

# Country Report: Germany



**2022  
Update**

## Acknowledgements & Methodology

This update of the report was written by Marlene Stiller and Paula Hoffmeyer-Zlotnik, independent researchers and was edited by ECRE. The 2021 update of the report was written by Paula Hoffmeyer-Zlotnik. The first report and updates until 2019 for 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 2022, 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, Türkiye, the United Kingdom) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://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

<b>AnkER centre</b>	<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.
<b>Arrival centre</b>	<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.
<b>Arrival certificate</b>	<i>Ankunftsbescheinigung</i> – Certificate received upon arrival in the initial reception centre valid until the formal asylum application.
<b>Dependence</b>	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> .
<b>Fictional approval</b>	<i>Fiktionsbescheinigung</i> – Document issued by the immigration authority to prove that an application for a residence permit (new or extension) has been filed and is currently processed. For the case of persons fleeing Ukraine, the fictional approval gives rise to entitlement for social benefits and access to the labour market (see <a href="#">Report on Temporary Protection</a> ).
<b>Formal decision</b>	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.
<b>Geographical restriction</b>	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 <a href="#">Section 56 Asylum Act</a> . 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).
<b>Initial reception centre</b>	<i>(Erst-)Aufnahmeeinrichtung</i> – Reception centre where asylum seekers are assigned to reside during the first phase of the asylum procedure.
<b>Residence rule</b>	<i>Wohnsitzregelung</i> – Obligation on beneficiaries of international protection to reside in the Federal State where their asylum procedure was conducted, pursuant to <a href="#">Section 12a Residence Act</a> . This is different from the geographical restriction imposed on asylum seekers.
<b>Revision</b>	Appeal on points of law before the Federal Administrative Court.

<b>Secondary application</b>	Under <a href="#">Section 71a Asylum Act</a> , 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.
<b>Special officer</b>	<i>Sonderbeauftragte*r</i> – Specially trained BAMF officer dealing with vulnerable asylum seekers.
<b>Special reception centre</b>	<i>Besondere Aufnahmeeinrichtung</i> – Reception centre where accelerated procedures are carried out in accordance with <a href="#">Section 30a Asylum Act</a> .
<b>Ukraine-Aufenthalts-VO</b>	<i>Ukraine-Aufenthalts-Übergangsverordnung</i> - Ukraine-Residence-Transitional Regulation

## List of Abbreviations

<b>AnKER</b>	Arrival, Decision and Return   Ankunft, Entscheidung, Rückführung
<b>APD</b>	EU Asylum Procedures Directive
<b>ARE</b>	Arrival and Return Centre   Ankunfts- und Rückführungseinrichtung
<b>BAMF</b>	Federal Office for Migration and Refugees   Bundesamt für Migration und Flüchtlinge
<b>BumF</b>	Federal Association for Unaccompanied Refugee Minors   Bundesfachverband unbegleitete minderjährige Flüchtlinge
<b>BVerfG</b>	Federal Constitutional Court   Bundesverfassungsgericht
<b>BVerwG</b>	Federal Administrative Court   Bundesverwaltungsgericht
<b>CEFR</b>	Common European Framework of Reference for Languages
<b>CJEU</b>	Court of Justice of the European Union
<b>CPT</b>	European Committee for the Prevention of Torture
<b>EASY</b>	Initial Distribution of Asylum Seekers   Erstverteilung der Asylbegehrenden (Computer based system for the distribution of asylum seekers)
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>GGUA</b>	Non-profit Society for the Support of Asylum Seekers   Gemeinnützige Gesellschaft zur Unterstützung Asylsuchender
<b>GU</b>	Collective accommodation   Gemeinschaftsunterkunft
<b>ILGA</b>	International Lesbian and Gay Association
<b>OVG/VGH</b>	Higher Administrative Court   Oberverwaltungsgericht / Verwaltungsgerichtshof
<b>VG</b>	Administrative Court   Verwaltungsgericht
<b>ZAB</b>	Central Immigration Authority   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*).<sup>1</sup> Furthermore, detailed statistics can be found in responses to information requests which are regularly submitted by German members of parliament.

Applications and granting of protection status at first instance: 2022

	Applicants in 2022	Pending at end of 2022	Refugee status <sup>2</sup>	Subsidiary protection	Rejection <sup>3</sup>	Humanitarian protection (Removal ban)	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
<b>Total</b>	244,132	136,448	40,911	57,532	49,330	30,020	23.0%	32.4%	16.9%	27.7%
Breakdown by countries of origin of the total numbers										
Syria	72,646	36,036	15,327	52,151	41	243	22.6%	77.0%	0.4%	0.1%
Afghanistan	41,471	27,594	8,539	1,903	260	26,499	23.0%	5.1%	71.2%	0.7%
Türkiye	25,054	19,286	2,966	84	5,671	28	33.9%	1.0%	0.3%	64.8%
Iraq	16,328	8,525	2,916	797	11,949	1,273	17.2%	4.7%	7.5%	70.6%
Georgia	8,865	3,523	7	2	5,301	16	0.1%	0.0%	0.3%	99.5%
Iran	7,350	5,274	1,252	133	1,768	53	39.1%	4.1%	1.7%	55.1%
North Macedonia	5,602	2,179	2	1	2,287	12	0.1%	0.0%	0.5%	99.3%

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

<sup>2</sup> These include decisions on constitutional asylum.

<sup>3</sup> Inadmissibility decisions and 'formal decisions' are excluded from the statistics above.

Moldova	5,218	661	2	1	2,119	5	0.1%	0.0%	0.2%	99.6%
undetermined <sup>4</sup>	4,973	3,075	2,420	563	804	79	62.6%	14.6%	0.2%	20.8%
Somalia	4,360	2,817	2,188	389	732	513	57.2%	10.2%	13.4%	19.2%

Source: *Asylgeschäftsstatistik* (01-12/22), available in German at: <https://bit.ly/3Z7UIUM>. Inadmissibility decisions and ‘formal decisions’ are excluded from the statistics above. Protection and rejection rates are calculated by the authors based on the total number of decisions without formal/inadmissibility decisions and without decisions where the country of origin is unknown.

\* Statistics on decisions cover the decisions taken throughout the year, regardless of whether they concern applications lodged that year or in previous years.

\* ‘Applicants in year’ refers to the total number of applicants, and not only to first-time applicants.

In addition to refugee status 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),<sup>5</sup> and on the other hand, a ‘removal ban’ for compelling humanitarian reasons. Note that this includes only removal bans issued by the BAMF, and not by immigration authorities. The BAMF only examines removal bans due to the situation in the country of origin, whereas immigration authorities can issue removal bans based on the situation of the applicant in Germany (e. g. medical reasons, family unity etc).

The figures presented in the table above represent the “adjusted protection rates” (*bereinigte Schutzquoten*). This means that ‘formal decisions’ are not considered. There were 50,880 ‘formal decisions’ in 2022, in which the applications were rejected as inadmissible or in which the asylum procedure was terminated for other reasons. In all these cases, the substance of the case was not examined by the asylum authorities. In contrast, official statistics usually represent the ‘overall protection rate’ (*Gesamtschutzquoten*), which is determined by including the formal decisions. The overall protection rates for 2022 are:

- ❖ Refugee rate (incl. constitutional asylum): 17.9%,
- ❖ Subsidiary protection rate: 25.2%,
- ❖ ‘Removal ban’: 13.1%,
- ❖ Rejection: 21.6%,
- ❖ Formal decisions: 22.3%.<sup>6</sup>

<sup>4</sup> The category ‘undetermined’ (*ungeklärt*) applies in most cases to persons who have lived in a country for a long time without having the nationality of this country, such as Palestinian refugees having lived in Syria before arriving in Germany. According to the BAMF, their asylum applications are treated with regard to the situation in the country of residence. The category further applies in cases where the information on the country of origin indicated by the applicant is disproven or deemed not credible by the BAMF, and where no other country of origin can be established. See Frankfurter Allgemeine Zeitung, *Knapp 500 Asylbewerber mit unbekannter Herkunft*, 23 May 2021, available in German at <http://bit.ly/40ARLNz>.

<sup>5</sup> Constitutional asylum was granted in 1,937 cases in 2022.

<sup>6</sup> BAMF, *Aktuelle Zahlen*, December 2022, available in German at <https://bit.ly/3TDLUEZ>, 11.

### Gender/age breakdown of the total number of applicants: 2022 (first applications only)

	Number	Percentage
<b>Total number of applicants</b>	217,774	100%
Adult Men	102,210	46.9%
Adult Women	34,332	15.8%
Children	81,232	37.3%
Among which unaccompanied children	4,965	2.3%

Source: BAMF, Aktuelle Zahlen, December 2022, available in German at <https://bit.ly/3TDLUEZ>, 11. Statistics on unaccompanied minors provided by the BAMF, 9 March 2023.

### Comparison between first instance and appeal decision rates, 1 January – 30 November 2022 ('adjusted decision rates', excluding formal decisions):

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	162,464		42,571	
Positive decisions (excluding formal decisions)	117,061	72.1%	15,745	37.0%
• <i>Refugee status (incl. constitutional asylum)</i>	37,408	23.0%	5,454	12.8%
• <i>Subsidiary protection</i>	52,192	32.1%	1,358	3.2%
• <i>Humanitarian protection</i>	27,461	16.9%	8,933	21.0%
Negative decisions	45,403	27.9%	26,826	63.0%

Source: BAMF, *Asylgeschäftsstatistik (11-12/22)*, available at <https://bit.ly/3TGcQ07>, and Federal Government, *Response to parliamentary question by The Left, 20/5709*, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 35. All figures refer to decisions made between 1 January and 30 November 2022, as full-year figures for appeal decisions were not available at the time of writing of this report.

## 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	<a href="http://bit.ly/1K3bGbv">http://bit.ly/1K3bGbv</a> (DE) <a href="http://bit.ly/2tZaS9E">http://bit.ly/2tZaS9E</a> (EN)
Residence Act	Aufenthaltsgesetz	AufenthG	<a href="http://bit.ly/1SiAxKm">http://bit.ly/1SiAxKm</a> (DE) <a href="http://bit.ly/1M5sZvW">http://bit.ly/1M5sZvW</a> (EN)
Asylum Seekers' Benefits Act	Asylbewerberleistungs-gesetz	AsylbLG	<a href="http://bit.ly/1yuVyOx">http://bit.ly/1yuVyOx</a> (DE)
Basic Law (German Constitution)	Grundgesetz	GG	<a href="http://bit.ly/1Tw9QM">http://bit.ly/1Tw9QM</a> (DE) <a href="http://bit.ly/1Rteu8M">http://bit.ly/1Rteu8M</a> (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	<a href="http://bit.ly/1HAT3Yv">http://bit.ly/1HAT3Yv</a> (DE) <a href="http://bit.ly/3Z4mIKh">http://bit.ly/3Z4mIKh</a> (EN)
Code of Administrative Court Procedure	Verwaltungsgerichtsordnung	VwGO	<a href="http://bit.ly/3Hs0KZk">http://bit.ly/3Hs0KZk</a> (DE) <a href="http://bit.ly/3kXNMuW">http://bit.ly/3kXNMuW</a> (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	<a href="http://bit.ly/1eVh0mp">http://bit.ly/1eVh0mp</a> (DE)
Regulation on Employment	Beschäftigungsverordnung	BeschV	<a href="http://bit.ly/2nhb2B0">http://bit.ly/2nhb2B0</a> (DE)
Ukraine-Residence-Transitional Regulation	Ukraine-Aufenthalts-Übergangsverordnung	Ukraine-Aufenthalts-VO	<a href="http://bit.ly/424XJrv">http://bit.ly/424XJrv</a> (DE)

## Overview of the main changes since the previous report update

The report was previously updated in **April 2022**.

### National context

In 2022, the government (sworn into office in December 2021) started to work on some of the reforms and measures announced in the Coalition agreement.<sup>7</sup> The most important measures were a reform of the provisions on the right to stay, enabling certain persons to regularise their stay in what is called a '*Chancenaufenthaltsrecht*', the introduction of a humanitarian admission programme for Afghanistan and a reform of some provisions related to the first instance asylum procedure as well as the appeal procedure with the Act on the acceleration of asylum court proceedings and asylum procedures.<sup>8</sup>

#### *Right to stay for persons with a long-term tolerated status (Chancenaufenthaltsrecht)*

A reform which entered into force on 31 December 2022 introduced a new way for persons with a tolerated status ('*Duldung*') to legalise their stay in Germany and relaxes some conditions for existing pathways to legal residence.<sup>9</sup> A tolerated status applies to persons who are obliged to leave Germany, e. g. because their application for asylum was rejected, but whose removal is suspended for either legal reasons (e. g. because of the situation in the country of origin) or practical reasons (e. g. when removals cannot be enforced due to an illness or the lack of travel documents).<sup>10</sup> The newly introduced provision applies to all persons who have been staying in Germany for five years on 1 October 2022. They can apply to receive a residence permit for a period of 18 months without fulfilling the usual criteria to legalise their stay (such as the ability to secure their own subsistence, valid identity documents, and German language skills), and then have to meet these criteria within the 18 months in order to secure their legal stay.<sup>11</sup> The provision is set to expire after three years.<sup>12</sup> The reform also relaxed conditions for existing ways to legalise stay in Germany. These include the residence permit for young persons (Section 25a Residence Act) and for persons proving 'sustainable integration' (Section 25b Residence Act). For the first group, the age until when young people can apply to obtain the residence permit was increased to 27 (from 21). For the second group, the length of previous stay was lowered from eight to five years. However, they must have had a tolerated stay (and not e. g. the legal status of an asylum seeker) for the 12 months preceding the application.<sup>13</sup>

### International protection

❖ **Key asylum statistics:** In 2022, a total of 244,132 applications for international protection were lodged in Germany, mainly by Syrians (72,646), Afghans (41,471) and Turkish nationals (25,054). This marks an important increase compared to 190,816 applications in 2021 and 122,170 applications in 2020. The overall recognition rate at first instance stood at 72.3% (i.e. 23% refugee status, 32.4% subsidiary protection and 16.9% humanitarian protection). It reached 99.9% for Syrians, 99.3% for Afghans, but only 35.2% for Turkish nationals and 29.4% for Iraqis. Other nationalities such as Georgians, North Macedonians or Moldovans, were nearly all rejected with a rejection rate around 99%. An additional 15,745 persons were granted international protection by Courts at second instance

<sup>7</sup> For an overview see AIDA, *Country Report Germany - Update on the year 2021*, April 2022, available at <https://bit.ly/3XnN7RS>, 11-12.

<sup>8</sup> Official Gazette I no. Nr. 56 (2022) of 28 December 2022, 2817.

<sup>9</sup> Official Gazette I no. Nr. 57 (2022) of 30 December 2022, 2847.

<sup>10</sup> Section 60a (1) Residence Act.

<sup>11</sup> Section 104c Residence Act.

<sup>12</sup> Federal Ministry of the Interior, *Anwendungshinweise des Bundesministeriums des Innern und für Heimat zur Einführung eines Chancen-Aufenthaltsrechts*, 23 December 2022, available in German at <https://bit.ly/3TaVTRS>.

<sup>13</sup> Informationsverbund Asyl & Migration, *Chancen-Aufenthaltsrecht und Änderungen im Asylverfahren: die ersten Gesetze der Ampel-Koalition treten in Kraft*, 2 January 2023, available in German at <http://bit.ly/3WLFgYc>.

until the end of November 2022. The number of pending cases at the BAMF, which had more than doubled between the end of 2020 and 2021 from 52,056 to 108,064, increased again to 136,448 at the end of 2022.

### *Asylum Procedure*

- ❖ **Act on the acceleration of asylum court proceedings and asylum procedures.** The reform entered into force on 1 January 2023 and thus does not apply to the reporting period for this update. The most important changes of the reform include:
  - The introduction of independent counselling for asylum seekers, instead of the state-run counselling which was introduced in 2019 (see [Information for asylum seekers and access to NGOs and UNHCR](#))
  - Changes to the rules for personal interviews: an additional ground for dispensing with the interview was introduced when the BAMF is of the opinion that the foreigner is unable to attend a hearing due to permanent circumstances beyond their control and the possibility of conducting video interviews (see [Personal interview](#))
  - The provisions on time limits for the asylum procedure were changed in order to closely mirror the relevant provisions of the EU Asylum Procedure Directive (see General (scope, time limits))
  - A change in the rules for onward appeals (Revision) to the Federal Administrative Court, according to which the latter can now also adjudicate on the facts of the case, rather than merely on points of law (see [Onward appeal\(s\)](#)).
  - Complete revision of the grounds for cessation of the residence permit and substantial amendments to the grounds of revocation of the residence permit (see [Cessation and review of protection status](#)).
- ❖ **Humanitarian admission programme for Afghan nationals:** On 17 October 2022, the Federal Government launched a federal admissions programme which had been announced in the coalition agreement of 2021.<sup>14</sup> This programme is in addition to the admission programme for former employees of German authorities. 1,000 admissions per month are foreseen until the end of the current government's term in 2025. Applicants are registered via cooperating NGOs and then selected by the Federal government. Admission is foreseen for human and women's rights activists, persons who have worked in justice, politics, the media, education, culture, sport or academia, or particularly vulnerable persons who are subject to violence or persecution based on gender, sexual orientation, gender identity or religion (see Differential treatment of specific nationalities in the procedure).
- ❖ **LGBTIQ+ refugees:** The Federal Ministry of the Interior issued new guidelines according to which as of 1 October 2022, applicants who fear persecution on the basis of their sexual orientation can no longer be expected to hide their sexual orientation upon return to the country of origin.<sup>15</sup> This is a significant change in the BAMF practice, which before had repeatedly rejected asylum claims of LGBTIQ+ applicants on this basis,<sup>16</sup> even in cases of LGBTIQ+ activists who had openly advocated for the rights of queer refugees in Germany.<sup>17</sup>
- ❖ **Beneficiaries of protection in another country who apply for asylum in Germany:** The BAMF had "de-prioritised", and thus de facto stopped processing, asylum applications from Syrians who had been granted protection in Greece since 2019. As of April 2022, the BAMF took up decision-making

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<sup>14</sup> For further details, see AIDA, *Country Report Germany - Update on the year 2021*, April 2022, available at <https://bit.ly/3XnN7RS>, 11.

<sup>15</sup> BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), version of January 2023, 395, available in German at <https://bit.ly/3J5jPTA>.

<sup>16</sup> See asyl.net, *Anwendung des ‚Diskretionsgebots‘ durch das BAMF*, 13 January 2023, available in German at <http://bit.ly/3Jt2VyJ>.

<sup>17</sup> PRO ASYL, *Asyl im Zeichen des Regenbogens?* 30 September 2022, available in German at <https://bit.ly/3Dy9M6d>.

again, as a result of which the number of pending cases from this group dropped from 39,000 as of December 2021 to 12,500 as of December 2022. In deciding these cases, the BAMF re-examines the merit of the claims rather than recognising the decision made by Greek authorities, a practice that has been challenged in courts and is the subject of a request for preliminary ruling to the CJEU (see [Suspension of transfers](#)).

- ❖ **Key jurisprudence on the regular asylum procedure:** following a 2021 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,<sup>18</sup> the Federal Administrative Court ruled in January 2023 that the risk of persecution still has to be established in each individual case, based on a connection between the ground for persecution and the type of persecution to be feared (see Differential treatment of specific nationalities in the procedure).<sup>19</sup>
- ❖ **Key jurisprudence on the Dublin procedure:** The CJEU, in a preliminary ruling, found that the BAMF practice to extend the time limit after which Germany becomes responsible for a case during the suspension of transfers due to Covid-19 pandemic was unlawful under the Dublin Regulation.<sup>20</sup> In a case concerning the practice of 'church asylum', the Bavarian High Court ruled on 25 February 2022 that granting shelter and food to persons obliged to leave Germany cannot be considered a criminal offence if the agreement on church asylum is followed. The court further found that there is no obligation on the host to actively end church asylum when the stay is unauthorised.<sup>21</sup>
- ❖ **Key jurisprudence on subsequent applications:** The Administrative Court of Sigmaringen issued a preliminary ruling request to the CJEU, asking whether two conditions for the admissibility of a subsequent application – a change in the material or legal situation; and the bringing forward of new evidence which would have changed the outcome of the first instance procedure, had it been known before – are compatible with the EU Asylum Procedures Directive (APD), which merely refers to new elements or findings as requirements for subsequent applications, and does not mention whether they would change the decision. The court further requested clarification on the status of new CJEU rulings, which are currently not considered a 'new legal situation' in Germany if the ruling only concerns the interpretation of EU law.<sup>22</sup>

### *Reception conditions*

- ❖ **Reintroduction of emergency shelters:** Due to the increasing arrivals of protection seekers, several municipalities, especially larger cities, have had to reintroduce emergency shelters. Especially in larger cities, exhibition grounds and/or made-up tent facilities are used to host asylum seekers. The conditions in these emergency shelters are below standards. It has been reported that no adequate heating systems were installed in winter and that often access to social and legal assistance is difficult.
- ❖ **Overcrowding in arrival and reception centres:** As a consequence of the increasing arrivals, many regular arrival centres are heavily overcrowded. This has led to deteriorating conditions in the facilities. In many municipalities there is a backlog in registrations of asylum seekers and access to health care and social assistance became more difficult. Especially children do not receive adequate assistance in mass accommodations.

<sup>18</sup> CJEU, Case C-238/19, Judgment of 19 November 2020, available at: <http://bit.ly/3z5Hk8U>.

<sup>19</sup> Federal Administrative Court, Case 1 C 1.22, 19 January 2023, press release available in German at: <http://bit.ly/42EC4qk>.

<sup>20</sup> CJEU, Cases Joint Cases C-245/21 and C-248/21, 22 September 2022, available at: <http://bit.ly/40rVMUq>.

<sup>21</sup> Infomigrants, 'Ruling in church asylum case creates legal precedent in Germany', 04 March 2022, available at <https://bit.ly/3wAt3jv>.

<sup>22</sup> Art. 33(2)d and 40(2) recast APD. To follow on the preliminary ruling see CJEU, Case C-216/22, available at: <http://bit.ly/3z3gNJr>.



- ❖ **Jurisprudence on reception conditions:** Following a decision by the Federal Constitutional Court, single adults who live in mass accommodation centres and those who live in private housing shall now receive the same amount of financial social benefits. Prior to the judgement it was assumed by the authorities that those who live in mass accommodations economise together and therefore require less financial benefits.<sup>23</sup> In February 2022 the Higher Court of Baden-Wuerttemberg ruled that private rooms in mass accommodation centres are protected under the German Constitution and that consequently any entry and raids by security personnel must be regulated by law and justified in the individual case.<sup>24</sup>

#### *Detention of asylum seekers*

- ❖ **Grounds for detention pending removal:** With a legal change that entered into force on 31 December 2022, the time within which the removal must be expected to take place has been extended from 3 to 6 months for persons with a criminal conviction (see [Grounds for detention](#)).
- ❖ **Key jurisprudence on detention:** On 10 March 2022, the CJEU issued its decision as to whether the possibility of using regular prisons for detention due to an 'emergency situation', in place between 2019 and July 2022, was in line with the Return Directive.<sup>25</sup> 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 Return Directive.

#### *Content of international protection*

- ❖ **Cessation and revocation:** In 2022 the number of revocation procedures further decreased in comparison to the three previous years. Nevertheless, the status of 2,649 persons was revoked in 2022, mainly of persons from Syria, Iraq, Afghanistan and Iran (see detailed statistics under [Cessation and review of protection status](#)). More importantly the legal framework on cessation and revocation has been amended substantially. The changes serve to relieve the administrative and judicial bodies, therefore no more routine revisions are foreseen by the amended legal framework.
- ❖ **Long term residence for beneficiaries of international protection:** Beneficiaries of international protection are eligible for a permanent residence permit after five years (three years if they have a good command of the German language).
- ❖ **Family reunification for beneficiaries of subsidiary protection:** Family reunification for beneficiaries of subsidiary protection continues to be limited to 1,000 persons per month as a matter of policy. However, in 2022, 8,900 visas were issued for family members of beneficiaries of subsidiary protection in practice, thus only half of 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 have been extended beyond 2021. A number of Federal States decided to put similar family reunification

<sup>23</sup> Federal Constitutional Court, Decision 1 BvL 3/21, 19. October 2022, available in German at: <http://bit.ly/3z5FN2W>, para 70f.

<sup>24</sup> VGH Baden-Wuerttemberg, Decision 12 S 4089/20, 2 February 2022, available in German at: <https://bit.ly/3K4VP3e>.

<sup>25</sup> CJEU, Case C-519/20, 10 March 2022, available in German at: <https://bit.ly/3NtZt6u>.



programmes in place for family members of Afghan refugees, which have been authorised by the Federal government in 2022. The Federal government set up a family reunification programme for Afghan nationals as well but its implementation seems to progress rather slow.

- ❖ **Tense housing market for beneficiaries of international protection.** Beneficiaries of international protection generally have the same access to the housing market as German nationals. However, in Germany in 2022 there is a huge lack of apartments, especially low-cost apartments. In practice this leads to disadvantages for beneficiaries of international protection in comparison to German nationals since beneficiaries often face discrimination and scepticism by landlords. In many cases beneficiaries of international protection therefore have no choice but to stay in reception centres.
- ❖ **Change in social welfare system:** The legal framework on social benefits for German nationals as well as for beneficiaries of international protection was revised completely, with the new rules entering into force on 1 January 2023. The reforms include inter alia higher unemployment benefits and less possibilities for sanctions in cases of non-compliance with the obligation to cooperate.
- ❖ **Key jurisprudence on the content of international protection:** In August 2022 the CJEU strengthened the right to family reunification and condemned the age assessment cut off for family reunification of the German authorities.<sup>26</sup> Prior to the judgement the child had to be a minor at the time of effective reunification in cases where the sponsor was the child as well as in cases where the sponsor was the parent. This had been criticised heavily by civil society organisations, since the visa procedure may take several months or even years and minor children may turn eighteen in the meantime. The CJEU decided that the age at the time of the original application for international protection is decisive in both scenarios. Following the judgment, the Federal government urged the local authorities to swiftly implement the judgement. In December 2022 the Federal Administrative Court ruled that a distinction between refugees and beneficiaries of subsidiary protection concerning the right to family reunification does not violate the Constitution.<sup>27</sup> As the judgement has not been fully published yet, the consequences of the judgment remain partly unclear. In October 2022 the Federal Administrative Court ruled that beneficiaries of subsidiary protection may not be required to sign a 'repentance statement' at the embassies of the country of origin in order to obtain a passport. If such a practice is adopted by the country of origin, the beneficiary cannot be reasonably expected to obtain a passport of the country of origin.<sup>28</sup>

## Temporary protection

The information given hereafter constitute a short summary of the German Report on Temporary Protection, for further information, see [Report on Temporary Protection](#).

- ❖ **Key statistics on temporary protection:** as of March 2023, 1,072,248 persons were registered in the Central Register of Foreigners, and 778,799 persons held a residence permit for temporary protection. 69% of registered persons are women, and 33% are children.

### *Temporary protection procedure*

- ❖ **Scope of temporary protection and disadvantageous treatment of third country nationals:** In Germany the scope of temporary protection is wider than in the Council decision. 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 may

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<sup>26</sup> CJEU, Joined Cases C-273/20 and C-355/20, Judgement of 1 August 2022, available at: <http://bit.ly/42CZDjh>.

<sup>27</sup> Federal Administrative Court, Voraussetzungen für den Familiennachzug zu subsidiär Schutzberechtigten, press release Nr. 78/2022, 8 December 2022, available in German at: <https://bit.ly/3YcL6rO>.

<sup>28</sup> Federal Administrative Court, Decision BVerwG 1 C 9.21, 11 October 2022, available in German at: <http://bit.ly/3FS5Myr>.

also be granted to third country nationals holding a residence permit in Ukraine, even if not a permanent one, but only if they are unable to return to their countries of origin. It has been criticised that in practice applicants from third countries face several disadvantages in all stages of the procedure compared to Ukrainian nationals. The different treatment of third country nationals applying for temporary protection and applicants of Ukrainian nationality constitute the most flagrant legal disputes as to the German implementation of the Council Decision. The difference in treatment is displayed in the registration process where access to the application for temporary protection is sometimes not granted to third country nationals or where eligible third country nationals are pressured into the asylum procedure instead. After having lodged their application, third country nationals are further treated differently with regards to access to the labour market and other social benefits.

- ❖ **No automatic suspensive effect upon appeal:** Differing from the asylum procedure, the appeal of a negative decision on temporary protection does not have automatic suspensive effect, an application for interim measures must be filed to guarantee legal stay during the appeal proceedings.
- ❖ **Accessibility of information on temporary protection:** The German government is putting effort into distributing information for people fleeing Ukraine on entry, legal stay and housing on their websites in different languages.
- ❖ **Flaws in identification of vulnerable groups:** As for the asylum procedure no systemic mechanisms exist to identify applicants with special needs and meet these needs.
- ❖ **Access to regular social benefits:** In 2022 the system of social benefits for applicants for and beneficiaries of temporary protection were revised completely. As of June 2022, applicants and beneficiaries of temporary protection have access to regular social benefits. The unequal treatment between applicants for temporary protection who receive regular social benefits and applicants for international protection who receive social benefits under the Asylum Seekers Benefits Act has been criticised by many civil society organisations.

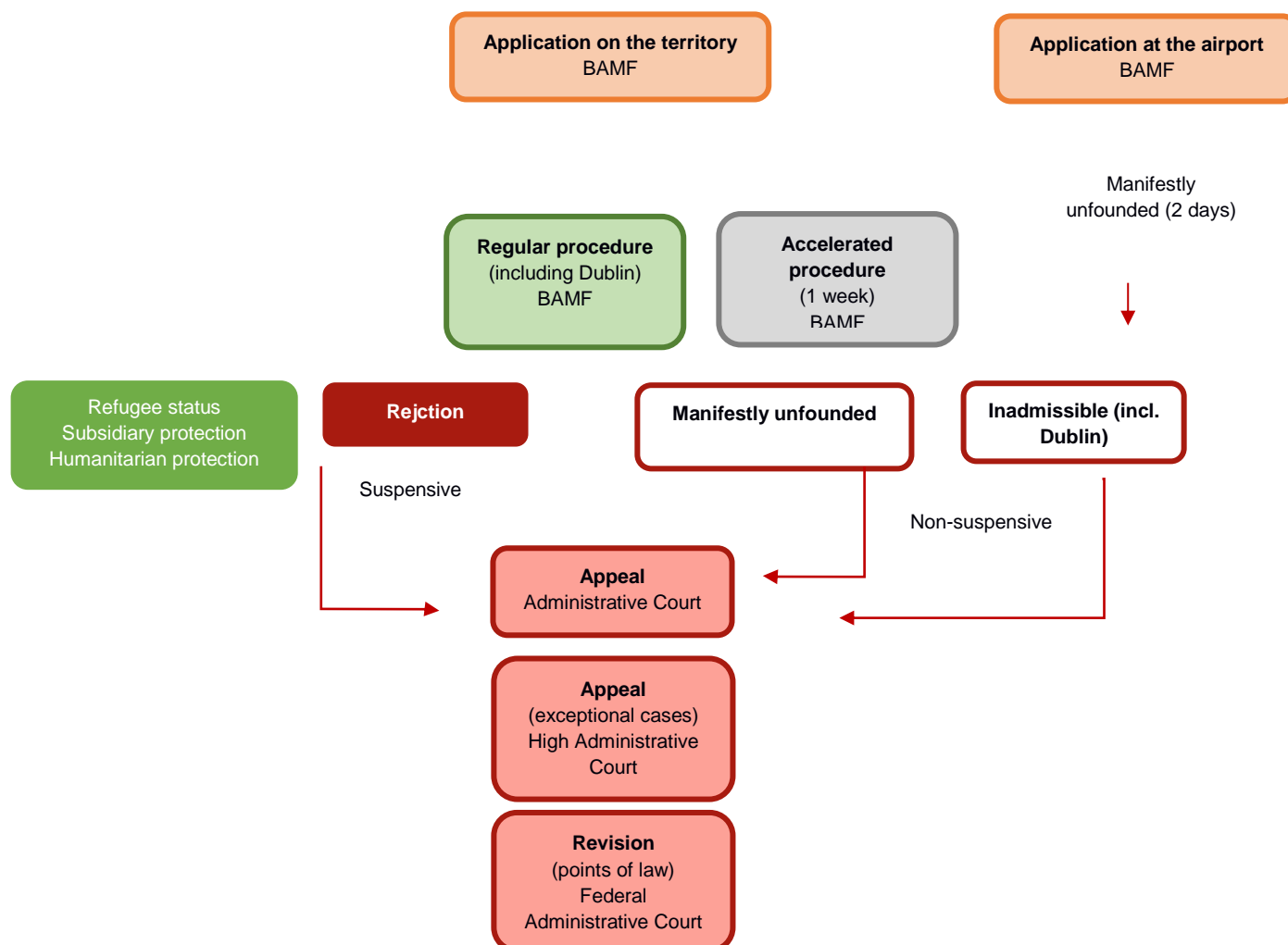
#### *Content of temporary protection*

- ❖ **Excessive waiting periods for receiving residence permits:** Depending on the region, decision making may take several months due to a general overburdening of the local authorities.
- ❖ **Obligation to reside in the allocated municipality also applies to beneficiaries of temporary protection.** Following legal amendments in June 2022 beneficiaries of temporary protection are now also obliged to reside in the municipality to which they have been allocated in the determination procedure for three years. However, North Rhine-Westphalia suspended the application of this obligation for beneficiaries of temporary protection.
- ❖ **Dense housing situation and reintroduction of emergency shelters:** While most of the emergency shelters of 2016 had been dismantled, the rising numbers of people fleeing Ukraine but also the continuing high numbers of people fleeing Iran, Syria and Afghanistan in combination with the general lack of affordable housing led the authorities to reintroduce emergency shelters. The conditions in the emergency shelters but also in overcrowded first accommodation centres have been criticised by many NGOs. While beneficiaries of temporary protection are generally allowed to access the regular housing market, due to the lack of affordable housing, they are often required to stay in accommodation centres for extended periods.
- ❖ **Access to regular social benefits, labour market and health care:** Beneficiaries of temporary protection in theory have the same access to social benefits and health care as German nationals. Practical hurdles may however arise due to administrative requirements.

# Asylum Procedure

## A. General

### 1. Flow chart



### 2. Types of procedures

**Indicators: Types of Procedures**

Which types of procedures exist in your country?

❖ Regular procedure:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
▪ Prioritised examination: <sup>29</sup>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
▪ Fast-track processing: <sup>30</sup>	<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: <sup>31</sup>	<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

<sup>29</sup> For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast APD.

<sup>30</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>31</sup> Labelled as 'accelerated procedure' in national law. See Article 31(8) recast APD.

### 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"> <li>• First appeal</li> <li>• Second appeal</li> <li>• Final appeal</li> </ul>	<ul style="list-style-type: none"> <li>• Administrative Court</li> <li>• High Administrative Court</li> <li>• Federal Administrative Court</li> </ul>	<ul style="list-style-type: none"> <li>• Verwaltungsgericht</li> <li>• Oberverwaltungsgericht or Verwaltungsgerichtshof</li> <li>• Bundesverwaltungsgericht</li> </ul>
Subsequent application	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)	8,138 positions (about 3,094.4 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, 20/4019*, 12 October 2022, 51, <https://bit.ly/3k5XoUw>.

