁵³³ In most cases, states have referred responsibility for accommodation following the initial reception period 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

Statistics on the year 2021 are not available. For the year 2020, 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 2020				
Federal State	Initial reception centres	Collective accommodation	Decentralised accommodation	Total
Baden-Württemberg	1,605	16,530	27,390	45,525
Bavaria	5,385	32,095	18,075	55,555
Berlin	2,460	9,685	12,510	24,655
Brandenburg	1,210	9,530	5,335	16,080
Bremen	25	1,830	2,970	4,825
Hamburg	820	8,330	3,210	12,360
Hesse	3,455	14,475	8,975	26,905
Mecklenburg-Vorpommern	690	3,240	1,795	5,730
Lower Saxony	2,310	8,705	27,425	38,440
North Rhine-Westphalia*	115	36,515	37,180	73,810
Rhineland-Palatinate	3,920	1,815	9,700	15,435
Saarland	15	885	770	1,670
Saxony	2,450	9,615	8,650	20,715
Saxony -Anhalt	825	3,475	3,740	8,040
Schleswig-Holstein	1,665	2,020	13,580	17,265
Thuringia	200	3,575	4,365	8,135
Total	27,150	162,320	185,670	375,145

Source: Statistisches Bundesamt, Empfängerinnen und Empfänger nach Bundesländern: <https://bit.ly/2UtNxZW>. This includes both asylum seekers and people with tolerated stay (*Duldung*). The Federal Statistical Office notes that due to reporting problems in North Rhine-Westphalie, there is an undercount of about 6,800 cases.

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

⁵³³ Section 10 Asylum Seekers' Benefits Act.

considerably between the Federal States.⁵³⁴ In some states such as **Bavaria, Hamburg** or **Hesse**, most asylum seekers are indeed living in this type of accommodation. In contrast, there are other Federal States, including **Rhineland-Palatinate, Lower Saxony** or **Schleswig-Holstein**, in which the majority of recipients of asylum seekers' benefits are staying in so-called “decentralised accommodation”, so usually in apartments of their own.⁵³⁵ The latter might also at least partially be the result of authorities generally being more restrictive when it comes to issuing (long-term) holders of a tolerated stay with residence permits, which would entitle them to regular social benefits.

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

Conditions in general

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 (*Landesaufnahmegesetze*) and in regulations and directives. Where no standards for the accommodation of asylum seekers exist, the Federal States often refer 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 conditions have been reported, far below standards.⁵³⁶ Following public criticism, the authorities have started renovation works in the facility of early April 2019 and have transferred several residents to other facilities.⁵³⁷

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

⁵³⁴ 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.

⁵³⁵ It is possible, though, that some Federal States subsume smaller types of collective accommodation under “decentralised” housing as well. Furthermore, some states seem to have changed their preferences compared to previous years, as the comparison to the figures of 2018 indicates (see AIDA, *Country Report Germany - Update on the year 2019*, July 2020, 88-89).

⁵³⁶ Süddeutsche Zeitung, “Die Regierung muss hier sofort einschreiten”, 26 March 2019, available in German at: <https://bit.ly/2OGa40d>.

⁵³⁷ Süddeutsche Zeitung, ‘Die Funkkaserne wird angeblich unter Hochdruck saniert’, 5 April 2019, available in German at: <https://bit.ly/2KA8Rcv>.

(**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.⁵³⁸

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.⁵³⁹ In **Berlin**, the Arrival Centre of the Regional Authorities for Refugees reported that, in December 2021, there were a large number of asylum applicants from Egypt, Iraq and Yemen in its reception facilities, having arrived through the Polish–Belarusian border. The number of asylum applicants from Georgia, Moldova and Vietnam also remains high in Berlin. Since June 2021, 2 000 asylum applicants have arrived every month in Berlin, and reception capacities have reached their limits.⁵⁴⁰

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.⁵⁴¹ 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. 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.

The living conditions in many initial reception centres have been criticised by asylum seekers, volunteers and NGOs – especially in light of the extended obligatory stay in these facilities. Asylum seekers at the arrival centre in **Hamburg-Rahlstedt**, for example, have reported *inter alia* a lack of privacy, unclean sanitary facilities and disturbances at night. The sleeping areas are placed in former warehouses and divided by thin partitions into several compartments, which do not allow for privacy. Besides reading lamps

⁵³⁸ Refugee Council Bavaria, 'Abschiebelager Manching/Ingolstadt', available in German at: <http://bit.ly/2pnLtRg>.
⁵³⁹ 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/2Flz6KP>. See also Bayerischer Flüchtlingsrat, 'Abschiebelager Bamberg', available in German at: <http://bit.ly/2lwD471>.

⁵⁴⁰ FRA, *Migration – Fundamental Rights Concerns – Bulletin 1 January 2022*, available at: <https://bit.ly/3Ng4gbF>, p.18.

⁵⁴¹ European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in Germany*, 2013, 26.

attached to each bed, there is one common light for the whole warehouse, which is switched on from 8:00am to 22:00pm.⁵⁴²

More generally, studies published in 2020 have come to the conclusion that the accommodation in initial reception centres is infringing childrens' rights and constitutes a danger to their mental health. The spatial confinement, the experience of violence and removals, as well as the permanent uncertainty cause psychological stress and have a negative impact on children.⁵⁴³ Health care and psychosocial support provided for young refugees in the mass accommodations was described as worryingly inadequate for most of the facilities.⁵⁴⁴

The NGO "Ärzte der Welt" (Doctors of the World) announced in September 2019 that an advice service run by the organisation in the AnKER-centre of **Manching/Ingolstadt** was to be terminated. The NGO described living conditions in the facility as "morbid" and claimed that adequate treatment, in particular treatment of persons with psychological disorders, was impossible under the circumstances. Insufficient protection against assaults, lack of privacy and nocturnal disturbances were impeding mental stabilisation of asylum-seekers at the facility and the NGO was no longer capable to bear responsibility for the mental health of its patients. Moreover, the organisation claims that there was no system for the identification of vulnerable persons in place at the facility.⁵⁴⁵

Conditions in reception centres and collective accommodation during the Covid-19 pandemic

Following the COVID-19 outbreak, there has been rising concern that the conditions in initial reception centres (and other form of collective accommodation) do not allow for sufficient protection against the virus. In **Ellwangen**, for example, 50% of the asylum seekers were tested positive in April 2020.⁵⁴⁶ Several studies have found a higher infection risk in common accommodation centres as opposed to decentralised accommodation.⁵⁴⁷ While the Federal States where data are available report a comparatively low number of infections in reception centres,⁵⁴⁸ the mass quarantines and suspension of services and activities in many centres has deteriorated conditions which had already been subject to criticism before the Covid-19 outbreak (see below), as they have exacerbated difficulties to work or otherwise integrate as well as isolation from the rest of the society. This has led a number of NGOs and welfare associations to call for the closure of AnKER centres and to prioritise decentralised accommodation of refugees.⁵⁴⁹

⁵⁴² Fluchtpunkt, *Mitten in Hamburg, und doch am Rand: Unzumutbare Bedingungen im Ankunftszentrum Rahlstedt*, November 14th 2019, available in German at: <https://bit.ly/3iJgGtb>.

⁵⁴³ Terre des hommes, *Zur Lebenssituation von minderjährigen Geflüchteten in Aufnahmeeinrichtungen*, June 2020, 7, available in German at: <https://bit.ly/38Etah0>, 7.

⁵⁴⁴ Bundesweite Arbeitsgemeinschaft der Psychosozialen Zentren für Flüchtlinge und Folteropfer (BAfF), *Living in a box - Psychosoziale Folgen des Lebens in Sammelunterkünften für geflüchtete Kinder*, 2020, 55, available in German at: <https://bit.ly/2W5DaLo>.

⁵⁴⁵ Frankfurter Rundschau, „Krankmachende Lebensbedingungen“ - Ärzte der Welt zieht sich aus Ankerzentrum zurück, 26 September 2019, available in German at: <https://bit.ly/2Z7NyUE>.

⁵⁴⁶ Frankfurter Allgemeine Zeitung, „Jeder zweite Flüchtling in Ellwangen hat Corona“, 15 April 2020, available in German at: <https://bit.ly/31ZspxV>.

⁵⁴⁷ See AWO Bundesverband, 'Unterbringung von geflüchteten Menschen und die Corona-Pandemie. Forderungen an die Politik und Empfehlungen an die Praxis', October 2021, 11, available in German at: <https://bit.ly/3D08MGi>.

⁵⁴⁸ See the Federal State reports on the evaluation of AnKER and functionally equivalent facilities in BAMF, Evaluation of AnKER Facilities and Functionally Equivalent Facilities, Research Report 37 of the BAMF Research Centre, 2021, available in English at <https://bit.ly/3FgxXnq>

⁵⁴⁹ See for example AWO Bundesverband, 'Unterbringung von geflüchteten Menschen und die Corona-Pandemie. Forderungen an die Politik und Empfehlungen an die Praxis', October 2021, available in German at <https://bit.ly/3fDYj8U>; Caritas Deutschland, , *Aufruf für eine zukunftsorientierte Erstaufnahme von Asylsuchenden in Deutschland*, 28 July 2021, available in German at <https://bit.ly/3fC4gmr>; PRO ASYL, 'AnKER-Zentren: Drei Jahre Isolation und Ausgrenzung von Asylsuchenden', 29 July 2021, available in German at <https://bit.ly/33KXl7Y>

As the following overview shows, preventive and isolation measures were implemented in most initial reception centres according to information provided by the Federal State governments. However, civil society reports also point to the lack of adequate measures or information in reception centres, leading to a high degree of exposure and the simultaneous closing down of services, support and activities.⁵⁵⁰

Bavaria has introduced systematic testing of new arrivals in its AnKER centres since late February 2020. As of July 2020 the situation was described by the State government as follows: new arrivals are isolated from other inhabitants until the test results are known. Reception centres are put under quarantine in case one inhabitant tests positive. The quarantine can be limited to parts of the reception centre if the outbreak is found to be limited to certain persons. Entry restrictions for non-resident persons were put in place, but according to the State government access for NGOs and volunteers or other outside contacts was possible once a protection plan was in place in AnKER facilities. Distancing is applied in common spaces such as cafeterias, and the capacities of the centres are used in a way to maximise ⁵⁵¹

The State of **Saxony** describes the implementation of protection from infection risks as difficult in AnKER centres and functionally equivalent reception facilities. In spring 2020, several courts in Saxony have ruled that asylum seekers must be allowed to take residence outside of initial reception centres.⁵⁵² The state government notes that “only through a variety of ever more refined measures, combined with a reduction in occupancy, that the LDS managed to convince the courts of legally-compliant accommodation at the reception facilities.” These include the obligation to wear masks everywhere except in one’s own room, the constant monitoring of distancing rules in common spaces and the handing out of masks and information in the form of signs, pictograms and informative events.⁵⁵³

At the AnKER centre in Lebach in the Federal State of **Saarland**, systematic testing of new arrivals was introduced in March 2020, and inhabitants were re-allocated to allow for separation and quarantine measures. Support and counselling services, group activities and activities for children such as the nursery and after-school club were suspended, while the number of security staff was increased to ensure compliance with social distancing and hygiene rules. The allocation of refugees to municipalities was suspended except for vulnerable persons (e. g. with pre-existing health conditions) who had already been allocated. Allocation had resumed as of July 2020 ⁵⁵⁴ The allocation to municipalities was also suspended in **Brandenburg**.⁵⁵⁵

Similar measures were reported for reception centres in **Brandenburg**, **Mecklenburg-Western Pomerania** and **Schleswig-Holstein**. In Schleswig-Holstein, all new arrivals were being tested and put into isolation for two weeks as of July 2020. Both states also report that parts of reception centres have been designated as isolation or separation areas, and that these will likely remain in place in the future as well. At the arrival centre in Hamburg, services could continue during the spring of 2020 due to the acquisition of protective equipment for the staff and “individual commitments of employees” who offered to work during weekends to avoid crowding of the initial registration area.⁵⁵⁶

⁵⁵⁰ Der Neue Wiesentbote, ‘Offener Brief der Bamberger „Mahnwache Asyl“ zum Umgang mit dem Corona-Virus in der ANKER-Einrichtung Oberfranken’, 18 March 2021, available in German at <https://bit.ly/3AW4Hls>.

⁵⁵¹ BAMF, Evaluation of AnKER Facilities and Functionally Equivalent Facilities, Research Report 37 of the BAMF Research Centre, 2021, 66-67, available in English at <https://bit.ly/3FgxXnq>

⁵⁵² Administrative Court Leipzig, *Decision 3 L 204/20.A*, 22 April 2020; Administrative Court Dresden, *Decision 11 L 269/20.A*, 24th April 2020; Administrative Court Münster, *Decision 6a L 365/20*, 7 May 2020.

⁵⁵³ BAMF, ‘Evaluation of AnKER Facilities and Functionally Equivalent Facilities’, Research Report 37 of the BAMF Research Centre, 2021, 89, available in English at <https://bit.ly/3FgxXnq>

⁵⁵⁴ BAMF, ‘Evaluation of AnKER Facilities and Functionally Equivalent Facilities’, Research Report 37 of the BAMF Research Centre, 2021, 98-99, available in English at <https://bit.ly/3FgxXnq>

⁵⁵⁵ BAMF, ‘Evaluation of AnKER Facilities and Functionally Equivalent Facilities’, Research Report 37 of the BAMF Research Centre, 2021, 162, available in English at <https://bit.ly/3FgxXnq>

⁵⁵⁶ BAMF, ‘Evaluation of AnKER Facilities and Functionally Equivalent Facilities’, Research Report 37 of the BAMF Research Centre, 2021, 184, available in English at <https://bit.ly/3FgxXnq>

2.2. Situation in collective accommodation centres and decentralised housing

Following the initial reception period, asylum seekers are supposed to be sent to a collective accommodation centre 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.

Studies have repeatedly shown 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.

It has also been pointed out that living conditions in individual apartments are not necessarily better than 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.

While occupancy rates have improved in recent years, some aspects of collective accommodation centres continue to be identified as problematic by asylum seekers and NGOs. Facilities are often isolated or in remote locations. Many temporary facilities do not comply with basic standards and do not guarantee privacy.⁵⁵⁷ 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. The quality of food is often criticised where food is handed out in the form of pre-packed meals.⁵⁵⁸

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.⁵⁵⁹

Furthermore, many facilities lack qualified staff, thus highlighting the crucial role played by NGOs and volunteers, particularly regarding counselling and integration. A lack of communication between authorities and NGOs and/or volunteers has also been flagged problematic.⁵⁶⁰

⁵⁵⁷ ProAsyl, 'Ein Leben ohne Privatsphäre? Sammelunterbringung darf nicht zum Dauerzustand werden!', 10 January 2017, available in German at: <http://bit.ly/2kWyj5U>.

⁵⁵⁸ *Ibid.*

⁵⁵⁹ *Ibid.*

⁵⁶⁰ 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>.

2.3. Physical security

In addition to overall living conditions, the security of residents can also be an issue of concern. According to preliminary police statistics, 61 attacks on accommodation facilities took place in 2021, compared to 84 in 2020 and 128 in 2019. In addition, 932 attacks on individual asylum seekers or refugees were recorded in 2021 (1,606 in 2020). Most of these attacks are classified as racially motivated crimes.⁵⁶¹

According to statistics compiled by NGOs, the number of attacks on reception centres during 2020 was significantly higher – namely 992 attacks on facilities, including 6 arson attacks, compared to 93 attacks including 3 arson attacks in 2019.⁵⁶² Nevertheless, NGO statistics also show a significantly lower number of attacks (198) on individual asylum seekers or refugees for the same year, therefore discrepancies may partially be explained by differences in counting methods.

In many facilities, spatial confinement and lack of privacy led to a lack of security, particularly for women and children.⁵⁶³ To counter this problem, most Federal States have developed violence protection concepts in recent years.⁵⁶⁴

Fences are used around premises, particularly for large-scale centres, 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](#)).⁵⁶⁵

2.4. Duration of stay

The duration of stay in initial reception centres has been generally set at a maximum of 18 months following the reform in 2019 (see [Freedom of Movement](#)). Following the initial reception period, a stay in other collective accommodation centres is also obligatory, until a final decision on the asylum application is reached.⁵⁶⁶ This often takes several years since the obligation applies to appeal procedures as well. In addition, people whose asylum applications have been rejected are now obliged to stay in collective accommodation centres as long as their stay is “tolerated”.⁵⁶⁷ It has been argued that a stay in collective accommodation which lasts several years increases health risks, especially with regard to mental disorders.

⁵⁶¹ Federal Government, Reply to parliamentary questions by The Left, 20/718, 15 February 2022, 20/119, 24 November 2021, 19/27020, 25 February 2021 and 19/18269, 19 March 2020 and [zdf.de](https://www.zdf.de), 'Weniger Angriffe auf Heime, aber mehr Gewalt', 31 August 2021, available in German at: <https://bit.ly/3L1jS0A>.

⁵⁶² Mut Gegen Rechte Gewalt, 'Chronik flüchtlingsfeindlicher Vorfälle', 16 January 2022, available in German at: <https://bit.ly/3f43DQT>.

⁵⁶³ ProAsyl, 'Ein Leben ohne Privatsphäre? Sammelunterbringung darf nicht zum Dauerzustand werden!', 10 January 2017, available in German at: <http://bit.ly/2kWy5U>.

⁵⁶⁴ Bundesinitiative Schutz von geflüchteten Menschen in Flüchtlingsunterkünften, Schutzkonzepte von Bundesländern, available in German at <https://bit.ly/3eYOMqZ>.

⁵⁶⁵ *Ibid.*

⁵⁶⁶ Section 53(2) 1st Sentence Asylum Act.

⁵⁶⁷ Section 61(1d) Residence Act.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

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

1.1. Time limit for the right to work

Access to the labour market for asylum seekers has been subject to further restrictions in recent years. The applicable legislation was amended again in 2019 by the Skilled Workers' Immigration Act (*Fachkräfteeinwanderungsgesetz*) which entered into force in March 2020. As a result, the regulatory system has become more restrictive and complex.

Prior to March 2020, asylum seekers were barred from access to employment as long as they were under an obligation to stay in an initial reception centre. Outside these centres, they could be permitted to take up employment after having stayed in the federal territory for 3 months.

Access to employment for asylum seekers in reception centres

Since March 2020, the general rule still is that asylum seekers in initial reception centres are not allowed to take up employment.⁵⁶⁸ This limitation has been severely extended as the result of the extension of the [Obligation to stay in Initial Reception Centres](#). For most adult asylum-seekers, the time-limit before accessing employment is now 18 months, up to 24 months in some Federal States. Nevertheless, some asylum seekers with a permission to stay (*Aufenthaltsgestattung*) in initial reception centres are entitled to an employment permit after 9 months in the asylum procedure under certain conditions.⁵⁶⁹ This applies to asylum seekers whose procedure is still ongoing before the BAMF or where an appeal is pending. Once their asylum procedure has been running for 9 months, they are entitled to access employment pursuant to Section 61(1) of the Asylum Act if the further requirements are met.⁵⁷⁰ However, asylum seekers from safe country of origins are excluded by law from such possibilities. Hence, the law establishes an unequal treatment for the latter category. Since asylum seekers from safe countries of origin are generally obliged to stay in initial reception centres for the whole duration of the procedure, they have effectively been excluded from access to the labour market.

Former asylum seekers with a tolerated stay (*Duldung*), who are still obliged to stay in reception centres, may only be allowed to take up employment after a waiting period of 6 months at the discretion of the authorities. This can apply to those whose application has been rejected as inadmissible or manifestly unfounded while their appeal is still pending before the administrative courts - but for whom the request for suspensive effect was rejected.

⁵⁶⁸ Section 61(1) 1st Sentence Asylum Act.

⁵⁶⁹ Section 61(1) 2nd Sentence Asylum Act.

⁵⁷⁰ Section 61(2) 5th Sentence Asylum Act.

Access to employment for asylum seekers staying outside of reception centres

Outside of reception centres, asylum seekers with a permission to stay (*Aufenthaltsgestattung*) are not allowed to take up employment during the first 3 months of their stay on the territory, after which they can be permitted to do so on a discretionary basis.⁵⁷¹

Before the 2020 amendment of the Asylum Act, asylum seekers were not allowed to work on a self-employed basis for the whole duration of their asylum procedure, since the permission to pursue self-employment requires a regular residence permit. The asylum seeker's permission to stay (*Aufenthaltsgestattung*) does not qualify as such.⁵⁷² However, the new Section 4a(4) Residence Act now provides that it is at the discretion of the responsible authorities to permit any economic activity including self-employment for those with a permission to stay (*Aufenthaltsgestattung*) or tolerated stay (*Duldung*). This only applies to those living outside of initial reception centres, though.⁵⁷³

1.2. Restrictions on access to the labour market

On top of the restrictions mentioned above, there are additional limitations to the access to the labour market in practice. Firstly, asylum seekers have to apply for an employment permit each time they want to take up employment. To that 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 a detailed job description must be shared with the authorities.

Secondly, employment is only granted upon approval of the Federal Employment Agency.⁵⁷⁴ There are a few exceptions to this rule, e.g. for internships and vocational training.⁵⁷⁵ Such approval depends *inter alia* on a “review of labour conditions”, i.e. an examination of whether labour rights are complied with and whether wages correspond to regional standards.