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. As of January 2022, the BAMF website lists a total of 63 branch offices.<sup>32</sup> 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 integration of foreign nationals). Branch offices are assigned specific countries of origin, whereas the main countries of origin are processed in the majority of branch offices.<sup>33</sup> In cooperation with the Federal States, the BAMF manages a distribution system for asylum seekers known as Initial Distribution of Asylum Seekers

<sup>32</sup> BAMF, *Locations*, available at: <https://bit.ly/3dFTd8w>. The website lists 63 'branch offices' and 'regional offices', with some offices having both functions.

<sup>33</sup> A list of all countries of origin and the allocated branch offices is available on the website of the Refugee Council of Lower Saxony (up to date as of March 2022): <https://bit.ly/3WJ0eg1>.

(*Erstverteilung der Asylbegehrenden*, EASY) system, which allocates places according to a quota system known as “*Königsteiner Schlüsse*” (see [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 2022, the BAMF had 3,094.4 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 8,138 according to the Federal Ministry of the Interior.<sup>34</sup>

The government provided the following numbers for positions in the relevant departments as of September 2022:<sup>35</sup>

- ❖ asylum department (excluding revocation and Dublin procedures): 2,230,9 full-time equivalents
- ❖ revocation procedures: 133,9 full-time equivalents
- ❖ procedures (appeal procedures, representation of the BAMF in court): 355 full-time equivalents
- ❖ quality management: 170 full-time equivalents
- ❖ Dublin-procedures: 338,5 full-time equivalents

## Quality

The quality of BAMF asylum decisions has been much debated in recent years given the high number of appeals filed at the courts, but also because of “scandals” which prompted extensive media coverage in 2017 and 2018.<sup>36</sup> This was related, in part, to the high increase in personnel in 2015 and 2016, 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 and to the quality assurance procedures since 2017. As of 2018, short summaries of interview transcripts and notice letters are checked by a second employee. Randomly selected cases are subject to a more thorough quality control by the BAMF’s quality assurance division. In addition, the BAMF also has a division for ‘Operative management of asylum procedures and integration’ which ‘analyses developments and trends so that it is possible to recognise and react to a need to act for management at an early date’, according to the BAMF.<sup>37</sup> In particular, the decision-making practices of the different branch offices are monitored and branch offices with significant deviations from the overall protection rates are asked to provide further information on the treated cases to the BAMF headquarters.<sup>38</sup> The results of this monitoring and the case outcomes are not made public by the BAMF automatically, but are regularly requested and published through parliamentary enquiries.<sup>39</sup>

## 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 into the territory may be refused on the grounds that the migrant has travelled through a “safe third country”.

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<sup>34</sup> Federal Ministry of the Interior, ‘*Bundesamt für Migration und Flüchtlinge*’, available in German at <https://bit.ly/3qTH0qt>

<sup>35</sup> Federal Government, Response to information request by The Left, 20/4019, 12 October 2022, 51.

<sup>36</sup> For more detailed information, see AIDA, *Country Report Germany - Update on the year 2019*, July 2020, available at: <https://bit.ly/34so09M>, 20-21.

<sup>37</sup> BAMF, *Procedure management and quality assurance*, 28 November 2018, available at <http://bit.ly/3DxsTgJ>.

<sup>38</sup> Federal Government, Response to information request by The Left, 20/2309, 17 June 2022, 12-14.

<sup>39</sup> See for the second half of 2021: Federal Government, Response to information request by The Left, 20/2309, 17 June 2022, 12-14.

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).

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.<sup>40</sup> Once asylum seekers have reported to the reception facility, they have to be issued an ‘arrival certificate’ (*Ankunftsnaehweis*). Afterwards, the responsible branch office of the BAMF is determined with the help of a 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 the person to 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 must be retracted by the authorities.

### First instance decision

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

- ❖ Constitutional asylum, restricted to people persecuted by state actors for political reasons;
- ❖ Refugee status according to the 1951 Refugee Convention and to the Qualification Directive;
- ❖ Subsidiary protection as part of the international protection under the Qualification Directive; or
- ❖ 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 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 50,880 cases in 2022 (22.3%), a ‘formal decision’ – including inadmissibility decisions – was taken, which means that the case was closed without an examination of the asylum claim’s substance.<sup>41</sup> 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.<sup>42</sup>

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<sup>40</sup> Section 13 Asylum Act.

<sup>41</sup> In the previous years the numbers were as follows: 55,035 (28.8%) in 2021, 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.

<sup>42</sup> Section 34 (1) Asylum Act.



## Appeal

An appeal against the rejection of an asylum application must 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.<sup>43</sup> However, entry into 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.<sup>44</sup>

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)<sup>45</sup> - they have not necessarily entered the territory,<sup>46</sup> and it is possible that a removal to the neighbouring state (*Zurückweisung*) is still carried out at this point without examination which country is responsible for treating the asylum application.<sup>47</sup> In 2022, border control authorities detected a total of 34,731 persons entering Germany irregularly and asking for asylum. Out of these, 34,061 were referred to the BAMF.<sup>48</sup>

<sup>43</sup> Section 18 (1) Asylum Act.

<sup>44</sup> Section 18(2) Asylum Act and Sections 14 and 15 Residence Act.

<sup>45</sup> Section 2(2) Federal Police Act.

<sup>46</sup> Section 13(2) Residence Act.

<sup>47</sup> Pro Asyl, *Fortgesetzte Grenzkontrollen: rechtswidrige Zurückweisung von Geflüchteten*, 28 April 2022, available in German at <http://bit.ly/3IBKTAP>.

<sup>48</sup> Federal Government, *Reply to parliamentary question by The Left, 20/5870*, 28 February 2023, available in German at: <https://bit.ly/40KZhWi>, 70.

With the outbreak of the Covid-19 pandemic, the German government introduced temporary border controls at internal Schengen borders at various points in time.<sup>49</sup> In June 2022, all remaining entry restrictions and Covid-related border controls were lifted, except for countries designated as 'virus-variant-areas'. No countries were designated as such areas in 2022.<sup>50</sup>

Independently of the pandemic situation, Germany has regularly re-introduced border controls at its borders with Austria since 2015. The controls have been continued throughout 2022, and are in place until 11 May 2023 at the time of writing of this report.<sup>51</sup> The prolongations occurred despite a ruling of the CJEU of 26 April 2022 in which the court states that border controls cannot exceed a duration of 6 months unless there is a new threat justifying a renewed introduction of controls for another six months maximum.<sup>52</sup> The extension has been criticised by NGOs such as PRO ASYL, who argue that controls lead to refusals of entry of would-be asylum seekers in Germany, who are denied access to an assessment by the Federal Office for Migration and Refugees whether Germany might be responsible for handling their asylum application.<sup>53</sup> A representative of the union of police officers equally criticised the extensions, on the grounds that they do not reduce irregular immigration but rather shift routes to other land borders.<sup>54</sup>

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.<sup>55</sup> 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 persons found at the Austrian-German border, as this was the only border where controls continue to take place. While being heavily debated in 2018, 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.<sup>56</sup> While no refusals of entry were carried out between May 2021 and the end of 2021 according to the Federal Police,<sup>57</sup> two persons were returned to Spain in 2022.<sup>58</sup> 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.<sup>59</sup>

The legality of the new procedure has been questioned by legal experts,<sup>60</sup> and forced returns that took place on its basis were subject to court challenges, including requests for interim measures to bring back

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<sup>49</sup> For further information see AIDA, *Country Report Germany - Update on the year 2021*, April 2022, available at <https://bit.ly/3XnN7RS>, 22.

<sup>50</sup> Federal Government, *Coronavirus in Deutschland: Die wichtigsten Fragen und Antworten für Reisende*, 28 September 2022, available in German at <http://bit.ly/3JJfVE>.

<sup>51</sup> European Commission, 'Temporary Reintroduction of Border Control', available at: <https://bit.ly/3HLWSGd>.

<sup>52</sup> CJEU. Case C-368/20, *NW v Landespolizeidirektion Steiermark*, judgement of 26 April 2022, available at <http://bit.ly/40gPAPE>.

<sup>53</sup> Pro Asyl, *Fortgesetzte Grenzkontrollen: rechtswidrige Zurückweisung von Geflüchteten*, 28 April 2022, available in German at <https://bit.ly/3IBKTAP>.

<sup>54</sup> Süddeutsche Zeitung, *Faerer verlängert Kontrollen an Grenze zu Österreich*, 27 April 2022, available in German at <http://bit.ly/3JLCRgC>.

<sup>55</sup> The text of the German-Spanish Administrative Arrangement is available at: <http://bit.ly/2G2lZ7E>. The text of the German-Greek Administrative Arrangement is available at: <https://bit.ly/3HkJ4Nx>.

<sup>56</sup> 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>.

<sup>57</sup> Information provided by the Federal Police, 6 April 2022.

<sup>58</sup> Information provided by the Federal Police, 14 March 2023.

<sup>59</sup> Süddeutsche Zeitung, *Der Streit war absurd*, 3 November 2019, available in German at: <https://bit.ly/3011Y8e>.

<sup>60</sup> 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>.



the forcibly returned applicants. The responsible court – the administrative court of Munich – granted interim measures and ordered the German Federal Police to bring back asylum seekers from Greece in two cases in 2019 and 2021.<sup>61</sup> While the two cases are still pending as of March 2023, 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 neither its practice nor its legal assessment in light of the court decision of May 2021.<sup>62</sup> In October 2021, the Ministry of Interior declared its willingness to conclude a renewed agreement with Greece and to potentially reintroduce border controls at airports with flights from Greece.<sup>63</sup> However, the declaration occurred only weeks before the end of term of the Minister of Interior who had initiated the procedure. No information is available as to whether the new Federal government continues to apply the agreements. More information on the procedure and the legal challenges brought against it can be found in the 2019 Update to this report as well as in ECRE's assessment of transfers of asylum seekers based on these agreements.<sup>64</sup>

The outbreak of the war against Ukraine did not lead to the reintroduction of border controls, as Ukrainian nationals and persons residing in Ukraine on the day of the outbreak can enter Germany without the need for a visa (for more details see the [Report on Temporary Protection](#)).<sup>65</sup> However, the number of illegal border crossings detected by the Federal Police was higher in 2022 compared to 2021,<sup>66</sup> and the Federal Police did enhance its activity at the internal borders, including on trains transporting persons fleeing Ukraine. According to the Federal Police, this was to 'help the rapid granting of protection for eligible persons and to help safeguard basic security needs'.<sup>67</sup>

The humanitarian crisis at the Polish-Belarusian border had effects on border-crossing into Germany in 2021, with border crossings decreasing significantly since the start of 2022. 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.<sup>68</sup> According to the Federal Police, the main nationalities of persons crossing into Germany were from Iraq, Syria, Yemen and Afghanistan.<sup>69</sup> 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.<sup>70</sup> Over the course of 2022, the number of unauthorised border crossings from Poland into Germany decreased, with 8,760 detected crossings.<sup>71</sup> During the first half of

<sup>61</sup> 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/3ID8l13>; 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/>.

<sup>62</sup> 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>.

<sup>63</sup> Federal Ministry of the Interior, 'Kabinett berät aktuelle Migrationslage', 20.10.2021, available in German at: <https://bit.ly/3JOjeUk>.

<sup>64</sup> AIDA, *Country Report Germany - Update on the year 2019*, July 2020, available at: <https://bit.ly/3GlPjEQ>, 20-21; See also: ECRE, *Bilateral Agreements: Implementing or Bypassing the Dublin Regulation?*, December 2018; available at: <https://bit.ly/2GgVoEf>.

<sup>65</sup> Federal Police, *Bislang etwa 253.000 Kriegsvertriebene mit Ukraine-Bezug festgestellt*, 25 March 2022, available in German at <http://bit.ly/3LOco4T>.

<sup>66</sup> Federal Police, *Feststellung unerlaubter Einreisen durch die Bundespolizei*, 07 December 2022, available in German at <http://bit.ly/42GPTVh>.

<sup>67</sup> Information provided by the Federal Police, 14 March 2023.

<sup>68</sup> 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>.

<sup>69</sup> Deutschlandfunk Kultur, 'Die neue Belarus-Route', 4 November 2021, available in German at: <https://bit.ly/3Ilgb4R>.

<sup>70</sup> 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>.

<sup>71</sup> Information provided by the Federal Police, 14 March 2023.

the year, most of the detected persons came from Iraq or Syria, while an increase was detected for Egyptian nationals.<sup>72</sup>

## 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. In addition, a specific admission programme for Afghan nationals was introduced in October 2022 (see [Differential treatment of specific nationalities in the procedure](#)).

Since 2016, the German resettlement programme is part of Germany's contribution to the EU resettlement scheme.<sup>73</sup> Next to the national quota, resettlement includes admissions of Syrian refugees from Türkiye in the context of the so-called EU-Turkey statement. 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.<sup>74</sup>

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 a reception centre for up to two weeks. Whereas in previous years, all resettlement refugees were first housed in the reception centre of Friedland (Lower Saxony), the resettlement guidelines for 2022 foresee housing in Friedland as well as Doberlug-Kirchhain (Brandenburg) or other facilities made available by Federal States.<sup>75</sup> They 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.<sup>76</sup>

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 four persons commit to accompany and support resettled refugees for at least one year and to pay for their rent during two years. This was lowered to one year on 1 July 2022.<sup>77</sup> The Federal government decided to make the programme permanent from 1 January 2023, with 200 places available per year. The conditions were slightly changed: groups of four people can apply to be sponsors; and in contrast to the pilot phase, they only need to pay rent (without electricity, water and heating) for one year.<sup>78</sup>

The Federal States also run admission programmes mainly for Syrian nationals, but these are mostly geared towards family members of beneficiaries of international protection residing in the respective Federal States (see [Family Reunification](#)). Three Federal States – Schleswig-Holstein, Berlin and Brandenburg – have introduced their own admission programmes. Schleswig-Holstein introduced an admission programme for a total of 500 persons from Egypt and Ethiopia in 2018 that ended at the end of 2021 with a total of 511 admissions.<sup>79</sup> Berlin has pledged to resettle 100 persons per year from Lebanon

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<sup>72</sup> Mediendienst Integration, *Ein Jahr humanitäre Krise an der Belarus-EU-Grenze*, 5 August 2022, available in German at: <http://bit.ly/3JHlvBE>.

<sup>73</sup> Federal Ministry of the Interior, 'Resettlement und humanitäre Aufnahmen', available in German at: <https://bit.ly/3H4rqhK>.

<sup>74</sup> resettlement.de, 'Humanitarian admission programmes', available at: <https://bit.ly/3fSx62o>.

<sup>75</sup> Federal Ministry of the Interior, *Anordnung des Bundesministeriums des Innern und für Heimat für das Resettlement-Verfahren 2022 gemäß § 23 Abs. 4 des Aufenthaltsgesetzes (AufenthG) zur Aufnahme besonders schutzbedürftiger Flüchtlinge unterschiedlicher Staatsangehörigkeit oder staatenloser Flüchtlinge aus Ägypten, Jordanien, Kenia und Libanon sowie über den UNHCR Evakuierungsmechanismus in Niger (aus Libyen) vom 24.03.2022*, 24 March 2022, available in German at: <https://bit.ly/3TldpNv>.

<sup>76</sup> resettlement.de, 'Resettlement', available at <https://bit.ly/3qVMD7P>.

<sup>77</sup> Federal Ministry of the Interior, *Pilotprogramm NesT wird reguläres Aufnahmeprogramm für Flüchtlinge*, 01 July 2022, available in German at <http://bit.ly/3zapdi5>.

<sup>78</sup> Federal Ministry of the Interior, 'Resettlement und humanitäre Aufnahmen', available in German at: <https://bit.ly/3H4rqhK>.

<sup>79</sup> Ministry for the Interior, municipalities, housing and sport of Schleswig-Holstein, *Erfolgreicher Abschluss des Landesaufnahmeprogramms*, 17 December 2021, available in German at <http://bit.ly/40zW9fB>.

up to a total of 500. Brandenburg in turn pledged to admit 200 persons per year, up to a total of 800 persons.<sup>80</sup>

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	485 (in addition to persons not admitted from the 2020 pledges)	5,369
2022	6,000	4,770

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](https://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 and since the statistics only refer to persons who passed through the reception centre in Friedland.

Germany pledged a total of 6,000 resettlement places in 2022, which is higher than in previous years. Out of the 6,000 places, up to 2,500 places are allocated to the national resettlement programme, up to 200 places are foreseen for the NesT programme, up to 3,000 places are allocated for admission of Syrian nationals from Türkiye under the EU Türkiye statement, and 300 places are allocated to admission programmes of the Federal states of **Berlin** and **Brandenburg**. Admission through the resettlement programme are divided between Jordan (up to 400 places), Lebanon (up to 700 persons), Egypt (up to 800 persons), Kenya (up to 350 persons and Niger (up to 250 persons).<sup>81</sup> A total of 4,770 persons was admitted in 2022. Out of these, 1,603 persons were admitted through the national resettlement programme and the NesT programme, 2,857 persons were admitted through the humanitarian admission programme for Syrians in Türkiye, and 310 persons were admitted through the programmes led by **Schleswig-Holstein** (8), **Berlin** (112) and **Brandenburg** (190).<sup>82</sup> Over the course of 2021, a total of 5,369 persons was admitted to Germany through the various resettlement programmes. Out of these, 2,377 came through the resettlement programme; 69 persons were admitted under the private sponsorship programme NesT; 2,192 were admitted from Türkiye and 731 persons were admitted through admission programmes of the Federal States of **Berlin**, **Brandenburg** and **Schleswig-Holstein**.<sup>83</sup>

For humanitarian admission programmes for Afghanistan, see Differential treatment of specific nationalities in the procedure.

As regards relocation, Germany relocated a (small) number of asylum seekers from other EU Member states based on temporary and ad hoc agreements over the last years. 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.<sup>84</sup> A total of 210

<sup>80</sup> Resettlement.de, *Aktuelle Aufnahmen*, available in German at <http://bit.ly/40fobgN>.

<sup>81</sup> Federal Ministry of the Interior, 'Resettlement und humanitäre Aufnahmen', available in German at: <https://bit.ly/3H4rqhK> and BAMF, *Das Bundesamt in Zahlen 2021*, available in German at <https://bit.ly/40zu7ks>, 78.

<sup>82</sup> Information provided by the BAMF, 9 March 2023.

<sup>83</sup> BAMF, *Das Bundesamt in Zahlen 2021*, available in German at <https://bit.ly/40zu7ks>, 77.

<sup>84</sup> BAMF, *Migrationsbericht 2020 der Bundesregierung*, December 2021, available in German at <https://bit.ly/3nTDv1J>, 22.

unaccompanied minors from Greece were relocated to Germany in 2020.<sup>85</sup> In total, 2,812 persons were admitted between April 2020 and the end of 2021.<sup>86</sup> In 2022, admissions for persons rescued at sea continue on a case-by-case basis. As of May 2022, a total of 936 persons were admitted since the summer of 2018.<sup>87</sup> In August 2022, Germany pledged to admit 3,500 persons from Italy under the new EU Solidarity mechanism initiated by the French Council presidency.<sup>88</sup> A total of 212 were admitted to Germany through this mechanism in 2022 according to the BAMF.<sup>89</sup>

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. For visas issued in the context of evacuations from Afghanistan see [Differential treatment of specific nationalities in the procedure](#).

## 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

### 2.1. Making and registering the application

Asylum seekers cannot make their asylum application directly at the border. Instead, asylum seekers who apply for asylum at the border have to be referred to an initial reception centre for asylum seekers.<sup>90</sup> When doing so, the border police registers their personal data and informs both the BAMF and the reception centre.<sup>91</sup> Irrespective of special regulations which apply in the border region only (see [Access to the territory and push backs](#) for details), 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, in which can they have to report to the nearest reception facility as soon as possible.<sup>92</sup> At this stage of initial registration, personal data including photographs and fingerprints

<sup>85</sup> 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>, 11.

<sup>86</sup> BAMF, Migrationsbericht 2020 der Bundesregierung, December 2021, available in German at <https://bit.ly/3nTDv1J>, 22.

<sup>87</sup> BAMF, *Das Bundesamt in Zahlen 2021*, 79, available in German at <https://bit.ly/3k0wtZy>. A detailed overview of rescues with a pledge of admission by Germany and the number of persons rescued and relocated to Germany is available in a parliamentary request of April 2022: Federal Government, *Response to information request by The Left*, 20/1316, 6 April 2022, 10 et seq.

<sup>88</sup> Infomigrants, *Germany to take in migrants from Italy under EU solidarity mechanism*, 10 August 2022, available at <https://bit.ly/3LOovyB>.

<sup>89</sup> Information provided by the BAMF, 9 March 2023.

<sup>90</sup> Section 18 (1) Asylum Act.

<sup>91</sup> A collection of documents used by the authorities and information handed out to asylum seekers at this stage is available on the BAMF website in several languages: <https://bit.ly/3XGnpYs>.

<sup>92</sup> Section 13 Asylum Act, Section 20 asylum Act.

are collected and stored in the 'Central Register of Foreigners' (*Ausländerzentralregister (AZR)*), to which a number of public authorities have access.<sup>93</sup> The authorities can initiate checks with police and secret service agencies at this stage to check for entries indicating crimes on the basis of which international protection is to be denied or in connection to terrorism.<sup>94</sup> 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, it is established case law that the application should be filed after a maximum of two weeks unless in exceptional circumstances.<sup>95</sup> Delay in filing the application may be held against the asylum seeker during the asylum procedure if no reasonable justification for the delay is brought forward.

Once asylum seekers have reported to the 'reception facility' mentioned above, they must be issued an 'arrival certificate' (*Ankunftsachweis*). 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 Schlüssel*' 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](#)).<sup>96</sup> 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 (see [Housing](#)).

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 (*Ankunftsachweis*) 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.<sup>97</sup> As a result of the increasing number of asylum seekers since September 2022, the BAMF experienced some delays in registering asylum applications in the autumn of 2022. According to the BAMF, measures have been taken to remedy this situation as of January 2023.<sup>98</sup>

If a person expresses the intention to seek asylum in a detention centre, the application is filed in written form to the BAMF, who then designates the responsible branch office (for more details see [Legal framework of detention](#)).<sup>99</sup>

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<sup>93</sup> BAMF, *Arrival and registration*, available at: <https://bit.ly/3ltgFpW>.

<sup>94</sup> Section 73 Residence Act

<sup>95</sup> Federal Administrative Court (BVerwG), *Decision 9 C35.96*, available in German at <https://bit.ly/3GmApeR>.

<sup>96</sup> BAMF, *Asylum and refugee protection*, available at: <http://bit.ly/40i7UaK>.

<sup>97</sup> Sections 20, 22 and 23 Asylum Act.

<sup>98</sup> Federal Government, *response to written question by Clara Bünger* (The Left), 20/5137, 6 January 2023, available in German at: <https://bit.ly/40Yupln>, 29.

<sup>99</sup> Section 14(2) Asylum Act.



## 2.2. Lodging the application

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

While the application generally must 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 applicants to submit their application for asylum by filling in a form instead.<sup>100</sup> Application forms could be filled in in initial reception centres and sent by post 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.<sup>101</sup> From May 2020, German authorities resumed registration and relevant services in person when the conditions in branch offices allowed for it.<sup>102</sup> Nonetheless, applications via written form were still possible as of early 2022 if this is necessary to comply with infection protection regulations.<sup>103</sup> As of early 2023, this is still possible based on an agreement between the BAMF branch office and the respective initial reception centre, according to information provided by the BAMF.<sup>104</sup> For subsequent applications, the written registration of applications was possible until 1 October 2021.<sup>105</sup> From the 7 July 2022 onwards, the need to have a certificate of vaccination, a negative result or proof of a passed infection was lifted.<sup>106</sup>

### Use of digital tools in the asylum procedure

Since 2015, the BAMF has gradually increased the number and use of digital tools for establishing the identity and country of origin of applicants at the registration or lodging stage under what it calls 'integrated identity management'.<sup>107</sup> Four tools are being used:

- ❖ Reading out of mobile devices such as smartphones
- ❖ Language/dialect detection software
- ❖ Image biometrics
- ❖ Transcription of names<sup>108</sup>

If any of these give indications that the identity or country of origin of an applicant might be different from what they report, this is to be clarified during the personal interview.<sup>109</sup> Reading out of mobile devices,

<sup>100</sup> 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>

<sup>101</sup> Information provided by the BAMF, 10 March 2022.

<sup>102</sup> 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>, 3.

<sup>103</sup> Information provided by the BAMF, 10 March 2022.

<sup>104</sup> Information provided by the BAMF, 9 March 2023.

<sup>105</sup> 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>

<sup>106</sup> Information provided by the BAMF, 9 March 2023.

<sup>107</sup> For an extensive overview of data collection and management in the German asylum procedure see Janne Grote, *Accurate, timely, interoperable? Data management in the asylum procedure in Germany*, Study by the German National Contact Point for the European Migration Network (EMN), Working Paper 90 of the Research Centre of the Federal Office for Migration and Refugees, February 2021, available at <https://bit.ly/3Y993A0>.

<sup>108</sup> BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), version of January 2023, available in German at <https://bit.ly/3J5jPTA>, 307.

<sup>109</sup> BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), version of January 2023, 307, available in German at <https://bit.ly/3J5jPTA>.

language detection and name transcription are not used in cases where an entry is found in the VIS-database on Schengen visa, since this is regarded as sufficient proof of identity.<sup>110</sup>

The reading out of mobile devices is possible in cases where applicants do not provide identity documents or where there are indications that the documents provided are falsified.<sup>111</sup> It can only be performed by persons qualified to be judges (i. e. with two completed law exams), who decide whether to share the obtained data with the responsible case officer. The obtained information can only be used to establish identity or country of origin, and not for other purposes during the asylum procedure.<sup>112</sup> The types of data that are used as indications for country of origin or identity are geolocation data, the countries to which the majority of phone calls are made, the language of communication, the countries in which the saved contacts are located, or the domain host country of frequently used websites.<sup>113</sup>

If an applicant refuses to hand out their smartphone, the BAMF considers the application to be withdrawn and ends the asylum procedure.<sup>114</sup> For subsequent applications, failure to hand out one's smartphone can be used as a ground to withdraw material benefits, as these can be reduced for applicants who fail to cooperate with authorities (see [Reduction or withdrawal of reception conditions](#)). However, reading out of smartphones is only done in these cases when the BAMF intends to conduct an interview with the applicant.<sup>115</sup>

The practice of screening applicants' smartphones has been ruled illegal by the Federal Administrative Court on 16 February 2023, after the Gesellschaft für Freiheitsrechte (GFF, an NGO focused on strategic litigation for fundamental and civic rights) filed several lawsuits.<sup>116</sup> The court ruled that the screening interferes with the fundamental right to guarantee the confidentiality and integrity of information technology systems and that it is not lawful when less severe means are available to the BAMF to establish applicants' identity, such as other certificates and documents (e. g. marriage certificates), register comparisons and inquiries with the translator about linguistic abnormalities

Language or dialect detection software can also only be used when no identity documents are provided, and only for applicants older than 14 years.<sup>117</sup> Applicants have to speak into a telephone, and a speech analysis software then produces a report on the languages or dialects detected and the probability that these were indeed the spoken languages or dialects. As for smartphone screening, the results can never be used as proof of identity or country of origin, but merely as indications which will be raised during the personal interview in cases where the reports contradict the information given by the applicant. According to BAMF internal guidelines, as of January 2023 speech recognition is used for the main Arabic dialects (Maghrebian, Egyptian, Iraqi, Levantine and Gulf) and for Dari, Pashto and Persian.<sup>118</sup> As of August 2022,

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<sup>110</sup> BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), version of January 2023, 307, available in German at <https://bit.ly/3J5jPTA>.

<sup>111</sup> Section 15a Asylum Act, BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), version of January 2023, 307, available in German at <https://bit.ly/3J5jPTA>.

<sup>112</sup> BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), version of January 2023, 308, available in German at <https://bit.ly/3J5jPTA>.

<sup>113</sup> BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), version of January 2023, 314, available in German at <https://bit.ly/3J5jPTA>.

<sup>114</sup> BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), version of January 2023, 310, available in German at <https://bit.ly/3J5jPTA>.

<sup>115</sup> BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), version of January 2023, 310, available in German at <https://bit.ly/3J5jPTA>.

<sup>116</sup> Federal Administrative Court, Case 1 C 19.21, 16 February 2023. A summary of the decision can be found at <http://bit.ly/40r5Jlh>. See also GFF, *BAMF-Handydaten-auswertungen*, available in German at <http://bit.ly/3kVPBZo>.

<sup>117</sup> BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), version of January 2023, 317, available in German at <https://bit.ly/3J5jPTA>. For an overview in English see EMN/OECD, *The Use of Digitalisation and Artificial Intelligence In Migration Management*, February 2022, 9, available at <https://bit.ly/3HqCdnv>.

<sup>118</sup> BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), version of January 2023, 317, available in German at <https://bit.ly/3J5jPTA>.

the detection rate for these languages and dialects was around 80% for Arabic dialects, ca. 73% for Dari and ca. 77% for Pashto.<sup>119</sup>

The use of language detection software has been subject to criticism by NGOs and the opposition, who claim that detection tools can be dangerous especially when asylum officers are overworked and thus more likely to rely on them as facts, rather than falsifiable indications. The software has been found to perform poorly especially for Arabic dialects in countries with a high number of local languages, such as Yemen or Sudan. In addition, the amount of training data for the artificial intelligence varies significantly between languages, leading to likely more accurate predictions for some languages than others. Furthermore, while the BAMF has announced that a scientific study would accompany the introduction of the language detection system, this has not yet happened.<sup>120</sup>

In addition, the BAMF has been piloting the use of blockchain technology to improve communication in the asylum procedure in the AnKER facility in Dresden since April 2021.<sup>121</sup>

## 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 2022:   | 136,448   |
| 4. Average length of the first instance procedure in 2022:   | 7.6 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

As of 2022, 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 must notify asylum seekers upon request about when the decision is likely to be taken.<sup>122</sup> The relevant provision was changed with the Act on the acceleration of asylum court proceedings and asylum procedures<sup>123</sup> and now closely mirrors Art. 31 of the EU APD. As such, the BAMF must normally decide on applications within six months. This time limit can be extended to a maximum of 15 months if:

<sup>119</sup> Federal Government, *response to parliamentary question by The Left, 20/3238*, 31 August 2022, 10.

<sup>120</sup> See netzpolitik.org, *BAMF weitert automatische Sprachanalyse aus*, 5 September 2022, available in German at <http://bit.ly/3HjD8Gq>.

<sup>121</sup> EMN/OECD, *The Use of Digitalisation and Artificial Intelligence in Migration Management*, February 2022, 8, available at <https://bit.ly/3HqCdnv>.

<sup>122</sup> Section 24(8) Asylum Act.

<sup>123</sup> Official Gazette I no. Nr. 56 (2022) of 28 December 2022, 2817.



- ❖ Complex issues of fact and/or law arise,
- ❖ A large number of foreigners simultaneously apply for international protection, making it especially difficult in practice to conclude the procedure within the six-month time limit,
- ❖ Where the delay can clearly be attributed to the failure of the applicant to comply with their obligations in the asylum procedure (Section 15 Asylum Act)<sup>124</sup>

The time limit of 15 months can be extended for another 3 months in exceptional cases where this is necessary to ensure an adequate and complete examination of the application.<sup>125</sup> In line with Art. 31(5) EU APD, the new provision equally sets an absolute time limit of 21 months.<sup>126</sup>

In addition, and mirroring Art. 31 (4) APD, the reform introduces the possibility to postpone the decision due to a temporarily uncertain situation in the state of origin. In such cases, the Federal Office shall review the situation in the country of origin at least every six months. The Federal Office shall inform the applicants concerned within a reasonable period of time of the reasons for postponing the decision, and shall also inform the European Commission of the postponement of decisions.<sup>127</sup> In line with Art. 31 (3) APD, the reform also clarifies that the starting time for the 6 months is the formal lodging of the asylum application. In Dublin cases, the starting time is the moment in which Germany's responsibility to examine the claim is established, or, if the applicant is not on German territory at this point in time, the date of transfer to Germany.<sup>128</sup>

In 2022, procedures at the BAMF took 7.6 months on average.<sup>129</sup> In 2021, the average duration was 6.6 months; 8.3 months in 2020. The average time of asylum court procedures was 26.1 months between January and the end of November 2022, compared to 26.5 months in the year 2021.<sup>130</sup> In the first half of 2022, the average time from the asylum application to a non-appealable decision was 21.8 month. This includes the first instance procedure and the court procedure in cases where an appeal is filed.<sup>131</sup>

For the period 2016 to 2022, 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.<sup>132</sup> In 2020, the average length increased as a result of the Covid-19 lockdown according to the BAMF.<sup>133</sup>

Average duration of the procedure (in months) per country of origin							
	2016	2017	2018	2019	2020	2021	2022
<b>All countries</b>	<b>7.1</b>	<b>10.7</b>	<b>7.5</b>	<b>6.1</b>	<b>8.3</b>	<b>6.6</b>	<b>7.6</b>
Serbia	8.9	:	3	1.8	3.5	3.2	2.6
Afghanistan	8.7	11.9	10.6	6.6	8.5	6.4	9.1
Syria	3.8	7.0	4.9	5.3	6.0	4.8	7.9

<sup>124</sup> Section 24(4) Asylum Act.

<sup>125</sup> Section 24(4) Asylum Act.

<sup>126</sup> Section 24(7) Asylum Act.

<sup>127</sup> Section 24(5) Asylum Act.

<sup>128</sup> Section 24(6) Asylum Act.

<sup>129</sup> BAMF, *Aktuelle Zahlen*, December 2022, 13, available in German at <https://bit.ly/3TDLUEZ>.

<sup>130</sup> Federal Government, *Response to parliamentary question by The Left*, 20/5709, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 37 and 20/2309, 17 June 2022, 43.

<sup>131</sup> Federal Government, *Response to parliamentary question by The Left*, 20/6052, 14 March 2023, available in German at: <https://bit.ly/3zrfRPq>, 4.

<sup>132</sup> Federal Government, *Response to parliamentary question by The Left*, 19/1371, 22 March 2018, 42; 18/11262, 21 February 2017, 13.

<sup>133</sup> For details see AIDA, *Country Report Germany - Update on the year 2021*, April 2022, 27, available at <https://bit.ly/3XnN7RS>, 27.

Iraq	5.9	9.1	6.0	6.0	8.6	7.6	8.6
North Macedonia	:	:	2.6	1.8	4.0	2.0	2.7
Iran	12.3	10.3	6.3	5.7	11.5	11.8	9.1
Pakistan	15.5	13.9	10.6	5.7	9.1	6.8	:
Russia	15.6	15.7	12.9	9.0	13.3	12.1	8.8

Source: Federal Government, Reply to parliamentary questions by The Left: 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; 20/6052, 14 March 2023, available in German at: <https://bit.ly/3zrfRPq>, 2.

The overall number of pending applications at the BAMF was 136,448 at the end of 2022.<sup>134</sup> This is a significant increase compared to 2021 (108,064) where the number had already doubled compared to 2020 (52,056)<sup>135</sup> and significantly higher than in previous years too (57,012 in 2019 and 58,325 in 2018).<sup>136</sup> Most of the pending applications are by Syrian (26.4% of all pending cases), Afghan (20.2% of all pending cases) and Turkish nationals (14.1% of all pending cases). The backlog is likely due, to a large part, to the de-prioritisation of applications from Afghan nationals between August and December 2021 and from Syrian nationals holding a protection status in Greece between 2019 and April 2022 (see Sections [Differential treatment of specific nationalities in the procedure](#) and [Suspension of transfers](#)).<sup>137</sup> 11,432 of the pending cases are Dublin cases.<sup>138</sup> The BAMF has also experienced some delays in registering asylum applications in the autumn of 2022,<sup>139</sup> which might have increased the backlog.