The so called “priority review” which was previously applied in practice and which consisted in checking whether another job-seeker would be more suited for the position (i.e. German citizens or foreigners with a more secured residence permit) has been abandoned following the 2020 reform.

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. However, an analysis by the Institute for Employment Research finds that persons with a nationality of the main countries of origin of refugees and asylum seekers have been more severely impacted by the effects of Covid-19 than German or EU nationals. Unemployment has risen to a much higher degree for this group in 2020, and they were more likely affected by short-time work schemes.⁵⁷⁶

⁵⁷¹ Section 61(2) 1st Sentence Asylum Act and Section 61(2) 5th Sentence Asylum Act.

⁵⁷² Section 21(6) Residence Act.

⁵⁷³ Section 61(1) 1st Sentence Asylum Act.

⁵⁷⁴ Section 61(1) 2nd Sentence Number 2 and Section 61(2) 1st Sentence Asylum Act.

⁵⁷⁵ Section 32(2) Employment Regulation (*Beschäftigungsverordnung*).

⁵⁷⁶ Institute for Employment Research, ‘Die Arbeitsmarktwirkungen der COVID-19-Pandemie auf Geflüchtete und andere Migrantinnen und Migranten’, IAB Forschungsbericht 5-2021, available in German at: <https://bit.ly/3qJYkOH>.

2. Access to education

Indicators: Access to Education

- | | |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

As a matter of principle, the right and the obligation to attend school applies to all children in Germany, regardless of their status. However, since the education system falls 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.⁵⁷⁷ One such best practice example for education during the Covid-19 pandemic is the district of Treptow-Köpenick in **Berlin**, which deployed mobile teams and tablets to support distance learning of children and youth living in youth welfare facilities in 2021.⁵⁷⁸

Access to education is particularly problematic in initial reception centres such as arrival and AnkER centres. This has been exacerbated by the outbreak of the Covid-19 pandemic, as a result of which education in many facilities was suspended (see [Conditions in reception facilities](#)). An additional complication is the lack of sufficient internet access and digital infrastructure in many reception centres, which has made it difficult to access online schooling or other education offers which have been moved online.⁵⁷⁹ In 2016, an association of various NGOs (regional refugee councils, Federal Association for Unaccompanied Refugee Minors, Youth without Borders) started a campaign called “School for all” (*Schule für alle*) to draw attention to the fact that children in many initial reception centres have only had very basic schooling and no access to the regular school system for the duration of their stay in these facilities (see [Freedom of Movement: Obligation to Stay in Initial Reception Centres](#)). Furthermore, the NGOs have criticised the fact that access to education services was severely limited for asylum seekers above the age of 16, many of whom have not finished school in their countries of origin and therefore need access to the school system in order to gain a degree.⁵⁸⁰

These problems continue to exist today. Half of all federal states exempt asylum-seeking children from compulsory education until they have been assigned to a municipality (**Hesse, Mecklenburg-Vorpommern, Lower Saxony, North Rhine-Westphalia, Rhineland-Platinat, Saxony, Saxony-Anhalt**).⁵⁸¹ Thus, as long as they stay in initial reception centres, they will not have access to the regular school system. Some initial reception centres do provide educational offers or provide state-organised schooling in the reception facilities.⁵⁸² However, these offers are not comparable to regular schools.

⁵⁷⁷ For an overview of practices regarding the integration of refugee children into schools as of 2018, see See Julian Tangermann and Paula Hoffmeyer-Zlotnik, ‘Unaccompanied Minors in Germany – Challenges and Measures after the Clarification of Residence Status’, March 2018, 56-57, available in English at <https://bit.ly/3KcEEe6>.

⁵⁷⁸ Bezirksamt Treptow-Köpenick, ‘Mobile Unterstützung in der Pandemie: Jugend-Lern-Hilfe für Kinder und Jugendliche in Heimen’, 05 January 2021, available in German at: <https://bit.ly/3uciEsK>.

⁵⁷⁹ See AWO Bundesverband, ‘Unterbringung von geflüchteten Menschen und die Corona-Pandemie. Forderungen an die Politik und Empfehlungen an die Praxis, October 2021, 18, available in German at: <https://bit.ly/3fDYj8U>.

⁵⁸⁰ See the campaign at: <http://kampagne-schule-fuer-alle.de/>.

⁵⁸¹ Deutsches Kinderhilfswerk, ‘Beginn der Schulpflicht für asylsuchende Kinder“ - Datengrundlage für den Strukturindikator zum Recht auf Bildung, available in German at: <https://bit.ly/3iNtUFq>.

⁵⁸² See Federal State reports in BAMF, Evaluation of AnkER Facilities and Functionally Equivalent Facilities, Research Report 37 of the BAMF Research Centre, 2021, available in English at <https://bit.ly/3FgxXnq>

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 (*Berufsschule*) 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 only 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.⁵⁸³

In the AnKER centre in **Manching/Ingolstadt** classes are 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.⁵⁸⁴ 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.⁵⁸⁵

The problem of a lack of access to the education system in initial reception centres may have been mitigated to a certain extent by the legal clarification, introduced in 2019, according to which the general maximum time-limit for a stay in initial reception centres has been placed at six months for families with minor children. Because of this amendment, children should be allocated to decentralised accommodation after a few months (possibly earlier than the maximum six-months time-limit allows), which should in turn result in them having access to regular schools at their new place of residence. By way of example, in Saxony the authorities have “an established policy” of allocating families with school-age children to municipalities within three months.⁵⁸⁶ Due to the Covid-19 outbreak, re-allocation has been suspended in several Federal States and initial reception centres in spring 2020.

In legal terms, asylum seekers generally have access to vocational training. In order to start vocational training, they need an employment permit.⁵⁸⁷ However, the fact that asylum seeker's permission to stay (*Aufenthaltsgestattung*) are issued for a 6-month-period frequently renders the access to vocational training impossible. 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.

Studying at university is generally permitted for asylum seekers, but only possible with practical difficulties. The Federal States' laws that regulate access to higher education do not impose any restrictions with regards to a foreigner's residence status. Thus, asylum seekers with a permission to stay (*Aufenthaltsgestattung*) or tolerated stay (*Duldung*) legally have the same access to university as other foreigners. However, the higher education laws set requirements with regard to qualifications (university entrance qualification), knowledge of the German language and health insurance coverage, which are difficult to meet in practice for asylum seekers. Additionally, they are also not entitled to students' financial aid when in possession of a permission to stay (*Aufenthaltsgestattung*). In the Federal States, which are

⁵⁸³ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

⁵⁸⁴ *Ibid.*

⁵⁸⁵ Süddeutsche Zeitung, ‘Flüchtlingskinder aus Transitzentrum dürfen reguläre Schule besuchen’, 9 March 2018, available in German at: <http://bit.ly/2Dzi9fX>.

⁵⁸⁶ BAMF, Evaluation of AnKER Facilities and Functionally Equivalent Facilities, Research Report 37 of the BAMF Research Centre, 2021, 85, available in English at <https://bit.ly/3FgxXnq>

⁵⁸⁷ Section 32(2)(1) Employment Regulation.

responsible for university education, and on the Federal level there have been numerous initiatives to support refugees and asylum seekers to access universities and successfully conclude their studies.⁵⁸⁸

Integration courses

An education measure of practical relevance for adult asylum seekers are the integration courses, coordinated and financed by the BAMF. In contrast to beneficiaries of international protection, asylum seekers are not entitled to participate in an integration course. Only two groups of asylum seekers are eligible to participate:

- those with a “good prospect to remain” based on their nationality and its recognition rate – as of 2021 these were Eritrea, Syria and Somalia. Afghanistan was added in early 2022.⁵⁸⁹
- asylum seekers who have arrived in Germany before 1 August 2019 and who are employed, follow vocational training, are registered as unemployed, participate in preparatory training to take up employment, or are taking care of children under the age of three.⁵⁹⁰ According to the government, a registration as unemployed requires that access to the labour market exists in the first place.⁵⁹¹ However, such access is very limited especially during the first nine months (see [Access to the labour market](#)).

Asylum seekers who meet these criteria can also be obliged to participate in integration courses by the authority providing social assistance.⁵⁹² Participation is free of charge for asylum seekers.⁵⁹³ In their general form, integration courses their general form consist of 600 language lesson units and 100 lesson units in an “orientation course” where participants are meant to learn about the legal system as well as history and culture in Germany and about “community life” and “values that are important in Germany”.⁵⁹⁴ Next to the general integration courses, there are special courses e. g. courses for women or parents, literacy courses or intensive courses for experienced learners.

D. Health care

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

The law restricts health care for asylum seekers during the first 18 months of stay 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.”⁵⁹⁵ Furthermore, vaccination and

⁵⁸⁸ See for example the overview provided by the conference of university rectors, <https://bit.ly/3rD6KXx> or the programmes of the DAAD, <https://bit.ly/3nJoz5V>

⁵⁸⁹ BAMF, ‘Trägerrundschreiben Integrationskurse 01/22. Anpassung der Herkunftsländer „mit guter Bleibeperspektive’, 12 January 2022, available in German at: <https://bit.ly/37RNPIp>.

⁵⁹⁰ Section 44 para. 4 Residence Act.

⁵⁹¹ Der Paritätische Gesamtverband, ‘Arbeitshilfe zum Thema Flucht und Migration. Soziale Rechte für Flüchtlinge, 3. aktualisierte Auflage, December 2019, available in German at: <https://bit.ly/3fDooVv>.

⁵⁹² Section 44a para. 1 Residence Act.

⁵⁹³ BAMF, ‘Integration courses for asylum applicants and persons whose deportation has been temporarily suspended’, 298 November 2018, available at: <https://bit.ly/3uuHeFk>.

⁵⁹⁴ See BAMF, ‘The content and stages of the procedure’, available at <https://bit.ly/3fNqh1S>

⁵⁹⁵ Section 4(1) 1st Sentence Asylum Seekers’ Benefits Act.

“necessary preventive medical check-ups” shall be provided.⁵⁹⁶ The law further contains a special provision for pregnant women and women who have recently given birth. They are entitled to “medical and nursing help and support”, including midwife assistance.⁵⁹⁷ In addition, the law states that further benefits can be granted “if they are indispensable in an individual case to secure health”.⁵⁹⁸

After 18 months, asylum seekers are entitled to social benefits as regulated in the Twelfth Book of the Social Code (*Sozialgesetzbuch*). These “standard” social benefits include access to health care under the same conditions that apply to German citizens who receive social benefits. The waiting period of 18 months is a result of the reform of the Asylum Seekers’ Benefits Act in 2019, which had extended the previous waiting period of 15 months by an additional 3 months.⁵⁹⁹

The term “necessary treatment” within the meaning of the law has not conclusively been defined but is often considered to mean only medical care that is absolutely unavoidable. 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. If chronic diseases cause pain, they have to be treated as well.⁶⁰⁰ There remains a dispute, however, as to what treatment is necessary in these cases, i.e. if the treatment of pain requires treatment of the causes of the chronic disease, or if a more cost-effective treatment option (usually medication) that eliminates the pain, at least temporarily, is sufficient. 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.⁶⁰¹

Even if a chronic disease is not causing pain momentarily, asylum seekers might still be entitled to treatment, if it is indispensable to secure health pursuant to Section 6(1) of the Asylum Seekers’ Benefits Act. Recently, some Regional Social Courts have argued that this provision must be interpreted broadly in accordance with the constitution. Thus, apart from a few exceptions, especially in the case of minor illnesses or short stays, a level of benefits must be established that corresponds to regular health insurance.⁶⁰²

In general, the practice with regard to access to health care varies between Federal States and at times between municipalities.⁶⁰³ 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. Critics have pointed out that the ambiguity of the scope of benefits under the law leads to varying interpretations in practice from municipality to municipality and may result in bureaucratic arbitrariness by case workers

⁵⁹⁶ Section 4 Asylum Seekers’ Benefits Act.

⁵⁹⁷ Section 4(2) Asylum Seekers’ Benefits Act.

⁵⁹⁸ Section 6(1) Asylum Seekers’ Benefits Act.

⁵⁹⁹ However, the reduction of benefits may apply for more than 18 months (i.e. without any time limit) to persons who have “abused the law to affect the duration of their stay”.

⁶⁰⁰ Higher Administrative Court Baden-Württemberg, Decision 7 S 920/98, 4 May 1998.

⁶⁰¹ Georg Classen, *Leitfaden zum Asylbewerberleistungsgesetz* (Guideline to the Asylum Seekers’ Benefits Act), September 2018, 13, available in German at: <https://bit.ly/3ef7zwl>.

⁶⁰² Regional Social Court Hesse, Decision L 4 AY 9/18 B ER, 11th July 2018; Regional Social Court Mecklenburg-Vorpommern, Decision L 9 AY 13/19 B ER, 28th August 2019.

⁶⁰³ A study published in early 2022 gives an overview of the regulations and practices in place in the Federal States: Katja Lindner, ‘Gesundheitsversorgung von Asylsuchenden In den Bundesländern. Rahmenbedingungen und Reformbedarfe’, MIDEM-Policy Paper 01/22, available in German at <https://bit.ly/3inplgt>.

at the social welfare offices, who usually have no medical expertise.⁶⁰⁴ ⁶⁰⁵The 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 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 only been implemented in a few municipalities.⁶⁰⁶ Other Federal States (e.g. **Bavaria and Baden-Württemberg, Saxony, Mecklenburg-Vorpommern**) have announced that they will not participate in the scheme.

It has to be pointed out, however, that even in a Federal State like **Brandenburg**, where almost all municipalities are issuing health insurance cards, the policy does not apply to asylum seekers in initial reception centres, which fall under the responsibility of the Ministry of the Interior. Due to the recently extended obligation to stay in these centres, this affects many asylum seekers for a substantial amount of their asylum procedure (see [Obligation to stay in initial reception centres](#)). This means that they cannot access a medical professional of their choice as they depend on the medical personnel present in the initial reception centres. While nurses are present daily in initial reception centres **Eisenhüttenstadt** and **Doberlug-Kirchhain**, medical doctors are only on site three days a week.⁶⁰⁷ A further practical problem reported is the fact that the medical staff is very restrictive in referring patients to medical specialists. This makes it almost impossible for asylum seekers to meet the legal requirements for the proof of medical conditions in asylum procedures, which explicitly requires a qualified certificate from a medical specialist.⁶⁰⁸

Similarly, in **Bavaria**, access to health care is rendered extremely 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 practitioner.⁶⁰⁹ As seen above, this problem is not specific to AnKER centres, but also prevalent in other reception centres.

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](#)). Even if benefits have been reduced, however, asylum seekers remain entitled to medical treatment pursuant to Section 4 of the Asylum Seekers’ Benefits Act. However, treatment pursuant to Section 6(1) of the Asylum Seekers’ Benefits Act is not accessible in these cases.

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. In 2019, access to around 40 % of applicants is refused, and others have to wait an average of 7,3 months to start treatment. The treatment centres have to cover most of the costs for therapies (93 %) through donations or other funds since therapies are often

⁶⁰⁴ Gesundheit für Geflüchtete, Healthcare vouchers, available at: <https://bit.ly/2BXoxme>.

⁶⁰⁵ Georg Classen, *Leitfaden zum Asylbewerberleistungsgesetz* (Guideline to the Asylum Seekers’ Benefits Act), September 2018, 13, available in German at: <https://bit.ly/3iJEDAB>.

⁶⁰⁶ See overview of Federal States, see Gesundheit für Geflüchtete, *Regelung in den Bundesländern*, available at: <https://bit.ly/2U7GRRL>.

⁶⁰⁷ Information provided by local social workers of Komm Mit e.V. June 2020.

⁶⁰⁸ Section 60(7 in conjunction with Section 60a(2c) Residence Act.

⁶⁰⁹ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

not covered by the health and social authorities.⁶¹⁰ Large distances between asylum seekers' places of residence and treatment centres may also render an effective therapy impossible in practice.

The legal framework for accessing health care has not changed since the outbreak of Covid-19. However, preventive measures such as testing and social distancing was implemented in most reception centres and many services were reduced, which might have affected access to health care as well (see [Conditions in reception facilities](#)). All persons residing in Germany, including asylum seekers, are entitled to receive the vaccination against SARS-CoV-2. Asylum seekers living in reception centres were among the priority groups, meaning they were entitled to receive a Covid-19 vaccine from February 2021.⁶¹¹ However, the organisation of vaccinations have been criticised in some cases. By way of example, the Refugee Council of **Lower Saxony** reported that no adequate information about the vaccine was provided in reception centres at the start of the vaccination campaign, e. g. that information in other languages than German was missing and that information was not provided systematically.⁶¹² At the beginning, a lack of vaccines also led to delays in the start of vaccination campaigns.⁶¹³ In some places, the readiness of asylum seekers in reception centres to get vaccinated has thus been reported to be comparatively low in some reception centres. This was attributed to a mistrust vis-à-vis authorities following the lack of systematic information, but also the at times difficult conditions in reception centres during the first waves of the Covid-19 pandemic and previous experiences of being disadvantaged by authorities.⁶¹⁴

⁶¹⁰ Bundesweite Arbeitsgemeinschaft der Psychosozialen Zentren für Flüchtlinge und Folteropfer (BAfF), *Versorgungsbericht - Zur psychosozialen Versorgung von Flüchtlingen und Folteropfern in Deutschland*, August 2019, available in German at: <https://bit.ly/2O68bKK>, 146-147.

⁶¹¹ Flüchtlingsrat Niedersachsen e.V., 'Flüchtlingsrat bemängelt Aufklärung von Geflüchteten über Impfungen', 22 April 2021, available in German at: <https://bit.ly/3qnFXPb>.

⁶¹² Taz, '„Eindruck, als Testkaninchen zu dienen“', 11 August 2021, available in German at: <https://bit.ly/36AhrDq>.

⁶¹³ Zdf.de, 'Corona in Sammelunterkunft - Kaum Impf-Fortschritt bei Geflüchteten', 30 April 2021, available in German at: <https://bit.ly/3N00rXX>.

⁶¹⁴ Flüchtlingsrat Niedersachsen e.V., 'Flüchtlingsrat bemängelt Aufklärung von Geflüchteten über Impfungen', 22 April 2021, available in German at: <https://bit.ly/3qnFXPb>.

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

In 2019, a provision was introduced requiring Federal States to take appropriate measures to ensure the protection of women and vulnerable persons when accommodation asylum seekers in initial reception centres.⁶¹⁵ Even before this provision was introduced, authorities were required to provide specific support to those with special reception needs in accordance with Reception Conditions Directive.⁶¹⁶ 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 specific medical treatment. However, the Asylum Act does not foresee a systematic assessment procedure for vulnerable persons. A systematic screening for vulnerabilities is only in place in three Federal States (for details see [Screening of vulnerability](#)). Practices differ between Federal States and also municipalities, as not all Federal States have laws or protection concepts in place that apply to all accommodation centres for asylum seekers.

The AnKER centres and functionally equivalent reception centres usually provide for separate accommodation for women travelling alone and other vulnerable groups in some cases.⁶¹⁷ However, whether or not protection of vulnerable groups is taken seriously in practice often depends on the local management of reception centres.⁶¹⁸ For example, there are reports of women travelling alone being housed next to men with psychological difficulties.⁶¹⁹

By way of example, in **Rhineland-Palatinate**, the regional government has adopted a protection concept which also includes methods for the identification of vulnerabilities.⁶²⁰ 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.

⁶¹⁵ Section 44(2a) Asylum Act.

⁶¹⁶ Section 21 et seq. Directive 2013/33/EU.

⁶¹⁷ See BAMF, *Evaluation of AnKER Facilities and Functionally Equivalent Facilities*, Research Report 37 of the BAMF Research Centre, 2021, 85, available in English at <https://bit.ly/3FgxXnq>

⁶¹⁸ PRO ASYL e.V., Bayerischer Flüchtlingsrat e.V., Flüchtlingsrat Brandenburg e.V., Hessischer Flüchtlingsrat Flüchtlingsrat Niedersachsen e.V., Flüchtlingsrat Sachsen-Anhalt e.V., Universität Göttingen, ‘*Zur Umsetzung Der Istanbul-Konvention In Bezug Auf Geflüchtete Frauen Und Mädchen In Deutschland. Schattenbericht für GREVIO*’, July 2021, available in German at: <https://bit.ly/3LdLTDg>; 10.

⁶¹⁹ BafF, ‘Identifizierung besonderer Schutzbedürftigkeit am Beispiel von Personen mit Traumafolgestörungen. Status quo in den Bundesländern, Modelle und Herausforderungen’, June 2020, 28. Study available in German at <https://bit.ly/3GsdrSm>

⁶²⁰ 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>.

1. Reception of unaccompanied children

Unaccompanied children should be placed in the care of a youth welfare office which has to seek “adequate accommodation”.⁶²¹ 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](#)).

Latest available figures for unaccompanied minors reflect the situation in 2020: during that year, 7,563 newly arriving unaccompanied minors were placed in the care of a youth welfare office (in comparison to 8,647 in 2019 44,935 in 2016).⁶²² The total number of unaccompanied children and young adults under the care of youth authorities has also been decreasing significantly in recent years, from 64,045 at the end of 2016 to 21,276 in December 2020.⁶²³ Out of these, 58.5 % were older than 18 years but still fell under the competence of youth welfare offices because they were entitled to youth welfare measures.