## 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 hand, and the 'AnKER centres' established in several States since 2018, on the other (see also Section [Types of accommodation](#)). Prioritised and fast-track processing is not based on a specific legal provision and different to accelerated procedures (see [Accelerated procedure](#) Accelerated procedure).

### 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, 19 out of 63 branch offices of the BAMF were integrated in arrival centres in 12 different Federal States.<sup>140</sup> The concept of arrival centres is not based in law but has been developed by business consultants under the heading

<sup>134</sup> BAMF, *Asylgeschäftsstatistik (statistics on applications, decisions and pending procedures)*, 1-12/2022, available in German at: <https://bit.ly/3IMppKK>.

<sup>135</sup> BAMF, *Asylgeschäftsstatistik (statistics on applications, decisions and pending procedures)*, 1-12/2020, available at: <https://bit.ly/3rnIEzR>.

<sup>136</sup> BAMF, *Aktuelle Zahlen*, December 2019, available in German at: <https://bit.ly/2XL4gsp>.

<sup>137</sup> Information provided by the BAMF, 10 March 2022.

<sup>138</sup> BAMF, *Aktuelle Zahlen*, December 2022, available in German at <https://bit.ly/3TDLUEZ>, 13.

<sup>139</sup> Federal Government, *response to written question by Clara Büniger (The Left)*, 20/5137, 6 January 2023, 29.

<sup>140</sup> BAMF, *Locations*, <https://bit.ly/3dFTd8w>, lists 63 '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>).

'integrated refugee management'.<sup>141</sup> Accordingly, this method for fast-tracking of procedures must not be confused with the introduced law in March 2016 on accelerated procedures (see [Accelerated procedure](#)).

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.<sup>142</sup> According to the BAMF, the Berlin branch office is the only one systematically applying the direct procedure, mostly for Moldovan applicants. Furthermore, the direct procedure is applied in Bielefeld 'in individual cases' and is 'held as available' for certain countries of origin in the Leipzig and Dresden branches but not currently applied.<sup>143</sup> This indicates that in other arrival centres, the procedure is carried out according to the regular BAMF guidelines. The average length of first instance procedure in all arrival centres was 7.0 months in 2022, compared to 7.6 months for all first instance procedures.<sup>144</sup>

The 'direct procedure' shall only apply in 'clear-cut' cases, in which protection can be 'easily' recognised or rejected. In contrast, the regular procedure must take place in the following instances:

- ❖ The facts of the case cannot be established immediately, but further examinations are necessary;
- ❖ The applicant states they are 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 them 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.<sup>145</sup>

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.<sup>146</sup> It should be noted that there are considerable variations to the procedure in the various arrival centres. In particular, there is no common approach on access to social services or other counselling institutions, while in many arrival centres no such access exists (see [Information for asylum seekers and access to NGOs and UNHCR](#)). 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

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<sup>141</sup> 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/2HdQ0P>.

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

<sup>143</sup> Information provided by the BAMF, 9 March 2023.

<sup>144</sup> Federal Government, *Response to parliamentary question by The Left, 20/6052*, 14 March 2023, available in German at: <https://bit.ly/3zrfRPq>, 9.

<sup>145</sup> Flüchtlingsrat Berlin, *Das Schnellverfahren für Asylsuchende im Ankunftszentrum Berlin*, November 2017, available in German at: <http://bit.ly/2HdSDzb>.

<sup>146</sup> Flüchtlingsrat Berlin, *Das Schnellverfahren für Asylsuchende im Ankunftszentrum Berlin*, November 2017, available in German at: <http://bit.ly/2HdSDzb>.

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*)

Like arrival centres, the concept of AnKER centres was introduced in 2018 to speed up asylum and return procedures. 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 15 February 2023, a total of 9 BAMF branch offices were located in AnKER centres.<sup>147</sup> In 2020, around 27% of all asylum applications were examined in an AnKER centre or functionally equivalent facility.<sup>148</sup>

In **Bavaria**, where the majority of AnKER centres have been set up, asylum seekers are first registered in a so-called 'arrival centre'<sup>149</sup> 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,<sup>150</sup> as well as by an evaluation of AnKER centres carried out by the BAMF,<sup>151</sup> the procedure has been described as follows:<sup>152</sup>

- 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.<sup>153</sup>
- 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

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<sup>147</sup> Information provided by the BAMF, 9 March 2023. See also BAMF, *Locations*, available at: <https://bit.ly/3dFTd8w>.

<sup>148</sup> Federal Government, *Response to parliamentary question by The Left, 19/30711*, 15 June 2021, 31.

<sup>149</sup> 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.

<sup>150</sup> ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

<sup>151</sup> 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>.

<sup>152</sup> Markus Kraft: 'Die ANKER-Einrichtung Oberfranken', *Asylmagazin* 10-11/2018, 352-353.

<sup>153</sup> 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>.

within 2-3 days of lodging, the BAMF evaluation finds that on average, the time between lodging the application and the interview is 12 days, both in AnKER centres and in other branch offices.<sup>154</sup>

In 2022, the average duration of the first instance procedure in the AnKER centres and functionally equivalent facilities was 8.2 months, compared to 7.6 months for all first instance procedures.<sup>155</sup> Thus, similar to 2021 (7.3 months in AnKER centres, compared to 6.6 months for all procedures), procedures were not faster but slower in AnKER centres. In 2020, procedures in AnKER centres and functionally equivalent facilities lasted 6.6 months, compared to 8.3 months for all 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.<sup>156</sup>

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.<sup>157</sup> 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 published in 2021, and the rate of forced removals has been found to be lower.<sup>158</sup> It also appears that (rejected) asylum seekers stay in these facilities for prolonged periods (see [Freedom of movement](#)).

### 1.3 Personal interview

#### Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure?  
☒ Yes ☐ No  
❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision?  
☒ Yes ☐ No
3. Are interviews conducted through video conferencing? ☐ Frequently ☒ Rarely ☐ Never
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender?  
☒ Yes ☐ No  
❖ If so, is this applied in practice, for interviews? ☒ Yes ☐ No

In the regular procedure, the BAMF conducts an interview with each asylum applicant.<sup>159</sup> In principle, applicants can ask for the interviewer and interpreter to be of a specific gender. It has to be substantiated that this is necessary, though, and this possibility is mostly mentioned in the context of female applicants subject to gendered persecution or sexualised violence or when specific vulnerabilities are communicated

<sup>154</sup> 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>.

<sup>155</sup> Federal Government, *Response to parliamentary question by The Left, 20/6052*, 14 March 2023, available in German at: <https://bit.ly/3zrfRPq>, 9.

<sup>156</sup> 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>

<sup>157</sup> Markus Kraft: ‘Die ANKER-Einrichtung Oberfranken’, *Asylmagazin* 10-11/2018, 355.

<sup>158</sup> 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>.

<sup>159</sup> Sections 24 and 25 Asylum Act.



to the BAMF by Federal State authorities (see [Special procedural guarantees](#)).<sup>160</sup> The BAMF is not obliged by law to provide this but states that it will do so 'if possible'.<sup>161</sup>

Only in exceptional cases may the interview be dispensed with, where:

- ❖ The BAMF intends to recognise the entitlement to asylum on the basis of available evidence;
- ❖ The applicant claims to have entered the territory from a [Safe third country](#);
- ❖ 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';<sup>162</sup> or
- ❖ The applicant fails to appear at the interview without an adequate excuse.<sup>163</sup>

Taking effect on 1 January 2023, the grounds for dispensing with the interview have been reformed in the Act on the acceleration of asylum court proceedings and asylum procedures.<sup>164</sup> From then onwards, the interview can also be dispensed with when the BAMF is of the opinion that the foreigner is unable to attend a hearing due to permanent circumstances beyond their control.<sup>165</sup> With this provision, the government implements Art. 14(2)(1)a of the APD.<sup>166</sup> According to the government, the provision aims at speeding up procedures. In cases of doubt, the BAMF must involve medical personnel in the decision and seek confirmation from a medical doctor.<sup>167</sup> The introduction of this possibility to dispense with the interview were criticised inter alia by *Der Paritätische Gesamtverband* (one of the main welfare associations), on the ground that the central piece of the procedure should only be dispensed with in extreme circumstances and with the consent of the applicant.<sup>168</sup> In addition, the provision on applicants claiming to have entered from a safe third country no longer applies. The Federal Government explains this by a lack of a provision to that effect in the EU APD.<sup>169</sup> Before, this ground was only rarely applied in practice.<sup>170</sup>

In another important change, the reform introduced the possibility of conducting interviews via video conference in exceptional cases (for video interpretation see below).<sup>171</sup> According to the Federal Government, this would still necessitate the applicant to be in on BAMF premises for the interview; but not necessarily in the same building as the interviewer.<sup>172</sup> A BAMF employee will however stay in the same room as the interviewee during the whole interview, according to the Federal Government.<sup>173</sup> Consent of the applicant is not required, according to internal BAMF guidelines.<sup>174</sup> Video interviews shall only be conducted in cases where they contribute to a better use of capacities within the BAMF and

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<sup>160</sup> For example, Flüchtlingsrat Niedersachsen, *Vor der Anhörung*, available in German at <http://bit.ly/3WuUfKZ>.

<sup>161</sup> BAMF, *The personal interview*, available in German at <http://bit.ly/3XPDLYf>.

<sup>162</sup> Section 24(1) Asylum Act.

<sup>163</sup> Section 25 (5) Asylum Act.

<sup>164</sup> Official Gazette I no. Nr. 56 (2022) of 28 December 2022, 2817.

<sup>165</sup> Section 24(1) Asylum Act.

<sup>166</sup> SPD, BÜNDNIS 90/DIE GRÜNEN and FDP, *Draft Act on the Acceleration of asylum court proceedings and asylum procedures*, 20/4327, 8 November 2022, 35.

<sup>167</sup> Section 24(1) Asylum Act.

<sup>168</sup> Der Paritätische Gesamtverband, *expert opinion (Sachverständigenstellungnahme) on the Draft Act on the Acceleration of asylum court proceedings and asylum procedures*, 28 November 2022, available in German at <http://bit.ly/3kzfbD8>.

<sup>169</sup> SPD, BÜNDNIS 90/DIE GRÜNEN and FDP, *Draft Act on the Acceleration of asylum court proceedings and asylum procedures*, 20/4327, 8 November 2022, 35.

<sup>170</sup> 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.

<sup>171</sup> Section 25 (7) Asylum Act.

<sup>172</sup> SPD, BÜNDNIS 90/DIE GRÜNEN and FDP, *Draft Act on the Acceleration of asylum court proceedings and asylum procedures*, 20/4327, 8 November 2022, 19.

<sup>173</sup> Federal Government, *Response to parliamentary question by The Left*, 20/6052, 14 March 2023, available in German at: <https://bit.ly/3zrfRPq>, 15.

<sup>174</sup> See BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), version of January 2023, 109, available in German at <https://bit.ly/3J5jPTA>.

contribute to accelerating the procedure, and if the case is suited for a video interview.<sup>175</sup> The interviews are not recorded; the transcript is compiled in the same way as for in-person interviews.<sup>176</sup> The internal guidelines list cases in which video interviews cannot be conducted, such as

- ❖ persons whose identity or nationality could not be established,
- ❖ certain groups of vulnerable applicants (unaccompanied minors, persons older than 65 years, victims of torture, traumatised applicants or applicants who have been subject to gendered and sexualised violence or because of their sexual orientation or identity; applicants with a disability),
- ❖ cases where an “enhanced credibility assessment” is needed (cases of religious conversion are listed as an example),
- ❖ cases with security relevance,
- ❖ applicants who need sign language translation.<sup>177</sup>

According to the Federal government, the interview is to be stopped when it becomes apparent during the interview that the use of video conferencing is not adequate for the specific interview situation.<sup>178</sup>

When introducing the change, the Federal Government stated that this new provision merely adapts the law to administrative practice.<sup>179</sup> However, in 2021 the internal BAMF guidelines had been updated to allow for 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.<sup>180</sup> At the time, the directives concerning video interviews were only applicable during the Covid-19 pandemic. Video conferencing equipment for interviews had been installed in all BAMF branch office as of early 2022. As of March 2023 there are no statistics as to how often this possibility was used in practice.<sup>181</sup> According to the Federal Government, up until the change in law video conferencing had only been used ‘in individual cases in relation to the Covid-19 pandemic’.<sup>182</sup>

Civil society organisations as well as legal practitioners criticise the introduction of video conferencing. By way of example, the German institute for Human Rights and the Republican Lawyers’ Association demand that consent of the applicant be required for video interviews as well as for interpretation via video.<sup>183</sup> According to PRO ASYL and the German Lawyer’s Association, video conferencing is not an adequate technique for the personal interview as the central piece of the procedure, which requires the interviewer to gain a holistic impression of the applicant and their behaviour, including details of gestures or facial expressions, and where applicants must have the time and possibility to put forward all relevant claims.<sup>184</sup>

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<sup>175</sup> See BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), version of January 2023, 110, available in German at <https://bit.ly/3J5jPTA>.

<sup>176</sup> Federal Government, *Response to parliamentary question by The Left*, 20/6052, 14 March 2023, available in German at: <https://bit.ly/3zrfRPq>, 18.

<sup>177</sup> See BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), version of January 2023, 111, available in German at <https://bit.ly/3J5jPTA>.

<sup>178</sup> Federal Government, *Response to parliamentary question by The Left*, 20/6052, 14 March 2023, available in German at: <https://bit.ly/3zrfRPq>, 16.

<sup>179</sup> SPD, BÜNDNIS 90/DIE GRÜNEN and FDP, *Draft Act on the Acceleration of asylum court proceedings and asylum procedures*, 20/4327, 8 November 2022, 28.

<sup>180</sup> BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), 03 August 2021, 104.

<sup>181</sup> Federal Government, *Response to parliamentary question by The Left*, 20/6052, 14 March 2023, available in German at: <https://bit.ly/3zrfRPq>, 18. See also EASO, ‘COVID-19 emergency measures in asylum and reception systems. Issue No. 3, 7 December 2020, available at <https://bit.ly/3FBPZ3Y>.

<sup>182</sup> Federal Government, *Response to parliamentary question by The Left*, 20/6052, 14 March 2023, available in German at: <https://bit.ly/3zrfRPq>, 19.

<sup>183</sup> German Institute for Human Rights, *expert opinion (Sachverständigenstellungnahme) on the Draft Act on the Acceleration of asylum court proceedings and asylum procedures*, 28 November 2022, 11, available in German at <http://bit.ly/3kzfbD8>.

<sup>184</sup> Deutscher Anwaltverein / Berthold Münch, *expert opinion (Sachverständigenstellungnahme) on the Draft Act on the Acceleration of asylum court proceedings and asylum procedures*, 28 November 2022, 13, available in German at <http://bit.ly/3kzfbD8>, and PRO ASYL, *expert opinion (Sachverständigenstellungnahme) on the Draft Act on the Acceleration of asylum court proceedings and asylum procedures*, 24 October 2022, available in German at <https://bit.ly/3ks1Cpb>.

In previous years, video conferencing was used on a very rare basis until 2013, but its use seemed to have been abandoned completely since then.<sup>185</sup> Audio or video recording or video conferencing is not used in appeal procedures either.

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'.<sup>186</sup> However, the BAMF has not made use of this possibility since its introduction.<sup>187</sup>

### 1.3.1. Interpretation

The presence of an interpreter at the interview is required by law.<sup>188</sup> The BAMF recruits its own interpreters on a freelance basis. As for interviewers, in principle, applicants can ask for the interpreter to be of a specific gender. It has to be substantiated that this is necessary, though, and this possibility is mostly mentioned in the context of female applicants subject to gendered persecution or sexualised violence or when specific vulnerabilities are communicated to the BAMF by Federal State authorities (see [Special procedural guarantees](#)).<sup>189</sup> The BAMF is not obliged by law to provide this but states that it will do so "if possible".<sup>190</sup>

The BAMF introduced the possibility of videoconferences for interpretation in 2016. This practice was codified through the Act on the acceleration of asylum court proceedings and asylum procedures.<sup>191</sup> The provision allows for video translation 'in suitable cases' and 'exceptionally',<sup>192</sup> indicating that, as for the interview itself, interpretation in presence retains priority over video interpretation. 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. The BAMF internal guidelines apply a relatively low threshold for this to be the case, however, by stating that video interpretation can be used when there is an objective reason, such as a more efficient or flexible allocation of interpreters cost efficiency reasons, a shortage of interpreters in a certain area or for rare languages with few interpreters. All countries of origin are in principle considered suitable for video interpretation, including when the applicant is considered vulnerable. However, special officers need to be included in the decision when it concerns unaccompanied minors, victims of gendered violence, torture, human trafficking or traumatised persons.<sup>193</sup> Video interpretation does not require consent by the applicant.<sup>194</sup>

Video conferencing was used in 1,019 interviews in 2021 and 1,359 interviews in 2020, compared to around 2,500 interviews in 2019.<sup>195</sup> No statistics were available for the year 2022 at the time of writing of this report. Thus, the Covid-19 outbreak did not lead to more use of video interpretation. According to the BAMF, this is because distancing measures and contact avoidance were also implemented in the interpretation hub, leading to an overall lower number of interviews.<sup>196</sup>

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 online training programme

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<sup>185</sup> 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.

<sup>186</sup> Section 24(1a) Asylum Act.

<sup>187</sup> Information provided by the BAMF, 9 March 2023.

<sup>188</sup> Section 17 Asylum Act.

<sup>189</sup> For example, Flüchtlingsrat Niedersachsen, *Vor der Anhörung*, available in German at <http://bit.ly/3WuUfKZ>.

<sup>190</sup> BAMF, *The personal interview*, available in German at <http://bit.ly/3XPDLYf>.

<sup>191</sup> Official Gazette I no. Nr. 56 (2022) of 28 December 2022, 2817.

<sup>192</sup> Section 17(3) Asylum Act.

<sup>193</sup> See BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), version of January 2023, 105, available in German at <https://bit.ly/3J5jPTA>.

<sup>194</sup> BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), 03 August 2021, 101.

<sup>195</sup> Information provided by the BAMF, 10 March 2022 and 8 April 2022.

<sup>196</sup> Information provided by the BAMF, 8 April 2022.



was established.<sup>197</sup> 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. They further need advanced German language skills; level C1 of the Common European Framework of Reference for Languages. Moreover, the BAMF established a system for complaint management in the context of interpretation at the BAMF in 2017.<sup>198</sup> 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.<sup>199</sup>

In addition, the BAMF has published a code of conduct for interpreters.<sup>200</sup> According to this document, interpreters at the BAMF must 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). From the introduction of the new concept and the code of conduct in 2017 and until April 2018, more than 2,100 interpreters were 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.<sup>201</sup> However, no re-assessment of the decisions where these interpreters were involved has taken place.<sup>202</sup> In 2022, the BAMF received 77 notifications via its complaint management system that were classified as complaints.<sup>203</sup> Between 2017 and February 2022, a total of 926 complaints were signalled to the BAMF via the same system.<sup>204</sup>

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’.<sup>205</sup> Interpreters at court are, however, also generally paid more than interpreters contracted by the BAMF – as of January 2023, the hourly rate is 85 Euro,<sup>206</sup> whereas the BAMF does not make pay rates public –, and courts generally require higher levels of qualifications.

### 1.3.2. 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 they have had the opportunity to present all the important details of the case, that

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<sup>197</sup> BAMF, *Dolmetschen und Übersetzen für das BAMF*, 17 November 2022, available in German at <https://bit.ly/3HngsXd>.

<sup>198</sup> BAMF, ‘Online-Videotraining für Sprachmittler gestartet’, 28 September 2017, available in German at: <http://bit.ly/2oWwbTH>.

<sup>199</sup> Information provided by the BAMF, 10 March 2022.

<sup>200</sup> BAMF, *Verhaltenskodex für Sprachmittler*, June 2017, available in German at <https://bit.ly/2XZADBF>.

<sup>201</sup> Federal Government, *Response to parliamentary question by The Left, 19/1631*, 13 April 2018, available in German at: <https://bit.ly/2F2kvqq>, 40-41.

<sup>202</sup> 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>

<sup>203</sup> Information provided by the BAMF, 9 March 2023.

<sup>204</sup> 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.

<sup>205</sup> Information provided by an attorney-at-law, 31 August 2020.

<sup>206</sup> Section 9(5) Judicial Remuneration and Compensation Act.

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.<sup>207</sup> 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?
 

❖ 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
- Rejection	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Some grounds
- Rejection as manifestly unfounded	<input type="checkbox"/> Yes	<input type="checkbox"/> Some grounds
		<input type="checkbox"/> No
		<input checked="" type="checkbox"/> No
2. Average processing time for the appeal body to make a decision: 26.4 months<sup>208</sup>

### 1.4.1. Appeal before the Administrative Court

Appeals against rejections of asylum applications must be lodged before 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.<sup>209</sup> 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 must be submitted within 2 weeks (i.e. 14 calendar days) after reception of the negative decision.<sup>210</sup> This appeal has suspensive effect. It does not necessarily have to be substantiated at once, since the appellant has 1 month (also counting from the reception of the decision) to submit reasons and evidence.<sup>211</sup> Furthermore, it is common practice that the

<sup>207</sup> Uwe Berlit, *Sonderasyl/prozessrecht – Zugang zu gerichtlichem Rechtsschutz im Asylrecht*, Informationsbrief Ausländerrecht 9/2018, 311.

<sup>208</sup> 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.

<sup>209</sup> 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.

<sup>210</sup> Section 74(1) Asylum Act.

<sup>211</sup> Section 74(2) Asylum Act.

courts either set another deadline for the submission of evidence at a later stage (e.g. a few weeks before the hearing at the court) or that further evidence is accepted up to the moment of the hearing at the court.

**Rejection as ‘manifestly unfounded’ (*offensichtlich unbegründet*):** Section 30 of the Asylum Act lists several grounds for rejecting an application as ‘manifestly unfounded’. These include among others unsubstantiated or contradictory statements by the asylum seeker, as well as misrepresentation or failure to state one’s identity. 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.<sup>212</sup> 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).<sup>213</sup> The request to restore suspensive effect has to be substantiated. Court practice varies as to how much time is given for the substantiation, but usually it has to be filed within one week or ‘immediately’, meaning as soon as possible.<sup>214</sup>

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.<sup>215</sup> In any case, suspensive effect is only granted in exceptional circumstances.

The Administrative Court investigates the facts of the case as well as the correct application of the law by the BAMF. This includes a personal hearing of the asylum seeker in cases of a ‘simple’ rejection. With the Act on the acceleration of asylum court proceedings and asylum procedures which entered into force on 1 January 2023,<sup>216</sup> personal hearings can be dispensed with if the applicant is represented by an attorney and if they do not concern a ‘simple’ rejection application or a withdrawal/revocation, e. g. in cases of rejection as ‘manifestly unfounded’ or inadmissible.<sup>217</sup> However, a hearing has to take place if the applicant requests so.<sup>218</sup> Court decisions on applications for suspensive effect usually conducted without a personal hearing. Courts are required to gather relevant evidence at their own initiative. Asylum appeals are decided by a single judge in the vast majority of cases.<sup>219</sup> 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). As of 1 January 2023,<sup>220</sup> the rules for filing a bias motion against the competent judge have changed so that the hearing can take place with said judge if a bias motion was filed three days or less before the hearing. If the judge is found to be biased after the hearing, the hearings that took place after the filing of the motion must be repeated.<sup>221</sup>

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<sup>212</sup> Der Paritätische Gesamtverband, *Grundlagen des Asylverfahrens*, überarbeitete 5. Auflage 2021, available in German at <https://bit.ly/33c4uhF>, 26.

<sup>213</sup> Section 74(1) Asylum Act.

<sup>214</sup> Information provided by an attorney-at-law, January 2023.

<sup>215</sup> See more references in Dominik Bender and Maria Bethke. “Dublin III’, Eilrechtsschutz und das Comeback der Drittstaatenregelung.’, *Asylmagazin* 11/2013, 362.

<sup>216</sup> Official Gazette I no. Nr. 56 (2022) of 28 December 2022, 2817.

<sup>217</sup> Section 77(2) Asylum Act.

<sup>218</sup> Section 77(2) Asylum Act.

<sup>219</sup> Section 76 Asylum Act.

<sup>220</sup> Official Gazette I no. Nr. 56 (2022) of 28 December 2022, 2817.

<sup>221</sup> Section 74(3) Asylum Act.

Average processing period for appeals				
2018	2019	2020	2021	2022
7.8	17.6	24.3	26.5	26.0

In 2022, the average processing period for appeals was 26 months, compared to 26.5 months in 2021 (and to 24.3 months in 2020).<sup>222</sup> This is significantly longer than in the 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).<sup>223</sup> 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.<sup>224</sup> 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.<sup>225</sup> 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 124,169 cases pending as of January 2023 (compared to 191,110 pending cases at the end of 2020 and 252,250 at the end of 2019).<sup>226</sup> 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.<sup>227</sup>

Over the last years, the BAMF has put efforts into digitalising communication with the courts, partly to shorten the length of 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'.<sup>228</sup> A digitalisation of court hearing themselves, e. g. via video conferencing, is neither practiced nor discussed as of January 2023.

It should be noted that a high number of appeal procedures (52.4% in 2022)<sup>229</sup> are 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. 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.

<sup>222</sup> Federal Government, *Responses to parliamentary question by The Left*, 20/6052, 14 March 2023, available in German at: <https://bit.ly/3zrfRPq>, 12; 20/432, 14 January 2022, 22, 19/28109, 30 March 2021, 39.

<sup>223</sup> Federal Government, *Responses to parliamentary question by The Left*, 19/18498, 2 April 2020, 47; 19/8701, 25 March 2019, 48; 19/1371.

<sup>224</sup> 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>.

<sup>225</sup> BAMF, *Das Bundesamt in Zahlen* 2020, 37.

<sup>226</sup> 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; 20/5709, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 35.

<sup>227</sup> 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>.

<sup>228</sup> BAMF, *Digitalisation of the asylum procedure*, 2020 available at: <https://bit.ly/3pFFITU>.

<sup>229</sup> Federal Government, *Response to parliamentary question by The Left*, 20/5709, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 35.

Until the end of November 2022, 17.6% 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 considered, the success rate for appeals was 37%. This is similar to 2021 (18% of all appeal decisions and 35% if formal decisions are not considered) and slightly higher than in previous years (in 2020, the rates were 17% of all appeal decisions and 31% if formal decisions are not considered; the rates for 2019 were 15% and 27%).<sup>230</sup>

#### 1.4.2. Onward appeal(s)

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:

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

Second appeal cases in the Higher Administrative Courts are decided by the senate which is composed of several judges.<sup>231</sup> Decisions by the High Administrative Court may be contested at a third stage, the Federal Administrative Court, in exceptional circumstances. As of 2022, 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 must 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. As of 1 January 2023, with the entry into force of the Act on the acceleration of asylum court proceedings and asylum procedures,<sup>232</sup> the Federal Administrative Court can also decide on the facts of the case as they pertain to the situation in the country of origin or destination.<sup>233</sup> This only applies if the Higher Administrative Court grants leave for revision and if the Higher Administrative Court's appreciation of the situation in the respective country differs from that of other High Administrative Courts or of the Federal Administrative Court.<sup>234</sup> The reform was introduced in an effort to unify jurisprudence when it comes to the situation in countries of origin or destination.<sup>235</sup> PRO ASYL criticises the change as it stands in the way of an appreciation of circumstances in each individual case and hampers the appreciation of circumstances "in real time" if lower administrative courts are bound by earlier decisions

<sup>230</sup> 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.

<sup>231</sup> By way of example, at the Higher Administrative Court of North Rhine Westphalia it is composed of three judges plus two voluntary judges in cases with an oral hearing, see <http://bit.ly/3lhV2m5>.

<sup>232</sup> Official Gazette I no. Nr. 56 (2022) of 28 December 2022, 2817.

<sup>233</sup> Section 78(8) Asylum Act.

<sup>234</sup> Section 78(8) Asylum Act.

<sup>235</sup> SPD, BÜNDNIS 90/DIE GRÜNEN and FDP, *Draft Act on the Acceleration of asylum court proceedings and asylum procedures*, 20/4327, 8 November 2022, 43.



by the Federal Administrative Court. PRO ASYL thus expects the change to not enhance legal certainty, but to lead to legal disputes on the scope of Federal Administrative Court decisions regarding the situation in a given country.<sup>236</sup>

Judgments of the Federal Administrative Court are always legally valid since there is no further remedy against them. However, when the Federal Administrative Court only decides on points of law and does not investigate the facts, it can send 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, the right to human dignity including the state obligation to provide a minimal subsistence level of benefits 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. Recent examples of Federal Constitutional Court decisions with relevance for the asylum procedure concern the level of social benefits for persons living in reception centres (see [Reduction or withdrawal of reception conditions](#)) or a failure to take into account changed circumstances in Romania after the outbreak of the war against Ukraine, which violated the right to an effective legal remedy.<sup>237</sup>

## 1.5 Legal assistance

### Indicators: Regular Procedure: Legal Assistance

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

❖ Does free legal assistance cover:

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

❖ Does free legal assistance cover

☐ Yes      ☒ With difficulty      ☐ No  
☒ Representation in courts  
☒ 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.<sup>238</sup> Consequently, asylum seekers are rarely represented by a lawyer at the initial stage of the asylum procedure and/or during the interview.

Since 2019, systematic counselling is offered to asylum seekers (see [Information for asylum seekers and access to NGOs and UNHCR](#)). As of 1 January 2023, the provisions on counselling have been reformed

<sup>236</sup> PRO ASYL, *expert opinion (Sachverständigenstellungnahme) on the Draft Act on the Acceleration of asylum court proceedings and asylum procedures*, 24 October 2022, 34-35, available in German at <https://bit.ly/3ks1Cpb>.

<sup>237</sup> Federal Constitutional Court (BVerfG), Decision of 19 July 2022 2 BvR 961/22 - asyl.net: M30822.

<sup>238</sup> 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.

and it now encompasses advice on legal remedies against asylum decisions, but falls short of covering legal representation at first or second instance.<sup>239</sup>

Once asylum seekers have left the initial reception centres and have been transferred to other accommodation, the access to legal assistance in practice 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.<sup>240</sup> 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 argue that fees based on the legal aid system do not always cover their expenses.<sup>241</sup> Thus, specialising only on asylum is generally supposed to be difficult for law firms. Most specialising in this area have additional areas of specialisation while a few also charge higher fees on the basis of individual agreements with clients.

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

## 2. Dublin

### 2.1. General

In 2022, Germany sent a total of 68,709 outgoing requests to other Member States, mainly to Italy (14,439) Greece (9,166) and Austria (8,352). Germany received 15,744 requests, mainly from France (7,810), Belgium (1,730) and the Netherlands (1,441). This is a marked increase compared to 2021 where Germany had sent a total of 42,284 outgoing requests and received 14,233 incoming requests.

As regards transfers, they increased again after significantly decreasing during COVID-19 due to the relevant restrictions. In 2022, a total of 4,158 outgoing transfers were carried out, and Germany received a total of 3,700 incoming transfers.<sup>242</sup> In 2021, there were 2,656 (2020: 2,953) outgoing and 4,274 incoming (2020: 4,369) transfers.<sup>243</sup> Pre-Covid, transfer numbers were still higher than in 2022, however, with 8,423 outgoing and 6,087 incoming transfers in 2019.<sup>244</sup>

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<sup>239</sup> SPD, BÜNDNIS 90/DIE GRÜNEN and FDP, *Draft Act on the Acceleration of asylum court proceedings and asylum procedures*, 20/4327, 8 November 2022, 34.

<sup>240</sup> 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>.

<sup>241</sup> According to information proved by an attorney-at-law in January 2023, legal aid fees amount to € 868,70 for an appeals procedure and 367,23 € for interim measures to reinstate the suspensive effect of an appeal.

<sup>242</sup> BAMF, *Aktuelle Zahlen, December 2022*, 10, available in German at <https://bit.ly/3TDLUEZ>.

<sup>243</sup> 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.

<sup>244</sup> BAMF, *Das Bundesamt in Zahlen – 2019*, August 2020, 44, available in German at <http://bit.ly/3WYzMKc>.



## Dublin statistics: 2022

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
<b>Total</b>	68,709	4,158	<b>Total</b>	14,233	3,700
Italy	14,439	362	France	5,911	1,378
Greece	9,166	0	Belgium	2,204	310
Austria	8,352	885	The Netherlands	1,704	451
Bulgaria	5,438	86	Switzerland	1,021	376
France	5,294	598	Austria	907	380

Source: Federal Government, *Response to parliamentary question by The Left, 20/5868*, 28 February 2023, available in German at: <https://bit.ly/3TFedY>, 29.

### 2.1.1. Application of the Dublin criteria

The majority of outgoing Dublin requests was based on so-called 'Eurodac hits' in 2022 (68.6%), similar to previous years (69.9% in 2021 and 71.8% in 2020).<sup>245</sup> Details on the criteria used for requests are only available for the outgoing requests which were based on 'Eurodac hits'. In 2022 they referred to a total of 47,163 requests based on Eurodac, out of which:

- ❖ 30,682 (62.0%) after an application for international protection (CAT 1);<sup>246</sup>
- ❖ 4,830 (27.0%) after apprehension upon illegal entry (CAT 2);<sup>247</sup>
- ❖ 1961 (11.0%) after apprehension for illegal stay (CAT 3).<sup>248</sup>

The number of transfers from other European countries to Germany was 3,700 in 2022, slightly lower than in previous years (4,274 in 2021, 4,369 in 2020) where they had already decreased in comparison to previous years (6,087 in 2019; 7,580 in 2018). The notable decrease in the numbers of transfers from **Greece** before and during the Covid-19 outbreak continued in 2022, with 212 transfers in 2022 (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 (208 out of 212) were carried out on the basis of the family unity provisions of the Dublin Regulation. The German government provided the following details on transfers carried out from Greece on the basis of family unity provisions:

Incoming Dublin transfers from Greece: 2021	
Criterion	Number of transfers
Unaccompanied children with family members or relatives: Article 8	135
Family members of beneficiaries of international protection: Article 9	17
Family members of asylum seekers: Article 10	8
Dependent persons: Article 16	2
Family reunification based on the humanitarian clause: Article 17(2)	46
<b>Total</b>	<b>208</b>

Source: Federal Government, *Response to parliamentary question by The Left, 20/5868*, 28 February 2023, available in German at: <https://bit.ly/3TFedY>, 38.

<sup>245</sup> Federal Government, *Responses to parliamentary question by The Left, 20/5868*, 28 February 2023, available in German at: <https://bit.ly/3TFedY>, 3, 20/861, 24 February 2022, 2, 19/30849, 21 June 2021, 3.

<sup>246</sup> Article 9 recast Eurodac Regulation.

<sup>247</sup> Article 14 recast Eurodac Regulation.

<sup>248</sup> Article 17 recast Eurodac Regulation.

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 2020, a total of 1,289 requests were sent from Greece, and 1,036 were rejected.<sup>249</sup> 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.<sup>250</sup> In 2020, in 743 cases Greece remonstrated the rejection by the BAMF. In the same year, the BAMF accepted 328 of such remonstrations.<sup>251</sup> In 2021 and 2022, both the overall number of incoming requests and the rejection rate decreased, with 377 out of 701 incoming requests being rejected in 2021 and 191 rejections out of 339 requests in 2022.<sup>252</sup> In 2022, Greece remonstrated the rejection in 119 cases, and in 73 cases the BAMF accepted responsibility after such a remonstrations.<sup>253</sup>

### 2.1.2. The dependent persons and discretionary clauses

In 2022, the sovereignty clause was applied in 624 cases (compared to 665 cases in 2021 and 1,083 cases in 2020), resulting in an asylum procedure being carried out in Germany.<sup>254</sup> 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.<sup>255</sup>

## 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.<sup>256</sup> The examination of whether another state is responsible for carrying out the asylum procedure (either based on the Dublin Regulation or on the German 'safe third country' rule) is an admissibility assessment and as such a part of the regular procedure. Thus, in the legal sense, the term 'Dublin procedure' does not refer to a separate procedure in the German context, but merely to the shifting of responsibility for an asylum application within the administration (i.e. takeover of responsibility by the 'Dublin Units' of the BAMF).