Figures in 2019 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 November 2019 amounting to 317% of the Federal State’s quota. Two other Federal States (**Hamburg**: 140% and **Hessen**: 137%) were also considerably over their quota, while all East German States except Berlin (**Mecklenburg-Vorpommern**, **Brandenburg**, **Saxony**, **Saxony-Anhalt**, **Thuringia**) did not fully meet the quota allocated to them under the distribution key.⁶²⁴ The implementation of the distribution system has been criticised by the Federal Association for Unaccompanied Refugee Minors (BumF), who reported that the procedure does not always take into account the best interests of the child and that as a result, unaccompanied minors have gone missing as they travelled to places where they have relatives or a support network.⁶²⁵

A study of the BumF, published in March 2021, shows significant disparities between regions as far as reception conditions for unaccompanied children are concerned.⁶²⁶ Around 1,000 persons working in youth welfare institutions and NGOs had participated in an online survey for this study. 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. According to the authors, the data indicates that especially the Federal States of, **Bremen**, **Brandenburg**, **Mecklenburg-Vorpommern** and **Saxony** need to undertake systematic efforts in this regard. Disparities are especially big as regards support for young adults. Moreover, a major point of concern for them are municipalities where unaccompanied minors will

⁶²¹ Section 42(1) Social Code, Vol. VIII.

⁶²² FEderal Statistical Office, ‘Kinderschutz: Jugendämter nahmen 2020 rund 45 400 Kinder in Obhut’, 24 June 2021, available at <https://bit.ly/3lkxPp5>. For 2016 : Federal Governmen, *Bericht über die Situation unbegleiteter ausländischer Minderjähriger in Deutschland (Report on the situation of unaccompanied foreign minors in Germany)*, Parliamentary report no. 19/17810, 05 March 2020, available in German at: <https://bit.ly/38Q1VQU>, 13.

⁶²³ Mediendienst Integraton, ‘*Unbegleitete minderjährige Flüchtlinge*’, available in German at <https://bit.ly/3FKaWtC> ⁶²⁴ 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 2019, available in German at: <https://bit.ly/3fePy32>,

⁶²⁴ 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 2019, available in German at: <https://bit.ly/3fePy32>,

⁶²⁵ Federal Association for Unaccompanied Refugee Minors, ‘Bericht zum Verteilverfahren unbegleiteter Minderjähriger: Starre Zuständigkeiten, scheiternde Familienzusammenführungen und Mängel bei Rechtsschutz und rechtlicher Vertretung befördern Abgängigkeiten von Jugendlichen’, 23 August 2021, available in German at: <https://bit.ly/37LJEaW>.

⁶²⁶ Federal Association for Unaccompanied Refugee Minors, *Die Situation unbegleiteter minderjähriger Flüchtlinge in Deutschland*, March 2021, 40, available in German at <https://bit.ly/3GMm1f5>

primarily be housed in regular collective accommodation once they turn 18. This happens most frequently in the Federal States of **Bavaria, Thuringia, North Rhine-Westphalia** and **Brandenburg**. Youth welfare offices can however continue to offer care and accommodation up to the age of 21 and up to 27 in individual cases.⁶²⁷

The regional authority in **Berlin** started a pilot project in 2021 to house former unaccompanied minors in reception centres, with continued support by youth welfare organisations. A number of NGOs criticised the project for not providing adequate individual support and assistance.⁶²⁸ As an encouraging improvement, the BumF study points out that temporary housing (youth hostels, hotels, emergency shelters) have continued to decline in all forms of assistance and are now only very rarely used to accommodate young people.⁶²⁹ However the Berlin Senate Department for Education, Youth and Family reported that the reception capacities for unaccompanied children and adolescents have been exhausted since September 2021.⁶³⁰ Further facilities have therefore been taken into service. The Federal Working Group of Psychosocial Support Centres for Refugees and Victims of Torture, Deutschlandfunk and XENION, a centre providing psychosocial assistance to refugees, also reported limited access to psychotherapy for refugees, unaccompanied children and adolescents.⁶³¹

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.⁶³² Regional guidelines for protection against violence in refugee accommodation centres regularly refer to LGBTI persons as a particularly vulnerable group.⁶³³ 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 together 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.⁶³⁴ Some of the AnKER and functionally equivalent centres provide for separate accommodation for LGBTI persons, sometimes upon request of the individuals only.⁶³⁵

⁶²⁷ See Julian Tangermann and Paula Hoffmeyer-Zlotnik, ‘Unaccompanied Minors in Germany – Challenges and Measures after the Clarification of Residence Status’, *Study by the German National Contact Point for the European Migration Network (EMN). Working Paper 80 of the Research Centre of the Federal Office for Migration and Refugees*, March 2018, 30-31, available in English at <https://bit.ly/3KcEEe6>

⁶²⁸ See Flüchtlingsrat Berlin e. V., , 20.09.2021: Keine „Jugendhilfe Light“ in Sammelunterkünften für junge volljährige Geflüchtete!, 22 September 2021, available in German at: <https://bit.ly/3L9AOIL>.

⁶²⁹ Federal Association for Unaccompanied Refugee Minors, *Die Situation unbegleiteter minderjähriger Flüchtlinge in Deutschland*, December 2019, available in German at: <https://bit.ly/3fePy32>, 84.

⁶³⁰ FRA, *Migration – Fundamental Rights Concerns – Bulletin 1 January 2022*, available at: <https://bit.ly/3Ng4gbF>, p.23.

⁶³¹ Ibid. See also : Deutschlandfunk, ‘Flucht und TraumaWarum in Deutschland Therapieplätze für Migranten fehlen’, 5 November 2021, available in German at: <https://bit.ly/3wqm2CZ>; Xenion, ‘Deutschlandfunk: Janina Meyeringh im Interview zum Thema: Warum in Deutschland Therapieplätze für Migrant:innen fehlen’, 9 November 2021, available in German at: <https://bit.ly/3DiBu5H>.

⁶³² Queer.de, ‘München schafft Schutzräume für LGBTI-Flüchtlinge’, 19 January 2017, available in German at: <http://bit.ly/2jByQkW>; Die Welt, ‘Hamburg bietet Wohnungen für schwule Flüchtlinge an’, 4 August 2016, available in German at: <http://bit.ly/2DBL6rl>.

⁶³³ For protection concepts of different Federal States see Bundesinitiative Schutz von geflüchteten Menschen in Flüchtlingsunterkünften, Schutzkonzepte von Bundesländern, available in German at: <https://bit.ly/38MVVYX>.

⁶³⁴ Ministry of the Interior for North Rhine-Westphalia, ‘Landesgewaltschutzkonzept für Flüchtlingseinrichtungen des Landes Nordrhein-Westfalen’, March 2017, available at: <https://bit.ly/2ul7CCQ>.

⁶³⁵ BAMF, ‘Evaluation of AnKER Facilities and Functionally Equivalent Facilities’, Research Report 37 of the BAMF Research Centre, 2021, available in English at <https://bit.ly/3FgxXnq>

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.”⁶³⁶

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.

Information on the Covid-19 pandemic and related measures and advice was given out in many reception centres, but practise varied between Federal States and individual facilities (see [Conditions in reception facilities](#)).

Since 2019, Section 12a of the Asylum Act ensures that asylum seekers receive free of charge counselling on the asylum procedure (see [Provision of information on the procedure](#)). This does not include information on reception conditions, however.

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.⁶³⁷ Any restriction of access to reception centres for UNHCR would therefore be considered illegal.

There is no general rule for other third parties. Access of other organisations or individuals to reception centres can be restricted by house rules issued by the owner of the premises or by the management of the facilities. For instance, visits can generally be restricted to daytime hours, even for spouses in some facilities. 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. Access was further made difficult by Covid-19 related restrictions imposed since spring 2020 (see [Conditions in reception facilities](#)).

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.

⁶³⁶ Section 47(4) Asylum Act.

⁶³⁷ Section(9) Asylum Act.

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 Dependence**.⁶³⁸

⁶³⁸ ECRE, *The AnkER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2021:	Not available
2. Number of asylum seekers in detention at the end of 2021:	Not available
3. Number of pre-removal detention centres:	15
4. Total capacity of detention centres:	Around 1,000

Responsibility for detention, including detention pending removal (*Abschiebungshaft*), lies with the Federal States. Available statistics on detention pending removal 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 removal order may take effect regardless of legal remedy, unless a court grants an interim measure suspending such a removal. 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 removal order becomes enforceable.⁶³⁹ Accordingly, within the meaning of German law, detention is only ordered once an asylum application has been finally rejected. Therefore, detention pending removal generally does not affect asylum seekers within the scope of the law. However, a new provision of the Residence Act introduced in 2020 allows for the "preparatory" detention of persons who are subject to an entry ban and present "a significant danger to their own or others' lives, or to internal security" or have been convicted for criminal offences, including asylum seekers (see below).

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. 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.

The majority of the Federal States (9 out of 16) do not differentiate between detention in the context of a Dublin transfer or a return decision. Nevertheless, statistics provided by the other seven Federal States indicate that persons detained for a Dublin transfer made up between 0% and 25% of all detainees in 2020,⁶⁴⁰ with an overall average of 20.8 % (2019: average of 30.8 %, 2018: average of 34.4 %).⁶⁴¹ Available statistics also indicate that the number of Dublin transfers preceded by detention is relatively low, albeit with large differences between Federal States: between 0.8 % and 50 % of all Dublin transfers were preceded by detention in 2020.⁶⁴² In 2020, 2,953 persons were transferred following a Dublin procedure, compared to 8,423 in 2019 and 9,209 in 2018 (see

⁶³⁹ Section 67 Asylum Act.

⁶⁴⁰ Hesse, North Rhine-Westphalia, Rhineland-Platinate, Saxony, Saxony-Anhalt, Schleswig-Holstein, Thuringia. Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021.

⁶⁴¹ Bremen: 4 transfers out of detention (50 % of all transfers); North Rhine-Westphalia: 119 transfers out of detention (15.5 % of all transfers), Saxony: 1 transfer out of detention (1.5 % of all transfers), Saxony-Anhalt: 5 transfers out of detention (0.8 % of all transfers), Schleswig-Holstein: 3 transfers out of detention (4 % of all transfers), Thuringia: 5 transfers out of detention (6.3 % of all transfers), see Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021.

Dublin).

Specialised pre-removal detention facilities existed in twelve Federal States in 2021 (see [Place of detention](#)).⁶⁴³ The capacity of these detention facilities has increased significantly in recent years, from around 400 places in 2016,⁶⁴⁴ to 821 available places at the beginning of 2022.⁶⁴⁵ The high number of removals and the comparably low capacity of pre-removal detention facilities indicate that the vast majority of removals 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. Still, the increase in detention facilities over the last years occurred in parallel with rising numbers of detentions since 2017. The decrease in both removals and detentions in 2020 is related to the Covid-19 pandemic and travel restrictions, suspending removals for a certain period (see below).

Number of removals: 2015-2021						
2015	2016	2017	2018	2019	2020	2021
20,888	25,375	23,966	26,114	22,097	10,800	11,982

Source: Federal Government, Reply to parliamentary question by The Left, 18/7588, 18 February 2016, 18/11112, 9 February 2017, 19/800, 20 February 2018, 19/18201, 19 March 2020 and reply to written question by Bernd Baumann (AfD), 20/765, 17.

Number of persons detained for removal or Dublin transfer: 2015-2020					
2015	2016	2017	2018	2019	2020
1,850	2,821	4,163	4,481	5,208	3,063

Source: Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021.

If an asylum application is lodged after a person has been taken into detention pending removal, 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 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.

Detention during the Covid-19 pandemic

A number of Federal States released detainees at the outset of the Covid-19 outbreak in Germany since removals and Dublin transfers were temporarily suspended. As of mid-April 2020, there were still between 25 and 30 persons in detention, however.⁶⁴⁶ By way of example, the **Bavarian** authorities reported an important decrease in the number of persons detained in the spring of 2020 as detainees were released on the ground that their removal was no longer imminent due to travel restrictions. Detention numbers started to increase again in the summer of 2020, but with reduced capacities in detention facilities.⁶⁴⁷ In **Rhineland Palatinate**, no one was in detention the months of April and May 2020, whereas the numbers

⁶⁴³ Stefan Keßler, *Abschiebungshaft*, socialnet.de, 14 January 2019, available in German at: <https://bit.ly/2TiNCji>.

⁶⁴⁴ Paula Hoffmeyer-Zlotnik, *'Return Policy in Germany in the Context of EU Rules and Standards.'*, Study by the German National Contact Point for the European Migration Network (EMN). Working Paper 80 of the Research Centre of the Federal Office for Migration and Refugees, March 2018, p. 38, available in English at <https://bit.ly/3fRwsln>

⁶⁴⁵ For existing and planned facilities and their capacities as of 31 March 2021, see Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 23. Two of the planned facilities (Glückstadt in Schleswig-Holstein and Hof in Bavaria) have been opened as of January 2022.

⁶⁴⁶ ECRE, *Information Sheet 28 May 2020: Covid-19 Measures Related to Asylum and Migration Across Europe*, available at: <https://bit.ly/3IMPtZD>;

⁶⁴⁷ Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 3.

have been rising again since the summer of 2020.⁶⁴⁸ Detention conditions, including access for visitors and support groups, continue to be impacted by Covid-19 related restrictions however.

Over the course of 2020, the detention facilities in Büren (**North Rhine Westphalia**),⁶⁴⁹ and the closed detention facility in Eisenhüttenstadt (**Brandenburg**),⁶⁵⁰ were used for the detention of asylum seekers who had violated quarantine rules in reception facilities. This practice was criticised as discriminatory and racist, as this type of detention generally only applied to asylum seekers.⁶⁵¹ The practice, which authorities based on the infection protection law, was ruled unlawful by a Court in Paderborn in October 2021.⁶⁵²

Legal changes as a result of the “enforcement deficit” debate

Despite the stable number of removals over the last years prior to the Covid-19 outbreak, an alleged “enforcement deficit” had become the subject of a heated political debate and a “media obsession” in 2017 and 2018, as the authorities were being criticised for their failure to carry out removals.⁶⁵³ This has led to the demand for increased use of detention in the removal procedure. Available statistics on the year 2021 indicate that a total of 16,407 removals failed, compared to 11,982 effective removals.⁶⁵⁴ The most prominent reasons for failure to carry out removals were as follows:

Failed removals in focus: 2021		
Reasons for cancellation or abandonment of removal measures	Removals	Out of which Dublin transfers
Revocation of removal order by local authorities (before persons to be deported were handed over to the Federal Police)	10,850	2,337
Failure by local authorities to hand over persons to be deported to the Federal Police (reasons unknown)	4,798	650
Resistance of persons to be deported	161	77
Refusal of pilots or other flight personnel to transport the person to be deported	121	35
Refusal of Federal Police to take over persons to be deported from local authorities	72	28
Cancellation of flights (for technical reasons, strikes etc.)	91	3
Medical concerns	49	12
Legal actions (appeals or interim measures)	41	0
(Attempted) suicides or self-harm	7	3
Refusal by receiving states to accept deported persons	6	0

⁶⁴⁸ Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 5.

⁶⁴⁹ Hilfe für Menschen in Abschiebehaft Büren e.V., ‘Corona-Flüchtlingshaftanstalt Büren’, 26 April 2020, available in German at: <https://bit.ly/3uQmGr9>.

⁶⁵⁰ Neues deutschland, ‘Quarantäne-Verweigerer im Abschiebeknast’, 10 February 2021, available in German at <https://bit.ly/36VF4qg>.

⁶⁵¹ Hilfe für Menschen in Abschiebehaft Büren e.V., ‘Corona-Flüchtlingshaftanstalt Büren’, 26 April 2020, available in German at: <https://bit.ly/3uQmGr9>.

⁶⁵² 100-jahre-Aschiebehaft.de, ‘Rassistische Corona-Absonderungshaft in Büren war rechtswidrig’, 31 October 2021, available in German at: <https://bit.ly/3NrZyaT>.

⁶⁵³ Deutsche Welle, How do removals work in Germany?, 16 July 2018, available at: <https://bit.ly/2Hhh3uM>.

⁶⁵⁴ Federal Government, Reply to parliamentary question by The Left, 20/890, 2 March 2022, 20, 27.

Source: Federal Government, Reply to parliamentary question by The Left, 20/890, 2 March 2022, 20, 27.

The above statistics show that in the overwhelming majority of cases, the reasons for the failure of removals can be found at the level of local authorities, although it is not clear which exact circumstances led to the cancellation of removal measures in such cases. The Federal Government has no information on the number of cases in which persons to be deported were responsible for the cancellations (e.g. by absconding) and there are numerous other possible reasons for the cancellation of removal attempts (such as medical reasons, organisational problems etc.). It is also likely that persons can simply not be found on the date of the scheduled removals, due to them staying at another place rather than because they are deliberately avoiding to be arrested.⁶⁵⁵ Nevertheless, despite the lack of empirical evidence, the comparatively high number of cancellations of removal attempts is usually associated with the absconding of the persons concerned.

In 2019, requests for a more frequent use of detention pending removal in the political debate resulted in new legislation which came into force in August 2019 through the Second Act for an improved enforcement of the obligation to leave the country (*Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht*, also known as the “Orderly Return Act”/*Geordnete-Rückkehr-Gesetz*). As far as arrest and detention of persons to be deported are concerned, this Act introduced the following changes:

- Authorities were granted new powers to access and enter private apartments in order to search for persons to be deported (Section 58 Residence Act).
- It is now expressly regulated in the law that authorities carrying out a removal are entitled to arrest the person concerned. Thus, this short-term custody (*Festhalten*) is now legally distinguished from “detention” and is not subject to a court order. It has to be limited to the “inevitable” period of time which is necessary to transport the persons to be deported to the airport or to a border control point (Section 58 IV Residence Act). This new provision creates a legal basis for what has already been common practice.
- The grounds for detention pending removal were re-organised and expanded in the text of the law, in particular by adding new criteria to the definition of „risk of absconding“ (Section 62 Residence Act, see below:

⁶⁵⁵ Brief analysis of Dr. Thomas Hohlfeld (assistant to the parliamentary group of The Left) of the Federal Governments reply 19/17100, 20 March 2020, 5.

- [Legal framework of detention](#)).
- A new legal instrument was established with a form of “detention to enforce the obligation to cooperate” with authorities (*Mitwirkungshaft*, Section 62 VI Residence Act).
- Furthermore, the law also allows for the execution of detention pending removal in regular prisons (with certain reservations and limited to a transition period until June 2022). Several Federal States (**Berlin, Hesse, Lower Saxony, Mecklenburg-Vorpommern, Saxony Anhalt** and **Schleswig-Holstein**) reported to make use of this possibility at least in individual cases as of March 2021.⁶⁵⁶

The numerous and increasingly restrictive legal changes in previous years continued with a new detention provision in Section 62c Residence Act adopted in November 2020 (see [Grounds for detention](#)).

⁶⁵⁶ Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 6,8, 18-20.

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 are two possibilities for the detention of asylum seekers whose application is still pending. The first 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 removal (*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 removal, 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 prolongation of detention, such as a risk of absconding or an illegal stay for a duration of one month.

The second possibility was introduced in 2020 and related to persons who are subject to an entry ban and present “a significant danger to their own or others’ lives, or to internal security” or have been convicted for criminal offences, including asylum seekers (Section 62c Residence Act). According to the government, the provision is meant to allow for the detention of persons who are obliged to leave the country and who file an asylum application.⁶⁵⁷ NGOs such as PRO ASYL and the Federal Association for Unaccompanied Minors heavily criticised the new provision as it contains no safeguards for vulnerable groups and lacks a proper legal basis in the grounds for detention as provided by the EU Reception Conditions Directive.⁶⁵⁸

If the lodging of 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 international protection has been rejected as inadmissible or as manifestly unfounded.⁶⁵⁹

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 removal and if a judge cannot be requested to issue a detention order

⁶⁵⁷ Deutscher Bundestag, ‘Bundestag verschiebt Zensus in das Jahr 2022, 5 November 2020, available in German at <https://bit.ly/3H2nY6U>.

⁶⁵⁸ PRO ASYL, *Stellungnahme zum Entwurf eines Gesetzes zur Einführung eines § 62c Aufenthaltsgesetz*, 16 July 2019, available in German at <https://bit.ly/3ltbtSy>.

⁶⁵⁹ Section 14(3) Asylum Act.

beforehand. In such cases, the detention order has to be subsequently obtained from a court as soon as possible.

A judge may issue a detention order as “preparation of detention” (*Vorbereitungshaft*) in cases of persons who have been expelled (usually following a criminal conviction) and in cases of persons who have been given a removal order on the grounds that they pose a risk to national security.⁶⁶⁰ In most cases, however, a detention order is issued for the purpose of “safeguarding the removal” (*Sicherungshaft*). This type of detention is defined in Section 62(3) of the Residence Act.

This provision has undergone a major amendment in August 2019 as part of the so-called Second Act for an improved enforcement of the obligation to leave the country (*Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht*, also known as the “Orderly Return Act”/*Geordnete-Rückkehr-Gesetz*). Section 62(3) of the Residence Act now states that a foreigner shall be placed in detention pending removal “if:⁶⁶¹

- there is a risk of absconding;
- the foreigner is required to leave the country on account that he/she entered the territory unlawfully;
- a removal order has been issued pursuant to Section 58a [against persons who have been expelled or who have been found to pose a risk to national security] but is not immediately enforceable”.