<sup>249</sup> Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 44.

<sup>250</sup> Anne Pertsch, „Dublin reversed' vor Gericht. Aktuelle Rechtsprechung zu Dublin-Familienzusammenführungen. Asylmagazin 8-9/2019, available at: <https://bit.ly/2W0l8tM>, 287-294.

<sup>251</sup> 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.

<sup>252</sup> Federal Government, Responses to parliamentary question by The Left, 20/5868, 28 February 2023, available in German at: <https://bit.ly/3TFefdY>, 38.

<sup>253</sup> Federal Government, Response to parliamentary question by The Left, 20/5868, 28 February 2023, available in German at: <https://bit.ly/3TFefdY>, 39.

<sup>254</sup> Federal Government, Response to parliamentary question by The Left, 20/5868, 28 February 2023, available in German at: <https://bit.ly/3TFefdY>, 10; 20/861, 24 February 2022, 10; 19/30849, 21 June 2021, 9.

<sup>255</sup> Federal Government, Response to parliamentary question by The Left, 19/17100, 20 February 2020, 12.

<sup>256</sup> Section 29(1)(a) Asylum Act.

Fingerprints are usually taken from all asylum seekers on the day that the application is registered and are systematically subjected to a Eurodac query. 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. 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 is then 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.<sup>257</sup> 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 in July 2020 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.<sup>258</sup> In previous years, there had been indications that there have also been Dublin procedures managed by the Federal Police in 2016, but the government denied this.<sup>259</sup> For more information on applications at the border and practice of refusal of entry 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 was 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 [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.<sup>260</sup>

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 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.<sup>261</sup>

On average, a Dublin procedure lasted 2.3 months in 2022. If Germany took over responsibility after a failed transfer to another Member State the average duration of the whole asylum procedure until a first instance decision was 22.1 months.<sup>262</sup>

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<sup>257</sup> Federal Government, *Response to parliamentary question by The Left*, 18/13428, 18 August 2017, 23-24.

<sup>258</sup> 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>.

<sup>259</sup> For further information see AIDA, *Country Report Germany - Update on the year 2021*, April 2022, 42, available at <https://bit.ly/3XnN7RS>

<sup>260</sup> 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.

<sup>261</sup> BAMF, *Entscheiderbrief* (newsletter for decision-makers) 9/2021, 5-6.

<sup>262</sup> Federal Government, *Responses to parliamentary question by The Left*, 20/5868, 28 February 2023, available in German at: <https://bit.ly/3TFedY>, 36-37.

### 2.2.1. 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.<sup>263</sup> For an analysis of the examination of individualised guarantees and suspension of transfers in relation to specific countries see [Suspension of transfers](#).

### 2.2.2. Transfers, absconding and ‘church asylum’

Transfers under the Dublin Regulation are usually carried out as removals and 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,<sup>264</sup> 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 was 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 them to be present in their 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 their 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.<sup>265</sup>

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. After an initial agreement between the BAMF and high-ranking members of the Protestant and Catholic church in Germany in 2015, parishes hosting persons who ought to be transferred can submit a dossier proving individual hardship to the BAMF and the BAMF will reconsider the case.<sup>266</sup> The guidelines were updated on 1 August 2018, stating that an extension of the transfer deadline to 18 months for reasons of ‘absconding’ can be ordered for persons in church asylum 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.<sup>267</sup> 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.<sup>268</sup> This was confirmed by a ruling of the Federal Administrative Court in 2020.<sup>269</sup> The BAMF has adapted its practice

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<sup>263</sup> Information provided by the BAMF, 1 August 2017.

<sup>264</sup> Section 59(1) Residence Act.

<sup>265</sup> Federal Administrative Court (BverwG), *Decision 1 C 55.20*, available in German at <https://bit.ly/3rgh2wA>

<sup>266</sup> BAMF, ‘*Merkblatt Kirchenasyl im Kontext von Dublin-Verfahren*’, August 2021 available in German at <https://bit.ly/3HY47Wl>.

<sup>267</sup> ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

<sup>268</sup> 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>.

<sup>269</sup> Federal Administrative Court (BverwG), *Decision 1 B 19.20*, available in German at <https://bit.ly/33k6qEK>

and has clarified in January 2021 that persons in ‘open church asylum’ where their whereabouts are known are not considered to be absconding.<sup>270</sup> This led to an increase in reported cases: in 2022, a total of 1,243 cases of ‘church asylum’ have been reported to the BAMF, up from 822 cases in 2021 and 335 in 2020. In only 12 cases, the BAMF decided to apply the sovereignty clause of the Dublin regulation and to conduct the asylum procedure in Germany.<sup>271</sup> However, according to church activists in **North Rhine Westphalia**, almost all cases of church asylum are successful in that they lead to the ‘intended goal’, presumably the avoidance of a Dublin transfer or removal.<sup>272</sup> As of 2 November 2022, according to the ecumenical Federal Working Group on Asylum in the Church, there were 314 active cases of church asylum involving 508 persons, out of which 112 were children. 294 out of the 314 cases concerned Dublin transfers.<sup>273</sup> According to church activists, demand has been rising over the course of 2022, with far more requests than the participating churches can accommodate.<sup>274</sup> Church asylum was challenged by prosecution authorities in **Bavaria** in recent years, leading to criminal charges against persons providing this type of shelter. The Bavarian High Court ruled on 25 February 2022 that granting shelter and food to persons obliged to leave Germany cannot be considered a criminal offence if the agreement on church asylum is followed. The court further found that there is no obligation on the host to actively end church asylum when the stay is unauthorised.<sup>275</sup>

In its *Jawo* ruling of 2019, the CJEU clarified that absconding ‘may be assumed (...) where the transfer cannot be carried out because 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’.<sup>276</sup>

‘Absconding’ from the Dublin procedure also has repercussions on [Reduction or 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](#).<sup>277</sup>

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 and segregate the data, between 1.5% and 50% of all Dublin transfers involved a form of detention in 2020.<sup>278</sup> 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

<sup>270</sup> BAMF, ‘Merkblatt Kirchenasyl im Kontext von Dublin-Verfahren’, August 2021 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>.

<sup>271</sup> Federal Government, *Response to parliamentary question by The Left*, 20/5868, 28 February 2023, available in German at: <https://bit.ly/3TFefdY>, 27; 20/861, 24 February 2022, 18; 19/30849, 21 June 2021, 25.

<sup>272</sup> Domradio.de, *Aktuell viele Anfragen nach Kirchenasyl in NRW*, 04 December 2022, available in German at <http://bit.ly/3kOQ9Ao>.

<sup>273</sup> Ökumenische Bundesarbeitsgemeinschaft Asyl in der Kirche, *Aktuelle Zahlen: Kirchenasyle bundesweit*, 02 November 2022, available in German at <https://bit.ly/3HvY114>.

<sup>274</sup> Domradio.de, *Aktuell viele Anfragen nach Kirchenasyl in NRW*, 04 December 2022, available in German at <http://bit.ly/3kOQ9Ao>.

<sup>275</sup> Infomigrants, *Ruling in church asylum case creates legal precedent in Germany*, 04 March 2022, available at <https://bit.ly/3wAt3jv>.

<sup>276</sup> CJEU, Case C-163/17 *Jawo*, Judgment of 19 March 2019, para 70.

<sup>277</sup> ECRE, *The AnkER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

<sup>278</sup> Federal Government, *Response to parliamentary question by The Left*, 19/31669, 04 August 2021, 117 et seq.



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.<sup>279</sup> 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.<sup>280</sup> For 2021, the Federal government reports that 110 Dublin transfers involved use of means of physical restraint by the police, compared to 129 in 2020.<sup>281</sup>

### 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? ☐ Yes ☐ No ☒ Information unavailable

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 happen at various stages of the procedure. In practice, the Dublin and regular procedure are carried out simultaneously. The personal hearing in the framework of the Dublin procedure is to be conducted, if possible, immediately after the registration of the asylum application, during which a first hearing is conducted to establish the basic facts of a case in relation to the possible responsibility of another Member State to carry out the asylum procedure. In this Dublin interview, applicants 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). According to BAMF internal guidelines of December 2022, even if there are reasons to believe that another Member State might be responsible, the BAMF case officer is to conduct a personal interview related to the grounds for asylum after the ‘Dublin interview’ to increase efficiency of the procedure.<sup>282</sup> 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.

Whereas before the outbreak of Covid-19, a face to face interview was mandatory for the admissibility interview,<sup>283</sup> the reform of the Asylum Act through Act on the acceleration of asylum court proceedings and asylum procedures<sup>284</sup> which entered into force on 1 January 2023 introduced the possibility to conduct video interviews, including for Dublin interviews (see Personal interview). Even before, this possibility had

<sup>279</sup> See Federal Government, *Response to parliamentary question by The Left, 19/7401*, 29 January 2019, available in German at: <https://bit.ly/2HwaiQQ>.

<sup>280</sup> ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

<sup>281</sup> Federal Government, *Response to parliamentary question by The Left, 20/890*, 02 March 2022, 28.

<sup>282</sup> BAMF, *Dienstanweisung Dublin* (internal directive for Dublin procedures), version of December 2022, available in German at <https://bit.ly/3J5jPTA>

<sup>283</sup> *Entscheiderbrief*, 9/2013, 3.

<sup>284</sup> Official Gazette I no. Nr. 56 (2022) of 28 December 2022, 2817.

been introduced for Dublin interviews as of July 2021.<sup>285</sup> There is no information as to whether video interviews were carried out in practice between 2020 and 2022.

## 2.4. Appeal

**Indicators: Dublin: Appeal**  
☐ Same as regular procedure

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

❖ If yes, is it

❖ If yes, is it suspensive

☒ Yes

☒ Judicial

☐ Yes

☐ No

☐ Administrative

☒ No

Dublin decisions are inadmissibility decisions under Section 29 of the Asylum Act.

It is possible to lodge an appeal against a Dublin decision before 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. As of 1 January 2023, following the Act on the acceleration of asylum court proceedings and asylum procedures,<sup>286</sup> courts have discretion whether to hold personal hearings if the applicant is represented by a lawyer. However, a hearing must take place if the applicant requests so.<sup>287</sup>

Material requirements for a successful appeal remain difficult to fulfil and the way these requirements must be defined in detail remains a highly controversial issue. For example, administrative courts in the Federal States continue to render diverging decisions regarding 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 parallel application for suspensive effect must be fully substantiated. To prepare such an application requires expert knowledge of the asylum law, but in the absence of systematic legal counselling asylum seekers regularly have to turn to a lawyer or to refugee counsellors for assistance. However, it might prove impossible for asylum seekers to make an appointment with lawyers or counsellors within the short timeframe. Even if they manage to contact a lawyer, it is still very difficult to produce a sufficiently substantiated application at such short notice. Therefore, it has been argued that the one-week period, although being an improvement compared to the previous situation, still does not provide for an effective remedy and might constitute a violation of the German Constitution.<sup>288</sup>

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

<sup>285</sup> BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), 03 August 2021, 104

<sup>286</sup> Official Gazette I no. Nr. 56 (2022) of 28 December 2022, 2817.

<sup>287</sup> Section 77(2) Asylum Act.

<sup>288</sup> Dominik Bender and Maria Bethke, "Dublin III', Eilrechtsschutz und das Comeback der Drittstaatenregelung.' *Asylmagazin* 11/2013, 362.



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.<sup>289</sup>

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 end of November 2022. 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 2022		
Country	Granting suspensive effect	Refusing suspensive effect
Belgium	5	89
Bulgaria	96	482
Denmark	12	51
Estonia	3	33
Finland	1	9
France	53	589
Greece	2	0
Iceland	0	1
Italy	1074	1645
Croatia	125	557
Latvia	10	95
Lithuania	273	269
Luxemburg	0	3
Malta	8	21
Netherlands	3	99
Norway	2	10
Austria	18	435
Poland	249	707
Portugal	22	84
Romania	83	214
Sweden	15	206
Switzerland	11	79
Slovakia	1	5
Slovenia	32	100
Spain	64	590
Czech Republic	6	33
Hungary	123	44
Cyprus	3	6

Source: Federal Government, *Response to parliamentary question by The Left, 20/5868*, 28 February 2023, available in German at: <https://bit.ly/3TFefdY>, 34.

<sup>289</sup> BverfG, Decision 2 BvR 157/17, 8 May 2017, asyl.net, available at: <http://bit.ly/2G6rw9X>.

## 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 [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?

### Suspension of transfers following the outbreak of the war in Ukraine<sup>290</sup>

Germany issued Dublin transfer decisions to Poland, Slovakia, Romania, and the Czech Republic during the beginning of the war in Ukraine and displacement crisis, despite these countries suspending all incoming transfers following the outbreak of the war. German courts had varying opinions on the legality of these decisions, with some granting emergency suspension requests and others upholding the decisions.<sup>291</sup> In May and June 2022, Poland and Romania lifted their suspensions on incoming transfers. Romania's Dublin unit said it would gradually accept transfers with limited capacity, while Poland informed other member states that it would resume incoming transfers on August 1, 2022.<sup>292</sup>

After the lifting of suspensions by the countries themselves, transfers can only be suspended if the situation in the destination country would amount to inhuman or degrading treatment. Jurisprudence continued to diverge on this question. Before the outbreak of the war, the administrative court of Weimar found that LGBTIQ+ persons are subject to inhuman or degrading treatment in **Poland** as their vulnerability was not acknowledged in the asylum procedure, and considering heightened discrimination of homosexual persons in society.<sup>293</sup> Other courts found no indications of such treatment for vulnerable persons or of systematic deficiencies in the Polish asylum system even after the arrival of millions of

<sup>290</sup> For more detailed information see the AIDA, *Update on the implementation of the Dublin III Regulation in 2021*, available at <https://bit.ly/3Djv5s2>.

<sup>291</sup> For further information, see Informationsverbund Asyl & Migration, 'Overview: Effects of the Ukraine War on Dublin Renditions', 1 June 2022, available at: <https://bit.ly/3pXFqY>; and 'Update: Effects of the Ukraine War on Dublin Renditions', 14 July 2022, available at: <https://bit.ly/3PXtRGg>.

<sup>292</sup> Informationsverbund Asyl & Migration, 'Overview: Effects of the Ukraine War on Dublin Renditions', 1 June 2022, available at: <https://bit.ly/3pXFqY>; and 'Update: Effects of the Ukraine War on Dublin Renditions', 14 July 2022, available at: <https://bit.ly/3PXtRGg>.

<sup>293</sup> Administrative Court of Weimar, 3 E 1408/21, 6 January 2022 – asyl.net: M30364.

Ukrainian refugees.<sup>294</sup> With regard to **Bulgaria**, courts generally agree that transfers under the Dublin regulation are lawful at least with regards to healthy, single adults.<sup>295</sup> Regarding **Lithuania**, several administrative courts have granted interim measures in 2022 to prevent transfers on the ground of a real risk of inhuman or degrading treatment following the severe restrictions in the country's asylum system in response to the crisis at the border with Belarus.<sup>296</sup> Other courts have decided that transfers to Lithuania can take place. For jurisprudence on removals of beneficiaries of international protection see below. For **Romania**, some administrative courts have halted transfers referring to the lack of social assistance for families with minor children<sup>297</sup> and the fact that asylum seekers whose application is considered a subsequent application upon return do not have access to social assistance,<sup>298</sup> or that it cannot be established that deficiencies related to the influx of Ukrainian refugees do not persist,<sup>299</sup> while the Higher Administrative Court of North Rhine Westphalia does not see systemic deficiencies in the Romanian asylum system as of 25 August 2022.<sup>300</sup>

### Dublin transfers during the Covid-19 pandemic

In 2020 and 2021, several decisions were taken with regard to Dublin transfers at the federal level (suspensions, testing requirements, etc).<sup>301</sup> However, no updated information is available for the year 2022 as transfers are operated by the Federal States and there are no longer unified testing requirements.

When suspending transfers in 2020, 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.<sup>302</sup> This suspension was contested by the European Commission, stating that the Dublin regulation provides no legal basis for such a suspension,<sup>303</sup> as well as by neighbouring countries and German administrative courts. The CJEU was called to give a preliminary ruling on the matter by the Federal Administrative Court. The ruling, issued on 22 September 2022, found that the suspension does not interrupt the six-month time limit.<sup>304</sup> 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 could enter the national asylum procedure. This did not apply however to applicants with an ongoing appeal procedure.<sup>305</sup> As of 20 May 2021, the transfer period had expired for a total of 9,329 persons due to the Covid-19 pandemic.<sup>306</sup> 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.

<sup>294</sup> Administrative Court of Wiesbaden, 3 K 1656/18.WI.A, 6 May 2022; Administrative Court of Munich, M 30 S 22.50276, 27.5.2022

<sup>295</sup> Higher Administrative Court of Baden-Württemberg, A 4 S 162/22, 24 February 2022 – asyl.net: M30517; Administrative Court of Saarland, 5 L 63/22, 2 March 2022 – asyl.net: M30512; Administrative Court of München, M 5 S 22.50150, 24 March 2022.

<sup>296</sup> See table below for an overview.

<sup>297</sup> Administrative Court of Bremen, 1 K 1022/19, 02 March 2022.

<sup>298</sup> Administrative Court of Braunschweig, 6 A 321/21, 22 March 2022 - asyl.net: M30525.

<sup>299</sup> Administrative Court Arnesberg, Decision 8 L 359/22.A, 28 July 2022, asyl.net: M30804.

<sup>300</sup> Higher Administrative Court of North Rhine Westphalia, Decision 11 A 861/20.A, 25 August 2022, asyl.net: M30995.

<sup>301</sup> For further information, see AIDA, *Country Report Germany - Update on the year 2021*, April 2022, available at <https://bit.ly/3XnN7RS>, 85.

<sup>302</sup> ECRE, *Information Sheet 28 May 2020: Covid-19 Measures Related to Asylum and Migration Across Europe*, available at: <https://bit.ly/3IMPtZD>

<sup>303</sup> 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>

<sup>304</sup> CJEU, Cases C-245/21 and C-248/21.

<sup>305</sup> Pro Asyl, 'Praxishinweise zur aktuellen Aussetzung von Dublin-Überstellungen und Überstellungsfristen', available in German at <https://bit.ly/3zV65EG>

<sup>306</sup> Federal Government, *Response to parliamentary question by The Left, 19/30849*, 21 June 2021, 47.

## Suspension of transfers and individualised guarantees for specific Member States

**Croatia:** Several administrative courts have halted Dublin transfers to Croatia, referring to illegal push-backs of asylum seekers to Bosnia Herzegovina and Serbia and police violence against asylum seekers, while other courts see no danger of push backs for returnees from Germany (for an overview see tables above and below). With a total of 95 transfers compared to 4,657 outgoing requests and 3,276 cases accepted by Croatia, the ratio of transfers to requests was much lower than the average of all member states.

**Hungary:** According to information provided by the BAMF in 2018, 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 APD.<sup>307</sup> It is established jurisprudence, however, that admissibility decisions and removals regarding Hungary are unlawful due to the lack of access to the national asylum system in Hungary and the conditions especially in 'transit centres'.<sup>308</sup> 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 2022 and 2021. Whereas no Dublin transfers to Hungary took place between 11 April 2017 and the end of 2020,<sup>309</sup> one person was transferred to Hungary in 2021, with an individualised guarantee issued by the Hungarian authorities,<sup>310</sup> And 8 transfers took place in 2022.<sup>311</sup> No further information is available on these cases and it is unclear whether this presents a general change in practice on the side of either the German or the Hungarian authorities. Several court decisions halting transfers to Hungary in 2022 (see table below) indicate that the BAMF is again ordering transfers to Hungary at least in some cases.

**Greece:** A formal suspension of transfers to Greece, which had been in place for several years, ended in March 2017.<sup>312</sup> In 2022 and 2021, Germany sent a comparably high number of take charge requests to Greece (9,166 in 2022, or 13.3% of all outgoing requests in 2022, 10,427 or 24.6% of all outgoing requests in 2021).<sup>313</sup> However, no transfer was carried out in 2022, only one in 2021 and 4 in 2020 (compared to 20 in 2019).<sup>314</sup> 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.<sup>315</sup> In 2022, no such individualised guarantees were issued according to the Federal Government.<sup>316</sup> 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

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<sup>307</sup> Federal Government, *Response to parliamentary question by The Left*, 19/921, 26 February 2018, 19.

<sup>308</sup> Justus Linz, *Zur Situation von »Dublin-Rückkehrenden« und »Anerkannten« in Staaten Osteuropas*, September 2022, asyl.net, 3, available in German at <https://bit.ly/3JdJ7PH>.

<sup>309</sup> Preliminary remark to Federal Government, *Response to parliamentary question by The Left*, 19/17100, 20 February 2020, 1.

<sup>310</sup> Federal Government, *Response to parliamentary question by The Left*, 20/5868, 28 February 2023, available in German at: <https://bit.ly/3TFefdY>, 4, 19/30849, 21 June 2021, 47.

<sup>311</sup> Federal Government, *Responses to parliamentary question by The Left*, 20/5868, 28 February 2023, available in German at: <https://bit.ly/3TFefdY>, 12.

<sup>312</sup> Federal Government, *Response to parliamentary question by The Left*, 19/30849, 21 June 2021, 27.

<sup>313</sup> Federal Government, *Response to parliamentary question by The Left*, 20/861, 24 February 2022, 22, 19/30849, 21 June 2021, 3.

<sup>314</sup> Federal Government, *Response to parliamentary question by The Left*, 20/5868, 28 February 2023, available in German at: <https://bit.ly/3TFefdY>, 12; 19/30849, 21 June 2021, 11; 19/17100, 20 February 2020, 59-60.

<sup>315</sup> Federal Government, *Response to parliamentary question by The Left*, 19/30849, 21 June 2021, 27.

<sup>316</sup> Federal Government, *Responses to parliamentary question by The Left*, 20/5868, 28 February 2023, available in German at: <https://bit.ly/3TFefdY>, 36.

the age of three.<sup>317</sup> Transfers to Italy are systematically ordered, including for vulnerable persons such as pregnant women or persons with severe mental health conditions.<sup>318</sup> In reaction to a letter issued by the Italian ministry in December 2022 that it would no longer accept incoming requests based on a lack of reception capacity, the German government responded that it continued to apply the Dublin procedure as 'directly applicable EU law' and that it would 'take into account temporary challenges in individual cases'.<sup>319</sup> On 24 January 2023, the administrative court of Arnsberg (**North Rhine Westphalia**) found that the refusal of Italy to accept Dublin returnees, together with the government's statement that there is no reception capacity, amounts to systemic deficiencies which make Dublin transfers to Italy illegal.<sup>320</sup> However NGOs report that the BAMF continues to issue Dublin transfer decisions as of March 2023, even though Italy did not accept the transfers in most cases.<sup>321</sup>

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.<sup>322</sup> 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. In 2021, the BAMF sought to appeal a decision of the Higher Administrative Court of **North Rhine Westphalia** in July 2021, halting the transfer of a single man to Italy ruled unlawful due to the lack of accommodation in Italy,<sup>323</sup> based on an alleged lack of sufficient consideration of the facts on the ground. The Federal Administrative Court however confirmed the decision on 27 January 2022.<sup>324</sup>

Over the last years 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 2022.<sup>325</sup> Notably, the Higher Administrative Court of **Lower Saxony** found in June 2022 that access to illegal forms of work in Italy can be taken into account when state authorities are not enforcing the law against such forms of work.<sup>326</sup> Two administrative court decisions issued after the new right-wing government in Italy took office point to different assessments of the impact of the change in government on conditions for asylum seekers: while the administrative court of Greifswald does not expect the situation to change,<sup>327</sup> the administrative court of Braunschweig expects the situation to worsen.<sup>328</sup>

<sup>317</sup> 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.

<sup>318</sup> ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

<sup>319</sup> Federal Government, *Responses to parliamentary question by The Left, 20/5868*, 28 February 2023, available in German at: <https://bit.ly/3TFefdY>, 40-41.

<sup>320</sup> Administrative Court Arnsberg, Decision 2 K 2991/22.A, 24 January 2023, available in German at <https://bit.ly/3Lk9pAH>.

<sup>321</sup> Oral discussion with AIDA partner NGO.

<sup>322</sup> Bundesverfassungsgericht (BverfG), *Decision 2 BvR 1380/19*, 10 October 2019, asyl.net: M27757.

<sup>323</sup> Higher Administrative Court of North Rhine Westphalia, 11 A 1689/20.A, 20 July 2022.

<sup>324</sup> Federal Administrative Court, 1 B 66.21, 27 January 2022, asyl.net: M31153.

<sup>325</sup> Informationsverbund Asyl & Migration, 'Das »Dublin-Verfahren«. Die Zulässigkeitsprüfung im Asylverfahren bei »Dublin-Fällen« und »Anerkannten«', Available in German at <https://bit.ly/3K4StLy>

<sup>326</sup> Higher Administrative Court of Lower Saxony, 10 LA 77/22, 10 June 2022, asyl.net: M30785

<sup>327</sup> Administrative Court of Greifswald, 3 A 1301/22 HGW, 17 November 2022.

<sup>328</sup> Administrative Court of Braunschweig, 2 B 278/22, 1 December 2022

A detailed analysis of case law on this issue, which consists of hundreds of decisions, is not 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: 2022		
Country	Halting transfer	Upholding transfer
Bulgaria	<p>Administrative Court of Potsdam, 12 K 2418/20. A, 11 January 2022</p> <p>Administrative Court of Trier, 6 K 2497/21.TR, 25 January 2022</p> <p>Administrative Court of Cologne, 13 L 589/22. A, 21 April 2022</p> <p>Administrative Court of Würzburg, W 2 K 22.30046, 8 June 2022</p> <p>Administrative Court of Magdeburg, 2 A 43/21 MD, 7 July 2022</p>	<p>Higher Administrative Court of North Rhine Westphalia, 11 A 1625/21. A, 15 February 2022</p> <p>Administrative Court of Munich, M 5 S 22.50115, 15 March 2022</p> <p>Administrative Court of Augsburg, Au 8 S 22.50178, 1 August 2022</p> <p>Administrative Court of Karlsruhe, A 19 K 2565/22, 27 September 2022</p>
Croatia	<p>Administrative Court of Braunschweig, 2 B 27/22, 25 February 2022</p> <p>Administrative Court of Braunschweig, 2 A 26/22, 24 May 2022</p> <p>Administrative Court of Freiburg, A 1 K 1805/22, 26 July 2022</p> <p>Administrative Court of Stuttgart, A 16 K 3603/22, 2 September 2022</p> <p>Administrative Court of Hanover, 15 B 3250/22, 7 September 2022</p>	<p>Administrative Court of Munich, 4 January 2022</p> <p>Administrative Court of Hanover, 7 B 6223/21, 31 January 2022</p> <p>Administrative Court of Minden, 12 L 847/21. A, 1 February 2022</p> <p>Administrative Court of Hamburg, - 16 AE 1814/22, 3 May 2022</p> <p>Administrative Court of Cologne, 2 L 1005/22. A, 27 June 2022</p>
Greece (only with regard to beneficiaries of international protection)	<p>Higher Administrative Court of Baden-Württemberg, A 4 S 2443/21, 27 January 2022</p> <p>Administrative Court of Oldenburg, 11 A 3608/21, 14 March 2022</p> <p>Higher Administrative Court of Saxony, 5 A 492/21. A, 27 April 2022</p>	
Hungary	<p>Administrative Court of Bremen, 3 K 491/18, 6 April 2022</p> <p>Administrative Court of Aachen, 5 K 3571/18. A, 11 April 2022</p> <p>Administrative Court of Munich, M 6 K 18.33184, 10 May 2022</p> <p>Administrative Court of Munich, M 10 S 22.50218, 18 July 2022</p> <p>Administrative Court of Arnshausen, 1 L 827/22. A, 13 September 2022</p>	



Italy	<p>Administrative Court of Bremen, 6 V 987/21, 20 January 2022</p> <p>Administrative Court of Hannover, 5 A 3610/18, 07 February 2022</p> <p>Administrative Court of Düsseldorf, 12 K 971/22. A, 16 February 2022</p> <p>Administrative Court of Gelsenkirchen, 1a K 2967/19. A, 22 February 2022</p> <p>Administrative Court of Münster, 10 K 585/22. A, 3 March 2022</p> <p>Administrative Court of Halle, 4 B 219/22 HAL, 20 May 2022</p> <p>Administrative Court of Trier, 6 K 439/21.TR, 24 August 2022</p> <p>Administrative Court of Münster, 10 K 2572/21. A, 1 September 2022</p> <p>Administrative Court of Braunschweig, 2 B 278/22, 1 December 2022</p>	<p>Higher Administrative Court of Saarland, 2 A 46/21, 15 February 2022</p> <p>Higher Administrative Court of Saxony, 4 A 341/20. A, 14 March 2022</p> <p>Administrative Court of Cottbus, 5 K 754/19. A, 8 September 2022</p> <p>Administrative Court of Greifswald, 3 A 1301/22 HGW, 17 November 2022</p>
Lithuania	<p>Administrative Court of Hanover, 12 B 6475/21, 23 February 2022</p> <p>Administrative Court of Munich, M 10 S 22.50244, 17 June 2022</p> <p>Administrative Court of Weimar, 6 E 1610/21 We, 9 August 2022</p> <p>Administrative Court of Berlin, 22 L 258/22. A, 7 October 2022</p> <p>Administrative Court of Arnberg, 13 L 900/22. A, 19 October 2022</p> <p>Administrative Court of Hannover, 3 B 4452/22, 1 November 2022</p>	<p>Administrative Court of Augsburg, Au 5 S 22.50008, 22 February 2022</p> <p>Administrative Court Greifswald, 6 B 367/22 HGW, 21 March 2022</p> <p>Administrative Court of Berlin, 21 K 3/22 A 3 May 2022</p>
Romania	<p>Administrative Court of Bremen, 1 K 1022/19, 02 March 2022</p> <p>Administrative Court of Braunschweig, 6 A 321/21, 22 March 2022</p> <p>Administrative Court of Düsseldorf, 22 L 526/22. A, 4 May 2022</p> <p>Administrative Court of Arnberg, 8 L 359/22. A, 28 July 2022</p>	<p>Higher Administrative Court of North Rhine Westphalia, Decision 11 A 861/20. A, 25 August 2022, asyl.net: M30995.</p>

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 deal with cases of persons who have been granted international protection in other European states such as Bulgaria, Greece, Hungary 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 or Italy, while the majority of courts do not consider transfers to Greece to be lawful (see also below).<sup>329</sup>

On 1 August 2022, the CJEU established in a preliminary ruling that the asylum applications of a child born in one Member state (in this case Germany) whose parents have been granted protection in another Member State (in this case Poland) cannot be rejected as inadmissible.<sup>330</sup> The request was made by the Administrative Court of Cottbus (**Brandenburg**), based on a BAMF decision that such an application was inadmissible on the grounds that Poland was responsible for conducting the asylum procedure under the Dublin regulation. According to the CJEU, this ground for inadmissibility cannot be applied analogously to cases where international protection has already been granted to family members.

In October 2019, the Federal Constitutional Court 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*,<sup>331</sup> the court held that authorities and courts in Germany had to examine this point when deciding about the possibility of a transfer.<sup>332</sup>

Between 2019 and April 2022, the BAMF 'de-prioritised' cases from applicants who had already been granted international protection in **Greece**, meaning applications were de facto not processed, which left applicants in legal limbo, retaining the status of asylum seekers. 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.<sup>333</sup> 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.<sup>334</sup> 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

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<sup>329</sup> Informationsverbund Asyl & Migration, *Vorlage des BVerwG an den EuGH: Ist das BAMF an die Schutzzuerkennung durch andere EU-Staaten gebunden?*, 21 September 2022, available in German at <http://bit.ly/407ZvXV>

<sup>330</sup> CJEU, *Judgment in case C-720/20*, available at <http://bit.ly/3WEtCmX>.

<sup>331</sup> CJEU, *Judgment in case C-163/17, Jawo*, 19 March 2019, available at: <https://bit.ly/304sXA2>.

<sup>332</sup> Federal Constitutional Court, decision of 7 October 2019 – 2 BvR 721/19 – Asylmagazin 1-2/2020, S. 37 f. – asyl.net: M27758.

<sup>333</sup> Higher Administrative Court of North Rhine Westphalia, *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>

<sup>334</sup> Federal Administrative Court, Decision 1 C 3.21 of 07 September 2021, available in German at: <https://bit.ly/3pnuXk2>.

IOM and financed by EU and German funds.<sup>335</sup> 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.<sup>336</sup> Decisions of the Higher Administrative Courts of **Baden-Württemberg** and **Saxony** in 2022 confirmed that beneficiaries cannot be sent back to Greece, and that their applications cannot be deemed inadmissible for the reason that protection has been granted in another Member State (see also [Admissibility procedure](#)).<sup>337</sup>

The BAMF took up the processing of applications again on 1 April 2022. The BAMF stated that it planned to assess each case again on its merits, instead of accepting the decision to grant international protection from another Member State, and to only deem applications inadmissible “in justified individual cases” where no threat of violation of Art. 3 or 4 ECHR exists.<sup>338</sup> On 31 December 2022 12,500 asylum applications of persons who are likely to already have a protection in Greece were pending at the BAMF.<sup>339</sup> This is much lower than in December 2021 (39,000), but still a significant backlog. In 2022, 14,053 applications for international protection were filed by persons who had already been granted protection in Greece, compared to 19,805 such applications in 2021. Syrians and Afghans make up more than two thirds of these applicants.<sup>340</sup> Over the course of 2022, the BAMF decided on a total of 43,091 such applications, out of which 4,983 were rejected although protection had been granted by Greek authorities.<sup>341</sup> Some administrative courts have confirmed this decision, arguing that the BAMF is not bound by decisions of the Greek asylum authorities.<sup>342</sup> This question has been put before the CJEU in a request for preliminary ruling in September 2022.<sup>343</sup>

In 2022, a total of 72 removals of non-Greek nationals took place to Greece, but the removal statistics do not give indications on the residence status or nationality of persons returned.<sup>344</sup>

Regarding removals to **Bulgaria**, most courts are of the opinion that removals of beneficiaries of protection are lawful. By way of exception, some administrative courts have found – in the case of the administrative court of Potsdam even before the outbreak of the war in Ukraine - that even non-vulnerable persons face destitution and homelessness upon arrival.<sup>345</sup> The Federal State government of **Lower Saxony** issued guidance on 21 February 2022 according to which transfers are only admissible for healthy

<sup>335</sup> 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>

<sup>336</sup> Infomigrants, ‘Germany to process frozen asylum claims of refugees from Greece’, 21 March 2022, available online at: <https://bit.ly/3qH0fTN>.

<sup>337</sup> Higher Administrative Court of Baden-Württemberg, A 4 S 2443/21, 27 January 2022, Higher Administrative Court of Saxony, 5 A 492/21.A, 27 April 2022.

<sup>338</sup> BAMF, Letter to the Presidents of Higher Administrative Courts and Administrative Courts, 31 March 2022, available in German at <https://bit.ly/3ksC5Mq>.

<sup>339</sup> Federal Government, *Response to parliamentary question by The Left*, 20/5868, 28 February 2023, available in German at: <https://bit.ly/3TFefdY>, 17.