Risk of absconding

With the 2019 amendments, two new sub-paragraphs 62(3a) and 62(3b) Residence Act were introduced which contain an extensive definition of the grounds which may lead to the assumption of the **risk of absconding** (*Fluchtgefahr*). According to section 62(3a) a risk of absconding is to be assumed (as a refutable assumption), if⁶⁶²

1. the foreigner is providing the authorities with misleading information about his or her identity or has done so in connection with the planned removal or with possible impediments to removal and has not corrected false information on his/her own initiative, in particular by withholding or destroying documents or by claiming a false identity;
2. the foreigner has been asked to remain at the disposal of the authorities at a certain place in order to carry out an official hearing or a medical examination and has not been present at this place without good reason;
3. the deadline set for leaving the country 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, in spite of having been informed about his/her obligation to do so;
4. the foreigner has been banned from (re-)entering Germany and has not been granted an exceptional permission to enter Germany in spite of such a ban;
5. the foreigner has avoided removal in the past;
6. the foreigner has expressly declared that he or she will resist removal.

Section 62(3b) of the Residence Act then defines ‘specific indications’ for a risk of absconding as follows:

⁶⁶⁰ Section 62(2) Residence Act.

⁶⁶¹ Unofficial translation by the author, with minor abridgements.

⁶⁶² Unofficial translation by the author, with abridgements.

1. The foreigner has provided the authorities with misleading information about his or her identity in a manner which might result in an impediment to removal and has not corrected this piece of information on his/her own initiative, in particular by withholding or destroying documents or by claiming a false identity;
2. the foreigner has paid substantial amounts of money, in particular to a third person [a smuggler or a trafficker] and it can be concluded under the individual circumstances that he or she will resist removal, because otherwise his or her expenditures would have been of no avail;
3. the foreigner poses a significant risk to life and limb of third persons or to "significant legal interests of national security";
4. the foreigner has been sentenced repeatedly to at least one prison term for intentional criminal offenses;
5. the foreigner has failed to obtain a passport or has refused or omitted to cooperate with authorities to fulfil other legal requirements for the clarification of his/her identity. The foreigner must have been informed in advance about the possibility of detention in case he or she did not comply with the aforementioned obligations;
6. the foreigner has repeatedly failed to comply with an obligation imposed by the authorities to take up residence in a particular region or place [residence obligation] or with other obligations imposed by the authorities to safeguard and enforce the removal order;
7. a foreigner who has entered the country legally but is now obliged to leave, cannot be apprehended by the authorities, because he or she does not have a place of residence at which he or she is predominantly staying.

It has been noted that the relationship of the newly introduced sub-paragraphs 62(3a) and 62(3b) Residence Act is not entirely clear.⁶⁶³ The Explanatory Memorandum to the new Act states that the "indications" listed in Section 62(3b) aim to define the more concrete grounds, whereas the "assumptions" listed in Section 62(3a) "allow for a more reliable prognosis" on whether a person is trying to avoid removal.⁶⁶⁴ This seems to imply that the "assumptions" listed in sub-paragraph 3a are supposed to serve as additional grounds for detention, while the concrete evidence as listed in Section 3b would provide the basis for a possible detention order as "objective criteria". However, the wording of the law does not support this interpretation: According to the law, a detention order can be based both on the "assumptions" of sub-paragraph 3a and on the "indications" of sub-paragraph 3b. The 2019 amendments therefore simply seem to have expanded the list of possible grounds for detention, rather than clarifying the preconditions for detention orders.

The new provisions have been criticised for their contradiction with the principle of detention as a "last resort". Furthermore, it has been pointed out that the concept of a "refutable assumption" as it is now set out in paragraph 3a is vaguely worded and places the full burden of proof on the individual who has to provide evidence that he/she is *not* trying to evade removal. Furthermore, Article 15 of the Return Directive (2008/115/EC) does not refer to the concept of a "refutable assumption" as sufficient grounds for a detention order. For this reason, it is doubtful whether the amendments, in particular the concept of the "refutable assumption" of sub-paragraph 3a are in line with the Return Directive.⁶⁶⁵

⁶⁶³ Stefan Keßler, *Freiheitsentzug ad libitum? Die Auswirkungen des „Hau-Ab-Gesetzes II“ auf die Abschiebungshaft*, in: *Das Migrationspaket, Beilage zum Asylmagazin 8-9/2019*, available in German at: <https://bit.ly/3boa7HM>, 44-54 (45).

⁶⁶⁴ Explanatory memorandum to draft bill, Parliamentary document 19/10047, 10 May 2019, 39.

⁶⁶⁵ PRO ASYL, *Stellungnahme zum Entwurf eines Zweiten Gesetzes zur besseren Durchsetzung der Ausreisepflicht (BT-Drucksache 19/10047)*, 29 May 2019, available in German at <https://bit.ly/2WqrSit>, 16.

Detention in the context of the Dublin procedure

Section 2(14) of the Residence Act further contains special provisions for **detention in the course of Dublin procedures** (also referred to as *Überstellungsgewahrsam*/transfer detention). As a general rule, this section provides that most of the grounds for detention referred to above have to be regarded in the context of this provision as well: thus, the grounds listed in Section 62(3a) of the Residence Act shall apply accordingly to constitute a “refutable assumption for a risk of absconding within the meaning of Article 2 of the Dublin III Regulation.” The grounds listed in Section 62 (3b) No. 1-5 of the Residence Act shall be regarded as objective criteria for a risk of absconding within the meaning of Article 2(n) of the Dublin III Regulation.

With the general reference to the “risk of absconding” as defined in Section 62, the expansion of possible grounds for detention is now applicable to the transfer detention in Dublin cases as well. NGOs have raised doubts as regards the compliance of this provision with the Dublin III Regulation.⁶⁶⁶ According to the latter, Member States may detain the person concerned only if there is a significant risk of absconding and on the basis of an individual assessment (Article 28 II of the Dublin III Regulation). In contrast, German law now lists numerous grounds for detention, some of which are vaguely worded thus raising the question as to whether they constitute significant reasons to assume a risk of absconding.

In addition, Section 2(14) of the Residence Act defines two other criteria for a “risk of absconding”:

1. 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.
2. An asylum seeker has repeatedly applied for asylum in another Dublin Member State (or several other Dublin Member States) and has left this state before the asylum procedure had been concluded.⁶⁶⁷

Through the introduction of another amendment in 2019, which is similar to an existing provision on detention pending removal, the authorities are now expressly given the competence to temporarily detain people if there is a risk of absconding and if a court order cannot be obtained immediately. This can be regarded as providing a legal basis for what has been common practice. In these cases, authorities have to present the case to a court as soon as possible (Section 2 XIV 4th sentence of the Residence Act).

1.2. Custody pending departure (*Ausreisegewahrsam*)

According to the Section 62b of the Residence Act, “custody pending departure” can be carried out in the transit zones of airports or in other facilities “from where a direct departure is possible without having to cross a long distance to reach a border crossing point”.⁶⁶⁸ 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 and in which an immediate removal (i.e. a removal within the time-limit of 10 days) is feasible. The foreigner must further have “displayed a behaviour which leads one to assume that he/she will make the removal more difficult or impossible.”

An amendment which took effect in August 2019 as part of the Second Act for an improved enforcement of the obligation to leave the country (*Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht*, also known as the “Orderly Return Act”/*Geordnete-Rückkehr-Gesetz*) now further defines the grounds for

⁶⁶⁶ Ibid., 5.

⁶⁶⁷ PRO ASYL, *Stellungnahme zum Entwurf eines Zweiten Gesetzes zur besseren Durchsetzung der Ausreisepflicht (BT-Drucksache 19/10047)*, 29 May 2019, available in German at <https://bit.ly/2WqrSIt>, 5.

⁶⁶⁸ Section 62b(2) Residence Act.

this assumption. According to this provision, it is to be assumed that a foreigner is likely to obstruct removal measures, if:

1. he or she violated his or her legal obligations to cooperate;
2. he or she misled the authorities on his or her identity or nationality;
3. he or she has been convicted of intentionally committing a criminal offence (with the exception of offences which are subject to a fine of up to 50 daily rates)
4. he or she has exceeded the deadline allowed for voluntary departure by more than 30 days.”

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.⁶⁶⁹ Between 2018 and 2021, custody pending departure has been carried out in 10 out of 16 Federal States.⁶⁷⁰

1.3. Detention to enforce cooperation (*Mitwirkungshaft*)

The amendments introduced in 2019 through the “Orderly Return Act” (*Geordnete-Rückkehr-Gesetz*) have also established a new ground of detention to “enforce cooperation” with authorities (*Mitwirkungshaft*, Section 62 (6) Residence Act). This form of detention may only be applied in the following cases:

- Failure to appear in person at the diplomatic mission or at a meeting with authorised officials of the foreigner’s assumed state of origin;
- Failure to appear in person for a medical examination for the purpose to establishing the foreigner’s ability to travel.

The maximum period foreseen for this detention ground is 14 days and is subject to a court order, which means that the authorities may not carry out short-term arrests on the basis of this provision. There was no information or case-law available as to whether this ground for detention was implemented since it entered into force in August 2019. In January 2020 media reports seemed to suggest that the new “detention to enforce cooperation” had not been used yet,⁶⁷¹ but it was not entirely clear from these reports which type of detention they were referring to.

1.4. *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 airport procedure, according to the Federal Constitutional Court, being held at the transit zone is not considered as detention in terms of the law.⁶⁷²

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.⁶⁷³

⁶⁶⁹ Section 62b(3) Residence Act.

⁶⁷⁰ Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021.

⁶⁷¹ br.de,Bericht: „Kein Bundesland nutzt “Geordnete-Rückkehr-Gesetz”, 3. January 2020.

⁶⁷² 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>.

⁶⁷³ See also: ECRE, *Airport procedures in Germany: Gaps in quality and compliance with guarantees*, May 2019, available at: <https://bit.ly/2ZgTn2H>.

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 removal 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 removal only in exceptional cases and only for as long as it is adequate considering the well-being of the child.”⁶⁷⁴

In spite of this provision, lawyers and NGOs have frequently criticised that detention pending removal 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.⁶⁷⁵ In court decisions, alternatives to detention are rarely discussed.⁶⁷⁶ The practice is resorting to detention also differs widely between Federal States: by way of example, in 2020 in Berlin detention was only ordered in 18 cases compared to 968 forced removals (2 %), whereas in Bavaria, 851 persons were detained for a total of 1,558 forced removals (i.e. 54%).⁶⁷⁷

In terms of available alternatives, 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](#)).⁶⁷⁸ 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.⁶⁷⁹ In particular, these sanctions may consist of reporting duties, but also of an obligation to consult a counselling service for returnees.⁶⁸⁰ Passports of foreigners obliged to leave the country can be confiscated.⁶⁸¹ The authorities may also ask foreigners who are obliged to leave the country to deposit a security to cover the costs of a possible removal.⁶⁸² However, the law does not allow for security deposits which may be used as bail and confiscated in cases of “absconding”.⁶⁸³

⁶⁷⁴ Section 62(1) Residence Act.

⁶⁷⁵ 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](#).

⁶⁷⁶ Stefan Keßler, *Abschiebungshaft*, socialnet.de, 14 January 2019, available in German at: <https://bit.ly/2TiNCji>.
⁶⁷⁷ Federal Government, Reply to parliamentary questions by The Left, 19/31669, 4 August 2021, 9-12, 19/18201, 19 March 2020, 19.

⁶⁷⁸ Section 61(1)(c) Residence Act.

⁶⁷⁹ Section 61(1)(e) Residence Act.

⁶⁸⁰ Section 46(1) General Administrative Regulations relating to the Residence Act.

⁶⁸¹ Section 50(5) Residence Act.

⁶⁸² Section 66(5) Residence Act.

⁶⁸³ Ministry of the Interior of the Federal State of Schleswig-Holstein, *Interministerielle Arbeitsgruppe (IMAG) "Alternative Abschiebungshaft"* (Report of a working group “alternative detention pending removal”), 25 March 2014, 5.

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.⁶⁸⁴

Obligations resulting from the ‘tolerated stay for persons with undetermined identity’

A whole range of obligations can be imposed on foreigners in connection with the newly established “tolerated stay for persons with undetermined identity” (*Duldung für Personen mit ungeklärter Identität*, also known as “*Duldung light*/toleration light”). This new document was introduced in August 2019 as part of the Second Act for an improved enforcement of the obligation to leave the country. Persons who are issued this document have to fulfil several obligations which are summarised in section 60b of the Residence Act and which include *inter alia*:

- Obligation to cooperate with German authorities and with authorities from the country of origin in measures aimed at obtaining a passport;
- obligation to make a declaration according to which the foreigner is prepared to leave Germany voluntarily, if the issuing of a travel document is dependent on such a declaration;
- obligation to make a declaration according to which the foreigner is prepared to perform military service in the country of origin, if the issuing of a travel document is dependent on such a declaration;
- obligation to pay fees for the issuing of travel documents.

Persons affected by this provision shall only be issued the “tolerated stay for persons with undetermined identity” until they adhere with the obligations referred to above. In general, the main legal consequences of this new kind of tolerated stay are:

- reduced social benefits (benefits according to Section 1a of the Asylum Seekers’ Benefits Act);
- obligation to reside in a place assigned by the authorities (*Wohnsitzauflage* according to Section 61 (1d) of the Residence Act);
- no right to work;
- no possibility to consolidate the stay, i.e. obtain a residence permit.

As of March 2021, 7.5 % of all persons with a tolerated status were granted this “Duldung light” (17,988 out of approx. 240,000 persons with a tolerated status), with large differences between Federal States.⁶⁸⁵

The new provision of Section 60b of the Residence Act generally does not apply to asylum seekers as long as the (regular) asylum procedure is pending, because they are not subject to the obligation to obtain a passport during this period. It may apply, however, to persons whose asylum application has been rejected as “manifestly unfounded” or as “inadmissible”, even if their appeal is still pending.⁶⁸⁶ The latter category may also include Dublin cases, but these are less significant in this context than it is in the context of removal to countries of origin, since the existence of passports or other travel documents is usually no obstacle to Dublin transfers. As a result, the new provision is mainly relevant for rejected asylum-seekers or persons who have never applied for asylum.

⁶⁸⁴ 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.

⁶⁸⁵ By way of example, Bavaria hosts around 12 % of all persons with a tolerated status but 23.6 % of all cases where a “tolerated status light” was issued were in Bavaria. See Letter of State Secretary Dr. Helmut Teichmann in reply to Ulla Jelpke (The Left), available in German at <https://bit.ly/3nP3ZRF>

⁶⁸⁶ Kirsten Eichler, *Das Sanktionsregime der „Duldung light“*, in: *Das Migrationspaket, Beilage zum Asylmagazin 8-9/2019*, available in German at: <https://bit.ly/3boa7HM>, 64-72,

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

In 2021, 1,915 children (under 18 years) were deported to third countries or transferred to another state under the Dublin Regulation.⁶⁸⁷ These measures usually involve that children are taken into custody for a few hours on the day the transfer takes place. Furthermore, 1,572 minors were returned to neighbouring countries after being refused entry on the territory, out of which 296 were registered as unaccompanied minors.⁶⁸⁸ The immediate returns (*Zurückweisungen*) or removals (*Zurückschiebungen*) are usually preceded by an arrest and a short-term apprehension.

With the exception of these short-term apprehensions, detention of minors ordered by a court seems to be exceptional. Between 2018 and the first quarter of 2021, no minors were reported to be detained during a Dublin transfer.⁶⁸⁹ By way of illustration, the regional government of the Federal State of **Hesse** informed the Parliament that detention of minors for the purpose of removals was “excluded”,⁶⁹⁰ and **Bavaria and Hamburg** equally report that minors are not detained as a rule.⁶⁹¹ For the period of 2018 until the first quarter of 2021, 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.⁶⁹²

In practice, however, detention of (possible) minors may occur in cases in which the age of the persons concerned is uncertain or disputed. The Refugee Council of **Lower Saxony** highlighted a case of an unaccompanied minor who had been detained by way of judicial order in the detention facility of **Hannover-Langenhagen** immediately after he had arrived from the Netherlands in February 2020. Detention was ordered by a judge despite the fact that the police had recorded his statement that he was 16 years old. An age assessment which took place in the detention centre later on came to the conclusion that it could not be excluded that the person concerned was younger than 18. As a result, the detention order had apparently been in breach of a directive from the Federal State which stipulates that minors should not be held in detention pending removal as a matter of principle.⁶⁹³

⁶⁸⁷ Federal Government, Reply to parliamentary question by The Left, 20/890, 20/890, 2 March 2022, 8.

⁶⁸⁸ Federal Government, Reply to parliamentary question by The Left, 19/27007, 25 February 2021, 17.

⁶⁸⁹ Federal Government, Reply to parliamentary questions by The Left, 19/31669, 4 August 2021, 107-123.

⁶⁹⁰ Government of the Federal State of Hesse, Response to information request by The Left, 20/773, 16 September 2019, available in German at <https://bit.ly/2VSjyJJ>, 7.

⁶⁹¹ Federal Government, Reply to parliamentary questions by The Left, 19/31669, 4 August 2021, 7;36.

⁶⁹² Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 10.,

⁶⁹³ Flüchtlingsrat Niedersachsen, „Unbegleiteter minderjähriger Flüchtling seit 13 Tagen rechtswidrig in Abschiebungshaft“, Press release of 3 March 2020, available in German at: <https://bit.ly/2YZedDC>.

An activist from North Rhine-Westphalia further reported in an interview conducted at the end of 2019 that in some cases detained persons have entered the detention facility of **Büren** as adults (following an age assessment), but have left it as children, because they were found to be of minor age when travel documents were issued by the authorities of the country of origin. In one of these cases, a person detained as an adult was later found to be only 14 years old. The persons concerned were released from detention. Nevertheless, they remain registered as adults in the detention centre's statistics, which leads to the false impression that no minors have been detained, according to the interviewee.⁶⁹⁴

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. While some Federal States provide for separate detention of women, others use the facilities of other Federal States – notably the detention facility of Ingelheim in Rhineland Palatinate - and only detain men in their own detention facilities.⁶⁹⁵ Between 2018 and the first quarter of 2021, only **North Rhine-Westphalia** reported to have detained a total of 4 vulnerable persons in 2018, two of which were elderly persons, one a person with disabilities and one person who turned out to be a minor and was subsequently released.⁶⁹⁶

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 removal 10 days
2. In practice, how long in average are asylum seekers detained? 22 days (pre-removal detention)

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.⁶⁹⁷

The maximum time limit for the duration of the custody pending departure (*Ausreisegewahrsam*) is 10 days.⁶⁹⁸

Between 2018 and the first quarter of 2021, the average duration of detention was 22.1 days (see table below for a breakdown by year and Federal State). Statistics made available by Federal States further 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 with only a handful of cases reported every year overall.⁶⁹⁹

Average duration in days of pre-removal detention: 2018 – Q1 2021				
	2018	2019	2020	Q1 2021
Baden-Württemberg	33.8	29.7	22.3	N/A
Bavaria	33.3	30.1	19.5	19.2
Berlin	59	17	28	20

⁶⁹⁴ ze.tt, 'Eingesperrt ohne Straftat: So sind die Bedingungen in einem Abschiebegefängnis', 14 December 2019, available in German at <https://bit.ly/2T0KZ3g>.

⁶⁹⁵ Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 23-25.

⁶⁹⁶ Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 10.

⁶⁹⁷ Section 62(4) Residence Act.

⁶⁹⁸ Section 62b(1) Residence Act, as amended by the Law of 20 July 2017.

⁶⁹⁹ Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 38 et seq.

Brandenburg	-	-	-	-
Bremen	18.5	21.4	15.8	8
Hamburg	16	17	12	14
Hesse	22	23	22	16
Mecklenburg-Vorpommern	N/A	N/A	less than 2 weeks	2-6 weeks
Lower Saxony	20	22	21	19
Rhineland-Palatinate	29	26	25	25
North Rhine-Westphalia	33.8	29.5	23.1	15.8
Saarland		-	-	-
Saxony	8	22	16	17
Saxony-Anhalt	24.6	23.5	13.42	9.57
Schleswig-Holstein	23	26	22	23
Thuringia	30.7	19.1	22.2	20.3
Overall average	27.1	23.6	20.2	17.2

Source: Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 67-68

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

- 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
- 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

Detention pending removal is usually carried out in specialised detention facilities. 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,⁷⁰⁰ 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.

Until August 2019, the use of specialised detention facilities for pre-removal detention was also prescribed by law. However, the relevant provision of Section 62a (1) of the Residence Act was amended as part of the so-called "Orderly Return Act".⁷⁰¹ Since then, the first sentence of this provision reads:

⁷⁰⁰ CJEU, Joined Cases C-473/13 and C-514/13 *Bero v Regierungspraesidium Kassel & Bouzalmane v Kreisverwaltung Kleve*, Judgment of 17 July 2014.

⁷⁰¹ Full title: „Second Act for an improved enforcement of the obligation to leave the country“/Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht, also known as the "Orderly Return Act"/Geordnete-Rückkehr-Gesetz.

Persons in detention pending removal have to be accommodated separately from prisoners [*Strafgefangene*, i.e. persons detained in the penal system].