<sup>340</sup> Federal Government, *Response to parliamentary question by The Left*, 20/5868, 28 February 2023, available in German at: <https://bit.ly/3TFefdY>, 17; and 20/861, 24 February 2022, 17.

<sup>341</sup> Federal Government, *Response to parliamentary question by The Left*, 20/5868, 28 February 2023, available in German at: <https://bit.ly/3TFefdY>, 17.

<sup>342</sup> Informationsverbund Asyl & Migration, *Vorlage des BVerwG an den EuGH: Ist das BAMF an die Schutzzuerkennung durch andere EU-Staaten gebunden?*, 21 September 2022, available in German at <http://bit.ly/407ZvXV>.

<sup>343</sup> Federal Administrative Court (BVerwG), Decision of 7 September 2022 - 1 C 26.21 - asyl.net: M30943; to monitor the progress of the request, see case C-753/22 before the CJEU, available at: <http://bit.ly/3KbQp6T>.

<sup>344</sup> Federal Government, *Response to parliamentary question by The Left*, 20/5868, 28 February 2023, available in German at: <https://bit.ly/3TFefdY>, 25.

<sup>345</sup> Administrative Court of Potsdam, 12 K 2418/20.A, 11 January 2022, Administrative Court of Ansbach, 14 S 22.50126, 31 October 2022; Administrative Court of Köln, 20 K 3733/22.A, 15 November 2022; Administrative Court of Freiburg, A 14 K 900/22, 19 September 2022. See also Justus Linz, *Zur Situation von »Dublin-Rückkehrenden« und »Anerkannten« in Staaten Osteuropas*, September 2022, asyl.net, 3, available in German at <https://bit.ly/3JdJ7PH>.

persons who are fit to work, and not for single parents, families with minor children and persons unable to work.<sup>346</sup>

**For Hungary**, in 2022, a number of administrative courts have found that the situation of beneficiaries of international protection in Hungary bears the danger of violating Art. 3 ECHR or Art. 4 CFR as beneficiaries are likely not able to ensure a minimum of existence.<sup>347</sup>

For **Poland**, jurisprudence is unclear as of January 2023, with the administrative court of Hannover deciding against removal in June 2022 on the basis that capacities in Poland are overstretched due to the reception of Ukrainian refugees,<sup>348</sup> while the administrative court of Würzburg found no indication of inhuman or degrading treatment for beneficiaries of international protection in April 2022.<sup>349</sup>

A transfer of beneficiaries of international protection to **Romania** was halted by the Federal Constitutional Court in July 2022, which held that the competent administrative court had not properly assessed the situation on the ground in light of the changed situation after the outbreak of the war in Ukraine.<sup>350</sup> The Higher Administrative Court of North Rhine Westphalia asked the Swiss Refugee Council to assess the situation in April 2022, and found in a judgement of 25 August 2022 that no danger of inhuman or degrading treatment exists.<sup>351</sup>

A list of court cases dealing with transfers of beneficiaries of international protection can be found online.<sup>352</sup>

## 2.7. The situation of Dublin returnees

Germany received 3,700 transfers in 2022, compared to 4,274 in 2021, 4,369 in 2020 and 6,087 in 2019. Dublin transfers are usually carried out individually through commercial flights.

In 2022, the highest number of incoming requests towards Germany occurred from France, Belgium and the Netherlands.<sup>353</sup> If persons are transferred to Germany based on family unity provisions, upon arrival they are sent to the place where their relatives are staying and local authorities provide them with 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.<sup>354</sup>

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<sup>346</sup> Ministry for the Interior and Sports of Lower Saxony, *Abschiebungsvollzug von anerkannt Schutzberechtigten nach Bulgarien*, 21 February 2022, available in German at <http://bit.ly/3Y1o1rT>.

<sup>347</sup> Administrative Court of Bremen, 3 K 491/18, 6 April 2022, Administrative Court of Aachen, 5 K 3571/18.A – asyl.net: M30632, Administrative Court of Munich, M 6 K 18.33184, 10 May 2022, asyl.net: M30693.

<sup>348</sup> Administrative Court of Hannover, 15 B 371/22.A, 27 June 2022, asyl.net: M30777.

<sup>349</sup> VG Würzburg, W 1 K 22.30178, 6 April 2022, see also Justus Linz, *Zur Situation von »Dublin-Rückkehrenden« und »Anerkannten« in Staaten Osteuropas*, September 2022, asyl.net, 3, available in German at <https://bit.ly/3JdJ7PH>.

<sup>350</sup> Federal Constitutional Court (BVerfG), 2 BvR 961/22, 19 July 2022, asyl.net: M30822.

<sup>351</sup> Higher Administrative Court of North Rhine Westphalia, Decision 11 A 861/20.A, 25 August 2022, asyl.net: M30995.

<sup>352</sup> The website is available in German at: <https://www.asyl.net/recht/dublin-entscheidungen/>. Search with the keyword 'Anerkannte' (recognised persons).

<sup>353</sup> Federal Government, *Response to parliamentary question by The Left, 20/5868*, 28 February 2023, available in German at: <https://bit.ly/3TFefdY>, 29.

<sup>354</sup> ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

### 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:<sup>355</sup>

- ❖ Another country is responsible for carrying out the asylum procedure, according to the Dublin Regulation or based on other European or international treaties;
- ❖ Another EU Member State has already granted the applicant international protection;
- ❖ A country that is willing to readmit the foreigner is regarded as a 'safe third country' for the asylum seeker;<sup>356</sup>
- ❖ A country that is not an EU Member State and is willing to readmit the foreigner is regarded as 'another third country';<sup>357</sup>
- ❖ The applicant has made a subsequent,<sup>358</sup> or secondary,<sup>359</sup> application (see [Subsequent applications](#)).

The BAMF took the following inadmissibility decisions in 2022:

Inadmissibility decisions in 2022	
Ground	Number
Applicability of the Dublin Regulation	22,138
International protection in another EU Member State	4,637
Safe third country	10
Another third country	6
Secondary application (after procedure in a safe third country)	1,686
Subsequent application (after procedure in Germany)	13,438
Removal before decision	6
Application not treated further	7
'Non pursuit' on the applicant's side or granting of temporary protection	5,146
No decision required (Dublin)	198
Other reasons (not specified)	3608
<b>Total</b>	<b>50,880</b>

Source: Statistics on 'abandonment of procedures for other reasons' ('sonstige Verfahrenserledigungen') by the Federal Government, *Response to parliamentary question by The Left, 20/5709*, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 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,

<sup>355</sup> Section 29(1) Asylum Act.

<sup>356</sup> Section 29(1)(3) Asylum Act, citing Section 26a Asylum Act.

<sup>357</sup> Section 29(1)(4) Asylum Act, citing Section 27 Asylum Act.

<sup>358</sup> Section 29(1)(5) Asylum Act, citing Section 71 Asylum Act.

<sup>359</sup> Section 29(1)(5) Asylum Act, citing Section 71a Asylum Act.

in previous years the BAMF usually decided 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, 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.<sup>360</sup> In these cases, the BAMF would have to carry out a regular asylum procedure. After stopping the processing of applications from persons with a protection status in Greece since 2019 (meaning that the concerned persons retain the status of asylum applicant), the BAMF took up the processing of applications again on 1 April 2022 (see [Suspension of transfers for beneficiaries of international protection in other Member States](#)). The BAMF stated that it planned to assess each case again on its merits, instead of accepting the decision to grant international protection from another Member State, and to only deem applications inadmissible “in justified individual cases” where no threat of violation of Art. 3 or 4 ECHR exists.<sup>361</sup> Nonetheless, the statistics show an increase in inadmissibility decisions based on protection in another Member State in 2022 (4,637 cases) compared to 2021 (2,489 cases).

The provision that asylum applications may be considered inadmissible in case of safety in ‘another third country’ (*sonstiger Drittstaat*) is based on the concept of [First country of asylum](#) of Article 35 of the recast APD.<sup>362</sup> ‘Another third country’ may refer to any country which is not defined a [Safe third country](#) under German law.<sup>363</sup> 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 (6 cases in 2022, 4 cases in 2021).<sup>364</sup>

### 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?
 

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are questions limited to identity, nationality, travel route?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

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.

<sup>360</sup> 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.

<sup>361</sup> BAMF, Letter to the Presidents of Higher Administrative Courts and Administrative Courts, 31 March 2022, available in German at <https://bit.ly/3ksC5Mq>.

<sup>362</sup> Maria Bethke und Stephan Hocks, *Neue „Unzulässigkeits“-Ablehnungen nach § 29 AsylG*, Asylmagazin 10/2016, 336-346 (343).

<sup>363</sup> ‘Safe third countries’ are all member states of the European Union plus Norway and Switzerland: Section 26a Asylum Act and addendum to Asylum Act.

<sup>364</sup> Federal Government, *Response to parliamentary question by The Left, 20/432*, 14 January 2022, 6, and 20/5709, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 6.



### 3.3. Appeal

#### Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

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

❖ If yes, is it

❖ If yes, is it suspensive

☒ Yes  
☒ Judicial  
☐ Yes

☐ No  
☐ Administrative  
☐ Some grounds

☐ No  
☒ 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?  

❖ Does free legal assistance cover:

☐ Yes  
☐ Representation in interview  
☐ Legal advice

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

❖ Does free legal assistance cover

☐ Yes  
☒ Representation in courts  
☒ Legal advice

☒ With difficulty  
☐ No

As in the regular procedure, asylum seekers can be represented by lawyers at first instance (at the BAMF), but they must 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 and push backs](#)). 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.<sup>365</sup> Thus, asylum applicants are not considered to have entered Germany before a decision on entry has been taken.<sup>366</sup> 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](#)).<sup>367</sup>

The German Asylum Act foresees the applicability of the airport procedure where the asylum seeker arriving at the airport:<sup>368</sup>

- ❖ Comes from a ‘safe country of origin’;
- ❖ Is unable to prove their 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.<sup>369</sup> The scope of the airport procedure in Germany is therefore not consistent with the boundaries set by the recast APD.<sup>370</sup>

Yet, practice suggests that the second ground is the one most often used for activating the airport procedure. As demonstrated by the countries of origin of applicants, many applicants in the airport procedure in 2022 came from Syria, Iran, Afghanistan and Türkiye (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.

According to the BAMF 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](#)).<sup>371</sup> 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

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<sup>365</sup> Section 18a(1) Asylum Act.

<sup>366</sup> Section 13(2) Residence Act.

<sup>367</sup> Information provided by the BAMF, 10 March 2022.

<sup>368</sup> Section 18a(1) German Asylum Act.

<sup>369</sup> Article 31(8)(c) and (d) recast APD.

<sup>370</sup> See also Dominik Bender, *Das Asylverfahren an deutschen Flughäfen*, May 2014, 41.

<sup>371</sup> 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>, 8.

until their transfer. One exception applies to persons falling under the responsibility of Greece, who have been reportedly granted entry into the territory after a few days.<sup>372</sup>

### Number of airport procedures

Throughout 2022, 347 airport procedures took place. This is a marked increase compared to 2021 (198 procedures) and 2020 (145 procedures) but still lower than the 489 cases processed in 2019. This decrease in 2020 and 2021 is likely due to the COVID-19 pandemic and the reduced air traffic. Out of the 347 procedures carried out in 2022, 270 procedures took place at the **Frankfurt/Main Airport**, 32 at the **Munich Airport**, and 45 at the **Berlin Airport**. No airport procedures are reported for the year 2022 at the airports of **Düsseldorf** or **Hamburg**. As the statistics show, the overwhelming majority of procedures have taken place at Frankfurt/Main Airport over the last years.<sup>373</sup> 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 main countries of origin of persons subject to the airport procedure in 2020-2022 were as follows (for each year the top 10 nationalities are reported):

Applicants subject to the airport procedure: 2020-2022			
Nationality	2020	2021	2022
Syria	20	22	55
Iran	24	31	52
Afghanistan	5	11	31
Türkiye	6	30	28
Mongolia	-	-	20
Cuba	4	-	17
Russia	-	9	17
Angola		5	15
Iraq	14	10	11
undetermined			10
<b>Total</b>	<b>145</b>	<b>198</b>	<b>347</b>

Source: Federal Government, *Response to parliamentary question by The Left*, 20/5709, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 34, and 19/28109, 30 March 2021, available in German at: <https://bit.ly/3LJmTGw>.

Two out of the three main countries of origin of applicants in Germany in 2022 (Syria, Afghanistan and Türkiye) were among the main nationalities in the airport procedure in 2022. The top three nationalities in the airport procedure were Iran, Syria and Afghanistan. Other countries represented in the airport procedure in 2021 included Türkiye, Iraq, Russia, Cuba, Angola and Mongolia.<sup>374</sup> Overall, between 2015 and 2022, Syrians and Iranians were systematically part of the top 3 nationalities represented in the airport procedure.<sup>375</sup>

<sup>372</sup> Information provided by the Frankfurt Airport Church Refugee Service, 25 August 2020.

<sup>373</sup> Federal Government, *Response to parliamentary question by The Left*, 20/5709, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 34, 20/2309, 17 June 2022, 39/19/32678, 14 October 2021, 28 and 19/28109, 30 March 2021, 37.

<sup>374</sup> Federal Government, *Response to parliamentary question by The Left*, 20/5709, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 34.

<sup>375</sup> 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>, 37.

In contrast to previous years, since 2020 there seems to be more divergence between the top nationalities in airport procedures and among all asylum applications. 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;<sup>376</sup>
- ❖ In 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.<sup>377</sup>

These time limits are thus much shorter than the 4-week time limit laid down in the recast APD.<sup>378</sup> 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 since if the decision cannot take place within two days, the procedure ends and the applicant enters the regular procedure.<sup>379</sup> 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 into the territory is denied. A copy of the decision is sent to the competent Administrative Court.<sup>380</sup> 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 into 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 into the territory for the asylum procedure to be carried out in a regular procedure if an application is not rejected as manifestly unfounded;<sup>381</sup>
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 into the territory and access to the regular procedure are granted;<sup>382</sup> or

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<sup>376</sup> Section 18a(6)(1) and (2) German Asylum Act.

<sup>377</sup> Section 18a(4) and (6) German Asylum Act.

<sup>378</sup> Article 43(2) recast APD.

<sup>379</sup> 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>, 9.

<sup>380</sup> Section 18a(2)-(4) Asylum Act.

<sup>381</sup> 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.

<sup>382</sup> Section 18a(6) Asylum Act.

4. The BAMF has not taken a decision within 2 calendar days following the application. Entry into 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. However, 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,<sup>383</sup> a notable increase in decisions rejecting the application as manifestly unfounded has been 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, dropping only slightly to 34.5% in 2022.<sup>384</sup>

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 most 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, indicating that the airport procedure as such might be prone to produce higher rates of rejection. 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 Türkiye: 30.2% compared to 52.7%.<sup>385</sup> 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%.<sup>386</sup>

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 the applicants and the individual circumstances of the asylum applications. Nevertheless, these figures seem to indicate that the 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,<sup>387</sup> and confirms EASO’s (now EUAA) analysis according to which recognition rates are prone to be lower in the border procedure than in the regular procedure.<sup>388</sup> 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, Afghanistan and Türkiye).<sup>389</sup> 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

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<sup>383</sup> 264 out of 444 in 2017; 191 out of 273 in 2016, 549 out of 627 in 2015.

<sup>384</sup> Federal Government, *Response to parliamentary question by The Left*, 20/5709, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 34. 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, 28 and 19/28109, 30 March 2021, 37.

<sup>385</sup> 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.

<sup>386</sup> 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/31XOpvv>.

<sup>387</sup> 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 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>.

<sup>388</sup> EASO, *Border Procedures for Asylum Applications in EU+ Countries*, September 2020, available at: <https://bit.ly/3z4BaGk>, 20.

<sup>389</sup> BAMF, *Das Bundesamt in Zahlen 2019, 2020*, 56.

that vulnerabilities are less likely to be detected during the airport procedure.<sup>390</sup> At **Munich Airport**, concerns have been 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.<sup>391</sup> 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.<sup>392</sup>

As regards the outcome of airport procedures between 2020 and 2022 between the different airports, it was as follows:

Outcomes of airport procedures: 2020-2022						
	2020		2021		2022	
Airport	No decision within two days	Manifestly unfounded	No decision within two days	Manifestly unfounded	No decision within two days	Manifestly unfounded
Frankfurt/Main	67	58	68	64	166	100
Munich	6	6	13	6	23	9
Berlin	2	3	23	18	34	11
Hamburg	3	0	0	0	0	0
<b>Total</b>	<b>78</b>	<b>67</b>	<b>104</b>	<b>88</b>	<b>223</b>	<b>120</b>

Source: Federal Government, *Response to parliamentary question by The Left*, 20/5709, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 34; 20/2309, 17 June 2022, available in German at: <https://bit.ly/3ni6gYk>, 39, 19/28109, 30 March 2021, available in German at: <https://bit.ly/3LJmTGw>, 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?
  - ❖ 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

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.<sup>393</sup>

<sup>390</sup> 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>.

<sup>391</sup> ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

<sup>392</sup> *Ibid.*

<sup>393</sup> 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>, 8.

## 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.<sup>394</sup>

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 the 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.<sup>395</sup> 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), qualifications and approaches that also reflect in the way the interview is conducted.<sup>396</sup>

## Interview with the BAMF

The relevant interview for 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 and exit centre' is planned which would also accommodate BAMF staff for the airport procedure, according to the Federal Ministry of the Interior (see [Airport detention facilities](#)).<sup>397</sup>

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

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<sup>394</sup> ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

<sup>395</sup> 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.

<sup>396</sup> 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>.

<sup>397</sup> 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>.



heavily on applicants, who are frequently disoriented and anxious vis-à-vis the authorities.<sup>398</sup> 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.<sup>399</sup>

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.<sup>400</sup> 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.<sup>401</sup> 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.<sup>402</sup>

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 above).<sup>403</sup> 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.<sup>404</sup>

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,<sup>405</sup> or where it was clear that the interpreter was lacking the necessary terminology.<sup>406</sup>

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<sup>398</sup> 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>.

<sup>399</sup> Information provided by an attorney-at-law, 31 August 2020.

<sup>400</sup> Information provided by an attorney-at-law, 31 August 2020.

<sup>401</sup> 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.

<sup>402</sup> Information provided by an attorney-at-law, 31 August 2020.

<sup>403</sup> 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.

<sup>404</sup> 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>.

<sup>405</sup> ECRE, *Airport procedures in Germany: Gaps in quality and compliance with guarantees*, 10.

<sup>406</sup> 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

❖ If yes, is it suspensive

☒ Yes ☐ No

☒ Judicial ☐ Administrative

☐ Yes ☐ Some grounds ☒ 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. In line with jurisprudence of the Federal Constitutional Court,<sup>407</sup> upon request applicants are given four additional days to submit a reasoning accompanying the appeal.<sup>408</sup> The necessary application to the court can be submitted to the court directly or to the border authorities who forward it to the competent court.<sup>409</sup> All BAMF decisions are forwarded to the local administrative court at the same time that they are issued to the applicants, even if these do not intend to appeal the decision.<sup>410</sup>

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.<sup>411</sup> 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 into the territory.<sup>412</sup>

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.<sup>413</sup> 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 2022, out of 91 appeals lodged at the court, 6 were granted and 76 rejected (2021: 7 granted, 59 rejected; 2020: 6 granted, 55 rejected).<sup>414</sup>

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.<sup>415</sup> 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.<sup>416</sup>

<sup>407</sup> German Federal Constitutional Court, Decision 2 BvR 1516/93, 14 May 1996.

<sup>408</sup> See PRO ASYL, 'ABGELEHNT IM NIEMANDSLAND. Vom Flughafenverfahren zum »New Pact on Migration and Asylum« – Warum Asylgrenzverfahren unfair und mangelhaft sind', June 2021, 10, 21, available in German at <https://bit.ly/31XOpvv>.

<sup>409</sup> Section 18a(4) Asylum Act.

<sup>410</sup> See PRO ASYL, 'ABGELEHNT IM NIEMANDSLAND. Vom Flughafenverfahren zum »New Pact on Migration and Asylum« – Warum Asylgrenzverfahren unfair und mangelhaft sind', June 2021, 10, 21, available in German at <https://bit.ly/31XOpvv>.

<sup>411</sup> Section 18a(4) Asylum Act.

<sup>412</sup> Section 18a(6) Asylum Act.

<sup>413</sup> BAMF, *Das Bundesamt in Zahlen – 2019, 2020*, 60.

<sup>414</sup> Federal Government, *Response to parliamentary question by The Left*, 20/5709, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 34, 20/2309, 17 June 2022, 39, 20/432, 14 January 2022, 20.

<sup>415</sup> BAMF, *Das Bundesamt in Zahlen* 2019, 2020, 60 / 45.

<sup>416</sup> Section 18a(4) Asylum Act in connection with Section 36(4) Asylum Act.

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.<sup>417</sup> The tight deadlines for the appeal make it extremely challenging to adequately prepare the necessary documentation, including translations of documents.<sup>418</sup> Moreover, where an application has been rejected 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.<sup>419</sup> 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?
 

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

<input type="checkbox"/> Representation in interview
<input type="checkbox"/> Legal advice
  
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 

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

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

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.<sup>420</sup> This is the only procedure where asylum seekers are entitled to a form of free legal assistance in Germany.<sup>421</sup> 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 cannot 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.<sup>422</sup> 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.<sup>423</sup> This has led to about 80 to 90 cases being supported at first instance by PRO ASYL-funded lawyers in 2018.<sup>424</sup> 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.<sup>425</sup>

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

<sup>417</sup> Information provided by PRO ASYL, 1 April 2019; an attorney-at-law, 29 April 2019.

<sup>418</sup> 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>.

<sup>419</sup> Section 36(3) Asylum Act.

<sup>420</sup> German Federal Constitutional Court, Decision 2 BvR 1516/93, 14 May 1996.

<sup>421</sup> AIDA, *Country Report Germany - Update on the year 2019*, July 2020, available at: <https://bit.ly/4105BsU>, 51.

<sup>422</sup> Information provided by the Munich Airport Church Service, 25 August 2020.

<sup>423</sup> 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>.

<sup>424</sup> Information provided by the Frankfurt Airport Church Refugee Service, 1 April 2019.

<sup>425</sup> Information provided by an attorney-at-law, 31 August 2020.

elements such as health conditions.<sup>426</sup> 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 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 had 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.<sup>427</sup> 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.<sup>428</sup>

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.<sup>429</sup> 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.<sup>430</sup> 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.<sup>431</sup>

## 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:<sup>432</sup>

- ❖ Come from a **Safe country of origin**;
- ❖ Have clearly misled the authorities about their identities or nationalities by presenting false information or documents or by withholding relevant documents;
- ❖ 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;
- ❖ Have filed a subsequent application, in case they have left Germany after their initial asylum procedure had been concluded;<sup>433</sup>

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<sup>426</sup> Information provided by an attorney-at-law, 29 April 2019.

<sup>427</sup> 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>.

<sup>428</sup> 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>.

<sup>429</sup> 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>.

<sup>430</sup> Information provided by the Munich Airport Church Service 5 April 2019.

<sup>431</sup> Information provided by the Frankfurt Airport Church Service, 25 August 2020.

<sup>432</sup> Section 30a(1) Asylum Act.

<sup>433</sup> 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

- ❖ 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;
- ❖ Refuse to be fingerprinted in line with the Eurodac Regulation; or
- ❖ Were expelled due to serious reasons of public security and order or if there are serious reasons to believe that they constitute a serious threat to public security and order.

In the accelerated procedure, the BAMF must decide within 1 week (7 calendar days).<sup>434</sup> 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 can leave the special reception centre and the procedure is carried on as a regular procedure, if necessary.<sup>435</sup>

During an accelerated procedure, asylum seekers are obliged to stay in the special reception centres.<sup>436</sup> These are not closed facilities, as asylum seekers may leave the premises and are free to move around in the local area (usually the district of responsibility of the local immigration authority). 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.<sup>437</sup> 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.<sup>438</sup> The accelerated procedure does not seem to have been applied therein from the start. Asylum statistics show that the procedure under Section 30a Asylum Act is rarely applied.<sup>439</sup> In 2022, it was applied to 374 applications, representing 0.2 % of all asylum applications.<sup>440</sup> 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.<sup>441</sup> In 2022, the accelerated procedure was mainly applied in the AnKER centre in Bamberg (**Bavaria**) and the arrival centre in Mönchengladbach (**North Rhine-Westphalia**).<sup>442</sup> Among the top 10 nationalities of applications treated in the accelerated procedure in 2022 are the 'safe countries of origin' of the Western Balkans, Ghana and Senegal, but also Georgia, the Russian Federation and Algeria.<sup>443</sup> The average length of the accelerated procedure was 2.1 months in 2022 but differs between BAMF branch offices, between 0.2 months and 3.5 months in 2022.<sup>444</sup> By and large, it can be concluded that the introduction of the accelerated procedure under Section 30a of the Asylum Act has only had little impact on asylum procedures in general.

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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.

<sup>434</sup> Section 30a(2) Asylum Act.

<sup>435</sup> Section 30a(2)-(3) Asylum Act.

<sup>436</sup> Section 30a(3) Asylum Act.

<sup>437</sup> Section 33(2)(3) Asylum Act.

<sup>438</sup> Markus Kraft, Die ANKER-Einrichtung Oberfranken, *Asylmagazin* 10-11/2018, 351-353.

<sup>439</sup> Information provided by the BAMF, 1 August 2017.

<sup>440</sup> Federal Government, *Response to parliamentary question by The Left*, 20/6052, 14 March 2023, available in German at: <https://bit.ly/3zrfRPq>, 27.

<sup>441</sup> Federal Government, *Response to parliamentary question by The Left*, 19/30711, 15 June 2021, 21 & 30.

<sup>442</sup> Federal Government, *Response to parliamentary question by The Left*, 20/6052, 14 March 2023, available in German at: <https://bit.ly/3zrfRPq>, 28.

<sup>443</sup> Federal Government, *Response to parliamentary question by The Left*, 20/6052, 14 March 2023, available in German at: <https://bit.ly/3zrfRPq>, 27.

<sup>444</sup> Federal Government, *Response to parliamentary question by The Left*, 20/6052, 14 March 2023, available in German at: <https://bit.ly/3zrfRPq>, 20.



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 APD and Reception Conditions Directive. However, the concept was initially only made available to BAMF staff as an internal guideline.<sup>445</sup> In June 2022, the BAMF published a revised version of the concept<sup>446</sup> as well as standardised forms with which the Federal States can communicate detected vulnerabilities and specifics to the BAMF and vice versa.<sup>447</sup> According to the BAMF, the procedures to identify vulnerabilities are laid down in its internal regulations, while the concept gives the BAMF staff comprehensive information on the detection and treatment of vulnerable persons and is binding in so far as the internal guidelines refer to it.<sup>448</sup>

According to the BAMF, the identification of vulnerable applicants as required by the APD is primarily the remit of the Federal States, who are responsible for reception and accommodation. However, since 2022 the BAMF internal guidelines also acknowledge a duty on the side of the BAMF to identify vulnerabilities in order to guarantee a fair asylum procedure for the persons concerned.<sup>449</sup> A 2016 amendment to the German Asylum Act introduced wording relevant to the identification of vulnerable asylum seekers by allowing Federal States to transmit personal information about an applicant's vulnerabilities to the BAMF. Lacking clear duties of identification, the Asylum Act still fails to properly transpose the recast APDAPD, 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.'<sup>450</sup>

<sup>445</sup> Information provided by the BAMF, 1 August 2017; see BAMF *Dienstanweisung Asyl* (internal directive for asylum procedures) – 2. *Identifizierung vulnerabler Personen*, 2021, 81.

<sup>446</sup> BAMF, *Die Identifizierung vulnerabler Personen im Asylverfahren. Umsetzung in der Praxis des Bundesamtes für Migration und Flüchtlinge*, June 2022, available in German at: <https://bit.ly/3Z7JHCU>.

<sup>447</sup> The forms are available on the website of the Refugee Council North Rhine Westphalia at <http://bit.ly/3GMc5Do>.

<sup>448</sup> Information provided by the BAMF, 9 March 2023.

<sup>449</sup> See BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), – 2. *Identifizierung vulnerabler Personen*, version of January 2023, 288, available in German at <https://bit.ly/3J5jPTA>. The duty is based on Section 24(1) Asylum Act, which obliges the BAMF to investigate the relevant facts in each asylum case.

<sup>450</sup> Section 8 (1b) Asylum Act. See 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.



The BAMF claims that the 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 [Information for asylum seekers and access to NGOs and UNHCR](#)) has led to vulnerabilities 'being partially identified more often' as counsellors inform applicants about rights of vulnerable applicants during the procedure. Internal training measures for counsellors include sessions on identifying vulnerabilities<sup>451</sup> and BAMF counsellors can transmit information on vulnerabilities to the BAMF staff responsible for the asylum procedure or to the Federal State authorities responsible for reception, if the applicant consents.<sup>452</sup> However, no details were given concerning the number or the type of vulnerabilities which were identified in the course of the new advice service. According to information provided by the BAMF, no data are collected on vulnerabilities detected during the counselling.<sup>453</sup>

The lack of a systematic identification processes for vulnerable applicants has been subject to recurring criticism from NGOs<sup>454</sup> and international organisations<sup>455</sup>, and 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.<sup>456</sup>

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.<sup>457</sup>

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 conduct screenings, offer psychiatric or psychological consultations or refer to the general care infrastructure, and some Federal States have integrated identification in their concepts for protection from violence in reception centres (**Hamburg, Hesse, North Rhine Westphalia, Saarland, Saxony, Schleswig-Holstein**).<sup>458</sup> Since 2021, a project led by the Federal working group on psycho-social centres for refugees and victims of torture in cooperation with several NGOs as well as the BAMF and local authorities has developed a concept to identify vulnerable applicants in reception centres and in psycho-social centres. The concept was piloted in two reception centres in North Rhine Westphalia and Bremen and is to be published in March 2023. The concept is not legally binding, however, and it is unclear in how far it will be implemented.<sup>459</sup>

<sup>451</sup> BAMF, *Schulung Asylverfahrensberatung*, available in German at <https://bit.ly/3ixpQOe>.

<sup>452</sup> see BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), – 2. *Identifizierung vulnerabler Personen*, 2021, 81-82 and BAMF, *Die Identifizierung vulnerabler Personen im Asylverfahren. Umsetzung in der Praxis des Bundesamtes für Migration und Flüchtlinge*, June 2022, 24 available in German at: <https://bit.ly/3Z7JHCU>.

<sup>453</sup> Information provided by the BAMF, 9 March 2023.

<sup>454</sup> KOK, *Betroffene von Menschenhandel im Asylkontext erkennen. Problembeschreibung und Handlungsempfehlungen*, 2020, 4, available in German at <https://bit.ly/3Zmq4bD>.

<sup>455</sup> GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany*, 20 June 2019, available at: <https://bit.ly/3FKhZ8k>, 30.

<sup>456</sup> Information provided by the BAMF, 1 August 2017.

<sup>457</sup> Flüchtlingsrat Baden-Württemberg, *Arbeitshilfe „Unterstützung geflüchteter Frauen“*, 19 April 2022, available in German at: <https://bit.ly/3K7uMo8>, 2.

<sup>458</sup> BAMF, *Die Identifizierung vulnerabler Personen im Asylverfahren. Umsetzung in der Praxis des Bundesamtes für Migration und Flüchtlinge*, June 2022, available in German at: <https://bit.ly/3Z7JHCU>, 16.

<sup>459</sup> Bundesinitiative Schutz von geflüchteten Menschen in Flüchtlingsunterkünften (Federal Initiative for the protection of asylum seekers/refugees in accommodation centres'), *BESAFE - Besondere Schutzbedarfe bei der Aufnahme von Geflüchteten erkennen*, December 2022, available in German at: <https://bit.ly/3Kf1jLZ>.

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; LGBTQI+; single women and pregnant women; children and unaccompanied children; persons with disabilities, with chronic diseases and older persons.<sup>460</sup> The network was involved in the development of guidelines for the social services to assist with the identification of vulnerable groups.<sup>461</sup> 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.<sup>462</sup> 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.<sup>463</sup>

Recent practice in Berlin shows that when an asylum seeker needs special procedural guarantees, the BAMF simply assigns 'special officers' for the interview (see [Special procedural guarantees](#)). Apart from that, the regular procedure is carried out and the interview may take place within a few days. NGOs have criticised the fact that special procedural needs of asylum seekers are not considered (i.e. the lack of support and time to prepare for an interview).<sup>464</sup> 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.<sup>465</sup>

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 Brandenburg immigration authority (*Zentrale Ausländerbehörde*). 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.<sup>466</sup>

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<sup>460</sup> A list of the project partners of the „Berliner Netzwerk für besonders schutzbedürftige Flüchtlinge“ can be found at: <https://bit.ly/3dR5CGU>.

<sup>461</sup> 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>.

<sup>462</sup> 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>.

<sup>463</sup> Nina Hager and Jenny Baron, 'Verfahrensgarantien für psychisch Kranke oder Traumatisierte', *Asylmagazin* 7–8/2017, 17–26, 22.

<sup>464</sup> Manuel Armbruster, Georg Classen und Katharina Stübinger, 'Neue Verfahrensabläufe im Ankunftszentrum Berlin', *Asylmagazin* 10–11/2018, 350.

<sup>465</sup> 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>.

<sup>466</sup> 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>.

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.<sup>467</sup> Upon registration, all applicants are informed about special vulnerabilities during a meeting with the social service of the reception centre 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.<sup>468</sup>

In **Rhineland-Palatinate**<sup>469</sup>, the regional government has adopted a protection concept which also includes methods for the identification of vulnerabilities.<sup>470</sup> This includes the following measures:

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

However, there are considerable variations to the procedure in the different arrival centres, AnkER centres etc. There is no common approach on access to social services or other counselling institutions. This depends on how the Federal States and the BAMF have organised the procedure in the respective centres. Around two thirds of all Federal States have also adopted measures for the protection against violence in accommodation centres.<sup>471</sup>

## 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*).<sup>472</sup> 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 with the help of interpreters, based on their assessment of the developmental state of the minor obtained during the conversation as well as their visual impression.<sup>473</sup> As part of this qualified inspection, the office may hear or gather written evidence from experts and witnesses. The unaccompanied minor has the right

<sup>467</sup> 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>.

<sup>468</sup> See BafF, 'Identifizierung besonderer Schutzbedürftigkeit am Beispiel von Personen mit Traumafolgestörungen. Status quo in den Bundesländern, Modelle und Herausforderungen', June 2020, 30-31. Study available in German at <https://bit.ly/3GsdrSm>.

<sup>469</sup> Nina Hager and Jenny Baron, 'Verfahrensgarantien für psychisch Kranke oder Traumatisierte', Asylmagazin 7-8/2017, 17-26, 22.-24.

<sup>470</sup> 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>.

<sup>471</sup> Jakob Junghans, *Schutzbedürftige Personen im Aufnahmeverfahren der Länder*, in: Helene Heuser, Jakob Junghans and Winfried Kluth, *Der Schutz vulnerabler Personen im Flucht- und Migrationsrecht Grundlagen, Identifizierung und bedarfsgerechte Maßnahmen am Beispiel der Betroffenen von Menschenhandel*, 2021, available in German at: <https://bit.ly/3JK0Exl>.

<sup>472</sup> BAMF, *Dienstanweisung Asyl (internal directive for asylum procedures)*, 21 February 2019, available at: <https://bit.ly/2C1XSvI>, 4/14.