This means that detention pending removal can also be carried out in regular prisons. This provision is in effect until June 2022, since the “Orderly Return Act” foresees that from 1 July 2022 the wording of the provision will again be: “As a rule, detention pending removal is to be carried out in specialised detention facilities.”⁷⁰² Several Federal States (Berlin, Hesse, Lower Saxony, Mecklenburg-Vorpommern, Saxony Anhalt and Schleswig-Holstein) reported to make use of the possibility of detention in regular prisons at least in individual cases as of March 2021.⁷⁰³

In the Explanatory Memorandum to the Orderly Return Act, the government states that the new provision shall enable the Federal States to create up to 500 additional places for the purpose of detention pending removal. The stated reason is an alleged acute shortage of such places in the light of a high number of third-country-nationals who are obliged to leave the country. In light of this situation, the government also claims that the new provision is in line with European legislation, namely Article 18(1) of the Return Directive which allows for a derogation from the standards for conditions of detention in emergency situations.⁷⁰⁴

Critics and serious doubts have been raised as to whether Germany is currently facing such an emergency situation. Even if a rising number of persons in detention pending removal were to be recorded or expected, Federal States would still have enough time and opportunity to raise capacities of specialised institutions accordingly. Thus, the mere inaction of authorities to that end should not justify a breach of European law.⁷⁰⁵ After the CJEU’s general advocate had argued for the incompatibility of the provision in his opinion of 25 November 2021,⁷⁰⁶ the CJEU issued its decision on 10 March 2022.⁷⁰⁷ The Court did not adjudicate on the existence of an emergency situation, but ruled that national courts would have to examine the question when asked to issue a detention order. However, the CJEU argued that an emergency situation cannot be based solely on a high number of persons who are obliged to leave, and that a failure on the side of the state to provide for sufficient specialised detention facilities cannot justify an emergency situation. Furthermore, the court ruled that conditions in detention facilities must not be prison-like if they are to qualify as specialised detention facilities in the sense of the EU Return Directive. According to the lawyer filing the original case, this puts in question some of the existing specialised detention facilities such as Glückstadt in **Schleswig-Holstein** or Hof in **Bavaria** that are surrounded by high walls and barbed wire.⁷⁰⁸

Plans for a combined facility, which nevertheless takes into account the separation of prisoners and pre-removal detainees, were announced in **Bavaria** during the summer of 2018. According to media reports, both detention facilities are to be built on the same site in the town of **Passau**. However, the facility for detention pending removal will be separated from the other buildings by a wall and it will be separately accessible from the outside. Completion of the new facility is scheduled for the end of 2022 at the earliest.⁷⁰⁹

⁷⁰² Article 6 of the “Second Act for an improved enforcement of the obligation to leave the country”.

⁷⁰³ Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 6,8, 18-20.

⁷⁰⁴ Federal Government, Explanatory memorandum to the Second Act for an improved enforcement of the obligation to leave the country, Parliamentary document no. 19/10047, 42-43.

⁷⁰⁵ Stefan Keßler, *Freiheitsentzug ad libitum? Die Auswirkungen des „Hau-Ab-Gesetzes II“ auf die Abschiebungshaft*, in: *Das Migrationspaket*, Beilage zum Asylmagazin 8-9/2019, available in German at: <https://bit.ly/3boa7HM>, 44-54 (53).

⁷⁰⁶ CJEU, Case C-519/20, opinion available at <https://bit.ly/3rFSkG3>

⁷⁰⁷ CJEU, Case C-519/20, 10 March 2022, available in German at: <https://bit.ly/3NtZt6u>.

⁷⁰⁸ PRO ASYL, ‘Abschiebehaf: Der EuGH schiebt Deutschland einen Riegel vor’, 16 March 2022, available in German at: <https://bit.ly/3wIGz5S>.

⁷⁰⁹ Passauer Neue Presse, ‘JVA Passau wird mit Neubau eigenständig’, 3 August 2018, available in German at: <https://bit.ly/3cG3bH6>.

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 and **Darmstadt-Eberstadt** in Hesse.

In 2021, two new detention facilities opened: one in Glückstadt, Schleswig-Holstein, which is used by the Federal States **Schleswig-Holstein**, **Hamburg**, **Mecklenburg-Vorpommern** and has the capacity to accommodate up to 60 people,⁷¹⁰ and one in Hof, **Bavaria**. The detention centre in Hof can accommodate a total of 150 people, making it the second largest detention centre in Germany. At Munich airport, a new detention centre was opened in January 2022 which replaced the more provisional detention facility “Hangar 3”.⁷¹¹

The Federal State of **Saxony-Anhalt** had been planning to convert a former prison in Dessau-Roßlau into a detention facility, but this was abandoned in January 2021 as the necessary renovation works turned out to be too expensive.⁷¹² According to press reports, the government of **North Rhine-Westphalia** is planning a second detention facility near Düsseldorf airport that should be used mainly for custody pending departure, with a capacity of around 25 places.⁷¹³ The Federal States of **Thuringia** and **Berlin** do not intend to build facilities of their own and only make use of detention facilities in other Federal States.⁷¹⁴

At the beginning of 2022, facilities for detention pending removal existed in ten Federal States:

Pre-removal detention facilities in Germany: 2021		
Federal State	Location	Maximum capacity
Baden-Württemberg	Pforzheim	51
Bavaria	Eichstätt	96
	Erding	35
	Munich Airport	22
	Hof	150
Bremen	Bremen	16
Hamburg	Hamburg Airport	20
Hesse	Darmstadt-Eberstadt	80
	Frankfurt Airport	
Lower Saxony	Hannover (Langenhagen)	48
North Rhine-Westphalia	Büren	175
Rhineland-Palatinate	Ingelheim am Rhein	40
Saxony	Dresden	58
Schleswig-Holstein	Glückstadt	60
Total	14	821

Source: Source. Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 23.

Other types of detention facilities

⁷¹⁰ NDR, ‘Abschiebehaft in Glückstadt fertig, Insassen sollen bald kommen’, 5 August 2021, available in German at <https://bit.ly/33L1toG>.

⁷¹¹ Süddeutsche Zeitung, ‘Hafteinrichtung am Airport: “Überteuertes Symbol bayerischer Abschreckung”’, 12 January 2022, available in German at <https://bit.ly/33XJcEG>

⁷¹² Mdr.de, ‘Abschiebegefängnis in Dessau kommt nicht’, 29 January 2021, Available in German at <https://bit.ly/3GW47GO>

⁷¹³ 100-jahre-atschiebehaft.de, ‘Land NRW will neue Haftplätze schaffen’, Press statement of “Hilfe für Menschen in Abschiebehaft Büren”, 9 September 2021, available in German at: <https://bit.ly/3NrZyaT>.

⁷¹⁴ welt.de, ‘Die Kapazität genügt nicht dem tatsächlichen Bedarf’, 7 October 2019, available in German at <https://bit.ly/2Z2nPNQ>.

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.

Persons in custody pending removal under Section 62b of the Residence Act (*Ausreisegewahrsam*) are usually detained in general detention facilities. However, not all Federal States differentiate between pre-removal detention and custody in available statistics.⁷¹⁵In July 2019 the Federal State of **Brandenburg** opened a short-term detention facility (only for the purpose of the *Ausreisegewahrsam* under Section 62b, and reportedly limited to a maximum stay of 48 hours) at the airport of Berlin-Schönefeld, which is located on the territory of Brandenburg.⁷¹⁶ According to the Berlin Refugee Council the Federal State of **Berlin** may also use the facility at Schönefeld airport for short-term detention.⁷¹⁷

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.⁷¹⁸

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*). The new facility opened in January 2022 hosts both pre-removal detention and the “transit centre” for persons subject to the airport procedure.⁷¹⁹ At the new airport of Berlin (*BER*), the opening of a new “arrival and departure centre” is foreseen for 2024. The centre will include facilities to carry out the airport procedure but also facilities and personnel from other authorities which are involved in the return procedure such as the Federal Police, local courts, the public prosecutor’s office and the municipal authority.⁷²⁰

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. the **Munich Airport** detention centre or the detention centre in **Hamburg**.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

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

National law only provides basic rules for detention centres. As a result, conditions differ very much throughout the country.⁷²¹ Health care in detention is in general provided according to the provisions of

⁷¹⁵ Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021.

⁷¹⁶ Initiative 100 Jahre Abschiebehaft, Berlin-Schönefeld (Brandenburg), available in German at: <https://bit.ly/3aa9Ze4>.

⁷¹⁷ Flüchtlingsrat Berlin, 100 Jahre Abschiebehaft – 100 Jahre Haft ohne Straftat, 8 May 2019, available in German at: <https://bit.ly/2RScKuz>.

⁷¹⁸ ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

⁷¹⁹ Süddeutsche Zeitung, ‘Hafteinrichtung am Airport: “Überteuertes Symbol bayerischer Abschreckung”’, 12 January 2022, available in German at <https://bit.ly/33XJcEG>

⁷²⁰ Information provided by the BAMF, 10 March 2022.

⁷²¹ Jesuit Refugee Service, *Detention in Europe: Germany*, available at: www.detention-in-europe.org.

the Asylum Seekers benefits Act, which foresees emergency care only (see [Health Care](#)).⁷²² 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** 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**, 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. An overview of facilities and a collection of reports in German on detention conditions can also be found at “[100 Jahre Abschiebehäft](#)” (100 years of custody pending removal), a website run by activists campaigning for the general abolishment of detention pending removal:

Darmstadt-Eberstadt, Hesse: The facility was opened at the beginning of 2018. Detention conditions have been criticised heavily by local activists who, in a newspaper report of January 2020, refer to several detainees who went on hunger strike to protest against poor detention conditions and because they received no medical care. The facility’s management rejected the allegations and pointed out that a doctor was regularly available in the facility.⁷²³ A new, enlarged facility was opened in Darmstadt-Eberstadt in January 2021. According to the state government, the reception standards in the new facility are “considerable higher” than in the previous facility.⁷²⁴

The State law of 2017 sets out some basic principles for the facility.⁷²⁵ 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). According to a local activist and visitors’ group, however, in 2021 detainees were only allowed one hour of yard exercise per day, and visits are limited to three persons at a time and one hour.⁷²⁶ There are two social workers at the facility, and one external person providing counselling 4 hours a week.⁷²⁷ Detainees are allowed to use their mobile phones but without the camera function, and they have to buy mobile subscriptions at their own costs.⁷²⁸ They receive 20 Euros of “pocket money” per week from which they can buy products from a pre-defined shopping list.⁷²⁹ Health care in detention is described by local activists as insufficient, especially for detainees with serious conditions.

⁷²² PRO ASYL, ‘Schutzlos hinter Gittern. Abschiebungshaft in Deutschland’, June 2013, 24, available in German at: <https://bit.ly/3JCqxOv>.

⁷²³ fr.de, ‘Hessen: Abschiebe-Gefängnis in Darmstadt hat immer wieder mit Vorwürfen zu kämpfen, 14 February 2020’, available in German at <https://bit.ly/2T4vK9s>.

⁷²⁴ Frankfurter Rundschau, ‘Hessen vervierfacht Haftplätze in Abschiebegefängnis in Darmstadt’, 30 January 2021, available in German at <https://bit.ly/3ot0ot1>.

⁷²⁵ Official Gazette for the Federal State of Hesse, Gesetz über den Vollzug ausländerrechtlicher Freiheitsentziehungsmaßnahmen (VaFG), 18 December 2017, available at: <https://bit.ly/2Cael74>.

⁷²⁶ Community for All, ‘Knastreport’, Newsletter Volume 5, December 2021. Available in German at <https://bit.ly/3iGnrgu>.

⁷²⁷ Lina Droste and Sebastian Nitschke, ‘Die Würde des Menschen ist abschiebbar. Einblicke in Geschichte, Bedingungen und Realität deutscher Abschiebehäft’, 1. Auflage 2021, Münster: edition assemblage, 96.

⁷²⁸ Section 14, Gesetz über den Vollzug ausländerrechtlicher Freiheitsentziehungsmaßnahmen (VaFG), 18 December 2017, available at: <https://bit.ly/2Cael74>.

⁷²⁹ Lina Droste and Sebastian Nitschke, ‘Die Würde des Menschen ist abschiebbar. Einblicke in Geschichte, Bedingungen und Realität deutscher Abschiebehäft’, 1. Auflage 2021, Münster: edition assemblage, 96.

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.⁷³⁰ 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 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.⁷³¹ 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 restrictive amendments to the Federal State’s law on the enforcement of detention pending removal.⁷³² 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.

⁷³⁰ Nationale Stelle zur Verhütung von Folter. Unterbringungseinrichtung für Ausreisepflichtige Büren, Besuch vom 24./25. Januar 2018, available in German at <https://bit.ly/2CQ6Bbl>.

⁷³¹ Ministerium für Kinder, Familie, Flüchtlinge und Integration des Landes Nordrhein-Westfalen, Statement of 28 September 2018, available in German at: <https://bit.ly/2EUuxgn>.

⁷³² 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>.

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 restrictions used in the regular prison system.⁷³³ The support group “Hilfe für Menschen in Abschiebehaft Büren” shared this view and further criticised that complaint mechanisms and legal measures to challenge the new security measures were insufficient.⁷³⁴

Detention conditions at the Büren facility were described in detail in an interview with Frank Gockel at the end of 2019, a local activist and member of the support group “Hilfe für Menschen in Abschiebehaft Büren” which offers advice for detainees on a weekly basis:⁷³⁵

- Upon arrival detainees have to undress completely to be checked (mouth, ears, nose, anus). This check can be carried out by force if the person refuses to undress.
- Most cells are equipped with a table, bed, television, locker, chair, toilet and a sink.
- Cells are open for at least eight hours a day, the courtyard is accessible for one or two hours a day. Leisure activities include table tennis, billiard and a gym. In some areas there is a common kitchen for four to five people and an internet access which four people share.
- Visits can take place between 9:30 a.m. and 7 p.m., but the facility is located far out of town and there is no connection to public transport (nearest bus stop is 8 km away).
- Against persons who act in breach of the house rules various sanctions can be imposed. This usually means that persons remain locked in their cells for the most part of the day and therefore have no contact to other detainees. In more serious cases, detainees may be banned from all leisure activities and they may even be placed under 24-hour surveillance. For persons who pose a risk to themselves or to others, specially secured cells are available, in which persons may be tied to a bed frame. The latter measure requires a court order, according to the regional government and it has not been applied in many cases (below 10 cases since 2015, according to the government, more than 10 cases according to the interviewee).

With the outbreak of Covid-19, people continued to be detained in Büren. According to the support group “Hilfe für Menschen in Abschiebehaft Büren”, detainees were not informed in an adequate manner about measures taken in the context of the pandemic.⁷³⁶ This was aggravated by the lack of access to support groups (see [Access to detention facilities](#)).

Pforzheim, Baden-Württemberg: A Protestant priest reported in May 2019 that the facility did not have a room to hold religious ceremonies.⁷³⁷ According to the Refugee Council of Baden-Württemberg, the regional government had stated that there had been no demand for religious services at the facility. The Refugee Council described this statement as false, referring to several incidents in the past where detainees had asked to hold a religious service, but the priest was only allowed to visit one person at a time. The Refugee Council also criticised that medical care had not always been guaranteed. For example, a priest had organised an urgent appointment at an ophthalmologist for a detainee, but the person concerned had not been allowed to leave the facility for this appointment.⁷³⁸ In May 2019, following a protest outside the detention centre where one detainee spoke to the protesters via telephone, activists have reported severe repressive measures from the police and personnel, leading to isolation of several detainees, including a lack of access to showers or medical treatment. A petition on the matter, filed to the

⁷³³ Flüchtlingsrat Nordrhein-Westfalen, *Stellungnahme: Referentenentwurf Gesetz zur Änderung des Abschiebungshaftvollzugsgesetzes Nordrhein-Westfalen*, 9 August 2018, available in German at <https://bit.ly/2XxduGq>.

⁷³⁴ Hilfe für Menschen in Abschiebehaft Büren, *Stellungnahme zur Anhörung zum Abschiebungshaftvollzugsgesetz*, 7 November 2018, available in German at: <https://bit.ly/2UmjGiG>.

⁷³⁵ ze.tt, *Eingesperrt ohne Straftat: So sind die Bedingungen in einem Abschiebegefängnis*, 14 December 2019, available in German at: <https://bit.ly/2T0KZ3g>.

⁷³⁶ Hilfe für Menschen in Abschiebehaft Büren e.V., *„Offener Brief: Aussetzung der Abschiebehaft während der Corona-Pandemie“*, 15 April 2020, available in German at: <https://bit.ly/3qGbTOH>.

⁷³⁷ bnn.de, *„AG Abschiebehaft Pforzheim klagt über Umgang mit Betroffenen“*, 10 May 2019, available in German at: <https://bit.ly/3fMY5uY>.

⁷³⁸ Flüchtlingsrat Baden-Württemberg, *Misstände in der Abschiebehaft werden geleugnet, Stellungnahme des Flüchtlingsrats Baden-Württemberg zur Berichterstattung über die Abschiebehaft Pforzheim*, 17 May 2019, available in German at: <https://bit.ly/3dVHgFf>.

State parliament, had been without response 15 months later. In April 2020, detainees who had been transferred from the detention centre in **Damrstadt-Eberstadt, Hesse**, started a hunger strike to protest the detention conditions in Pforzheim.⁷³⁹

Eichstätt, Bavaria: Following a fact-finding mission conducted in April 2019, ECRE made the following observations on the conditions at the Eichstätt facility: The pre-removal detention centre (*Einrichtung für Abschiebungsschaft*) 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.

Reports about self-harm are 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 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.⁷⁴⁰

In a report published in May 2019, the European Committee for the Prevention of Torture (CPT) summarised detention conditions at Eichstätt as follows (based on a visit to the facility in August 2018):

„While material conditions at the facility in Eichstätt were generally very good in terms of state of repair, living space, access to natural light, ventilation and equipment, the environment did not take into account the specific situation of immigration detainees, with a number of restrictions that appeared unnecessary.[...].

Moreover, due to the applicable legislation on the execution of prison sentences, the regime for immigration detainees held at the establishment was – to all intents and purposes – comparable to that of sentenced prisoners. The only significant differences concerned the fact that the detainees were not obliged to work and that they could usually have more contact with the outside world and spend more time outside their cells. However, male detainees – in contrast to female detainees – did not benefit from an open-door regime (indoors); [...].⁷⁴¹

According to the CPT's report, common rooms with sports equipment or television were only accessible for a maximum of two and a half hours per day, while the outdoor exercise yard could only be accessed in the afternoon. While detainees were allowed to make phone-calls and were provided with free-of-charge phone cards for that purpose, they did not have access to the internet. Persons who behaved violently or who had either attempted or threatened to commit suicide can be referred to security cells at the Eichstätt facility. The facility's director stated that persons were not referred to these cells for disciplinary reasons, but only if they pose a risk to themselves or to others. The CPT criticised that conditions in the security cells were "akin to solitary confinement", since people were locked up for 24 hours a day without access to outdoor exercise and they often were not allowed to make phone calls or receive visits.⁷⁴²

⁷³⁹ Aktionbleiberecht.de, 'Fragwürdiger Umgang der Landesregierung mit der institutionellen Gewalt in der Abschiebehaf in Pforzheim', 31 August 2020, available in German at: <https://bit.ly/3iCDCLQ>.

⁷⁴⁰ ECRE, *The AnkER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

⁷⁴¹ Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 15 August 2018, 9 May 2019, available at: <https://bit.ly/2JJiN0z>, 27.

⁷⁴² Ibid. 28 and 31.

Glückstadt, Schleswig-Holstein: The detention facility in Glückstadt was opened on 16 August 2021. At the start, capacity was limited to 12 people, and this is to be gradually increased to the maximum capacity of 60 places. The State government describes the facility as “setting new standards for humane enforcement”, with rooms with private toilets, mobile phones without camera provided by the facility and pocket money for detainees. The facility employs six full-time medical staff, the protestant welfare association Diakonie is present in the facility to provide counselling on social matters, and psychological care is assured via a cooperation with the psychiatric hospital in Itzehoe, according to the government.⁷⁴³ Independent legal advice is not provided by the authorities. Instead, a student-led initiative of two Law Clinics based in Hamburg provides free legal advice in coordination with the Diakonie staff.⁷⁴⁴ While being of a comparatively high standards when it comes to detention conditions, the facility is surrounded by high walls and barbed wire like facilities in other Federal States.⁷⁴⁵ Furthermore, while mobile phones are provided, they do not allow communication via internet-based messengers, which means most communication with family, friends or supporters is only possible via the three shared computers, making private communication difficult.⁷⁴⁶ NGOs such as PRO ASYL, church organizations and local activists criticized the opening of the facility, pointing to the fact that even “beautiful” facilities cannot do away with the immense psychological pressure on detainees and the fact that detention is often ordered unlawfully.⁷⁴⁷ Over the course of 2021, a total of 38 persons were detained in Glückstadt.⁷⁴⁸ The number of detainees has been rising over the course of the year and in early 2022 with new parts of the detention center opening.⁷⁴⁹

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

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

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 removal if the latter so request.” Access of NGOs to detention centres varies in practice.

In addition, access was hampered by restrictions related to Covid-19 throughout 2020 and 2021. By way of example, the detention facility in **Darmstadt-Eberstadt (Hesse)** still allows for only one visitor at a time at the end of 2021 (see also below).⁷⁵⁰

⁷⁴³ Nordkurier, ‘Abschiebe-Haftanstalt in Norddeutschland wird eröffnet’, 5 August 2021, available in German at <https://bit.ly/3tGHqSt>.

⁷⁴⁴ Information provided by the « Abschiebehaftberatung HH” on 15 April 2022, see <https://abschiebehaftberatung-hh.de/>

⁷⁴⁵ The state government website hosts a “virtual tour of the facility before its opening which is openly accessible, see <https://bit.ly/3NtTQFw>.

⁷⁴⁶ Information provided by the « Abschiebehaftberatung HH” on 15 April 2022,, see <https://abschiebehaftberatung-hh.de/>

⁷⁴⁷ Evangelische Kirche in Mecklenburg-Vorpommern, , Abschiebehaft in Glückstadt eröffnet’, 16 August 2021, available in German at <https://bit.ly/3uDjVoe>.

⁷⁴⁸ Norddeutsche Rundschau, ‘Alltag in der Abschiebehaftereinrichtung Glückstadt’, 30 December 2021, available in German at: <https://bit.ly/37SLHKb>.

⁷⁴⁹ Information provided by the « Abschiebehaftberatung HH” on 15 April 2022,, see <https://abschiebehaftberatung-hh.de/>

⁷⁵⁰ Community for All, ‘Knastreport’, Newsletter Volume 2, April 2021. Available in German at <https://bit.ly/3iGnrgu>

The Refugee Council of Baden-Württemberg has compiled the following information on counselling services in some facilities:⁷⁵¹

- **Ingelheim, Rhineland-Palatinate:** An ecumenical counselling center has its own office in the facility with regular opening hours;
- **Hannover-Langenhagen, Lower Saxony:** The Refugee Council of Lower Saxony offers advice regularly in a conference room in the facility.
- **Eichstätt, Bavaria and Erding, Bavaria:** The Jesuit Refugee Service is offering consultation services regularly either in common rooms or in the rooms of the social services in the facility.

In contrast, the facility at Pforzheim, Baden-Württemberg, did not provide priests and other persons offering advice with a separate room. Therefore, visits had to take place in small visitor's rooms ("visitor cells"). The regional government claimed that there was no separate room for "capacity reasons" and that this was common practice in detention centres. This statement was refuted by the Refugee Council based on the information provided above.

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 certain particular detainees, was "massively impeded" by the authorities.⁷⁵² The group reiterated its criticism in a statement to a parliamentary committee in November 2018.⁷⁵³ The group usually visits the detention centre on a weekly basis, but since March 2020 support has been provided via telephone only according to the group's website⁷⁵⁴ due to restrictions on visits which make adequate support and counselling impossible. The rules only allow three members of the group to visit and limit visiting times. This limitation, as well as rules requiring 4 metres of distance between detainees and visitors, also applied to other visits as of August 2020.⁷⁵⁵

Darmstadt-Eberstadt, Hesse: According to the law which sets out basic principles for the facility,⁷⁵⁶ 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 for a maximum of one hour, while lawyers and consular representatives may visit at all times. The local activist and visitors group "Community for All" provides support through private visits and via telephone. In addition, there is one person offering external counselling for 10 hours per week. However, access for visitors has been restricted since the outbreak of Covid-19. As of end 2021, only one person was allowed to visit at a time, despite protective measures against Covid-19 being in place (such as the requirement to show proof of vaccination or recovery and to wear a mask). According to the group, this makes the provision of advice very difficult since it is not possible to bring translators. During the pandemic, support was provided mainly via mobile phone and digital means.⁷⁵⁷ In addition, practical difficulties for family

⁷⁵¹ Flüchtlingsrat Baden-Württemberg, *Misstände in der Abschiebehaft werden geleugnet, Stellungnahme des Flüchtlingsrats Baden-Württemberg zur Berichterstattung über die Abschiebehaft Pforzheim*, 17 May 2019, available in German at: <https://bit.ly/3dVHgF>. An overview of existing detention facilities and support services is also available here: <https://bit.ly/340ZpZK>

⁷⁵² Hilfe für Menschen in Abschiebehaft Büren, 'Schwere Menschenrechtsverletzungen in der Abschiebehaft Büren', 24 January 2018, available in German at: <https://bit.ly/2pYgn3k>.

⁷⁵³ Hilfe für Menschen in Abschiebehaft Büren, 'Stellungnahme zur Anhörung zum Abschiebungshaftvollzugsgesetz', 7 November 2018, available in German at: <https://bit.ly/2UmjGiG>.

⁷⁵⁴ Hilfe für Menschen in Abschiebehaft Büren, 'Die Betreuungsarbeit', available in German at <https://bit.ly/3KBBm4r>

⁷⁵⁵ 100-jahre-Aschiebehaft.de, 'Erinnern an Rachid Sbaai – Mahnwache 30.08. am Abschiebegefängnis Büren', Press statement of "Hilfe für Menschen in Abschiebehaft Büren", 28 August 2020, available in German at: <https://bit.ly/3NrZyAT>.

⁷⁵⁶ Official Gazette for the Federal State of Hesse, Gesetz über den Vollzug ausländerrechtlicher Freiheitsentziehungsmaßnahmen (VaFG), 18 December 2017, available at: <https://bit.ly/2Cael74>.

⁷⁵⁷ Community for All, 'Knastreport', Newsletter Volume 5, December 2021. Available in German at <https://bit.ly/3iGnrgu>.

and civil society visits were reported by a local activist visitors group in 2021, such as denial of access even when appointments were made.⁷⁵⁸

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.⁷⁵⁹

Glückstadt, Schleswig-Holstein: Access for visitors and legal representatives is possible in the detention facility between 8 am and 7 pm, except for the lunch break hours (between 12 pm and 2 pm).⁷⁶⁰ A support and visit group was formed in September 2021.⁷⁶¹

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. Access to other NGOs remains difficult, however.

At the “airport facility” (*Flughafenunterkunft*) of **Munich Airport**, the Church Service (*Kirchliche Dienste*) has access but no permanent presence on the premises; staff of the service travel thereto from the airport terminal when necessary.⁷⁶²

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

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

Under German law, only a judge is competent for the order and the prolongation of detention. The responsible courts are the District Courts (*Amtsgericht*) and their decision can be challenged at a Regional Court (*Landgericht*), in another instance at High Regional Courts (*Oberlandesgericht*) 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 removal, this may be particularly relevant if the detention order is based on an

⁷⁵⁸ Community for All, 'Knastreport', Newsletter Volume 2, April 2021. Available in German at <https://bit.ly/3iGnrgu>
⁷⁵⁹ ECRE, *The AnkER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

⁷⁶⁰ Information provided by the « Abschiebehaftberatung HH” on 15 April 2022., see <https://abschiebehaftberatung-hh.de/>

⁷⁶¹ Ndr.de, 'Glückstadt: Ehrenamtliche Hilfe für Bewohner in Abschiebehaft', 15 September 2021, available in German at: <https://bit.ly/3DcxWSk>.

⁷⁶² ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

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.⁷⁶³ 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.⁷⁶⁴ 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 removal can only be ordered or prolonged if there is a possibility for the removal 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 removal 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 removal even if authorities' applications for detention orders do not lay out sufficient reasons as to why detention is necessary.⁷⁶⁵ The Convention of Legal Advisors (*Rechtsberaterkonferenz*), a group of lawyers cooperating with German welfare organisations on asylum matters, notes that currently detention pending removal 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.⁷⁶⁶

There are no encompassing statistics regarding judicial review of detention.⁷⁶⁷ Available information is thus based on testimonies and data collected by activists, lawyers and NGOs.

In December 2019, a local activist from North Rhine-Westphalia claimed in an interview that both the local authorities (which apply for a detention order), and the local courts (which decide upon these applications), often "have no idea of what they are doing". Both institutions therefore would often ignore the most basic standards and procedural guarantees.⁷⁶⁸ Common mistakes included:

- Court decisions are based on outdated laws;
- The application for a detention order is not handed out to the person concerned and is not translated;
- An interpreter has to be present at the court hearing and he/she must have sufficient language skills both in the language of the person concerned and in German. This is not always taken care of in practice.

⁷⁶³ Federal Supreme Court, Decision V ZB 67/12, 18 April 2013.

⁷⁶⁴ Federal Supreme Court, Decision V ZB 141/11, 1 July 2011.

⁷⁶⁵ This is a recurrent concern. See Peter Fahlbusch, *Haft in Verfahren nach der Dublin II-Verordnung*, *Asylmagazin* 9/2010, 289-295.

⁷⁶⁶ Die Rechtsberaterkonferenz, *50 Forderungen zum Flüchtlings-, Aufenthalts-, Staatsangehörigkeits- und Sozialrecht*, November 2017, available in German at: <http://bit.ly/2HOWd2J>, 32-34.

⁷⁶⁷ Individual Federal States have provided some numbers on court proceedings or on revocation of detention orders by courts, but they do not allow to assess their overall number or rate of success, see Federal Government, Reply to parliamentary question by The Left, *19/31669, 4 August 2021*, 25 et seq. The only Federal States which report both the number of detention orders and the number of such orders revoked again by courts are Saxony (5 out of 50 revoked in 2021, 4 out of 109 in 2020), Saxony Anhalt (for 2020 only, 3 out of 31) and Schleswig Holstein (1 out of 9 in 2021, 1 out of 16 in 2020).

⁷⁶⁸ ze.tt, *Eingesperrt ohne Straftat: So sind die Bedingungen in einem Abschiebegefängnis*, 14 December 2019, available at <https://bit.ly/2T0KZ3g>.

Because these standards were often ignored, an estimated 50% of complaints to higher courts were successful and the detention orders issued by the local courts were found to be unlawful, according to the activist.

Other sources seem to confirm that local courts often do not sufficiently examine whether the detention order is necessary and proportionate and it has been further reported that basic procedural standards were sometimes violated.⁷⁶⁹ The Federal Supreme Court has therefore frequently ruled such detention orders 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;⁷⁷⁰
- Authorities had not given sufficient reasons to justify the duration of detention by simply stating that a Dublin transfer to Italy “might take place in between 6 and 8 weeks”. The authorities have to explain which organisational steps justify the period of detention they have applied for.⁷⁷¹
- The authorities were not able to justify the necessity and the proportionality of a 21 days pre-removal detention period;⁷⁷²
- The court had wrongfully assumed that a delay in presenting identity documents was in itself constituting a “risk of absconding”;⁷⁷³
- The detainee had filed a secondary application for asylum that was accepted as admissible by the BAMF;⁷⁷⁴
- The Court had not examined the person’s casefile before ordering detention;⁷⁷⁵
- The Court failed to adequately assess the risk of absconding based on a previous evasion of removal by the detainee;⁷⁷⁶
- The detention resulted in an unjustified separation of a mother and her minor children;⁷⁷⁷
- The Court had not sufficiently examined whether the detainee was a minor;⁷⁷⁸
- The authorities did not adequately speed up the removal procedure;⁷⁷⁹
- The authorities did not give an estimation of the time required to procure the necessary travel documents and whether this can occur in parallel to the organisation of security escort during the removal.⁷⁸⁰

Many other court decisions collected in the case law database of asyl.net also demonstrate that court orders issued by local courts are frequently overturned by higher courts.⁷⁸¹

⁷⁶⁹ Stefan Keßler, *Abschiebungshaft*, socialnet.de, 14 January 2019, available in German at: <https://bit.ly/2TiNCji>.

⁷⁷⁰ Federal Supreme Court, Decision XIII ZB 158/20, 31 August 2021, Federal Supreme Court, Decision XIII ZB 34/19, 12 November 2019, asyl.net: M27939, available in German at <https://bit.ly/2Z96SBc>; and Federal Supreme Court, Decision V ZB 79/18, 6 December 2018, available in German at: <https://bit.ly/2EQAPeO>.

⁷⁷¹ Federal Supreme Court, Decision V ZB 62/18 - 24 January 2019, asyl.net: M27471, available in German at: <https://bit.ly/2YXslrw>. See also Federal Supreme Court, Decision XIII ZB 12/20 of 31 August 2021, available in German at <https://bit.ly/3uAymOo> and Federal Supreme Court, Decision XIII ZB 30/19 of 20 May 2020, available in German at <https://bit.ly/3Nw8n3o>.

⁷⁷² Federal Supreme Court, Decision V ZB 54/18, 22 November 2018, available in German at: <https://bit.ly/2IWq4vP>. See also Federal Supreme Court, Decision XIII ZB 125/19 of 25 August 2020, available in German at: <https://bit.ly/35s758s>.

⁷⁷³ Federal Supreme Court, Decision V ZB 151/17, 13 September 2018, available in German at: <https://bit.ly/2SL9wqg>.

⁷⁷⁴ Federal Supreme Court, Decision XIII ZB 10/21, 20 July 2021, available in German at: <https://bit.ly/3NioBXk>.

⁷⁷⁵ Federal Constitutional Court, Decision 2 BvR 2345/16 of 14 May 2020, available in German at <https://bit.ly/36VIPwP>.

⁷⁷⁶ Federal Supreme Court, Decision XIII ZB 47/20 of 20 April 2021, available in German at: <https://bit.ly/38h83pb>.

⁷⁷⁷ Federal Supreme Court, Decision XIII ZB 95/19, 23 March 2021, available in German at: <https://bit.ly/3LnlmRZ>.

⁷⁷⁸ Federal Supreme Court, Decision XIII ZB 101/19, 25 August 2020, available in German at <https://bit.ly/3wKJQ4E>.

⁷⁷⁹ Federal Supreme Court, Decision XIII ZB 9/19, 24 June 2020, available in German at <https://bit.ly/3uGHfG6>

⁷⁸⁰ Federal Supreme Court, Decision XIII ZB 17/19, 19 May 2020, available in German at <https://bit.ly/3DnrMPi>

⁷⁸¹ A collection of the most important court decisions in that regard can be found in German at: <https://bit.ly/2HieAjb>.

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 April 2020. According to information submitted by Peter Fahlbusch, the firm represented 1,982 clients who were in detention pending removal during this period. In 982 of these cases (49.5%), higher courts found detention orders to be unlawful. For the clients affected, this had resulted in about four weeks of detention on average (26.6 days). Peter Fahlbusch reports that these figures have remained almost the same over the years.⁷⁸²

The Refugee Council of Lower Saxony also recorded a high number of unlawful detentions for the period between August 2016 and November 2019. During this time the organisation assisted 282 detainees in proceedings at Regional courts with the aim of examining the legality of detention orders issued by local courts. In 179 of these cases (63%) the higher courts decided that detention had been unlawful.⁷⁸³ In relation to the overall numbers of persons who had been in detention pending removal in the period outlined above (588) the ratio of unlawful detentions was 30%.

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.⁷⁸⁴

The Constitutional Court ruled in May 2018 that barriers to a lawyer's access to the **Eichstätt** facility were not in line with the constitution. In this case, the management of the facility had advised her that the next available opportunity to contact her client was on the day of removal.⁷⁸⁵ Moreover, in many detention facilities no contact information of available lawyers is provided by the detention administration or social services.

In general, persons in detention pending removal have the right to contact legal representatives, family members, the competent consular representation and relevant aid and support organisations.⁷⁸⁶

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.

⁷⁸² Peter Fahlbusch, Attorney, Information provided on 9 May 2020.

⁷⁸³ Flüchtlingsrat Niedersachsen, 'Rechtswidrige Abschiebungshaft in Niedersachsen: Kein Ende in Sicht', Press release of 13 November 2019, available in German at: <https://bit.ly/2Lo4E9b>.

⁷⁸⁴ Section 14(3) Asylum Act.

⁷⁸⁵ Federal Constitutional Court, Decision 2 BvQ 45/18, 22 May 2018.

⁷⁸⁶ Section 62a II of the Residence Act.

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 and renewing the residence permits lies with the local authorities of the place of residence of the beneficiary of protection.

Renewal of residence permits is generally subject to the same regulations as apply to issuance.⁷⁸⁷ Therefore, residence permits have to be renewed as long as the reasons which have led to the first issuance persist. The refugee status, subsidiary protection, and the status of the so-called “prohibition of removal” (*Abschiebungsverbot*) which is the basis of national protection status, have to be formally revoked by the BAMF, otherwise the residence permit has to be issued and/or renewed.⁷⁸⁸

Following the outbreak of covid-19 in Germany, the Federal Ministry of the interior issued guidance to local immigration authorities and recommended to allow for online applications to extend residence permits, and to be lenient regarding the expiry of residence permit when filing for renewal was impossible, e. g. because the concerned person could not return to Germany.⁷⁸⁹ Residence permits were not prolonged automatically, however. Whether an online application is possible depends on the respective foreigners’ authority. However, an application in written form (via e-mail or mail) is possible in all cases.⁷⁹⁰

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.⁷⁹¹

⁷⁸⁷ Section 8(1) Residence Act.

⁷⁸⁸ Sections 73a to 73c Residence Act.

⁷⁸⁹ Pro Asyl, ‘Newsticker Coronavirus: Informationen für Geflüchtete und Unterstützer*innen’, available in German at <https://bit.ly/3n5bqEe>.

⁷⁹⁰ Make it in Germany, ‘Special regulations on entry and residence’, last update 1 June 2021, available at: <https://bit.ly/3DIBNfK>.

⁷⁹¹ 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.

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 (*Aufenthaltsgestattung*) or the residence permit respectively. 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.⁷⁹²

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":⁷⁹³

- ❖ 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 has 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.⁷⁹⁴ 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.⁷⁹⁵

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. In order to safeguard access to the health system and to social benefits for newborn children, the German Institute for Human Rights has repeatedly asked authorities to issue birth certificates or, alternatively, "extracts from the Birth Registry" as a "minimum obligation".⁷⁹⁶

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 at least €204 per month available to all families staying in Germany, regardless of legal status;

⁷⁹² Deutsches Institut für Menschenrechte 'How to register your newborn - Information for refugees', 2nd ed., 20 July 2017, available at: <http://bit.ly/2c5Esku>.

⁷⁹³ 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.

⁷⁹⁴ *Ibid*, 18.

⁷⁹⁵ 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>.

⁷⁹⁶ Deutsches Institut für Menschenrechte "Keine Papiere – keine Geburtsurkunde? Empfehlungen für die Registrierung von in Deutschland geborenen Kindern Geflüchteter", *Position paper*, December 2018, available at <https://bit.ly/39Qtrxm>, 2.

- Parental allowances for persons in employment who stop working for a certain period after the child is born. Allowances amount to a standard 65% 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 periods 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 study on difficulties with the registration of new born children, authors from the Humboldt Law Clinic refer to the following problems which have been reported in the course of 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.⁷⁹⁷ 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.⁷⁹⁸

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.⁷⁹⁹

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:⁸⁰⁰

- 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

⁷⁹⁷ 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.

⁷⁹⁸ 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>.

⁷⁹⁹ 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>.

⁸⁰⁰ 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>.

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.

3. Long-term residence

Indicators: Long-Term Residence

1. Number of permanent residence permits issued to beneficiaries in 2021:	70,705
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Refugee status

After a certain period, a permanent status, “settlement permit” (*Niederlassungserlaubnis*) or also translated as “permanent residence permit”, can be granted. However, the preconditions for this are more restrictive since August 2016.⁸⁰¹

- After three years, persons with refugee status can be granted a *Niederlassungserlaubnis* if they have become “outstandingly integrated” into society.⁸⁰² 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;⁸⁰³
- 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, 16,338 persons were granted a *Niederlassungserlaubnis* in 2020. This is slightly higher than in 2019 (14,028) and represents a sharp increase in comparison to 2018 (1,807 persons). In 2021, the number increased even more, with 70,705 persons granted a permanent status.⁸⁰⁴ The sharp increase is likely caused by the high number of persons being granted refugee status in 2016, and who were then granted a permanent residence permit after five years.

In both cases, the *Niederlassungserlaubnis* can only be granted if the BAMF has not initiated a procedure to revoke or withdraw the status. In general, the *Niederlassungserlaubnis* shall be granted as long as the local authorities do *not* receive a notification from the BAMF about the initiation of a revocation procedure. This approach had been introduced in 2015 in order to simplify procedures, since before that date the local authorities as well as the refugees always had to wait for a formal notification from the BAMF, regardless of whether the BAMF actually carried out a so-called “revocation test” or not. However, the initial precondition of a mandatory notification from the BAMF has been re-established in 2019 for all cases in which persons have been granted protection status in 2015, 2016 and 2017, as a consequence of an extension of the time-limits of the so-called “routine revocation procedures” for these cases (see below: [Cessation and review of protection status](#)). Therefore, persons who were granted refugee protection between 2015 and 2017 and apply for a *Niederlassungserlaubnis* either after three or after five years of stay, now need a formal notification from the BAMF confirming that no revocation or withdrawal procedure is going to be initiated.⁸⁰⁵

⁸⁰¹ Section 26(3) Residence Act.

⁸⁰² 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.

⁸⁰³ Section 26(3) Residence Act

⁸⁰⁴ Federal Government, *Responses to parliamentary questions by The Left*, 20/1048, 16 March 2022, 37, 19/28234 6 April 2021, 41, 19/19333, 25 March 2020, 37, and 19/8258, 12 March 2019, 47.

⁸⁰⁵ Amendment to Section 26(3) Residence Act, entered into force on 21 August 2019.

Subsidiary protection and humanitarian protection

Beneficiaries of other types 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.⁸⁰⁶ However, they have to meet all the legal requirements for the *Niederlassungserlaubnis*,⁸⁰⁷ such as the requirement to completely cover the cost of living and to possess sufficient living space for themselves and their families. In addition, they have to prove that they have been paying contributions to a pension scheme for at least 60 months (which generally means that they must have had a job and met a certain income level for 60 months).

A total of 17,231 permanent residence permits were issued in 2021 based on this general provision, compared to 11,117 in 2020 (2019: 9,918, 2018: 5,731), but the statistics do not indicate how many were issued specifically to persons with a protection or a humanitarian status.⁸⁰⁸

4. Naturalisation

Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?	8 years
2. Number of citizenship grants to beneficiaries in 2021:	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.⁸⁰⁹

- ❖ 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.⁸¹⁰

⁸⁰⁶ Section 26(4) Residence Act.