<sup>473</sup> Section 42f Social Code (SGB), Vol. VIII. See BumF, 'Alles auf einen Blick. BumF-Basisinformationen', 11, available in German at <https://bit.ly/3nvWyi9>.

to be involved in the process and to be provided with information in a manner that they understand, including translation and can have a person they trust be present during the assessment.<sup>474</sup>

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 law does not specify the methods to be used, as a result of which different methods are used in practice, including x-rays of the denture, key bone or wrist.<sup>475</sup> The explanatory memorandum to the law states explicitly that the previously practiced examination of the genitals is excluded in this context.<sup>476</sup>

The problem of questionable age assessments carried out by the authorities has been discussed in some court decisions since 2016. For instance, the Administrative Court of **Berlin** criticised the authorities for an age assessment based only on outward appearances.<sup>477</sup> 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: an age assessment that leads to the conclusion that the applicant 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.<sup>478</sup> A similar decision was issued by the High Administrative Court of **Bremen** in 2018, which found that medical assessment can only be taken as a basis for concluding the person is not a minor if they can establish with certainty that the person is older than 18 years. A high likelihood that the person is over 18 based on just one method (in this case a dental x-ray) is not sufficient.<sup>479</sup>

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 has suspensive effect.<sup>480</sup> 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.<sup>481</sup>

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<sup>474</sup> Section 8 Social Code XIII (SGB), Vol. VIII; see also Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, *Alterseinschätzung*, available in German at: <http://bit.ly/3IG0BuG>.

<sup>475</sup> Ralf Pauli, *Wie funktioniert die Altersfeststellung bei Flüchtlingen?*, Fluter, 18 April 2018, available in German at <http://bit.ly/3JF09Vv>.

<sup>476</sup> Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, *Vorläufige Inobhutnahme – Was ändert sich zum 1.11.2015?*, October 2015, available in German at: <https://bit.ly/3ngs8mQ>, 2-3.

<sup>477</sup> Administrative Court Berlin, Decision 18 L 81.16, 19 April 2016, asyl.net, available at: <http://bit.ly/2mJm85c>.

<sup>478</sup> High Administrative Court Bavaria, Decision 12 CS 16.1550, 16 August 2016, asyl.net, available at: <http://bit.ly/2m2hP0w>.

<sup>479</sup> High Administrative Court Bremen, Decision 1 B 82/18, 4 June 2018, available at: <http://bit.ly/3LMMzSu>, and Section 42f(3) Social Code, Vol. VIII.

<sup>481</sup> 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/2Vl0w9G>, 206-217.

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. According to the BAMF, all case workers complete the EUAA training module on 'Interviewing Vulnerable Persons'.<sup>482</sup> If an applicant or a Federal State authority submits information to the BAMF that indicates vulnerability (such as medical records or information about specific physical, mental, intellectual or sensory impairments), such information is transferred to the case worker in charge who can decide to take measures such as allocate more time for the interview, appoint an interpreter of a specific gender or allow the person to bring a trusted person of their choice to the interview.<sup>483</sup>

For specific groups of vulnerable persons, the BAMF employs 'special officers' (*Sonderbeauftragte*) responsible for interviews and decisions on claims by applicants with special needs. Special officers also advise their colleagues in dealing with vulnerable applicants and are contact persons for specialised counselling services and psycho-social centres.<sup>484</sup> Staff members who become special officers must complete a training module for the specialisation they want to achieve. In addition, they follow the EASO training modules for their specialisation.<sup>485</sup> Training covers both the identification and in the treatment of vulnerable persons.<sup>486</sup> According to the BAMF, continuous training is offered for specific topics in the realm of the special officers' responsibilities.<sup>487</sup> The BAMF guidelines stipulate that the following cases shall be handled in a particularly sensitive manner and, if necessary, by specially-trained decision-makers:<sup>488</sup>

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

As of January 2021, a total of 747 BAMF employees had one or more roles as special officers, amounting to a total of 1,204 special officer roles. This corresponds to roughly a third of full-time equivalent positions allocated to the first instance procedure (see [Number of staff and nature of the first instance authority](#)). The distribution among areas of responsibilities was the following: Unaccompanied children (433), victims of gender-specific persecution (242) traumatised persons and victims of torture (283), victims of trafficking (246).<sup>489</sup> More recent information is not available.

<sup>482</sup> BAMF, *Die Identifizierung vulnerabler Personen im Asylverfahren. Umsetzung in der Praxis des Bundesamtes für Migration und Flüchtlinge*, June 2022, available in German at <https://bit.ly/3Z7JHCU>, 16.

<sup>483</sup> BAMF, *Die Identifizierung vulnerabler Personen im Asylverfahren. Umsetzung in der Praxis des Bundesamtes für Migration und Flüchtlinge*, June 2022, available in German at <https://bit.ly/3Z7JHCU>, 19.

<sup>484</sup> Information provided by the BAMF, 9 March 2023.

<sup>485</sup> BAMF, *Die Identifizierung vulnerabler Personen im Asylverfahren. Umsetzung in der Praxis des Bundesamtes für Migration und Flüchtlinge*, June 2022, available in German at <https://bit.ly/3Z7JHCU>, 16.

<sup>486</sup> BAMF, *Die Identifizierung vulnerabler Personen im Asylverfahren. Umsetzung in der Praxis des Bundesamtes für Migration und Flüchtlinge*, June 2022, available in German at <https://bit.ly/3Z7JHCU>, 16.

<sup>487</sup> Information provided by the BAMF, 9 March 2023.

<sup>488</sup> BAMF, *DA-Asyl (Dienstanweisung Asylverfahren) – Belehrungen*, 2010, 139.

<sup>489</sup> 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 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, in addition to notifying the reception centre.<sup>490</sup> 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 for further procedures: either the special officer adopts an advisory role or they take over responsibility for the procedure.<sup>491</sup> 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.<sup>492</sup>

Lawyers have reported that the introduction of 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.<sup>493</sup>

The BAMF also has special officers for security issues. They 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'.<sup>494</sup> 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 APD to provide for such exemptions under certain conditions.<sup>495</sup> It also makes no reference to 'adequate support' which should be provided to those requiring special procedural guarantees.<sup>496</sup>

With the exception of applications lodged by minors, there are no detailed available figures on the profile of applicants in airport procedures. In 2022, 72 minors were subjected to the airport procedure, representing 20.7% of all applicants in such procedures.<sup>497</sup> This is higher than in 2021 and 2020, where there were respectively 26 and 13 minors in the airport procedure, representing around 13% of all applicants in 2021 and 9% in 2020.<sup>498</sup> 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

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if this was lower than 3; Federal Government, *Reply to parliamentary question by The Left*, 19/10733, 6 June 2019, 7-8.

<sup>490</sup> BAMF, *Die Identifizierung vulnerabler Personen im Asylverfahren. Umsetzung in der Praxis des Bundesamtes für Migration und Flüchtlinge*, June 2022, available in German at <https://bit.ly/3Z7JHCU>, 20.

<sup>491</sup> Federal Government, *Reply to parliamentary question by The Left*, 19/32684, 15 October 2021, 19-22.

<sup>492</sup> BAMF, response to information request, e-mail from 'Zentrale Ansprechstelle' (central contact point), 28 August 2019.

<sup>493</sup> See e.g. FRA, *Monthly data collection: Highlights – Migrants with disabilities*, August 2016, available at: <http://bit.ly/2kWFgLT>, 14.

<sup>494</sup> BAMF, *Entscheiderbrief* (newsletter for decision-makers) 4/2020, 1.

<sup>495</sup> Articles 25(6)(b) and 24(3) recast APD.

<sup>496</sup> Article 24(3) recast APD.

<sup>497</sup> Federal Government, *Response to parliamentary question by The Left*, 20/5709, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 34.

<sup>498</sup> Federal Government, *Response to parliamentary question by The Left*, 20/2309, 17 June 2022, 39, 19/20377, 23 July 2020, 4; 19/28109, 2021, 20 March 2021, 37.



airport facility to conduct an age assessment and unaccompanied minors are usually allowed entry into the territory for the purpose of the asylum procedure.<sup>499</sup> That said, the detention facility at **Frankfurt/Main Airport** contains dedicated rooms for unaccompanied boys and girls.<sup>500</sup> 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).<sup>501</sup>

The BAMF has 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.<sup>502</sup> This includes appointing a specialised caseworker and/or an interpreter of 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.<sup>503</sup>

### 3. Use of medical reports

#### Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
 

☒ Yes
☐ In some cases
☐ No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?
 

☒ Yes
☐ No

The BAMF is generally obliged to clarify the facts of the case and to compile the necessary evidence.<sup>504</sup> As a general rule, an applicant is not expected to provide written evidence, but is only obliged to hand over to the BAMF those certificates and documents which are already in their 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'.<sup>505</sup> This is not only relevant with regard to past persecution, but also with a prospective view, since the German asylum procedure includes an examination of 'serious concrete risks' to life and limb which an applicant might face upon return.<sup>506</sup> 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:

- ❖ 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.<sup>507</sup>

<sup>499</sup> Information provided by an attorney-at-law, 31 August 2020.

<sup>500</sup> ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

<sup>501</sup> Federal Government, *Reply to parliamentary question by The Left, 19/18498*, 2 April 2020, 44.

<sup>502</sup> Information provided by the BAMF, 11 September 2020.

<sup>503</sup> *Ibid.*

<sup>504</sup> Section 24(1) Asylum Act.

<sup>505</sup> Section 15(3) Asylum Act.

<sup>506</sup> Section 60(7) Residence Act.

<sup>507</sup> 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>.

- ❖ 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.<sup>508</sup>

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.<sup>509</sup> 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.<sup>510</sup> 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:<sup>511</sup>

- ❖ 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 were 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.<sup>512</sup> 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 only slightly been loosened by the Federal Administrative Court and it is still difficult to meet these standards in practice.<sup>513</sup> 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

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<sup>508</sup> BAMF, *DA-Asyl (Dienstanweisung Asylverfahren) – Krankheitsbedingte Abschiebungsverbote* (Stand 2/19), available in German at: <https://bit.ly/3iFnYOF>.

<sup>509</sup> Section 60a (2)c of the Residence Act.

<sup>510</sup> Section 60 (7) 2nd sentence of the Residence Act.

<sup>511</sup> Section 60a (2)c 2nd and 3rd sentences of the Residence Act.

<sup>512</sup> Federal Administrative Court, Decision of 11 September 20–7 - 10 C 8.07 – (asyl.net, M12108).

<sup>513</sup> 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.

(including costs for interpreters). In such cases, it may also prove highly difficult to even find a specialist to submit a medical opinion.<sup>514</sup>

#### 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 had their first contact with authorities or in which they have been apprehended.<sup>515</sup> 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 **Error! Reference source not found.**).<sup>516</sup>

After the responsible youth welfare office has been determined, the regular taking into care procedure is initiated. This procedure is subject to youth welfare law and analogous to the taking into care of youth in situations where their welfare is in acute danger. It includes the appointment of a legal guardian by the competent Family Court 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 the application for a residence permit on humanitarian grounds.<sup>517</sup>

The guardian represents the minor in all legal matters and is the first contact point for all 'proceedings pertaining to asylum and residence law', including the asylum procedure.<sup>518</sup> The legal guardian has to file the asylum application for the unaccompanied minor in written form to the responsible BAMF branch office.<sup>519</sup> The guardian acts as the minor's legal representative, but also as a personal contact person with whom unaccompanied minors can develop perspectives for the future and contribute to the assistance planning procedure carried out by the youth welfare office.<sup>520</sup> While the personal interview is conducted with the minor themselves, the legal guardian is present during the interview and may ask them additional

<sup>514</sup> 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>.

<sup>515</sup> 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.

<sup>516</sup> 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, available in English at <https://bit.ly/3KcEEe6>, 27.

<sup>517</sup> 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>.

<sup>518</sup> 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, available in English at <https://bit.ly/3KcEEe6>, 47.

<sup>519</sup> Federal Association for Unaccompanied Refugee Minors (BumF) and Refugee Council Thuringia, *Das Asylverfahren bei unbegleiteten minderjährigen Flüchtlingen. Eine Arbeitshilfe für Jugendämter, Vormund\*innen und Betreuer\*innen*, November 2019, available in German at: <https://bit.ly/3z4tZO9>, 14.

<sup>520</sup> Federal Working Group of the Land Youth Welfare Offices, *Handlungsempfehlungen zum Umgang mit unbegleiteten Minderjährigen. Verteilungsverfahren, Maßnahmen der Jugendhilfe und Clearingverfahren*, 3rd edition, 2020, available in German at: <https://bit.ly/3FO4FQd>, 30.

questions (i.e. in case the minor forgot to mention an important aspect). They may also request to file statements or explanations on behalf of the minor.<sup>521</sup>

In the majority of cases, the youth welfare office acts as guardian for the minor. 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.<sup>522</sup> Another challenge is the lack of specific knowledge of asylum laws, especially among voluntary guardians but at times also in youth welfare offices.<sup>523</sup> Voluntary guardians do not have to complete a specific training, but generally the youth welfare office carries out an aptitude test.<sup>524</sup> In some Federal States, training is offered to legal guardians by state authorities or NGOs.<sup>525</sup> It has been noted that the current legal situation is not in line with relevant provisions of the recast APD and other European legal acts which state that children should be represented and assisted by representatives with the necessary expertise.<sup>526</sup>

## 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.<sup>527</sup> 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.<sup>528</sup> According to this, a new asylum procedure is only initiated if one of the following applies:

- ❖ The material or legal situation on which the decision was based has subsequently changed in favour of the applicant;
- ❖ New evidence is produced which would have resulted in a more favourable decision for the applicant in the earlier procedure; or

<sup>521</sup> Federal Association for Unaccompanied Refugee Minors (BumF) and Refugee Council Thuringia, *Das Asylverfahren bei unbegleiteten minderjährigen Flüchtlingen. Eine Arbeitshilfe für Jugendämter, Vormund\*innen und Betreuer\*innen*, November 2019, available in German at <https://bit.ly/3z4tZO9>, 18-20.

<sup>522</sup> See BumF, 'Online-Umfrage 2020 zur Situation junger Geflüchteter: Auswertung und Ergebnisse', April 2021, available in German at: <https://bit.ly/3A1BxB0>, 49.

<sup>523</sup> 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, available in German at <https://bit.ly/3A1BxB0>, 50.

<sup>524</sup> 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, available in English at <https://bit.ly/3KcEEe6>, 46.

<sup>525</sup> Federal Government, *Bericht der Bundesregierung zu dem Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher gem. § 42e SGB VIII – Die Situation unbegleiteter Minderjähriger in Deutschland*, 2020, 71, available in German at: <https://bit.ly/3z24XiC>.

<sup>526</sup> Stephan Hocks, 'Die Vertretung unbegleiteter minderjähriger Flüchtlinge', *Asylmagazin* 11/2015, 367-373.

<sup>527</sup> Section 71 Asylum Act.

<sup>528</sup> Section 51(1)-(3) Administrative Procedure Act (*Verwaltungsverfahrensgesetz*).

- ❖ There are grounds for resumption of proceedings, for example because of serious errors in the earlier procedure.<sup>529</sup>

Regarding the first two requirements, the Administrative Court of Sigmaringen (**Baden-Württemberg**) has referred a question to the CJEU in February 2022 asking if this is compatible with the EU APD, which merely refers to new elements or findings as requirements for subsequent applications, and does not mention whether they would change the decision. The court further requested clarification on the status of new CJEU rulings, which are currently not considered a ‘new legal situation’ in Germany if the ruling only concerns the interpretation of EU law.<sup>530</sup> The Administrative Court of Minden (**North Rhine Westphalia**) also referred a question to the CJEU as to whether the first and second ground can be assumed to not be applicable if the applicant has returned to and lived in their country of origin for several years.<sup>531</sup> No judgement was issued at the time of writing of this report.

A further requirement according to the law is that the applicant was unable, without grave fault on their part, to present the grounds for resumption in earlier proceedings, particular by means of legal remedy. The law also states that the application must be made within 3 months after the applicant has learned of the grounds for resumption of proceedings,<sup>532</sup> however, following an CJEU ruling indicating that such time limits are in violation of the EU APD,<sup>533</sup> the BAMF has declared it will no longer require this in practice.<sup>534</sup>

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 regular asylum procedure (see below for further details). The procedure is the same for third or further applications. A subsequent application always must 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 (*Zweit Antrag*). 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.<sup>535</sup> A CJEU ruling of September 2022 found that applications from persons whose asylum application has previously been rejected in Denmark – which applies the Dublin regulation but not the EU Qualification and Procedures Directives – cannot be considered a secondary application in Germany.<sup>536</sup>

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.

<sup>529</sup> The relevant grounds for this third alternative are listed in Section 580 of the Code of Civil Procedure (‘action for retrial of a case’), to which the Asylum Act makes a general reference. Serious errors according to this provision include false testimony by witnesses or experts. Apart from that, Section 580 of the Code of Civil Procedure contains several grounds which are either not relevant for the asylum procedure or are covered by the grounds referred to under the first and second alternatives mentioned here. Although it is conceivable that the third alternative may apply in certain cases, it hardly seems to be of significance in practice, cf. Kerstin Müller, AsylVfG § 71, para. 32, in Hofmann/Hoffmann, eds. *HK-AuslR (Handkommentar Ausländerrecht)*, 2008, 1826.

<sup>530</sup> Art. 33(2)d and 40(2) recast APD, CJEU C-216/22.

<sup>531</sup> See Administrative Court of Minden, 7 June 2022, *J.B. S.B. F.B. (Lebanon) v Federal Republic of Germany, request for a preliminary ruling*, summary available at <http://bit.ly/3Y7EUSm>.

<sup>532</sup> Section 51(2) Administrative Procedure Act.

<sup>533</sup> CJEU, Case C-18/20, Judgement of 9 September 2021.

<sup>534</sup> Asyl.net, *EuGH stärkt Rechte von Asylsuchenden bei Asylfolgeanträgen*, last update on 17 November 2021, available in German at: <https://bit.ly/3IB1tXA>.

<sup>535</sup> BAMF, *Initial, follow-up and second applications*, available at: <https://bit.ly/3prAS83>.

<sup>536</sup> CJEU, Case C-497/21, Judgement of 22 September 2022.



Accordingly, the stay of applicants is to be 'tolerated' (*geduldet*) until this decision has been rendered.<sup>537</sup> For secondary applications, the tolerated status is foreseen by law.<sup>538</sup> 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.<sup>539</sup> The applicant may also be detained pending removal until it is decided that a subsequent or secondary asylum procedure is carried out.<sup>540</sup>

The decision on admissibility of a subsequent or secondary application can be carried out without hearing the applicant.<sup>541</sup> Internal BAMF guidelines state that such a hearing only needs to take place when this is considered necessary to decide on the admissibility of the application. An example given is when the applicant has travelled to their country of origin in the meantime and puts forwards an individual persecution.<sup>542</sup> However, a judgement by the Administrative Court of **Berlin** of October 2022 found that even though the BAMF has full discretion, there has to be evidence that it actually exercised discretion by considering reasons for or against conducting an interview.<sup>543</sup> In a judgement of April 2022, the Administrative Court of Minden (**North Rhine Westphalia**) found that the BAMF has to conduct a hearing in principle, and has to provide a reasoning when it decided not to.<sup>544</sup> Because such hearings often do not take place in practice, it is recommended that subsequent applications, which generally have to be submitted in person, should be accompanied with a detailed written motivation.<sup>545</sup>

If the BAMF decides not to carry out a subsequent procedure, the application is rejected as 'inadmissible'.<sup>546</sup> Even though in this case the BAMF does not examine the merits of the application, it can pronounce a removal ban subject to national law at this stage.<sup>547</sup> If the BAMF issues a renewed order to leave the territory with the decision (see above), the period set for 'voluntary departure' is seven days, which is also the delay within which an appeal can be filed with the Administrative Court.<sup>548</sup> The appeal does not have suspensive effect, unless an interim measure is filed and granted to this effect. The delay for requesting interim measures is also seven days.<sup>549</sup> Where the person was already under the obligation to leave the territory before lodging the secondary application and where no new order to leave is issued, the delay for filing an appeal against the inadmissibility decision is two weeks. However, since the appeal does not have a suspensive effect and since the immigration authority is usually informed of the outcome before the applicant, a request for interim measures should be filed quickly in order to avoid removal.<sup>550</sup> There is no free legal assistance available for subsequent applications or for appealing against rejections of subsequent applications. Since the appeal only pertains to the (in)admissibility decision, the court considers whether such decision was made lawfully, but not the merits of the asylum application as such.

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<sup>537</sup> Kerstin Müller, 'AsylVfG § 71, para. 44', in Hofmann/Hoffmann, eds., *HK-AuslR (Handkommentar Ausländerrecht)*, 2008, 1830.

<sup>538</sup> Section 71a (3) Asylum Act.

<sup>539</sup> Section 71(5) Asylum Act.

<sup>540</sup> Section 71(8) Asylum Act, Section 71a (2) Asylum Act.

<sup>541</sup> Section 71(3) Asylum Act.

<sup>542</sup> BAMF, *Dienstanweisung Asyl* (internal directive for asylum procedures), 4 February 2022, 257.

<sup>543</sup> VG Berlin, 38 L 340/22 A, 26 October 2022, available in German at <http://bit.ly/3LK1k8M>.

<sup>544</sup> Administrative Court Minden, judgement of 6 April 2022, 10 K 3200/20.A, available in German at: <http://bit.ly/3nkUITX>.

<sup>545</sup> Kirsten Eichler, *Der Asylfolgeantrag. Zu den Voraussetzungen für die erneute Prüfung von Asylanträgen und zum Ablauf des Folgeverfahrens*, October 2018, 55, available in German at: <https://bit.ly/3MbCfBj>

<sup>546</sup> Section 29(1)(5) Asylum Act.

<sup>547</sup> Section 31(3) Asylum Act, Kirsten Eichler, *Der Asylfolgeantrag. Zu den Voraussetzungen für die erneute Prüfung von Asylanträgen und zum Ablauf des Folgeverfahrens*, October 2018, 61, available in German at: <https://bit.ly/3MbCfBj>.

<sup>548</sup> Section 71(4), 74(1) and 36(1)(3) Asylum Act.

<sup>549</sup> Section 75(1) Asylum Act, Section 80(5) Code of Administrative Court Procedure (VwGO).

<sup>550</sup> Kirsten Eichler, *Der Asylfolgeantrag. Zu den Voraussetzungen für die erneute Prüfung von Asylanträgen und zum Ablauf des Folgeverfahrens*, October 2018, 64, available in German at: <https://bit.ly/3MbCfBj>



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.<sup>551</sup>

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](#)),<sup>552</sup> 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](#)).<sup>553</sup>

The number of subsequent applications decreased in 2022 after a significant increase in 2021. 26,358 persons lodged subsequent applications in 2022, compared to 42,583 in 2021 and 19,589 in 2020. The highest number of subsequent applications in 2022 came from Afghan nationals, which is likely still related to the withdrawal of international troops and the takeover of the Taliban in 2021 (see [Differential treatment of specific nationalities in the procedure](#)). Only a minority of subsequent applications from Afghan nationals were deemed inadmissible (462), whereas the overwhelming majority (9,919) resulted in the granting of some form of protection, in most cases a removal ban based on national law (8,543 cases). Regarding Syrian applicants, there had been a strong increase in 2020 and 2021 in relation 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.<sup>554</sup> As a result, many Syrians who had previously been granted subsidiary protection in Germany lodged subsequent applications, which were however deemed inadmissible in most cases.<sup>555</sup> In 2022, the number of subsequent applications from Syrian nationals declined considerably. Among those applications decided, the protection rate was higher though, with 889 Syrians granted some form of protection.

Statistics do not distinguish between situations where applicants have remained in Germany until lodging a subsequent application and situations where subsequent applications are lodged after the applicant had left Germany. However, there are statistics on the number of asylum applications lodged by persons who already have a legalised status in Germany. 20,392 such applications were lodged in 2022, compared to 35,701 in 2021.<sup>556</sup> Around 60% of the applicants (58.4%) 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.

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<sup>551</sup> 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).

<sup>552</sup> Section 71(2) Asylum Act.

<sup>553</sup> 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>

<sup>554</sup> CJEU, Case C-238/19, Judgment of 19 November 2020.

<sup>555</sup> See also BAMF, *Migrationsbericht 2020 der Bundesregierung*, December 2021, 37, available in German at <https://bit.ly/3nTDv1J>.

<sup>556</sup> Federal Government, *Response to parliamentary question by The Left, 20/5709*, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 10 and 20/2309, 17 June 2022, 9.

The decisions on subsequent applications in 2022 were as follows:

Subsequent applicants and decisions on subsequent applications: 2022						
Nationality	Applications	Decisions	Inadmissible	Admissible		
				Positive decision	Negative decision	Termination / inadmissibility
Afghanistan	5,113	10,900	462	9,919	114	405
North Macedonia	2,847	2,654	2,174	7	247	226
Moldova	2,629	2,740	2,309	1	83	347
Syria	1,670	1,691	666	889	7	129
Serbia	1,512	1,421	1,119	6	148	148
<b>Total</b>	<b>26,358</b>	<b>32,332</b>	<b>13,438</b>	<b>12,402</b>	<b>2,299</b>	<b>4,193</b>

Source: BAMF, *Asyl/geschäftsstatistik (statistics on applications, decisions and pending procedures)*, 1-12/2022, available at: <https://bit.ly/3Z7UIUM>.

The statistics show that 41.6% of subsequent applications were being rejected as inadmissible before the asylum procedure was reopened in 2022, which is lower than in the previous year (75% in 2021, 48.5% in 2020). In 13% of cases, the follow-up procedure was terminated later either for formal reasons or because the application was 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, almost 84.3% of them were successful (12,402 decisions, compared to 2,919 decisions in 2021 (54.9%), and 2,471 decisions in 2020 (49.1%)).

The 12,402 'positive' decisions in 2021 resulted in the following status decisions:

- Asylum or refugee status: 2,462
- Subsidiary protection: 825
- (National) humanitarian protection/prohibition of removal: 9,115

## 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

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.<sup>557</sup> The concept of 'another third

<sup>557</sup> Article 16a(2)-(3) Basic Law.

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'.<sup>558</sup>

### 1.1. List of safe countries of origin

Member states of the European Union are by definition considered to be safe countries of origin.<sup>559</sup> 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.<sup>560</sup> Albania, Kosovo and Montenegro were added with another law which took effect on 24 October 2015.<sup>561</sup> 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.<sup>562</sup> The bill was not reintroduced again before the federal elections of September 2021.

Since 2015, the Federal Government has to issue a report every two years to determine whether the requirements to be designated a safe country of origin continue to apply, based on the political and legal situation in each country as well as the practical enforcement of existing laws. The last such report was published in January 2022, and concluded that all eight countries continue to fulfil the requirements. The

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<sup>558</sup> Article 16a(3) Basic Law.

<sup>559</sup> Section 29a(2) Asylum Act.

<sup>560</sup> 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.

<sup>561</sup> Asylverfahrensbeschleunigungsgesetz, BGBl. I, 23 October 2015, 1722.

<sup>562</sup> 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>.

report does not mention intentions to add new countries to the list.<sup>563</sup> NGOs however regularly criticise the designation of some of the countries on the list.<sup>564</sup>

## 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 they might be persecuted in spite of the general situation in the country of origin.

Since March 2016, accelerated procedures can be carried out for applicants from safe countries of origin. 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 applied in comparatively few cases, and only 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 2018. This notwithstanding, North Macedonia is among the top 10 countries of origin of asylum applicants in 2022 with a total of 5,602 asylum applications (see Statistics).

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	2022
Albania	17,236	6,089	2,941	2,573	1,220	1,897	2,522
Serbia	10,273	4,915	2,606	2,718	1,292	1,830	2,824
North Macedonia	7,015	4,758	2,472	2,258	823	4,542	5,602
Kosovo	6,490	2,403	1,224	875	560	444	499
Bosnia and Herzegovina	3,109	1,438	870	633	401	1,538	1,364
Ghana	2,645	1,134	992	966	599	441	394
Montenegro	1,630	730	377	252	151	285	310
Senegal	767	378	366	365	187	144	153
<b>Total</b>	<b>49,165</b>	<b>21,845</b>	<b>11,848</b>	<b>10,640</b>	<b>5,233</b>	<b>11,121</b>	<b>13,668</b>

Source: BAMF, Asylgeschäftsstatistik (statistics on applications, decisions and pending procedures), , available in German at: <https://bit.ly/3rnlEzR> (2020), <https://bit.ly/3goPTTa> (2021) and <https://bit.ly/3IMppKK> (2022).

It should be noted that many asylum applications of persons from safe countries of origin are subsequent applications (e.g. 50.8% for North Macedonia, 30.8% for Albania, 53.5% for Serbia in 2022). Hence the number of newly arriving asylum seekers from these countries is considerably lower than the numbers provided above.

<sup>563</sup> Federal Government, *Dritter Bericht zu der Überprüfung der Voraussetzungen zur Einstufung der in Anlage II zum Asylgesetz bezeichneten sicheren Herkunftsstaaten*, 20/766, available in German at <https://bit.ly/3ZZsbm7>, 2-3.

<sup>564</sup> See for example Flüchtlingsrat Thüringen, *Sogenannte "sichere" Herkunftsländer*, August 2021, available in German at <http://bit.ly/3JGdXQF>; PRO ASYL, *Neuer Anlauf für einen rechtswidrigen Gesetzentwurf: Erweiterung der »sicheren Herkunftsländer«*, 21 September 2018, available in German at <http://bit.ly/3YR6q6b>.

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	2022
Albania	0.4%	1.8%	1.2%	0.9%	0.4%	0.4%	1.0%
North Macedonia	0.4%	1%	0.8%	0.2%	0%	0.1%	0.7%
Serbia	0.4%	1%	0.7%	0.1%	0%	0.4%	0.7%

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, 1-12/2021 and 1-12/2022, available in German at: <http://bit.ly/40eORYd>.

## 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.<sup>565</sup> 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 must 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.<sup>566</sup>

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.<sup>567</sup> 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.<sup>568</sup> Asylum applications may not be accepted or referred to the responsible authority by the Federal Police if entry into 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 and push backs](#)).

<sup>565</sup> Section 26a(2) Asylum Act.

<sup>566</sup> Federal Constitutional Court, Decision of 14 May 1996, 2 BvR 1938/93, 2 BvR 2315/93, BVerfGE 94, 49 (189).

<sup>567</sup> Section 18 Asylum Act.

<sup>568</sup> The border area is defined as a strip of 30 kilometres.

### 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. Inadmissibility on this ground only applies to safety in non-EU Member States.<sup>569</sup> Such safety is presumed where the applicant holds a travel document from that country,<sup>570</sup> or has resided there for more than 3 months without being threatened by persecution. The applicant can rebuke this presumption by credibly asserting a threat of persecution.<sup>571</sup>

Important restrictions to the application of the provision were 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, 4 times in 2021 and 6 times in 2022 (see [Admissibility procedure](#)).<sup>572</sup>

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

### 1. Provision of information on the procedure

#### Indicators: Information on the Procedure

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

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

‘... [S]hall inform the foreigner early on 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, and about possibilities to return voluntarily.’

The provision was changed with the entry into force of the Act on the acceleration of asylum court proceedings and asylum procedures on 1 January 2023.<sup>573</sup> The reform introduced the requirement of informing applicants “early on” instead of “after the lodging of the asylum application”, which was the previous wording. Information is to be provided orally in groups (see [Oral information](#)). Another change introduced by the reform is the duty to inform not only about the asylum procedure, but also about possibilities to return voluntarily after the rejection of the asylum application.

For the impact of the Covid-19 outbreak on information provision to asylum applicants see the 2021 Update to the AIDA Country Report for Germany.<sup>574</sup>

#### 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

<sup>569</sup> Section 29 (1)(4) Asylum Act, Federal Administrative Court (BVerwG), Decision of 25. April 2019, 1 C 28.18, available in German at <http://bit.ly/3GP5LuV>.

<sup>570</sup> Section 27(2) Asylum Act.

<sup>571</sup> Section 27(3) Asylum Act.

<sup>572</sup> 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.

<sup>573</sup> Official Gazette I no. Nr. 56 (2022) of 28 December 2022, 2817.

<sup>574</sup> AIDA, *Country Report Germany - Update on the year 2021*, April 2022, 85, available at <https://bit.ly/3XnN7RS>.



sheets when reporting to the authorities and/or upon arrival at the initial reception centre,<sup>575</sup> 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'*), to be handed out by the authority where an applicant first voices the wish to apply for asylum (the border police, the local immigration authority, the police, the reception centre or the BAMF; see [Making and registering the application](#));<sup>576</sup>
- ❖ 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 at a date determined for the formal registration of the asylum application (*'Belehrung nach § 14 Abs. 1 und § 23 Abs. 2 AsylG'*);<sup>577</sup>
- ❖ An instruction on the obligation to comply immediately with a referral to the initial reception centre (*'Belehrung nach § 20 Abs. 1 AsylG'*);<sup>578</sup>
- ❖ 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'*).<sup>579</sup>

These information sheets are available in German and 44 other languages.<sup>580</sup> In BAMF branch offices in arrival centres, a video available in six languages is shown to applicants explaining the asylum procedure as well as their rights and duties.<sup>581</sup>

In addition, other leaflets and publications by the BAMF are available in several languages, although they are not systematically handed out to all asylum seekers.<sup>582</sup> These include:

- ❖ Information on the appointment for the interview in the asylum procedure (*Informationsblatt zum Anhörungstermin*);<sup>583</sup>
- ❖ Information on the asylum application (*Informationsblatt zur Asylantragstellung*).<sup>584</sup>
- ❖ The stages of the German asylum procedure (*Ablauf des deutschen Asylverfahrens*).<sup>585</sup>

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.

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.

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<sup>575</sup> BAMF, *DA-Asyl (Dienstanweisung Asylverfahren) – Belehrungen* (internal directives of the BAMF), version as of 1 January 2023, 151, available in German at <http://bit.ly/3J5jPTA>.

<sup>576</sup> DA-AVS (internal directives for the asylum procedure secretariat), 80, version as of March 2014, available in German at <https://bit.ly/3QPQZsl>.

<sup>577</sup> Available on the BAMF website at <https://bit.ly/2U0lyyv>.

<sup>578</sup> Available on the BAMF website at <http://bit.ly/3XGnpYs>.

<sup>579</sup> Available on the BAMF website at <http://bit.ly/3IWpqM0>.

<sup>580</sup> As of January, these were Albanian, Amharic, Arabic, Armenian, Azerbaijani, Bambara, Bosnian, Burmese, Chinese, Dari, English, Farsi, French, Fulani, Georgian, Hausa, Hindi, Italian, Croatian, Kurdish-Badinani, Kurdish-Kurmanji, Kurdish-Sorani, Kurdish-Zaza, Lingala, Macedonian, Mongolian, Nepali, Oromo, Pashto, Punjabi, Russian, Serbian, Sinhalese, Somali, Spanish, Tamil, Tigrinya, Turkish, Twi, Uyghur, Ukrainian, Urdu, Vietnamese, Wolof.

<sup>581</sup> The video is available in German, Albanian, Arabic, English, French and Persian on the BAMF website, <https://bit.ly/3tz57Nd>.

<sup>582</sup> According to information provided by the BAMF on 9 March 2023, the leaflets 'can be handed out to the foreigner in case of individual need within the framework of the asylum procedure counselling or the information in group discussions'.

<sup>583</sup> Available on the BAMF website (only in German) at <https://bit.ly/3wa8Osv>.

<sup>584</sup> Available on the BAMF website at <https://bit.ly/3bok08E>.

<sup>585</sup> Available in English at <https://bit.ly/3drFPWF>.

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'.<sup>586</sup> 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.<sup>587</sup> 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.<sup>588</sup> In addition, the provision of oral information has become more systematic through the introduction of state-run counselling (see below).

## 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). With the entry into force of the Act on the acceleration of asylum court proceedings and asylum procedures<sup>589</sup> on 1 January 2023, the state-run counselling is to be replaced by independent counselling, financed by the Federal Government but carried out by welfare associations or 'other civil society actors'.<sup>590</sup> This is in line with long-standing demands from welfare associations (see below). The BAMF will continue to carry out the first stage of counselling as described below, whereas independent organisations will carry out individual counselling.<sup>591</sup> At the time of writing of this report, the timeline for the rollout of the new counselling services was not clear. The BAMF published a call for expressions of interest to benefit from the EUR 20 million of financing foreseen for 2023 on 31 January 2023.<sup>592</sup>

Throughout 2022, counselling of asylum seekers was done by the BAMF, and this is to continue until the new system is established.<sup>593</sup> 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. 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'.<sup>594</sup> Procedure counselling was first introduced in a pilot project together with welfare associations.<sup>595</sup> 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.<sup>596</sup>

<sup>586</sup> Amnesty International et al., ed. *Memorandum zur derzeitigen Situation des deutschen Asylverfahrens* (*Memoranda on current situation of the German asylum procedure*), 2005, 21.

<sup>587</sup> Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland. Standards zur Integrieren von Asylsuchenden in das deutsche Asylverfahren*, November 2016, 14.

<sup>588</sup> 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, 39, study available in English at <https://bit.ly/33iJAO8>.

<sup>589</sup> Official Gazette I no. Nr. 56 (2022) of 28 December 2022, 2817.

<sup>590</sup> SPD, BÜNDNIS 90/DIE GRÜNEN and FDP, *Draft Act on the Acceleration of asylum court proceedings and asylum procedures*, 20/4327, 8 November 2022, 22.

<sup>591</sup> SPD, BÜNDNIS 90/DIE GRÜNEN and FDP, *Draft Act on the Acceleration of asylum court proceedings and asylum procedures*, 20/4327, 8 November 2022, 28.

<sup>592</sup> BAMF, *Förderaufruf für die Umsetzung einer flächendeckenden behördenunabhängigen Asylverfahrensberatung (AVB)*, 31 January 2023, available in German at <http://bit.ly/3TKsAft>.

<sup>593</sup> Federal Ministry of the Interior, *Response to written question by Clara Bünger* (The Left), 13 January 2023.

<sup>594</sup> BAMF, 'Voluntary, independent, state asylum procedure counselling', available in English at <https://bit.ly/31VK6AU>.

<sup>595</sup> Information provided by the BAMF, 9 March 2023. 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>.

<sup>596</sup> 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>.

As of 31 December 2022, counselling was available in 46 BAMF branch offices.<sup>597</sup> Throughout 2022, 37,644 applicants took part in the first stage counselling, while 3,147 received individual counselling (second stage). This is an increase in comparison to 2021 (1,928 individual sessions, while 25,784 persons took part in group sessions), but still shows that only around 15% of the 244,132 persons who applied for asylum in 2022 (see [Statistics](#)) received individual advice. More information on counselling during the Covid-19 outbreak can be found in the 2021 Update to the AIDA Country Report for Germany.<sup>598</sup>

The BAMF counselling sessions represent an improvement compared to the situation prior to August 2019 when no information was systematically provided to asylum seekers.<sup>599</sup> Nevertheless, the 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').<sup>600</sup>

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.<sup>601</sup> Civil society actors also criticised that the introduction of BAMF counselling led to funding cuts for NGO-led advice services.<sup>602</sup>

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 their interview.<sup>603</sup>

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.<sup>604</sup> 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.<sup>605</sup>

<sup>597</sup> BAMF, 'Voluntary, independent, state asylum procedure counselling', available in English at <https://bit.ly/31VK6AU>.

<sup>598</sup> AIDA, *Country Report Germany - Update on the year 2021*, April 2022, 85, available at <https://bit.ly/3XnN7RS>.

<sup>599</sup> Markus Kraft, 'Die ANKER-Einrichtung Oberfranken', *Asylmagazin* 10-11/2018, 353, available in German at <https://bit.ly/2P36MEe>.

<sup>600</sup> ECRE, *The Anker centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

<sup>601</sup> 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/3fyGqlg>.

<sup>602</sup> For further information, see AIDA, *Country Report Germany - Update on the year 2021*, April 2022, 85-86, available at <https://bit.ly/3XnN7RS>.

<sup>603</sup> 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.

<sup>604</sup> BAMF, *Das deutsche Asylverfahren – ausführlich erklärt. Zuständigkeiten, Verfahren, Statistiken, Rechtsfolgen (The German asylum procedures – an elaborate explanation. Responsibilities, Procedures, Statistics, Consequences)*, December 2012, 17.

<sup>605</sup> Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland. Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, 14.

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.<sup>606</sup>

## 2. Access to NGOs and UNHCR

### Indicators: Access to NGOs and UNHCR

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

Welfare organisations and other NGOs offer free advice services which include basic legal advice.<sup>607</sup> 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. As of 2022, 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.

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.<sup>608</sup>

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

<sup>606</sup> ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

<sup>607</sup> A database of advice services for asylum seekers is available at: <https://bit.ly/2Ho73Az>.

<sup>608</sup> ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

interview.<sup>609</sup> 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.

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 by 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](#)).<sup>610</sup> 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.

For information on access to NGOs during the airport procedure, see [Border procedure \(border and transit zones\)](#).

## 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?<sup>611</sup> ☒ 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 prioritised applications from specific nationalities at different points in time. Prioritisation of applications from certain countries was revoked in the second quarter of 2016.<sup>612</sup> It was partially replaced by a system of ‘clustering’ applications with the aim of prioritising the caseloads from countries of origin with high and low protection rates. The clustering system was also abandoned in the first half of 2017.<sup>613</sup> 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 focused on deciding cases which had been pending for a longer time and where the interview had already taken place.<sup>614</sup> Furthermore, according to the EU Fundamental Rights Agency,

<sup>609</sup> Johannes Moll, ‘Das verkürzte Asylverfahren im Ankunftszentrum Heidelberg. Ein Modell im Spannungsfeld von effizientem Verfahren und effektiven Rechtsschutz’, *Asylmagazin* 12/2016, 412, 415-416.

<sup>610</sup> Section 47(1a) Asylum Act.

<sup>611</sup> Whether under the ‘safe country of origin’ concept or otherwise.

<sup>612</sup> Federal Government, *Reply to parliamentary question by The Left*, 18/9415, 17 August 2016, 23.

<sup>613</sup> Information provided by the BAMF, 23 January 2018.

<sup>614</sup> Information provided by the BAMF, 10 March 2022.



when hearing resumed the BAMF did not prioritise vulnerable applicants.<sup>615</sup> This information was not confirmed by the BAMF, however.

Similarly to previous years, in 2022, 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:<sup>616</sup>

- ❖ Albania: 2.6 months
- ❖ North Macedonia: 2.7 months
- ❖ Montenegro: 1.8 months
- ❖ Kosovo: 4.0 months
- ❖ Bosnia and Herzegovina: 2.2 months
- ❖ Serbia: 2.6 months
- ❖ Georgia: 2.9 months

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 Ghana and Senegal were not faster than on average (7.6 months for Senegal, 10.7 months for Ghana).

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

- ❖ Iran: 9.1 months
- ❖ Afghanistan: 9.1 months
- ❖ Nigeria: 12.3 months
- ❖ Somalia: 11.1 months
- ❖ Ghana: 10.7 months

## 1. Syria

Since a policy change in the first months of 2016, the BAMF 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, whereas 99.5% 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, 22.6% of Syrian applicants were granted asylum or refugee protection in 2022 (as opposed to 49.5% in 2019, 48.1% in 2020, 27.6% in 2021). Conversely, the rate of Syrians being granted subsidiary protection rose from 0.1% in 2015 to 41.2% in 2016, and 56% in 2017. Since then, it has decreased again in the years 2018-2021 (39.7% in 2018, 33.1% in 2019, 39.6% in 2020, 34.7% in 2021). The year 2022 saw a considerable increase in the rate of subsidiary protection to 77%.

The policy change at the BAMF coincided with a legislative change in March 2016, according to which [Freedom of movement](#) 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 to gain refugee status ('upgrade-appeals'), however only ca. 10% of such appeals were successful in 2020.<sup>617</sup>

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<sup>615</sup> 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>.

<sup>616</sup> Federal Government, Response to parliamentary question by The Left, 19/30711, 15 June 2021, 3.

<sup>617</sup> Federal Government, Reply to parliamentary question by The Left, 19/28109, 30 March 2021, 42-44.



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.<sup>618</sup> Subsequent applications were deemed inadmissible in most cases, however (see also [Subsequent applications](#)).<sup>619</sup> The majority of Higher Administrative Courts continued to decide that refusal as such is not enough to be granted refugee protection, and that the risk of persecution has to be based on an established reason for persecution (e. g. political reasons, not just punishment for avoiding military service) and has to be established in each individual cases.<sup>620</sup> This line of reasoning was confirmed by the Federal Administrative Court in January 2023.<sup>621</sup> In 2022, the number and share of subsequent applications by Syrian nationals decreased considerably, with 1,670 subsequent applications compared to 15,259 in 2021 (see also [Subsequent applications](#)). The number of ‘upgrade appeal’ cases and decisions continues to be high, however, likely as a result of long court procedures. Between January and the end of November 2022, courts decided on 5,397 such appeals, and in 754 cases (14%) granted asylum or refugee protection, while in 4,643 cases (86%) the appeal did not lead to an improvement in the protection status.<sup>622</sup> 9,458 such appeals of Syrian nationals were pending as of 30 November 2022, a similarly high number to the end of 2020.<sup>623</sup>

The removal ban for Syria that had been in place since 2012 expired at the end of December 2020. 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.<sup>624</sup> The removal statistics for 2022 indicate that 707 removals of Syrian nationals took place. However, Syria is not listed as a country of destination for removals in 2022, 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 or removals following a refusal of entry.<sup>625</sup> As of March 2022, the Federal Government declared that it currently sees no possibilities for removals to Syria and that no such removals were taking place.<sup>626</sup>

## 2. Afghanistan

### Evacuation and admissions since the Taliban takeover in 2021

Germany has been operating an admission scheme for local staff of German ministries in Afghanistan since 2013. The scheme is based on Art. 22 (2) Residence Act (Temporary residence permission to uphold the political interest of the Federal Republic of Germany). The eligibility criteria depend on the status of the former employee. Only former staff (and their close family members) directly employed by German entities are covered by the programme.<sup>627</sup> The admission scheme for local staff will continue in parallel to the new humanitarian admission scheme announced on 17 October 2022 (see below).

<sup>618</sup> CJEU, Case C-238/19, Judgment of 19 November 2020.

<sup>619</sup> See also BAMF, *Migrationsbericht 2020 der Bundesregierung*, December 2021, 37, available in German at <https://bit.ly/3nTDv1J>

<sup>620</sup> Asyl.net, *BVerwG hebt Urteile auf, in denen Wehrdienstentziehern aus Syrien Flüchtlingsschutz gewährt worden war*, 23 January 2023, available in German at <http://bit.ly/3Dw8c4H>.

<sup>621</sup> Federal Administrative Court, *Case 1 C 1.22*, 19 January 2023.

<sup>622</sup> Federal Government, *Response to parliamentary question by The Left, 20/5709*, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 43.

<sup>623</sup> Federal Government, *Response to parliamentary question by The Left, 20/5709*, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 41, and *19/28109*, 30 March 2021, 42.

<sup>624</sup> 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>.

<sup>625</sup> Federal Government, *Response to parliamentary question by The Left, 20/5795*, 24 February 2023, available in German at: <https://bit.ly/3nGxgRt>, 7, 12, 14.

<sup>626</sup> Federal Government, *Response to parliamentary question by the AfD, 20/1225*, 25 March 2022, 12

<sup>627</sup> ECRE, *Afghans Seeking Protection in Europe*, December 2021, 11, available at <https://bit.ly/3krGfED>

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).<sup>628</sup> 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.<sup>629</sup> After the end of the evacuation, German authorities continued to receive and examine notifications of risk of former employees and of "especially endangered individuals" in exceptional circumstances. Sub-contractors and consultants who worked for German authorities only indirectly are considered on a case by case basis according to the Federal Government.<sup>630</sup> If the examination confirms that the persons are at risk due to their work for a German authority, admission permissions continue to be granted according to the Federal Ministry of the Interior.<sup>631</sup> Permissions are also included for close family members (spouses and minor siblings), other relatives are only considered in hardship cases.<sup>632</sup> Since travelling out of Afghanistan is difficult and costly, the Federal Government has provided 32 million Euros in funding to the GiZ (the German Development Agency) to support persons in leaving the country. Persons admitted to Germany mainly leave via Pakistan and Iran.<sup>633</sup> Germany has also concluded an agreement with the government of Pakistan to allow the concerned persons to enter Pakistan with a *Tazkira K (ID card)* instead of a passport as required by the Taliban to leave the country. However, in mid-September 2022 the Federal Government reported that a total of 34 former employees and family members are known to have died in Afghanistan.<sup>634</sup>

As of 17 October 2022, according to the Federal Government 38,100 persons had been issued a permission for admission to Germany (out of which 24,500 were former employees and eligible family members, and 13,600 were especially vulnerable persons and their eligible family members). Around 26,000 of these (68.2%) persons had entered Germany up until that time. As of 10 December 2021, a total of 28,053 permissions for admission from abroad had been issued to Afghan nationals and 8,014 persons had entered Germany as of the same date.<sup>635</sup>

On 17 October 2022, the Federal Government launched an additional federal admissions programme which had been announced in the coalition agreement of 2021.<sup>636</sup> The government describes the programme and procedure as follows: the programme is geared towards persons who 'have exposed themselves to particular risk through their commitment to women's and human rights or their work in the spheres of justice, politics, the media, education, culture, sport or academia and are thus vulnerable' or 'due to the special circumstances of their individual cases have experienced or are experiencing violence or persecution based on their gender, sexual orientation or gender identity or religion and are therefore at concrete and personal risk. In particular, these are victims of serious individual women's rights violations, homo- or transphobic human rights violations or vulnerable representatives of religious groups/communities.'<sup>637</sup> The admission programme includes family members of those persons, which includes spouses or same sex partners, minor children and other family members who can prove a

<sup>628</sup> BAMF, 'Aufnahme ehemaliger Ortskräfte und gefährdeter Personen aus Afghanistan', 29 November 2021, available in German at <https://bit.ly/3nv6sjZ>.

<sup>629</sup> BAMF, Migrationsbericht 2020 der Bundesregierung, December 2021, 38, available in German at <https://bit.ly/3nTDv1J>.

<sup>630</sup> Federal Government, Reply to parliamentary question by The Left, 20/3430, 15 September 2022, 3.

<sup>631</sup> Federal Ministry of the interior, Reply to written question by Canan Bayram (The Greens), 20/5046, 81-21.

<sup>632</sup> Federal Government, Reply to parliamentary question by The Left, 20/3430, 15 September 2022, 11.

<sup>633</sup> Federal Government, Reply to parliamentary question by The Left, 20/3430, 15 September 2022, 2.

<sup>634</sup> Federal Government, Reply to parliamentary question by The Left, 20/3430, 15 September 2022, 16.

<sup>635</sup> Deutscher Bundestag, parliamentary question by The Left, 20/791, 22 February 2022, 1.

<sup>636</sup> AIDA, *Country Report Germany - Update on the year 2021*, April 2022, 11, available at <https://bit.ly/3XnN7RS>.

<sup>637</sup> Federal Foreign Office, *Joint press release by the Federal Foreign Office and the Federal Ministry of the Interior and Community on the federal admission programme for people from Afghanistan who are at particular risk*, 17 October 2022, available at <http://bit.ly/3J47ZJA>.

relation of dependency (beyond economic dependency) with the main person and find themselves in a situation of concrete and lasting danger due to the work or vulnerability of the main person.<sup>638</sup> The German government appoints agencies (including civil society organisations) who can put forward names of suitable persons, who must still be living in Afghanistan, via an IT application containing a questionnaire of a total of 41 pages.<sup>639</sup> The names of these organisations are not made public by the government, but according to a press report, PRO ASYL, Reporters without Borders, Mission Lifeline and Luftbrücke Kabul are taking part in the programme as of 20 December 2022.<sup>640</sup>

The Government then takes the admission decision based on selection criteria that include vulnerability (in line with the UNHCR catalogue of criteria), relation to Germany e. g. through language skills, family ties, previous stays or work for German authorities or projects, level of personal exposure of the person e. g. through a visible / exposed position or public statements, and a special political interest on the side of Germany to admit a person.<sup>641</sup> As with the previous admission programme, selected persons first receive assistance to leave Afghanistan and enter a neighbouring country and are then issued a visa and travel assistance by the German embassy in that country. Persons who enter Germany under the programme receive a residence permit for three years. The Federal State responsible for reception of the persons is to be determined according to the quota system for the distribution of asylum seekers (see [Registration of the asylum application](#)), although family ties and other 'criteria supporting integration' are to be taken into account.<sup>642</sup>

When announcing the programme, the Federal Government declared that 'the new programme is now to be implemented quickly' and that it planned to approve around 1,000 requests per month, which is about the amount of permissions granted in the months preceding the announcement. The programme is planned to run until the end of the current government's term in 2025.<sup>643</sup> As of January 2023, no information was available as to the number of persons selected for admission or admitted. The first round of selection was reported to have taken place just before Christmas in 2022.<sup>644</sup> According to a press report, the NGOs Mission Lifeline and Luftbrücke Kabul alone have received around 32,000 requests as of early November 2022.<sup>645</sup>

The Left party and NGOs such as PRO ASYL welcomed the launch of the programme but criticised that 1,000 admissions per month was too low given the 'real pressure of persecution' for 'people who have fought for democracy and human rights'. PRO ASYL further criticised that the relatively abstract selection criteria could lead to an 'ethically highly ambivalent protection lottery'<sup>646</sup> especially in connection with the fact that only authorised agencies could put forward people and that the application is through an algorithm-based IT application with little room to put forward specific individual circumstances.<sup>647</sup> The

<sup>638</sup> Federal Ministry of the Interior and Federal Foreign Office, *FAQs on the humanitarian federal admission programme for Afghanistan*, available at <http://bit.ly/3iVp3Xx>.

<sup>639</sup> rbb.de, *Aufnahmeprogramm für Afghanen startet schleppend*, 20 December 2022, available in German at <http://bit.ly/3iVdBva>.

<sup>640</sup> rbb.de, *Aufnahmeprogramm für Afghanen startet schleppend*, 20 December 2022, available in German at <http://bit.ly/3iVdBva>.

<sup>641</sup> Federal Ministry of the Interior and Federal Foreign Office, *FAQs on the humanitarian federal admission programme for Afghanistan*, available at <http://bit.ly/3iVp3Xx>.

<sup>642</sup> Federal Ministry of the Interior and Federal Foreign Office, *Anordnung des Bundesministeriums des Innern und für Heimat gemäß § 23 Absatz 2, Absatz 3 i. V. m. § 24 Aufenthaltsgesetz (AufenthG) zur Aufnahme von besonders gefährdeten afghanischen Staatsangehörigen aus Afghanistan*, 19 December 2022, available in German at <http://bit.ly/3GW7jmJ>.

<sup>643</sup> Federal Ministry of the Interior and Federal Foreign Office, *FAQs on the humanitarian federal admission programme for Afghanistan*, available at <http://bit.ly/3iVp3Xx>.

<sup>644</sup> rbb.de, *Aufnahmeprogramm für Afghanen startet schleppend*, 20 December 2022, available in German at <http://bit.ly/3iVdBva>.

<sup>645</sup> rbb.de, *Aufnahmeprogramm für Afghanen startet schleppend*, 20 December 2022, available in German at <http://bit.ly/3iVdBva>.

<sup>646</sup> Infomigrants, 'Germany's new admission program for Afghans suffers mixed reviews' 19 October 2022, available at <https://bit.ly/3GNuRKs>.

<sup>647</sup> PRO ASYL, *Bundesaufnahmeprogramm Afghanistan: Enttäuschung nach langem Warten*, 21 October 2022, available in German at <https://bit.ly/3GNA5WA>.

NGO Kabul Luftbrücke reported problems with the IT application in October and November, leading to delays in sending the online forms to authorities. A further point of critique is that the programme does not extend to persons who have managed to flee Afghanistan.<sup>648</sup> Several NGOs also voiced concerns over the practical implementation, demanding a better staffing of the counselling and coordination centres for the programme and questioning the 'organization and content' of the procedure,<sup>649</sup> especially given that it is required to have a passport in order to leave the country while obtaining one is made extremely difficult by the Taliban government.

In addition to the Federal Government, several Federal States have announced plans for admission programmes based on family ties to Afghans living in the respective Federal States (for more information see **Error! Reference source not found.**). Afghan nationals can also benefit from funding and admission programmes for students and scholars at risk; however, access to such programmes is difficult in practice, especially for persons who are still in Afghanistan.<sup>650</sup>

### Asylum applications of Afghan nationals in Germany

In 2022, the protection rate for Afghan nationals more than doubled, from 42.9% in 2021 to 99.3% in 2022 (it was at 36.6% in 2020).<sup>651</sup> Most Afghan nationals were given humanitarian protection in the form of a national removal ban (78.7%) while 23.0% of applicants were given refugee status. As of mid-August 2021, the BAMF de-prioritised decisions on asylum applications from Afghanistan 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.<sup>652</sup> As a result, the number of pending applications by Afghan nationals rose considerably compared to 2020, to 27,846 at the end of 2021 (2020: 6,101). The BAMF resumed decisions concerning Afghan nationals in December 2021,<sup>653</sup> prioritising cases which involve several persons (as opposed to individual applications) and vulnerable applicants.<sup>654</sup> At the end of 2022, the number of pending cases was still high with 27,594 undecided cases (among which 24,959 first-time and 2,635 subsequent applications). 2022 also saw a high number of decisions on subsequent applications from Afghan nationals (10,900), which in most cases led to the granting of some form of protection (see [Subsequent applications](#)).

The already high success rate of appeals before Administrative Courts against negative decisions in the asylum procedure increased considerably in 2022. From the start of 2022 until the end of November 2022, 6,009 Afghan nationals were granted a form of protection by courts, compared to 331 rejections of appeals. In total, 40.6% of appeals were successful (the rate was 45.2% during the same period in 2021). If only decisions on the merits are counted, 94.8% of appeals resulted in the granting of protection (2021: 77.8%).<sup>655</sup> However, appeal statistics show large differences between courts. By way of example, the administrative court of Augsburg Würzburg (**Bavaria**) only had a 0.8% share of positive decisions for Afghan nationals among all decisions (including formal ones) until the end of November.<sup>656</sup> The success

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<sup>648</sup> Infomigrants, 'Germany's new admission program for Afghans suffers mixed reviews' 19 October 2022, available at <https://bit.ly/3GNuRKs>.

<sup>649</sup> Infomigrants, *Germany's Afghan refugee program 'extremely questionable,' aid groups warn*, 19 October 2022, available at <https://bit.ly/3HjJCX9>.

<sup>650</sup> For an overview of such existing programmes see Hammed Hakimi, *Higher Education in Europe: A Pathway to Protection for Afghans?*, ECRE Working Paper 17, November 2022, available at <https://bit.ly/42igPuu>.

<sup>651</sup> For more information about decision making in previous years, see AIDA, *Country Report Germany - Update on the year 2021*, April 2022, available at <https://bit.ly/3XnN7RS>, 91-92.

<sup>652</sup> Federal Government, Response to parliamentary question by The Left, 19/32678, 14 October 2021, 18-19.

<sup>653</sup> See PRO ASYL, 'Steigende Asylzahlen? Ein Blick hinter die Schlagzeilen', 14 January 2022, available in German at <https://bit.ly/3GMuoql>.

<sup>654</sup> Federal Government, Response to written question by Clara Bünger (The Left), 20/765, 18.

<sup>655</sup> Federal Government, Responses to parliamentary questions by The Left, 20/5709, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 36.

<sup>656</sup> Federal Government, Responses to parliamentary questions by The Left, 20/5709, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 53.



rate in both 2022 and 2021 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. 7,564 appeals of Afghan nationals were pending at the court at the end of 2022, a considerable reduction from the end of 2020 (27,002).<sup>657</sup>

## Removals

In principle, Germany has enacted removals of Afghan nationals with no legal right to stay since at least 2008.<sup>658</sup> From December 2016 onwards, following the conclusion of the 'Joint Way Forward' between the EU and Afghanistan, Germany started using charter flights for removals to Afghanistan.<sup>659</sup> With the outbreak of Covid-19, the Federal Ministry of the 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.<sup>660</sup> Removals started again after the first wave however, with one charter flight departing from Germany on 16 December 2020.<sup>661</sup> In total, 137 persons were forcibly removed to Afghanistan in 2020;<sup>662</sup> and 167 were removed in 2021, with the last charter flight departing from Germany on 6 July 2021.<sup>663</sup> Since August 2021, Germany has halted removals to Afghanistan, and thus no removal to Afghanistan took place in 2022.<sup>664</sup> Persons without a protection status receive a toleration (*Duldung*).

## 3. Iran

Following the protests and violent repressions in Iran, several Federal States declared a removal ban for Iran in October 2022.<sup>665</sup> The Conference of Interior Ministers of the Federal States as well as the Federal level decided in December 2022 that no removals would take place to Iran, with exceptions for serious criminal offenders and persons posing a risk to security.<sup>666</sup>

The overall protection rate for asylum applications from Iranian nationals in was 44.9% in 2022. 39.1% were given refugee status, 4.1% subsidiary protection and 1.7% a removal ban based on national law; while 55.1% of all applications were rejected (see [Statistics](#)). The protection rate was 46.2% for decision taken between January and August of 2022, indicating that no significant increase can be detected after the outbreak of the protests.<sup>667</sup>

## 4. Russia

Asylum applications of Russian nationals increased in 2022, likely as a result of the Russian war of aggression against Ukraine and the ensuing military conscriptions and political repression. In 2022, a total of 3,862 Russian nationals applied for asylum in Germany, among which 2,851 were first-time applicants. In comparison, 2021 saw 1,438 first-time applicants among a total of 2,314 applicants.<sup>668</sup> According to

<sup>657</sup> Federal Government, Response to parliamentary question by The Left, 20/5709, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 36, and 19/18498, 2 April 2020, 45.

<sup>658</sup> Federal Government, *Response to parliamentary question by The Left*, 16/12568, 06 April 2009.

<sup>659</sup> EMN / BAMF, Migration, Integration, Asylum. Political Developments in Germany 2016, 62. Available at <https://bit.ly/3WvSz44>

<sup>660</sup> PRO ASYL, 'Newsticker Coronavirus: Informationen für Geflüchtete und Unterstützer\*innen', available in German at <https://bit.ly/3n5bqEe>.

<sup>661</sup> Federal Government, Response to parliamentary question by The Left, 19/27007, 25 February 2021, 28

<sup>662</sup> Federal Government, Response to parliamentary question by The Left, 19/27007, 25 February 2021, 3.

<sup>663</sup> Federal Government, Reply to parliamentary question by The Left, 20/890, 2 March 2022, 3, 47.

<sup>664</sup> Federal Ministry of the interior, *Rückführungen nach Afghanistan zunächst ausgesetzt*, 11 August 2022, available in German at <http://bit.ly/3ZTXjDw> and Federal Government, *Responses to parliamentary questions by The Left*, 20/5795, 24 February 2023, available in German at: <https://bit.ly/3nGxgRt>, 2.

<sup>665</sup> Asyl.net, *Mehrere Bundesländer setzen Abschiebungen in den Iran aus*, 12 October 2022, available in German at <http://bit.ly/3jo9PdK>.

<sup>666</sup> Tagesschau.de, *Vorerst keine Abschiebungen in den Iran*, 2 December 2022, available in German at <http://bit.ly/3kXPnR2>.

<sup>667</sup> Federal Government, Response to parliamentary question by The Left, 20/4019, 12 October 2022, 3.

<sup>668</sup> Source: *Asylgeschäftsstatistik* (01-12/22), available in German at: <https://bit.ly/3ICA29E>.

PRO ASYL, the number of applications has risen in the last months of 2022, likely as a result of the partial mobilisation in Russia in September 2022.<sup>669</sup> In December 2022, Russia was among the top 10 countries of origin of asylum applicants for that month, with a total of 529 first-time applications.<sup>670</sup> The protection rate (share of positive decisions when formal decisions are not considered) was 24.0% in 2022, up from 15.5% in 2021.<sup>671</sup>

According to NGO PRO ASYL, the main obstacle for Russian nationals seeking protection in Germany is the lack of legal escape routes, as no flights from Russia to Germany are available and as countries along the EU's external border no longer allow Russian citizens to enter with Schengen visas.<sup>672</sup> Germany has only 'granted humanitarian visas in a few exceptional cases of people who have made public appearances, such as critical journalists' according to PRO ASYL, while 'German embassies and consulates generally reject such applications'.<sup>673</sup> PRO ASYL reports that in some cases, German embassies in countries other than Russia accept long-term visa applications from Russian nationals (e. g. for work, study or family reunification) for persons 'who would be unreasonably endangered if they were to return to the responsible mission in Russia to apply. This may be the case for human rights defenders, journalists, dissidents and conscientious objectors.'

Deserters of the Russian army – those who flee from active military service – can be granted refugee status as they are threatened with persecution on political grounds, according to the Federal Ministry of the Interior,<sup>674</sup> while more restrictive criteria apply to conscientious objectors. According to established jurisprudence, refusal to enter military service is, as such, not a ground for granting asylum. Conscientious objectors can only be granted refugee status in cases where the punishment for refusal to perform military service is disproportionately high, if the refusal triggers political persecution, or 'if the asylum seeker would have been obliged to participate in war crimes, crimes against peace or crimes against humanity during military service and refuses military service for this reason'.<sup>675</sup> The BAMF decides on these applications on an individual basis. As of 18 February 2023, there were only two known BAMF decisions on applications from Russian nationals fleeing military service. In one of them, the person was granted protection but based on political activities. The other case concerned a person over the age of 40 and without prior military training, and the BAMF assumed that it was not sufficiently likely he would be forced to participate in the war. The decision was criticised by civil society organisations, who argue that the Russian recruiting practice is broader and more unpredictable than what was assumed by the BAMF.<sup>676</sup>

With a decree issued on 20 June 2022, the Federal Ministry of the Interior granted special rights to Russian cultural and media workers who are critical of the regime to continue their work in Germany.<sup>677</sup> The government intends to use all possibilities under the residence law for this group of people, including using available discretion in granting residence permits or visas for the purpose of employment or self-employment. The decree also mentions that immigration authorities should issue residence permits

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<sup>669</sup> PRO ASYL, *Bundesamt für Migration lehnt Asyl für russischen Verweigerer ab*, 18 February 2023, available in German at <https://bit.ly/3Jp9d0z>.

<sup>670</sup> BAMF, *Aktuelle Zahlen (12/2022)*, 9, available in German at <https://bit.ly/3yK56qT>.

<sup>671</sup> BAMF, *Asylgeschäftsstatistik (01-12/22)*, available in German at: <https://bit.ly/3ICA29E> and *Asylgeschäftsstatistik (01-12/21)*, available in German at <https://bit.ly/3fvkrSI>.

<sup>672</sup> PRO ASYL, *Flucht aus Russland: Was wir aktuell sagen können*, 21 December 2022, available in English and German at <http://bit.ly/3LyoDm0>.

<sup>673</sup> Ibidem.

<sup>674</sup> Federal Ministry of the Interior, *Beantwortung von offenen Fragen zu Top 1 („Bericht des Bundesministeriums des Innern und für Heimat über die aktuelle Lage im Ukraine-Konflikt sowie die damit verbundenen innenpolitischen Auswirkungen“) der Sitzung des Ausschusses für Inneres und Heimat vom 11. Mai 2022*, available in German at <https://bit.ly/3Lwoe3q>, 3.

<sup>675</sup> PRO ASYL, *Flucht aus Russland: Was wir aktuell sagen können*, 21 December 2022, available in English and German at <http://bit.ly/3LyoDm0>.

<sup>676</sup> PRO ASYL, *Bundesamt für Migration lehnt Asyl für russischen Verweigerer ab*, 18 February 2023, available in German at <https://bit.ly/3Jp9d0z>.

<sup>677</sup> Federal Ministry of the Interior, *Beschäftigung von regimiekritischen Kultur- und Medienschaffenden aus der Russischen Föderation in Deutschland; Voraussetzungen für eine Beschäftigung im öffentlichen Interesse im Sinne von § 19c Absatz 3 AufenthG*, 20 June 2022, available in German at <https://bit.ly/3LsAAt9>.



directly without a preceding visa procedure for persons who are already in Germany in cases where a return to Russia would put applicants in danger.<sup>678</sup> For persons who do not fulfil the criteria for a residence title in Germany or for being granted international protection, PRO ASYL assumes that they should be issued a tolerated stay (*Duldung*) on the basis that removals to Russia are currently impossible.<sup>679</sup> A total of 46 persons were forcibly removed to Russia in 2022, out of which 40 were removed with deportation flights on 26 January and 17 February 2022, before the outbreak of the war.<sup>680</sup>

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<sup>678</sup> Federal Ministry of the Interior, *Beschäftigung von regimiekritischen Kultur- und Medienschaffenden aus der Russischen Föderation in Deutschland; Voraussetzungen für eine Beschäftigung im öffentlichen Interesse im Sinne von § 19c Absatz 3 AufenthG*, 20 June 2022, available in German at <https://bit.ly/3LsAAt9>.

<sup>679</sup> PRO ASYL, *Flucht aus Russland: Was wir aktuell sagen können*, 21 December 2022, available in English and German at <http://bit.ly/3LyoDm0>.

<sup>680</sup> Federal Government, *Response to parliamentary question by The Left*, 20/5795, 24 February 2023, available in German at: <https://bit.ly/3nGxgRt>, 4; 40-41.

## Reception Conditions

### 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 (*Aufnahmeinrichtung*) 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 and where 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 did not participate 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**) adjusted their reception facilities to the AnKER concept without necessarily using the politically contentious name 'AnKER centre' for these facilities. Following the elections in 2021 the Federal government declared that it would not pursue the AnKER centre concept anymore. However, in practice the centres continue to exist. To a parliamentary request the Federal government responded that accommodation facilities are run by the Federal states and that the Federal government is currently evaluating the cooperation with the Federal states on this issue.<sup>681</sup>

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,

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<sup>681</sup> Federal Government, Reply to parliamentary questions by The Left 20/940, 7 March 2022.

fast-tracking of procedures in this manner must not be confused with the accelerated procedure which was introduced in March 2016 in the law but is not applied in practice much.

## A. Access and forms of reception conditions

### 1. Criteria and restrictions to access reception conditions

#### Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?

❖ Regular procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Admissibility procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Border procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Accelerated procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Appeal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No

A.

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? ☒ Yes ☐ No

Asylum seekers are entitled to reception conditions from the moment they request asylum (*Asylgesuch*) in accordance with the Asylum Seekers' Benefits Act (*Asylbewerberleistungsgesetz*).<sup>682</sup> 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.<sup>683</sup> In practice, this usually happens within a few days after they have reported to the authorities (see also [Registration of the asylum application](#)).<sup>684</sup>

Foreigners remain entitled to these reception conditions, at a minimum, as long as they have the status of 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.<sup>685</sup>

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 [Reduction or withdrawal of reception conditions](#) below).<sup>686</sup>

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.<sup>687</sup> 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](#)).

<sup>682</sup> Section 1 (1a) Asylum Seekers' Benefits Act.

<sup>683</sup> Section 11 (2a) Asylum Seekers' Benefits Act.