⁸⁰⁷ Section 9 Residence Act.

⁸⁰⁸ Federal Government, Replies to parliamentary questions by The Left, 19/32579, 27 September 2021, 40, 19/28234 6 April 2021, 41, 19/633, 5 February 2018, 50.

⁸⁰⁹ Section 10 German Nationality Act (*Staatsangehörigkeitgesetz*). An overview on the naturalisation procedure is available in English on the BAMF website: <http://bit.ly/2ms1va9>.

⁸¹⁰ Section 38 Nationality Act.

In 2020, 109,880 persons received German citizenship, but available statistics do not differentiate between residence and/or protection statuses.⁸¹¹ The countries of origin of persons granted citizenship suggest that only a comparably small number of them were beneficiaries of international protection (e.g. in 2020, this represented 6,700 former Syrian nationals, 4,770 former Iraqi nationals, 3,965 former Iranian nationals, 2,880 former Afghan nationals).

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 under the protection of the state whose nationality he or she holds;
2. Voluntarily returns to and settles in the country he or she left or stayed away from for fear of persecution;
3. After losing his or her nationality has voluntarily regained it;
4. Has obtained a new nationality upon application and enjoys the protection of the state whose nationality he or she has obtained; or
5. 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:

⁸¹¹ Federal Statistical Office, „Bevölkerung und Erwerbstätigkeit: Einbürgerungen 2019“, Fachserie 1. Reihe 2.1 - 2020, 27 May 2021, available in German at: <https://bit.ly/3fLCPqu>.

a) Routine revision of status: 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. The BAMF can summarily decide not to initiate revocation procedures for certain groups of refugees (see [Long-Term Residence](#)).

According to Section 73(2a) Asylum Act the routine revocation test has to take place three years “at the latest” after the status determination has become final. However, a new provision was added in 2019 which extends the period for revocation tests to all cases in which status determination has been finally concluded in the years 2015, 2016 and 2017.⁸¹² For these cases, the time limit has now been set at a period between four and five years. For instance, the BAMF has been set a deadline at the end of 2019 to carry out revocation tests for all status decisions which have become legally valid before the end of 2015. The last extended period expired at the end of 2021 for asylum decisions issued in 2017. According to the explanatory memorandum to the new law, the extension of the time-limit has been introduced to enable the BAMF to deal with the high number of refugee recognitions of the years 2015-2017.⁸¹³

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”.⁸¹⁴ 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.⁸¹⁵ Case law has established that trauma or mental disorders which result from persecution constitute compelling reasons within the meaning of this provision.⁸¹⁶

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 legislation which 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 law now authorises the BAMF to impose obligations that are very similar to the obligations that apply during the asylum procedure. This includes:

⁸¹² Section 73(7) Asylum Act

⁸¹³ Explanatory memorandum to draft bill, 19/10047, 10 May 2019, available in German at <https://bit.ly/39iOnvK>, 48.

⁸¹⁴ Section 73(1) Asylum Act.

⁸¹⁵ Section 73(1) Asylum Act.

⁸¹⁶ 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.

- Obligation to attend a hearing (personal attendance is necessary, so representation through 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.⁸¹⁷

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 understanding that refugees and other beneficiaries of protection cannot 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. Furthermore, the obligation to undergo new identification measures, especially the taking of fingerprints and photos, is only considered necessary (and therefore reasonable) if these measures have not already been carried out on an earlier occasion.⁸¹⁸

Therefore, the hearing at the BAMF is the most important part of the revocation examination procedures and since attendance is now obligatory, persons with protection status are being summoned to these hearings on a regular basis. The invitation letters to these hearings generally refer to the “obligation to cooperate in an examination of whether grounds for a withdrawal or revocation exist”. In practice, the major part of the hearings is dedicated to questions concerning the identity of the persons concerned, because for most refugees there are no reasons to assume that a revocation of status could be based on the cessation clause (i.e. a change of circumstances in the countries of origin). It has been noted that these “retroactive identity checks” in some cases seem to take on the character of “security interviews” with questions being asked that “have nothing to do with revocation or withdrawal” but aim, for instance, at the refugee’s integration in Germany or his/her exercise of religion.⁸¹⁹ The German NGO PRO ASYL has therefore criticised the examination procedures for creating uncertainty in thousands of cases, in spite of the “extremely small” number of cases in which protection status is revoked or withdrawn in the end.⁸²⁰ In 2021, fines were issued in 212 cases where persons did not follow the order to appear for the hearing. This resulted in 34 hearings being carried out.⁸²¹

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.

⁸¹⁷ Michael Kalkmann, ‘Das Gesetz zur Einführung der Mitwirkungspflicht in Widerrufsverfahren’, *Asylmagazin* 1-2/2019, 6.

⁸¹⁸ Kirsten Eichler, GGUA Flüchtlingshilfe: ‘Einführung von Mitwirkungspflichten im Widerrufs- und Rücknahmeverfahren’, 12 December 2018, available in German at at: <https://bit.ly/3auqFxF>.

⁸¹⁹ Pro Asyl, ‘Hintergrund: Viel hilft nicht viel: Widerrufs- und Rücknahme-Aktionismus beim BAMF’, 29 April 2019, available in German at: <https://bit.ly/2vU7jU3>. See also: Taz, ‘Wiederrufsprüfverfahren beim Asyl’, 20 February 2020, available in German at: <https://bit.ly/3apZoMe>.

⁸²⁰ Ibid.

⁸²¹ Federal Government, Responses to parliamentary questions by The Left, 20/940, 7 March 2022, 7.

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 hundreds of thousands of “revocation examination procedures” or “revocation tests” (*Widerrufsprüfverfahren*), i.e. preliminary examinations on whether a formal revocation is to be carried out or not.

Prior to 2017, 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.⁸²² The trial against Franco A. has started in May 2021, following years of legal disputes over the question of whether he would eventually be charged with “preparation of a serious crime posing a risk to the state”.⁸²³

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 2017.⁸²⁴

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 illegally granted. However, the results of the internal investigation carried out by the BAMF later demonstrated that the “scandal” had been largely overestimated. It was confirmed that the branch office had been entitled to take over cases from other regions, and 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.⁸²⁵ Nevertheless, the “BAMF scandal” has largely triggered the increase of “revocation examination procedures”.

The total number of revocation procedures that have been initiated in recent years is as follows:

Total number of revocation procedures initiated: 2015-2021				
2017	2018	2019	2020	2021
77,106	192,664	205,285	187,565	117,093

⁸²² Deutsche Welle, ‘German soldier charged with plotting to kill politicians while posing as refugee’, 12 December 2017, available at: <http://bit.ly/2FVuyRy>.

⁸²³ Spiegel Online, Bundesanwaltschaft beharrt auf Terrorverdacht im Fall Franco A., 20 June 2018, available in German at: <https://bit.ly/2K5fJ1d>.

⁸²⁴ 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>.

⁸²⁵ Deutsche Welle, Bremen migration office scandal much smaller than first thought, available at <https://bit.ly/2WNXlvk>.

Source: BAMF, Asylgeschäftsbericht (monthly asylum report) December 2018, available at: <https://bit.ly/2T3P04i>, 8. and BAMF, Aktuelle Zahlen, December 2019, available in German at <https://bit.ly/3dNKyIQ>, 14, Aktuelle Zahlen, December 2021, available in German at : <https://bit.ly/3KBBaIG>, 14..

As appears from the table above, there was a sharp and consistent increase of revocation procedures being initiated from 2017 to 2019, followed by a decrease in 2020 and 2021. As regards the outcome of these revocation and withdrawal procedures that were already examined, they were as follows in 2020 and 2021 (note that the figures above cover both revocation and withdrawal procedures as national statistics do not distinguish between the two (see below Withdrawal of protection status)):

Outcome of revocation procedures		
	2020	2021
Revocation or withdrawal of national asylum status	155 (0.1%)	157 (0.1%)
Revocation or withdrawal of refugee status	6,339 (3.7%)	3,776 (2.2%)
Revocation or withdrawal of subsidiary protection	1,027 (0.6%)	1,531 (0.9%)
Revocation/withdrawal of prohibition of removal	1,189 (0.5%)	1,166 (0.7%)
No revocation or withdrawal	244,230 (96.6%)	162,693 (96.1%)
Total	252,940	169,323

Source: BAMF, *Aktuelle Zahlen*, December 2021, available in German at <https://bit.ly/3KBBaIG>, 14.

In the vast majority of these cases, the BAMF found no reason to revoke or withdraw the protection statuses. However, due to the high number of procedures, the total number of revocation or withdrawal decisions is still significant and affected a total of 6,630 persons in 2021. 95,960 revocation procedures were still pending at the end of 2021. Nationalities with a comparatively high number of revocations in 2021 include Syria, Iraq and Afghanistan.

Outcome of revocation procedures in 2021 by nationality						
Nationality	Revocation or withdrawal of national asylum status	Revocation or withdrawal of refugee status	Revocation or withdrawal of subsidiary protection	Revocation/withdrawal of prohibition of removal	No revocation or withdrawal	Total
Syria	12	1 841	580	42	68,334	70,809
Iraq	8	549	405	81	20,773	21,816
Afghanistan	3	248	135	453	20,599	21,438
Iran	11	230	20	10	12,215	12,486
Eritrea	21	182	55	7	9,397	9,662
Unknown	2	160	62	19	6,554	6,797
Turkey	25	46	33	12	5,648	5,764
Somalia	-	64	43	45	5,104	5,256
Nigeria	-	18	13	92	1,771	1,894
Pakistan	2	15	5	20	1,751	1,793
Other	73	423	180	385	10,547	11,608

Source: Information provided by the BAMF, 10 March 2022

In 2021 (until end of November) 1,719 court decisions regarding challenges of revocation decisions were registered. Only 193 appeals against revocation or withdrawal decisions by the BAMF were successful (11.2 %).⁸²⁶ This rate is higher than in 2020 (8.9 %) but comparable to previous years (2019: 9.6 %, 2018: 12.6%). In 611 cases (35.5%), the BAMF decision to withdraw or revoke a protection status was upheld by the courts, and in 915 cases (53.2%) of appeal procedures were terminated for other reasons, e.g. because the appeal was withdrawn by the claimant, or because a settlement out of court took place. Nationalities with a comparatively high rate of successful appeals in 2021 included Afghanistan (23.9%, 133 successful appeals) and Syria (10.4%, 22 successful cases).⁸²⁷

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, and usually the examination of the various grounds is carried out as a combined “revocation and withdrawal procedure”. Therefore, the information given above on procedures and on statistics for the revocation procedures also applies to withdrawal of protection (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.

⁸²⁶ Federal Government, Responses to parliamentary questions by The Left, 20/940, 7 March 2022, 4.

⁸²⁷ Federal Government, Responses to parliamentary questions by The Left, 20/432, 14 January 2022, 22, 19/28109, 30 March 2021, 38, 19/18498, 2 April 2020, 46, and 19/8701, 25 March 2019, 47.

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 months
3. Does the law set a minimum income requirement? Yes No

Persons with **refugee status** enjoy a privileged position compared to other foreign nationals in terms of family reunification, since they do not necessarily have to cover the cost of living for themselves and their families and they do not have to prove that they possess sufficient living space. In order to claim this privilege, refugees have to notify the authorities within 3 months after the refugee status has become incontestable (final) that they wish to be reunited with a close family member.⁸²⁸ 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.

Parents of unaccompanied minors may only be granted a visa if the child is still underage at the time of departure. This practice has been challenged in courts however, given the fact applications for family reunification often take a long time to process and in the context of a CJEU decision of 2018 which clarified that the date of lodging the asylum application, and not the date of entry of the parents, is decisive for the right to family reunification, meaning that family reunification is still possible if the minor turns 18 before the arrival of the parents.⁸²⁹ The Federal Administrative Court has requested a preliminary ruling of the CJEU on the matter in April 2020.⁸³⁰ As of January 2022, the CJEU’s decision is still pending.

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.⁸³¹ For family reunification of spouses, a further requirement is that both spouses have to be at least 18 years of age.⁸³²

⁸²⁸ Section 29(2)(1) Residence Act.

⁸²⁹ CJEU, Case C-550/16, *A und S / Staatssecretaris van Veiligheid en Justitie*, Judgement of 12 April 2018.

⁸³⁰ Federal Administrative Court, 1 C 9.19 – Decision of 23 April 2020.

⁸³¹ Sections 27(3) and 29 Residence Act.

⁸³² Section 30(1)(1) Residence Act.

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.⁸³³ In 2021, a total of 15,849 visas for family reunification were issued to beneficiaries of international protection, out of which 9,891 for beneficiaries of refugee protection and 5,958 for beneficiaries of subsidiary protection.⁸³⁴

Family reunification during COVID-19

The application procedure for family reunification and deadlines were significantly impacted by the outbreak of Covid-19, leading to even longer procedures than previously. Several German embassies stopped processing visa applications entirely or partially in March 2020. On 1 July 2020, the Federal Ministry of the Interior declared that family reunification was possible again from all third countries.⁸³⁵ The deadlines to apply for family reunification continued to apply. However, in June 2020 the Federal Ministry of the Interior announced that persons who had been granted a visa for family reunification that allowed for entry after 15 March 2020, but where entry was not possible due to travel restrictions, could apply for a renewed validity of their visa (“*Neuvisierung*”) within one month. This deadline started to apply from the moment when the respective embassy announces the possibility of applying for the renewed validity. After protests by NGOs, the Federal Government changed this deadline to 31 December 2020 for all applications for renewed validity.⁸³⁶ After expiry of the one-month deadline, family members had to apply again for a visa. If minors whose parents had applied for a visa turned 18 during the time when travel was not possible, the renewed validity was still granted for the parents’ visa.⁸³⁷ Covid-19 related impacts on family reunification procedure in embassies continue to apply in 2021.⁸³⁸ While the number of visas issued in 2021 was higher than in 2020, the overall figure stayed below the 2019 numbers, with a marked difference for family reunification visas for beneficiaries of international protection (15,849 visas issued in 2021, compared to 24,835 in 2019).⁸³⁹

Family reunification for beneficiaries of subsidiary protection

In 2018 the right to family reunification was effectively abolished for **beneficiaries of subsidiary protection** and was replaced with a provision according to which 1,000 relatives shall be granted a visa to enter Germany each month.⁸⁴⁰ This means that the privileged conditions that apply to family reunification for refugees do not apply to beneficiaries of subsidiary protection and have been replaced with a “humanitarian clause” which places family reunification at the discretion of the authorities.

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

1. Long duration of separation of family members,

⁸³³ Section 30(1)(3) Residence Act.

⁸³⁴ Reply to written parliamentary question by Clara Bünger (Die Linke), 20/894, 2 March 2022, 44.

⁸³⁵ Pro Asyl, ‘*Newsticker Coronavirus: Informationen für Geflüchtete und Unterstützer*innen*’, available in German at: <https://bit.ly/3n5bqEe>.

⁸³⁶ Pro Asyl, »Die überlangen Verfahrensdauern verlängern sich durch Corona noch weiter«, 9 October 2020, available in German at: <https://bit.ly/3wP9ncL>.

⁸³⁷ See Federal Ministry of the Interior, Letter to the competent ministries of the Federal States, 12 June 2020, available in German at: <https://bit.ly/33B6rog>.

⁸³⁸ Deutscher Caritasverband e. V., ‘Migration im Fokus: Familiennachzug’, November 2021, 37, available in German at: <https://bit.ly/3qJsy3R>.

⁸³⁹ Neue Osnabrücker Zeitung, ‘Familiennachzug hat im vergangenen Jahr wieder deutlich zugenommen’, 10 March 2022, available in German at: <https://bit.ly/389cYbi>.

⁸⁴⁰ Section 36a Residence Act; Section 104(13) Residence Act.

2. Separation of families with at least one (minor) unmarried child,
3. Serious risks to life, limb or personal freedom of a family member living abroad,
4. 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.⁸⁴¹

The monthly quota for visa has not been reached since the introduction of the new regulation for beneficiaries of subsidiary protection, due to a complicated procedure involving three different authorities: Embassies or consulates – often in cooperation with IOM – have to carry out an interview with the family members who have applied for visa; then the local alien’s offices in Germany have to decide whether the necessary humanitarian criteria are fulfilled; and then they have to pass on the visa applications to the Federal Administrative Office (*Bundesverwaltungsamt*) which theoretically should select the most urgent 1,000 cases per month.⁸⁴² In practice, this selection does not take place since procedures at the local authorities are lengthy, resulting in less than 1,000 applications per month. As a result, the Federal Administrative Office usually authorises all cases submitted by the local authorities and informs the embassies or consulates that visas may be issued.

Between August 2018 and April 2021, only 20,600 visas were granted to family members of beneficiaries of subsidiary protection, which equals to 62 % of the total of 33,000 visas that the law would have foreseen for this period.⁸⁴³ In 2021, 5,958 visas were issued, i.e. 50 % of the quota.⁸⁴⁴ Around 11,000 requests for appointments at the embassies were pending as of May 2021.⁸⁴⁵ 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.⁸⁴⁶

Difficulties for family reunification are exacerbated by long waiting periods at embassies.⁸⁴⁷ This has particularly problematic effects on family reunification procedures of unaccompanied minors (see above). In several decisions the Administrative Court of Berlin,⁸⁴⁸ has argued that the right to family reunification (i.e. reunification with one’s parents) ends when the subsidiary protection status holder becomes an adult.⁸⁴⁹ The delay in procedures, in particular on the part of local authorities, might put reunification of young persons with their parents at risk.⁸⁵⁰ In order to safeguard the right to family reunification, the Administrative Court of Berlin has repeatedly asked authorities to prioritise procedures of unaccompanied minors who were approaching their 18th birthday.⁸⁵¹

⁸⁴¹ Detailed information on the legal requirements and the procedure can be found at: <https://familie.asyl.net>.

⁸⁴² A description of the procedure in English has been published by Initiative "Familienleben für alle", available at <https://bit.ly/2V6QzBg>.

⁸⁴³ In 2020, the number of visas granted was especially low with 5,311, compared to 12,000 visas that should have been granted according to the monthly quota, see Tagesschau, ‘Viele Angehörige müssen warten’, 20 January 2021, available in German at: <https://bit.ly/3HOEwMM>.

⁸⁴⁴ Reply to written parliamentary question by Clara Bünger (Die Linke), 20/894, 2 March 2022, 44.

⁸⁴⁵ PRO ASYL, Daten, Fakten und Hintergründe zum Familiennachzug’ 13 July 2021, available in German at: <https://bit.ly/3rHedoz>.

⁸⁴⁶ Federal Government, *Reply to oral question by The Left*, Plenary protocol 19/139, 17412, 14 January 2020, available in German at <https://bit.ly/3dV6njk>.

⁸⁴⁷ By way of example, waiting times were 24 weeks at the Beirut embassy and over one year at the Islamabad embassy as of April 2021, see Federal Government, Response to parliamentary question by The Left, 19/30793, 17 June 2021, 8.

⁸⁴⁸ Appeals or other legal measures in family reunification cases have to be directed against the German Foreign Office which is responsible for issuing the necessary visa. Therefore, the Administrative Court of Berlin is the competent court of first instance for family reunification matters.

⁸⁴⁹ Administrative Court of Berlin, Decision 38 K 27.18 V, 29 March 2019, available at <https://bit.ly/2VGrPQW>.

⁸⁵⁰ An account of a case in which a 17-year-old Syrian could only be reunited with his mother following a „last-minute“ court intervention can be found here: Pro Asyl, Aus der Praxis: Familiennachzug – Zustimmung in letzter Minute, 2 January 2020, available at <https://bit.ly/39VrQp9>.

⁸⁵¹ Administrative Court of Berlin, Decision 38 L 502.19 V, 16 January 2020, available in German at: <https://bit.ly/34NRMCO>; Decision 38 L 442.19 V, 26 November 2019, available at: <https://bit.ly/3cDid0d>. For an overview of jurisprudence on this subject, see German Red Cross: *Nachzug zu subsidiär Schutzberechtigten*,

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", see Subsequent applications and Differential treatment of specific nationalities in the procedure).

The coalition programme of November 2021 underlines in this regard that the restrictions on family reunification for beneficiaries of subsidiary protection should be removed. Minors who have received a protection status should be allowed to bring their siblings, and not only their parents as is currently the case. It remains to be seen if these measures will be implemented in practice.

Ad hoc family reunification programmes for Syrian and Afghans

For Syrian refugees, some regional programmes for family reunification are still in place. These programmes are reserved for first and second degree relatives of persons living in Germany with refugee status or another legal residential status. In contrast to the "normal" family reunification procedures, the family members living in Germany have to act as sponsors by declaring that they will cover the cost of living of their relatives (either from their own resources or with the help of external sponsors). In 2020 and 2021 such programmes were in place in the Federal States of **Berlin** (until end of 2022), **Brandenburg** (until end of 2021), **Bremen** (until end of September 2021), **Hamburg** (until end of November 2021), **Schleswig-Holstein** (until end of 2021) and **Thuringia** (until end of December 2022). The programme in the Federal State of **Berlin** is also available to family members of Iraqi refugees.⁸⁵²

In 2021, several Federal States (**Berlin**, **Bremen**, **Schleswig-Holstein** and **Thuringia**) decided to put similar family reunification programmes in place for family members of Afghan refugees.⁸⁵³ However, in the case of **Thuringia**, the Federal Minister of the Interior refused to authorise such a programme in September 2021.⁸⁵⁴ Decisions regarding the programmes of Berlin, Bremen and Schleswig-Holstein were still pending in January 2022. The new Federal Government announced plans to set up a humanitarian admission programme on its own initiative in December 2021.⁸⁵⁵

No exact figures are available on the number of visas or residence permits granted to family members of refugees for family reunification purposes. In 2020, 3,900 residence permits were granted to Syrian nationals for the purpose of family reunification, compared to 12,790 permits in 2019. 1,339 such permits were granted to Iranian nationals (2019: 1,913) and 834 to Afghan nationals (2019: 1,151).⁸⁵⁶ However, these figures include both cases of family reunification with refugees and with persons who have a residence permit in Germany for other reasons. More recent statistics are not available.

besonders Minderjährige vor Eintritt der Volljährigkeit: Fachinformation des DRK-Suchdienstes zum Familiennachzug (FZ) von und zu Flüchtlingen, February 2020, available in German at <https://bit.ly/2wuFwK8>.

⁸⁵² An overview of regional programmes can be found at: <http://resettlement.de/aktuelle-aufnahmen/>.

⁸⁵³ Netzwerk Berlin Hilft, 'Berlin & Bremen beschließen Landesaufnahmeprogramme für Afghanistan – mit Defiziten', 29 December 2021, available in German at: <https://bit.ly/3rLdHFS>, Ministry of the Interior of Schleswig-Holstein, 'Innenministerin Sütterlin-Waack: Schleswig-Holstein bereitet ein eigenes Landesaufnahmeprogramm für Menschen aus Afghanistan vor', 17 August 2021, available in German at: <https://bit.ly/3Ky11fv>

⁸⁵⁴ Refugee Council Northrhine West-Phalia, 'Thüringer Landesaufnahmeprogramm für Afghanistan gescheitert', 9 september 2021, available in German at <https://bit.ly/3rKSCeG>

⁸⁵⁵ Federal Foreign Ministry, 'Action Plan for Afghanistan', 23 December 2021, available at: <https://bit.ly/3uF42lJ>.

⁸⁵⁶ The permits include permits for family reunification with German nationals (121 for Syria, 289 for Iran and 138 for Afghanistan in 2020), see BAMF, *Migrationsbericht 2020 der Bundesregierung*, December 2021, 271, available in German at: <https://bit.ly/3nTDv1J>.

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.⁸⁵⁷

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.⁸⁵⁸ 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.⁸⁵⁹

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 “residence rule” of Section 12a of the Residence Act.⁸⁶⁰

Further to the obligation to reside in a Federal State, 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 seven Federal States: **Bavaria, Baden-Württemberg, North Rhine-Westphalia, Hesse, Saarland, Saxony** and **Saxony-Anhalt**, with some regional distinctions. For instance, in the Federal State of **Saxony**, the obligation to live in a particular place is limited to a one-year period, as opposed to the possible three year-period applied in other states.⁸⁶¹ 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” (Berlin, Hamburg, Bremen) and several smaller Federal States (**Brandenburg, Mecklenburg-Vorpommern, Schleswig-Holstein, Thuringia**) have not introduced any further restrictions beyond the obligation to take up residence in the respective Federal State.⁸⁶²

⁸⁵⁷ Section 26(5) Asylum Act.

⁸⁵⁸ Section 27(4) Residence Act.

⁸⁵⁹ Section 31 Residence Act.

⁸⁶⁰ 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.

⁸⁶¹ Welt.de, ‚Dort wohnen, wo der Staat es will‘, 1 March 2019, available in German at <https://bit.ly/2XiTGZH>.

⁸⁶² Melina Lehrian, Zwei Jahre Wohnsitzregelung nach Artikel 12a AufenthG – Ein Überblick zur Umsetzung der Regelung in den einzelnen Bundesländern. Asylmagazin 12/2018, 416-423, available at <https://bit.ly/2V7T1rn>.

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 since 1 January 2016. 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.⁸⁶³

According to the official explanatory memorandum, the residence rule is supposed to promote sustainable integration by preventing segregation of communities.⁸⁶⁴ However, it has been questioned whether the way in which the provision has been put into effect is suitable for achieving the intended aim.⁸⁶⁵ 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.⁸⁶⁶

A brief analysis of the impact of the residence rule was published in January 2020.⁸⁶⁷ This paper is based on the “IAB-BAMF-SOEP survey”, a representative study on the living conditions of refugees which has been carried out on an annual basis since 2016. In this analysis, the situation of refugees who are subject to the residence rule is compared to other refugees, in particular those that were granted refugee status at an earlier date, before the introduction of the regulation. The duration of stay in Germany as well as other regional and individual factors were taken into account in order to avoid possible distortions. The main findings of this analysis are:

- Refugees who are subject to the residence rule are less likely to be employed;
- Refugees who are subject to the residence rule are less likely to live in private accommodation (as opposed to collective accommodation);
- It could not be ascertained whether the residence rule had a positive or negative impact on refugees’ German language skills or on their (successful) participation in integration courses.

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.⁸⁶⁸ Although the decision was restricted to North Rhine-Westphalia, it highlights that authorities generally have to conduct an individual assessment to determine whether a residence obligation is useful „to

⁸⁶³ Section 12a(5) Residence Act.

⁸⁶⁴ Explanatory memorandum, Bundestag Document no. 18/8614, 42-43.

⁸⁶⁵ Clara Schlotheuber and Sebastian Röder, *Integrative (?) Zwangsmaßnahme (!), Die neue Wohnsitzregelung nach § 12a AufenthG*, Asylmagazin 11/2016, 364-373.

⁸⁶⁶ Nona Renner, *Die Wohnsitzauflage als Mittel deutscher Integrationspolitik? Das Beispiel Sachsen*, MIDEM-Policy Paper 01/18, Dresden, available at: <http://bit.ly/2HSpzgM>.

⁸⁶⁷ Institut für Arbeitsmarkt- und Berufsforschung (IAB): *Wohnsitzauflagen reduzieren die Chancen auf Arbeitsmarktintegration*, IAB-Kurzbericht 2/2020, January 2020, available in German at: <https://bit.ly/34rH7wL>.

⁸⁶⁸ High Administrative Court North Rhine-Westphalia, Decision 18 A 256/18, 4 September 2018.

enhance the prospects of a sustainable integration“.⁸⁶⁹ Apart from this ruling, few cases have become known in which courts were asked to decide on the legality of the residence rule.

The residence rule for persons with protection status had originally been introduced for a period of three years, so it would have run out at the end of July 2019. The explanatory memorandum to the integration act of 2016 had stated that the decision on whether the rule would be discontinued or extended should be based on an evaluation of its impact. Although this evaluation never took place, a new law was introduced in the spring of 2019 and entered into force on 12 July 2019.⁸⁷⁰ This law has now made the residence rule permanent. The main principles of the regulation remain unchanged, as only a few clarifications were introduced (e.g. concerning the continuation of the residence rule after an authorised move to another Federal State). Furthermore, a new sanction was introduced for persons who have moved to another place without permission while they were subject to the residence rule: In these cases, the obligation to stay in the assigned place of residence can now be extended “by the (same) period of time at which the foreigner has not complied with the obligation”.⁸⁷¹ Again, the explanatory memorandum to the law states that an evaluation of the impact of Section 12a of the Residence Act is supposed to take place within three years.⁸⁷²

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 standards⁸⁷³ and therefore has to include a storage medium with the facial image, fingerprints etc.⁸⁷⁴

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”.⁸⁷⁵ 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.⁸⁷⁶ 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,⁸⁷⁷ 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

⁸⁶⁹ Claudius Voigt, ‘Zum Urteil des OVG Nordrhein-Westfalen: Rechtswidrige pauschale Wohnsitzzuweisung’, *Asylmagazin* 12/2018, 454-458.

⁸⁷⁰ Act to remove the time-limit of the integration Act (*Gesetz zur Entfristung des Integrationsgesetzes*), *Official Gazette I*, No. 25, 11 July 2019, 914.

⁸⁷¹ Section 12a(1)(3) Residence Act.

⁸⁷² Explanatory memorandum to draft bill, 25 March 2019, 19/8692, 9.

⁸⁷³ 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*.

⁸⁷⁴ Section 4(4) Residence Regulation (*Aufenthaltsverordnung*).

⁸⁷⁵ Section 4(1) Residence Regulation.

⁸⁷⁶ Section 5(1) Residence Regulation.

⁸⁷⁷ *Verfahrenshinweise der Ausländerbehörde Berlin* (Guidelines for the Aliens Office Berlin), 12 September 2016, available at: <http://bit.ly/2m1sjCe>, 492.

origin if this is necessary to obtain a passport.⁸⁷⁸ 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.⁸⁷⁹ 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? | No limit ⁸⁸⁰ |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2021: | 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 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.⁸⁸¹

No recent statistics or studies on the housing situation of refugees are available. According to a representative study published in 2020, 83 % of persons with a protection status who had come to Germany as asylum seekers between 2013 and the end of January 2016 were living in “individual accommodation” (i.e. not in collective accommodation centres).⁸⁸²

Some detailed figures are available for the Federal State of Bavaria: In 2021, 21.8% of persons living in collective accommodation centres in June 2021 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 5,177 beneficiaries of international protection (out of a total of 23,750 persons living in accommodation centres throughout Bavaria) who, in theory, were not obliged to live in this type of accommodation.⁸⁸³ Out of the 34,230 persons living in decentralised accommodation, 29.99 % are “false occupants” (i.e. 10,235 persons).⁸⁸⁴

⁸⁷⁸ Federal Ministry of Interior, *Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz* (General Administrative Guidelines for the Residence Act), 26 Oct. 2009, no. 3.3.1.3.

⁸⁷⁹ Section 8 Residence Regulation.

⁸⁸⁰ They are allowed to stay in reception centres until they secure housing – although this should not be interpreted as an entitlement but rather as a necessity.

⁸⁸¹ 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>.

⁸⁸² Tanis, Kerstin (2020): *Entwicklungen in der Wohnsituation Geflüchteter*,. Ausgabe 05|2020 der Kurzanalysen des Forschungs- zentrums Migration, Integration und Asyl des Bundesamtes für Migration und Flüchtlinge, available in German at: <https://bit.ly/3qSymZk>.

⁸⁸³ Bavarian Ministry for Labor, Social Affairs, Family and Integration, *Faktenblatt Asyl*, Januar 2018, available at: <https://bit.ly/2G3J5ZQ>.

⁸⁸⁴ Bavarian Ministry for the Interior, Sport and Integration, ‘*Unterbringung und Versorgung*’, available in German at <https://bit.ly/3rluDwL>.

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. More recent studies are not available, but the issues in practice remain. The main findings of this study include the following:⁸⁸⁵

“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 - as is the case for all beneficiaries of social aid in general according to national social law – 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.

If beneficiaries of protection have an income, but are still living in collective accommodation, authorities regularly impose fees as a contribution to the operational costs of the centres. It has been reported that some municipalities charge excessive fees which may clearly exceed the costs for an apartment in the area. In one case (the town of Hemmingen in **Niedersachsen/Lower Saxony**), authorities may charge fees up to a maximum of €930 for a place, according to the local statutes. These seemingly excessive costs result from a calculation which includes all operational expenses for the centres, such as costs for social services as well as security and maintenance. In practice, the fees may lead to a situation in which refugees have to pass on their complete income to the local authorities in exchange for a place in a shared room.⁸⁸⁶

Many local organisations and initiatives try to support refugees in finding apartments. One initiative operating for the whole of Germany, “**Living Together Welcome**” (*Zusammenleben willkommen, formerly “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.

⁸⁸⁵ 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>.

⁸⁸⁶ Frankfurter Rundschau, ‚Wohngebühren für Flüchtlinge: Monatlich bis zu 930 Euro‘, 12 August 2019, available at: <https://bit.ly/3nQtMsQ>.

Furthermore, under Section 12a of the Residence Act authorities can oblige them to take up place of residence in a specific municipality within the Federal State (see section on [Freedom of Movement](#)). One of the provisions introduced in the context of the new law refers explicitly to refugees and beneficiaries of subsidiary protection who still live in a reception centre or another form of temporary accommodation after their status has been determined. They can be obliged to take up their place of residence in a “specific place” in order to provide themselves with “suitable accommodation”.⁸⁸⁷ 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.⁸⁸⁸ 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. There are some specialised training and qualification programmes for migrants from which refugees also benefit, like vocational language courses⁸⁸⁹ or integration courses (see below [Access to education](#)).

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](#)”). However, the recognition of qualifications remains challenging despite its clear positive effects on integration into the labour market as well as integration more generally.⁸⁹⁰

Available official statistics on unemployment only distinguish between nationalities, but not between residence statuses of persons concerned. Therefore, it is not possible to determine how many beneficiaries of international protection have successfully integrated into the labour market.

The Covid-19 pandemic had a significant impact on the integration of (former) asylum seekers into the labour market in German, especially during the first lockdown between March and June 2020 according to a study published in May 2021.⁸⁹¹ Unemployment rates rose more significantly in this group than in other groups of workers. The study explains this effect by the nature of employment of (former) asylum seekers: These persons were often employed in areas of the labour market that were most significantly hit by the pandemic and where less protection measures or home office possibilities were available. Moreover, unemployment rates rose more significantly than labour market inclusion diminished. This effect was attributed by the study to the suspension, discontinuation and interruption of integration and qualification measures. This specific setup also led to the effect that after the first lockdown in summer 2020 employment rates rose significantly faster than for other groups. In the second lockdown since November 2020 the same effect was visible but they were less significant than between March and June 2020.⁸⁹²

⁸⁸⁷ Section 12a(2) Residence Act.

⁸⁸⁸ Section 25(2) Residence Act.

⁸⁸⁹ See BAMF, ‘*German for professional purposes*, 7 June 2021, available in German at <https://bit.ly/3rP6W6e>.

⁸⁹⁰ See on these effects: Brücker, Herbert; Glitz, Albrecht; Lerche, Adrian; Romiti, Agnese (2021): *Occupational recognition and immigrant labor market outcomes*. In: Journal of Labor Economics, Vol. 39, No. 2, S. 1-15.

⁸⁹¹ Brücker, Herbert; Gundacker, Lidwina; Hauptmann, Andreas; Jaschke, Philipp (2021): Die Arbeitsmarktwirkungen der COVID-19-Pandemie auf Geflüchtete und andere Migrantinnen und Migranten. (IAB-Forschungsbericht, 05/2021), Nuremberg.

⁸⁹² Ibid.

Research on the labour market integration of refugees over the last decade points to a relatively successful integration in the long run: a “brief analysis” on the integration of refugees into the labour market was published in February 2020. It is based on the “IAB-BAMF-SOEP-survey”, a long-term study on the living conditions of persons who have come to Germany as asylum seekers between 2013 and 2016.⁸⁹³ The main conclusions of the study include the following:

- About 50% of the persons surveyed has found employment within five years after the arrival, which implies that integration into the labour market is taking place faster in comparison to earlier years.
- 60% of the persons surveyed were either in employment or were attending an educational institution or were taking part in qualification or integration measures in the second half of 2018. The major part of the remaining 40% were actively seeking a job or were on maternity/parental leave.
- Of persons surveyed who were in employment, 44% had jobs categorised as “unskilled labour” while 52% had jobs which required a certain qualification. 5% were in employment characterised as “specialised” or “highly specialised” occupations. Because of the comparably high number of unskilled occupations, the income of persons surveyed was considerably lower than the average income of persons who were born in Germany (between 54 and 74%, depending on the age group).

It has to be noted that this study does not distinguish between the residence status of the persons surveyed. Therefore, it is not clear how many of the persons surveyed have been granted protection status. Nevertheless, the analysis provides at least an indication for the situation of persons with protection status, since a high percentage of persons who have arrived as asylum seekers between 2013 and 2016 have been granted protection.

These findings have been confirmed by the final report on this long-term survey published in November 2020.⁸⁹⁴ The study points to the positive developments triggered through specific integration measures aiming at labour market integration and show that inclusion into the formal labour market is likely to take place after three to five years of stay. Moreover, the study shows a significant effect of the duration of asylum procedures on the labour market integration: If an asylum procedure is prolonged by six months (in comparison to the regular duration of such procedures) the chances of labour market integration is diminished by 11%. A positive outcome of the procedure enhances the chances by 30% with the stable residence status being the most influential factor for employment of (former) asylum seekers.⁸⁹⁵ The residence requirement of Section 12a of the Residence Act on the other hand has a detrimental effect on labour market integration of refugees even though its purpose was to enhance integration.⁸⁹⁶

The recognition of qualifications is found to be challenging and problematic in the German context as the administrative hurdles for recognition are relatively and since the procedure is highly formalised. Moreover, the recognitions scheme works largely to the disadvantage of refugee women as their qualifications from the country of origin often do not match the formal requirements for recognitions under

⁸⁹³ Herbert Brücker, Yuliya Kosyakova and Eric Schuß - Institut für Arbeitsmarkt- und Berufsforschung, *Fünf Jahre seit der Fluchtmigration 2015: Integration in Arbeitsmarkt und Bildungssystem macht weitere Fortschritte*, IAB-Kurzbericht 4/2020, 4 February 2020, available in German at: <https://bit.ly/3aZDosE>.

⁸⁹⁴ Brücker, Herbert; Fendel, Tanja; Guichard, Lucas; Gundacker, Lidwina; Jaschke, Philipp; Keita, Sekou; Kosyakova, Yuliya; Vallizadeh, Ehsan (2020): *Fünf Jahre "Wir schaffen das" - Eine Bilanz aus der Perspektive des Arbeitsmarktes*. (IAB-Forschungsbericht, 11/2020), Nuremberg.

⁸⁹⁵ Ibid. p. 24 ff.

⁸⁹⁶ Brücker, Herbert; Hauptmann, Andreas; Jaschke, Philipp (2020): *Beschränkungen der Wohnortwahl für anerkannte Geflüchtete: Wohnsitzauflagen reduzieren die Chancen auf Arbeitsmarktintegration*. (IAB-Kurzbericht, 03/2020), Nuremberg.

German Law.⁸⁹⁷ If recognitions take place there is a highly positive effect on the income and the formal level of the labor market involvement of migrants in general and persons granted a protection status in particular.⁸⁹⁸ Studies show a significant gender gap in access to the labour market, employment levels as well as remuneration that is far greater than the “usual” gender pay gap in Germany.⁸⁹⁹

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. Furthermore, adults with a protection status are entitled to participate in the “integration courses” which in their general form consist of 600 language lesson units and 100 lesson units in an “orientation course” where participants are meant to learn about the legal system as well as history and culture in Germany and about “community life” and “values that are important in Germany”.⁹⁰⁰ Participants have to cover part of the costs themselves, unless they receive unemployment benefits or social assistance. Next to the general integration courses, there are special courses e. g. courses for women or parents, literacy courses or intensive courses for experienced learners.

According to the brief analysis mentioned in [Access to the Labour Market](#), 23% of persons surveyed (i.e. persons who arrived in Germany as asylum seekers between 2013 and 2016) had attended one of the following educational institutions:⁹⁰¹

- Schools, further education: 8%;
- Vocational training institution: 14%;
- Universities, colleges: 2%.

As noted above, the study does not distinguish between the protection status (and/or the residence status) of people surveyed, but it can provide an indication to the situation of persons with protection status. More recent data is not available.

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

⁸⁹⁷ See Kosyakova, Yuliya; Gundacker, Lidwina; Salikutluk, Zerrin; Trübswetter, Parvati (2021): Arbeitsmarktintegration in Deutschland: Geflüchtete Frauen müssen viele Hindernisse überwinden. (IAB-Kurzbericht, 08/2021), Nuremberg.

⁸⁹⁸ Brücker, Herbert; Glitz, Albrecht; Lerche, Adrian; Romiti, Agnese (2021): Occupational recognition and immigrant labor market outcomes. In: Journal of Labor Economics, Vol. 39, No. 2, S. 1-15.

⁸⁹⁹ See in particular: See Kosyakova, Yuliya; Gundacker, Lidwina; Salikutluk, Zerrin; Trübswetter, Parvati (2021): Arbeitsmarktintegration in Deutschland: Geflüchtete Frauen müssen viele Hindernisse überwinden. (IAB-Kurzbericht, 08/2021), Nuremberg.

⁹⁰⁰ See BAMF, ‘The content and stages of the procedure’, available at <https://bit.ly/3fNqh1S>

⁹⁰¹ *Ibid.*

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.⁹⁰²

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. Access to Covid-19 vaccines is based on residence in Germany and not health insurance status. As a result, beneficiaries of international protection have access to vaccines in the same conditions as all other persons living in Germany.⁹⁰³

⁹⁰² Georg Classen, *Ratgeber für Geflüchtete in Berlin*, 2nd ed., November 2017, available in German at: <https://bit.ly/2DOV0X5>, 156-157.

⁹⁰³ Federal Ministry of Health, 'Verordnung zum Anspruch auf Schutzimpfung gegen das Coronavirus SARS-CoV-2 (Coronavirus-Impfverordnung – CoronImpfV)', 1 June 2021, Section 1, available in German at <https://bit.ly/3wO3IDX>.

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/1lbaPmO (DE)

Note that the Asylum Procedures Directive and the Reception Conditions Directive have only partially been transposed by the corresponding acts referred to here.