<sup>684</sup> Section 63 (1) Asylum Act.

<sup>685</sup> Section 1 Asylum Seekers' Benefits Act.

<sup>686</sup> Section 1 (4) Asylum Seekers' Benefits Act.

<sup>687</sup> Section 10 and 10a Asylum Seekers' Benefits Act.

## 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.<sup>688</sup>

For example, asylum seekers are asked to hand over any cash they may possess at registration stage, i.e. before the application is formally lodged. The amount of money which they are allowed to keep varies across the Federal states, at minimum they are allowed to keep of € 200 in cash.<sup>689</sup> 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, except for the remaining € 200 that asylum seekers are allowed to keep. The cash is used to compensate partially the reception costs, so asylum seekers do not get any restitution.

## 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 2023 (in original currency and in €):<sup>690</sup>
  - ❖ Single adult in accommodation centre € 369
  - ❖ Single adult outside accommodation centre € 410

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*)<sup>691</sup> – 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.<sup>692</sup> '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.<sup>693</sup>

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.<sup>694</sup> 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.<sup>695</sup>

The annual adjustment of the rates for social benefits for asylum seekers are linked to the annual rates for social benefits for German nationals.<sup>696</sup> As the social benefits legal framework changes drastically

<sup>688</sup> Section 7 Asylum Seekers' Benefits Act.

<sup>689</sup> Evangelischer Pressedienst (epd), *Flüchtlinge müssen auch in Deutschland ihr Bargeld abgeben*, 21.01.2016, available in German at: <http://bit.ly/3QZMCuP>.

<sup>690</sup> This includes hygienic items allowance and pocket money only.

<sup>691</sup> Section 3(1) Asylum Seekers' Benefits Act.

<sup>692</sup> Section 4 Asylum Seekers' Benefits Act; for access to health care see below.

<sup>693</sup> Section 6 Asylum Seekers' Benefits Act.

<sup>694</sup> Section 3a (4) Asylum Seeker's Benefits Act.

<sup>695</sup> Sections 3a(1)(3)(a) and 3a(2)(3)(a) Asylum Seekers' Benefits Act.

<sup>696</sup> Section 3a (4) Asylum Seekers Benefits Act.

from the 1<sup>st</sup> January 2023 on, so does the calculation basis for social benefits for asylum seekers.<sup>697</sup> Prior to the legal reforms the annual adjustment was mainly based on the development of prices and wages.<sup>698</sup> Due to the dynamic development of prices for food and energy as result from the war in Ukraine,<sup>699</sup> the German government decided an additional increase on top of the compensation for the development of prices and wages.<sup>700</sup> The German government further argued that the annual adjustment of social benefits for German nationals shall be adhered to more strictly.<sup>701</sup> Whether this will be the case also for social benefits for asylum seekers remains unclear in the reasoning to the legal reforms. Whereas civil society organisations generally support the increase of social benefits, they criticise that the legal reforms did not change the general distinction in the calculation of ‘basic needs’ between asylum seekers and German nationals.<sup>702</sup> In an extensive study it is argued that the minimum subsistence level should not differ between German nationals and asylum seekers since the overall difference and exclusion of certain costs in 2019 cannot objectively be justified by different needs.<sup>703</sup>

One of the most controversial changes introduced in 2019 was the adjustment of benefits for single adults required to stay in an accommodation centres. 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.<sup>704</sup> 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 ordered the authorities to temporarily pay the same benefits as received by single adults outside of accommodation centres.<sup>705</sup> In April 2021, the Social Court of Düsseldorf referred the question to the Federal Constitutional Court.<sup>706</sup> In October 2022 the Federal Constitutional Court (*Bundesverfassungsgericht, BVerfG*) agreed with the earlier decisions of the Social Courts. The Federal Constitutional Court ruled that there is no evidence which proves that single adults in accommodation centres economize together.<sup>707</sup> Consequently, they cannot be compared to people who share a household and should therefore be treated equally to single adults staying outside of accommodation centres. Since the judgement applies retrospectively from the 1<sup>st</sup> September 2019, civil society organisations urged everyone formerly affected by the distinction to request a review of the amount of benefits at the local immigration authorities.<sup>708</sup> However, the case which was decided by the Federal Constitutional Court was about a man who stayed in an accommodation centre longer than 18 months and therefore received social benefits under Section 2 Asylum Seekers Benefits Act.

<sup>697</sup> Federal Ministry for Labour and Social Affairs, Information zu AsylbLG-Leistungsgrundsätzen für die Zeit ab Januar 2023, 10.10.2022, available in German at: <http://bit.ly/3ZPQL8P>.

<sup>698</sup> Section 28a Social Code (version prior 01.01.2023).

<sup>699</sup> Federal Government, *Gesetzesentwurf der Bundesregierung 'Entwurf eines Zwölften Gesetzes zur Änderung des Zweiten Gesetzbuches und anderer Gesetze, Einführung eines Bürgergeldes (Bürgergeld-Gesetz)'*, 10.10.2022, available in German at: <https://bit.ly/3GXbHSD>.

<sup>700</sup> Section 134 Social Code XII

<sup>701</sup> Federal Government, *Gesetzesentwurf der Bundesregierung 'Entwurf eines Zwölften Gesetzes zur Änderung des Zweiten Gesetzbuches und anderer Gesetze, Einführung eines Bürgergeldes (Bürgergeld-Gesetz)'*, 10.10.2022, available in German at: <https://bit.ly/3GXbHSD>.

<sup>702</sup> PROASYL, *Das Asylbewerberleistungsgesetz und das Existenzminimum. Eine Analyse der Regelsätze*, 10.11.2022, available in German at: <http://bit.ly/3ksiwJ>.

<sup>703</sup> PROASYL, *Das Asylbewerberleistungsgesetz und das Existenzminimum. Eine Analyse der Regelsätze*, 10.11.2022, available in German at: <http://bit.ly/3ksiwJ>.

<sup>704</sup> Sections 3a(1)(2)(b) and 3a(2)(2)(b) Asylum Seekers' Benefits Act.

<sup>705</sup> 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.

<sup>706</sup> See Informationsverbund Asyl & Migration, 'Rechtsprechungsübersicht: Niedrigere Leistungen für Alleinstehende in Sammelunterkünften verfassungswidrig?', available in German at <https://bit.ly/3GFyvoJ>.

<sup>707</sup> Federal Constitutional Court, Decision 1 BvL 3/21, 19. October 2022, para 70f.

<sup>708</sup> Informationsverbund Asyl & Migration, *Arbeitshilfe und Musterantrag der RLC Leipzig zur Überprüfung von AsylbLG-Leistungen*, 10.12.2022, available in German at: <http://bit.ly/3iXInd7>.

The Court left it open whether the ruling should also be applied to asylum seekers who stay in accommodation centres for less than 18 months under Section 3a Asylum Seekers Benefits Act. In **North Rhine-Westphalia, Hesse and Bavaria**, the state's governments decided to apply the court ruling to everyone staying in accommodation centres, irrespective of the length of stay.<sup>709</sup> Also the Federal Ministry for Labour and Social Affairs responded to a parliamentary request by The Left that the states should award the regular amount of benefits to all single adults.<sup>710</sup> Despite the instructions by the Federal Ministry for Labour and Social Affairs, in the calculation of the benefits for 2023 the group of 'single adults staying in accommodation centres' was not erased (see below).

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'.<sup>711</sup> 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'.<sup>712</sup> 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'.<sup>713</sup>

As of January 2023, 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'	€182	€164	€164	€146	€124	€122	€117
Further basic benefits (excl. costs related to accommodation)	€228	€205	€205	€182	€240	€182	€161
<b>Total</b>	<b>€410</b>	<b>€369</b>	<b>€369</b>	<b>€328</b>	<b>€364</b>	<b>€304</b>	<b>€278</b>
Regular Social Benefits	€502	-	€451	€402	€420	€348	€318

Sources: Bekanntmachung über die Höhe der Leistungssätze nach § 3a Absatz 4 des Asylbewerberleistungsgesetzes für die Zeit ab 1. Januar 2023, BGBl. I, Nr. 54, 23.12.2022, 2601, available at: <https://bit.ly/3XKNSUP>; and Federal Employment Office, Erhöhte Regelsätze, press release Nr. 60, 28.12.2022, available at: <http://bit.ly/3iXn98T>.

As indicated in the table above, rates under the Asylum Seekers' Benefits Act amount to a level of about 82% of regular social benefits – and less than 75% for single adults living in accommodation centres.

<sup>709</sup> Tagesspiegel, *Leistungskürzungen waren verfassungswidrig – Mehr alleinstehende in Flüchtlingsheimen bekommen wieder höhere Beträge*, 11.12.2022, available in German at: <http://bit.ly/3XMF3dd>.

<sup>710</sup> Deutscher Bundestag, Plenarprotokoll 20. Wahlperiode, 72. Sitzung, response to question 24 of Clara Bünger (The Left), 30.11.2022, available in German at: <https://bit.ly/3Hob6Lf>.

<sup>711</sup> Section 3(2) Asylum Seekers' Benefits Act.

<sup>712</sup> Section 3(3) Asylum Seekers' Benefits Act.

<sup>713</sup> Section 3(3) 3<sup>rd</sup> Sentence Asylum Seekers' Benefits Act.



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.<sup>714</sup> Consequently, asylum seekers now have to wait up to 18 months before they are entitled to regular social benefits.

### 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

#### 3.1 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:

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 before 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.

<sup>714</sup> Section 2(1) Asylum Seekers' Benefits Act.

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 acquired a right of residence for other reasons in such a state.</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 reasonable, e.g. for those who were granted international protection in Greece. <sup>715</sup>
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"> <li>❖ Failure to apply for asylum 'immediately' after entry into the territory (Section 13 (3) Asylum Act);</li> <li>❖ Failure to present or hand over a passport or passport substitute to the authorities (Section 15 (2) no. 4 Asylum Act);</li> <li>❖ Failure to present or hand over other documents necessary for the clarification of their identity (Section 15 (2) no. 5 Asylum Act);</li> <li>❖ 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);</li> <li>❖ Failure to undergo the required identification measures (especially taking of fingerprints, Section 15 (2) no. 7 Asylum Act);</li> <li>❖ Failure to keep the appointment for the formal registration of their application at the BAMF; or</li> <li>❖ Refusal to provide information about their identity or nationality in the course of the asylum procedure (Section 30 (3) no. 2 Asylum Act).</li> </ul>
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

<sup>715</sup> 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.

		<p>beneficiary affected.<sup>716</sup> Others have ruled the opposite, however.<sup>717</sup></p> <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>
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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.<sup>718</sup>

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.<sup>719</sup> It has been estimated that this may result in a reduction of almost 50% of the benefits in many cases.<sup>720</sup> 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.<sup>721</sup>

The 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.<sup>722</sup> 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,<sup>723</sup> 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.<sup>724</sup> The debate was 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.<sup>725</sup> The court argued that temporary sanctions, even to the point of a complete withdrawal of benefits, could be lawful if an unemployed person

<sup>716</sup> 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.

<sup>717</sup> Social Court Osnabrück, Decision S 44 AY 76/19 ER, 27 January 2020.

<sup>718</sup> Section 11(2a) Asylum Seekers' Benefits Act.

<sup>719</sup> Section 1a(1) Asylum Seekers' Benefits Act.

<sup>720</sup> Joachim Genge, 'Das geänderte Asylbewerberleistungsgesetz' in Informationsverbund Asyl und Migration (ed), *Das Migrationspaket: Beilage zum Asylmagazin* 8-9/2019, September 2017, 20.

<sup>721</sup> 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/2l3Obav>.

<sup>722</sup> Section 14(1) and (2) Asylum Seekers' Benefits Act.

<sup>723</sup> Federal Constitutional Court, Decision 1 BvL 10/10, 1 BvL 2/11, 18 July 2012.

<sup>724</sup> Social Court Stade, Decision S 19 AY 19/17 ER, 10 May 2017.

<sup>725</sup> Federal Constitutional Court, Decision 1 BvL 7/16, 5 November 2019.

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. 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.<sup>726</sup> 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 benefits for certain groups is in line with the constitution'.<sup>727</sup> Other courts have also questioned the legality of certain aspects of the Asylum Seekers' Benefits Act.<sup>728</sup> 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 on the basis that in the Court considered the matter of sanctions has already sufficiently decided by prior Court rulings and that in the individual case there was no breach of the Constitution.<sup>729</sup> In the decision of the Federal Constitutional Court of October 2022 (discussed above) the court maintained its earlier rulings, that benefits may be made conditional to obligations to cooperate while emphasising that any distinction between third country nationals and German citizens must be reasoned.<sup>730</sup> Civil society organisations continue to argue that the Asylum Seekers Benefits Act is discriminatory. The debate arose again especially when in May 2022 the Federal government decided to award regular social benefits to temporary protection seekers (see [Report on Temporary Protection](#)) but not to asylum seekers.<sup>731</sup>

In practice, the 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.<sup>732</sup> However, such decisions are rare because only a few asylum seekers appeal against reductions of benefits upon rejection of their asylum application.

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<sup>726</sup> Claudius Voigt, 'Gesetzlich minimierte Menschenwürde. Das Sanktions-Urteil des Bundesverfassungsgerichts und seine Auswirkungen auf das AsylbLG', Asylmagazin 1-2/2020, 12-21.

<sup>727</sup> 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, available in German at: <http://bit.ly/40wYUyl>; decision of 4 December 2019 -- L 8 AY 36/19 B ER, available in German at: <http://bit.ly/42DysF3>.

<sup>728</sup> 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>.

<sup>729</sup> Federal Constitutional Court, Case file number 1 BvR 2682/17, Decision of 12 May 2021, available in German at <https://bit.ly/3GltQ5f>.

<sup>730</sup> Federal Constitutional Court, Decision 1 BvL 3/21, 19. October 2022, para 65, 75.

<sup>731</sup> Refugee Council Bavaria, Menschenwürdige Sozialleistungen für alle sicherstellen!, 7. April 2022, available at: <http://bit.ly/3J8X1Tk>.

<sup>732</sup> 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.

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).<sup>733</sup> 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.<sup>734</sup> The former Federal Government emphasised that children are not generally exempted from sanctions.<sup>735</sup>

### 3.2 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.<sup>736</sup> 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.<sup>737</sup> With **Berlin** and **Rhineland Palatinate**, at least two Federal States have limited the scope of application of 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.<sup>738</sup>

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

### 4.1. 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.<sup>739</sup> 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

<sup>733</sup> Regional social administration of the Federal State of Berlin, Directive no. 10/2015, 9 December 2015.

<sup>734</sup> Information provided by GGUA, Münster, 19 June 2018.

<sup>735</sup> Federal Government, *Response to information request by The Left*, 19/26032, 20. January. 2021, available in German at: <http://bit.ly/3H0dJBw>.

<sup>736</sup> Section 1(4) Asylum Seekers' Benefits Act.

<sup>737</sup> Section 1(4) Asylum Seekers' Benefits Act.

<sup>738</sup> 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>.

<sup>739</sup> Sections 55(1) and 56(1) Asylum Act.



agreement between the concerned Federal States.<sup>740</sup> 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.<sup>741</sup> 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.<sup>742</sup> 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 **Error! Reference source not found.**).

The law provides that the geographical restriction shall generally expire after 3 months.<sup>743</sup> 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**.<sup>744</sup> 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.<sup>745</sup>

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.<sup>746</sup>

Distribution of asylum seekers to the Federal States is determined by the following aspects:<sup>747</sup>

- ❖ Capacities of initial reception centres;
- ❖ Competence of the branch offices of the BAMF for the particular applicant's country of origin. This means that certain initial reception centres tend to host specific nationalities (see **Differential treatment of specific nationalities in reception**);
- ❖ A quota system called '*Königsteiner Schlüssel*',<sup>748</sup> 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.

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<sup>740</sup> Section 58(6) Asylum Act.

<sup>741</sup> Section 58(1) Asylum Act.

<sup>742</sup> Section 58(2) Asylum Act.

<sup>743</sup> Section 59a(1) Asylum Act.

<sup>744</sup> Section 59a(1) Asylum Act.

<sup>745</sup> Section 59b(1) Asylum Act.

<sup>746</sup> BAMF, 'Initial Distribution of Asylum-Seekers (EASY)', 1 October 2016, available at: <http://bit.ly/2DASJOS>.

<sup>747</sup> Section 46(2) Asylum Act.

<sup>748</sup> Section 45 Asylum Act.



The quota for reception of asylum seekers in 2021 (*Königsteiner Schlüssel*) in comparison to number of (first) asylum applications in 2021 was as follows:

Distribution of asylum seekers in Germany: 2021			
Federal State	Quota	(First) applications in 2021	Actual share in 2021
Baden-Württemberg	13.04%	17,055	11.508%
Bavaria	15.56%	20,089	13.55%
Berlin	5.18%	9,653	6.51%
Brandenburg	3.02%	3,947	2.66%
Bremen	0.95%	1,623	1.09%
Hamburg	2.60%	4,231	2.85%
Hesse	7.44%	13,377	9.02%
Mecklenburg-Vorpommern	1.98%	2,843	1.92%
Lower Saxony	9.39%	15,343	10.35%
North Rhine-Westphalia	21.07%	29,500	19.09%
Rhineland-Palatinate	4.82%	7,891	5.32%
Saarland	1.20%	2,616	1.76%
Saxony	4.98%	7,249	4.89%
Saxony-Anhalt	2.70%	4,093	2.76%
Schleswig-Holstein	3.40%	4,726	3.12%
Thuringia	2.63%	3,709	2.50%

Source: BAMF, *Das Bundesamt in Zahlen 2021*, 2022 available in German at: <http://bit.ly/3iR0fQE>.

The above table demonstrates that the distribution of applicants was only roughly in line with the '*Königsteiner Schlüssel*' in 2021. 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. More recent statistics of 2022 are not yet available.

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 for compelling reasons (e.g. if a rare medical condition requires that an asylum seeker has to stay close to a particular hospital)<sup>749</sup>. The allocation of the asylum seeker to a particular area is not a formal decision that can be legally challenged by the individual.

## 4.2. 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.<sup>750</sup>

<sup>749</sup> Stahlmann in Hofmann, *Ausländerrecht* §57 AsylG para. 6f., 2016.

<sup>750</sup> Section 47(1) Asylum Act.

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.<sup>751</sup>
- ❖ Since 2019, under certain circumstances, asylum seekers who have failed to cooperate with the authorities have to stay in initial reception centres indefinitely.<sup>752</sup>
- ❖ Federal States are allowed to impose an obligation on applicants to stay in initial reception centres for up to 24 months.<sup>753</sup> As of November 2021, three 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).<sup>754</sup>

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.<sup>755</sup>

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 is 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.<sup>756</sup> In practice it seems that this premise is kept since North Rhine-Westphalia as well as Saxony excluded minor children from the prolongation in the regulation, Bavaria also included an more general exclusion clause.<sup>757</sup>

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.<sup>758</sup> 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.<sup>759</sup> The asylum seeker shall also be released from the initial reception centre if the administrative court granted suspensive effect to their appeal, with the exception of Dublin cases and those already granted international protection in another Member State.<sup>760</sup>

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).<sup>761</sup> 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;

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<sup>751</sup> Section 47(1a) Asylum Act.

<sup>752</sup> Section 47(1) 3rd Sentence Asylum Act.

<sup>753</sup> Section 47 (1b) Asylum Act.

<sup>754</sup> Refugee Council North Rhine-Westfalia, *Übersicht: Regelungen zum §47 Abs. 1b AsylG*, 23 March 2019, available in German at: <https://bit.ly/3wopA7n>.

<sup>755</sup> Section 47(1b) Asylum Act.

<sup>756</sup> 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.

<sup>757</sup> Refugee Council North Rhine-Westfalia, *Übersicht: Regelungen zum §47 Abs. 1b AsylG*, 23 March 2019, available in German at: <https://bit.ly/3wopA7n>.

<sup>758</sup> Section 49(2) Asylum Act.

<sup>759</sup> Section 49 (1) Asylum Act.

<sup>760</sup> Section 50 (1) Number 1 Asylum Act.

<sup>761</sup> Bayerischer Flüchtlingsrat, ‘*Abschiebelager Manching/Ingolstadt*’, available in German at: <http://bit.ly/2pnLtRg>.

- ❖ 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.<sup>762</sup>

In 2018, the average duration of 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.<sup>763</sup> According to the Bavarian authorities, the average duration rose to 6.2 months as of July 2020 as a result of the first wave of Covid-19.<sup>764</sup> In 2022 PROASYL and the Refugee Council Berlin published a comprehensive study on reception conditions. Accordingly, the average duration of stay varies not only for the different nationalities but rather due to regional differences.<sup>765</sup> In **Berlin** the average duration in initial arrival centres were 6 weeks to 6 months, in North **Rhine-Westphalia** a few days to six months for families, up to 24 months for single adults. One interviewee stated that in one part of the AnKER centre in **Bavaria**, which is reserved for people who should be expelled, a man has been living there for 25 years.

Similarly, in **Saxony**, where three AnKER centres or arrival centres exist, an obligation to stay in reception centres under Section 47(1b) Asylum Act was introduced through the state's Refugee Reception Act of 11 December 2018 in conjunction with the Saxon Residence Restriction Extension Decree (*Sächsische Wohnpflichtverlängerungsverordnung*). This obligation affects the following groups of asylum seekers:<sup>766</sup>

- ❖ 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.<sup>767</sup>
- ❖ 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.<sup>768</sup>

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.<sup>769</sup> The latter will be applicable until 1 September 2024.

Finally, the Federal State of **Saxony Anhalt** made use of Section 47(1b) of the Asylum Act, but extended the obligation to 18 months only. Additionally, the State not only exempted families with children, but also

<sup>762</sup> Section 2(2) Bavarian Reception Act (Aufnahmegesetz), as amended by the Act of 23 December 2021, available in German at: <https://bit.ly/2uE71MT>.

<sup>763</sup> ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

<sup>764</sup> 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>.

<sup>765</sup> PROASYL and Refugee Council Berlin, *Das Asylbewerberleistungsgesetz – Einschränkungen des Grundrechts auf ein menschenwürdiges Existenzminimum für Geflüchtete*, 269, November 2022, available in German at: <https://bit.ly/3XrdSox>.

<sup>766</sup> 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/2Zgczgku>.

<sup>767</sup> Addendum to the Saxon Residence Restriction Extension Decree of 3 May 2019, available in German at <https://bit.ly/2CBBaKI>.

<sup>768</sup> Section 3 Saxon Residence Restriction Extension Decree (*Sächsische Wohnpflichtverlängerungsverordnung*).

<sup>769</sup> Section(1) Implementing Act to Section 47(1b) of the Asylum Act, available in German at: <https://bit.ly/2BcfuO5>.

single women, persons with severe physical and psychological illnesses, victims of torture and sexual violence, LGBTIQ and asylum seekers who belong to persecuted minorities.<sup>770</sup>

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.<sup>771</sup> 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.<sup>772</sup> 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).

## 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.

<sup>770</sup> Section(1a) Reception Act, as amended by the Act of 14 February 2019, available in German at: <https://bit.ly/2YAXTbC>.

<sup>771</sup> ECRE, *The AnkER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

<sup>772</sup> *Ibid.*

Emergency shelters were reintroduced in 2022 especially in bigger cities following the rising numbers of protection seekers from Afghanistan and Ukraine (See also [Report on Temporary Protection](#)). In **Berlin** the former airport Tegel is used as emergency shelter and its capacities have been continuously expanded since its reintroduction. In July 2022 tents located in the former Terminal A and B had a capacity for 900 protection seekers which were extended to 1,900 in October 2022.<sup>773</sup> Whereas in the beginning the emergency shelters should only be provided until the end of 2022, the Berlin Senate decided that due to the arrivals from Ukraine a prolongation is required until 15 March 2023.<sup>774</sup> No further prolongation is foreseen and recently everything has been moved to Terminal C where 3,200 places have been made available.<sup>775</sup> The facility at Tempelhof which was closed in 2019 reopened in December with a capacity for 840 people.<sup>776</sup> In **Cologne**, North Rhine Westfalia and **Hamburg** exhibition grounds were used as emergency shelters.<sup>777</sup>

### 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*).<sup>778</sup> An obligation to stay in these centres for a maximum of 24 months can be imposed by Federal States since July 2017 (see [Freedom of movement](#)).<sup>779</sup> Furthermore, asylum seekers from safe countries of origin are obliged to stay there for the whole duration of their procedures.

The Federal States are required to establish and maintain the initial reception centres.<sup>780</sup> 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.<sup>781</sup>

#### 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

<sup>773</sup> Berlin.de, *Notunterkunft für Geflüchtete in Tegel geht an den Start*, 29 July 2022, available in German at: <http://bit.ly/3Ja1fKm>; Anna Klöpper, taz.de, *Weniger als 200 Betten noch frei*, 10 October 2022, available in German at: <http://bit.ly/3HpMC47>.

<sup>774</sup> Berlin.de, *Verlängerung der Nutzung der Terminalgebäude A/B des ehemaligen Flughafen Tegel als Notunterkunft*, 10 January 2023, available in German at: <http://bit.ly/3H2E4Pb>.

<sup>775</sup> Dirk Krampitz, *Ankunftszenrum Tegel: So geht es den 2200 Geflüchteten*, Berliner Morgenpost, 24 February 2023, available in German at: <http://bit.ly/3LrIVNE>.

<sup>776</sup> Zeit Online, *Neue Unterkunft für 840 Geflüchtete soll Freitag öffnen*, 19 December 2022, available in German at: <http://bit.ly/3XPPP2h>.

<sup>777</sup> NDR.de, *Hamburg richtet Flüchtlingsunterkunft in den Messehallen ein*, 09. October 2022, available in German at: <http://bit.ly/3Wricmh>; Kölner Stadtanzeiger, *Stadt Köln mietet erneut Messehalle für Geflüchtete an*, 28 November 2022, available in German at: <http://bit.ly/3R1DgyX>.

<sup>778</sup> Section 47(1) Asylum Act.

<sup>779</sup> Section 47(1b) Asylum Act.

<sup>780</sup> Section 44(1) Asylum Act.

<sup>781</sup> 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>).

2022, the BAMF lists 18 arrival centres which are located across 12 Federal States (down from 22 in 2018).<sup>782</sup>

- ❖ 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 were established in Germany in **Bavaria**, **Saxony** and **Saarland**.<sup>783</sup>

Since August 2018, Bavaria has established and/or rebranded all facilities run by the seven districts of the Federal State as AnKER centres.<sup>784</sup> 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 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.<sup>785</sup>

AnKER centres & <i>Dependancen</i> in Germany		
Federal State	AnKER centre	Location of AnKER <i>Dependancen</i> <sup>786</sup>
Bavaria <sup>787</sup>	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

<sup>782</sup> BAMF, *Locations*, available at: <https://bit.ly/2Z74Uko>.

<sup>783</sup> Federal Government, Response to parliamentary question by The Left, 19/30711, 15 June 2021, 28.

<sup>784</sup> Süddeutsche Zeitung, Das sind die sieben neuen Ankerzentren in Bayern, 1 August 2018, available at <https://bit.ly/2MeAYKy>.

<sup>785</sup> Bayrischer Rundfunk, *Ankerzentren: Augsburger Flüchtlingsrat begrüßt neuen Kurs*, 28 June 2019, available at: <https://bit.ly/2NJxyC1>.

<sup>786</sup> Anker-Watch.de, ANKER-Zentren und Dependancen, available at: <https://bit.ly/3ewPdbE>.

<sup>787</sup> 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>.



		Neuendettelsau
	Geldersheim/Niederwerrn (Lower Franconia)	-
	Augsburg (Swabia)	Augsburg: 5 locations Mering
Saxony	Dresden	-
Saarland	Lebach	-
<b>Total</b>	<b>8</b>	<b>17</b>

## 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).<sup>788</sup> 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.<sup>789</sup>

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, 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.<sup>790</sup> 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 2022 are not available. For the year 2021, 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:

<sup>788</sup> Section 53 Asylum Act.

<sup>789</sup> ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

<sup>790</sup> Section 10 Asylum Seekers' Benefits Act.

Recipients of asylum seekers benefits in the Federal States: 31 December 2021				
Federal State	Initial reception centres	Collective accommodation	Decentralised accommodation	Total
Baden-Württemberg	2,285	19,485	24,995	<b>46,770</b>
Bavaria	8,110	32,955	17,700	<b>58,760</b>
Berlin	4,375	11,560	12,510	<b>28,450</b>
Brandenburg*	635	8,145	5,665	<b>14,435</b>
Bremen	200	2,320	2,735	<b>5,225</b>
Hamburg	885	8,160	2,785	<b>11,830</b>
Hesse	4,810	16,850	8,870	<b>30,530</b>
Mecklenburg-Vorpommern	595	3,630	1,490	<b>5,720</b>
Lower Saxony	2,580	9,430	26,760	<b>38,770</b>
North Rhine-Westphalia	12,080	35,915	37,980	<b>85,980</b>
Rhineland-Palatinate	3,610	1,875	9,905	<b>15,395</b>
Saarland	0	10	770	<b>1,675</b>
Saxony	3,295	9,110	9,420	<b>21,825</b>
Saxony -Anhalt	1,230	3,990	3,885	<b>9,075</b>
Schleswig-Holstein	1,515	2,175	12,365	<b>16,050</b>
Thuringia	140	3,640	4,285	<b>8,065</b>
<b>Total</b>	<b>46,340</b>	<b>169,260</b>	<b>182,985</b>	<b>398,585</b>

Source: Statistisches Bundesamt, Empfängerinnen und Empfänger nach Bundesländern: <https://bit.ly/2UtNxZW>. This includes both asylum seekers and people with tolerated stay (Duldung). \*Due to a software update, there is presumably an undercount.

Although Section 53 of the Asylum Act provides that asylum seekers 'should, as a rule, be housed in collective accommodation' following the initial reception period, the above figures show that policies vary considerably between the Federal States.<sup>791</sup> 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.<sup>792</sup> 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.

<sup>791</sup> 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.

<sup>792</sup> 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).

## 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.<sup>793</sup> Following public criticism, the authorities started renovation works in the facility of early April 2019 and transferred several residents to other facilities.<sup>794</sup> In June 2019 a new area for children over 100 m<sup>2</sup> has been installed.<sup>795</sup> According to the municipality of Munich, the Funkkaserne continues to be used as *Dependance* in June 2022.<sup>796</sup>

Locations of centres vary significantly. While some of the initial reception centres, arrival centres and AnKER are situated in or close to big cities (e.g. **Berlin**, **Munich**, **Regensburg**, **Brunswick/Braunschweig**, **Bielefeld**, **Dortmund**, **Karlsruhe**), others are located in smaller cities (**Eisenhüttenstadt**, **Neumünster**, **Halberstadt**) or in small towns with some distance to the next city (**Lebach** near Saarbrücken). Some initial reception centres (**Nostorf-Horst** in Mecklenburg-Vorpommern, **Deggendorf** or the *Dependancen* in **Garmisch** and **Waldkraiburg** in Bavaria) are located in isolated areas far away from the next town.<sup>797</sup>

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.<sup>798</sup> In **Berlin**, the local

<sup>793</sup> Süddeutsche Zeitung, "Die Regierung muss hier sofort einschreiten", 26 March 2019, available in German at: <https://bit.ly/2OGa40d>.

<sup>794</sup> Süddeutsche Zeitung, 'Die Funkkaserne wird angeblich unter Hochdruck saniert', 5 April 2019, available in German at: <https://bit.ly/2KA8Rcv>.

<sup>795</sup> Süddeutsche Zeitung, *Kinder lernen wieder lachen*, 29 July 2019, available in German at: <http://bit.ly/3XApeqo>.

<sup>796</sup> Munich, *Übersicht des Sozialreferats über Unterkünfte für Geflüchtete und Wohnungslose ab 48 Bettplätzen*, 30 June 2022, available in German at: <https://bit.ly/3D9jwmY>.

<sup>797</sup> Refugee Council Bavaria, 'Abschiebelager Manching/Ingolstadt', available in German at: <http://bit.ly/2pnLtRg>.

<sup>798</sup> 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',

authorities of the Arrival Centre 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.<sup>799</sup> In 2022, the number of arrivals rose to over 3,963 in March to 14,704.<sup>800</sup> The numbers include though not only applicants for international protection but also subsequent applications which have been filled in the initial reception centres.<sup>801</sup>

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 4.5m<sup>2</sup> of living space, while other regulations provide for 6 or 7m<sup>2</sup> per person.<sup>802</sup> 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 themselves. 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.<sup>803</sup>

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. In 2022 the conditions deteriorated even more due to the massive overcrowding as consequence from the war in Ukraine and the situation in Afghanistan. Small cities like Herzogenrath in **North Rhine-Westphalia**,<sup>804</sup> as well as

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2 February 2018, available at: <http://bit.ly/2Flz6KP>. See also Bayerischer Flüchtlingsrat, 'Abschiebelager Bamberg', available in German at: <http://bit.ly/2lwD471>.

<sup>799</sup> FRA, *Migration – Fundamental Rights Concerns – Bulletin 1 January 2022*, available at: <https://bit.ly/3Ng4gbF>, 18.

<sup>800</sup> Berlin, Landesamt für Flüchtlingsangelegenheiten, *Zahlen und Fakten, Zugangslage Geflüchteter Berlin 2022*, lastly amended 20 January 2023, available in German at: <http://bit.ly/3woOTq0>.

<sup>801</sup> Ibid.

<sup>802</sup> European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in Germany*, 2013, 26.

<sup>803</sup> PROASYL and Refugee Council Berlin, *Das Asylbewerberleistungsgesetz – Einschränkungen des Grundrechts auf ein menschenwürdiges Existenzminimum für Geflüchtete*, 100, November 2022, available in German at: <https://bit.ly/3XrdSox>.

<sup>804</sup> InfoMigrants, *Refugees: German cities are reaching their limits*, 26 September 2022, available at: <https://bit.ly/3wpjCp>.

middle size municipalities like Augsburg in **Bavaria**<sup>805</sup> and Aachen in **North Rhine-Westphalia**<sup>806</sup> but also big municipalities like **Berlin**<sup>807</sup> and **Hamburg**<sup>808</sup> face difficulties in accommodating new protection seekers. In **Berlin** and **Hamburg**, around 99% percent of the reception capacities were occupied at the end of September 2022.<sup>809</sup> In **Brandenburg**, **Mecklenburg-Vorpommern** and **Lower Saxony** 80% are currently occupied.<sup>810</sup> According to the administration of **Berlin** 10,000 additional places are required, 3,200 shall be built as emergency shelters in tents on the territory of the former airport Berlin-Tegel.<sup>811</sup> Also the local administration of Augsburg, **Bavaria** claims that nearly all of the 67 accommodation centres are occupied and that the city is considering using sports facilities of local schools as emergency shelters.<sup>812</sup> The authorities on the local, state and federal level blame each other for the shortcomings. While the local authorities are by law responsible for the accommodation of protection seekers,<sup>813</sup> they claim that they do not have enough financial and housing resources to fulfil the current need. They therefore ask the Federal States to vacate more housing properties.<sup>814</sup> The Federal States in turn urge the Federal government to strengthen their efforts and to take up a coordinating role.<sup>815</sup> According to the Minister of **North Rhine-Westphalia**, the statement of the Federal government that 4.000 federal properties shall be made available for additional accommodation facilities is misleading, since most of these properties are farmland and thus not suitable for quick usage.<sup>816</sup> In **North Rhine-Westphalia**, only 3 out of 39 proposed facilities by the Federal government are suitable for accommodating people.<sup>817</sup>

As consequence of the overcrowding, the authorities seem to be overburdened and deteriorating conditions have been reported. Under the law the state may derogate from the obligation to stay in initial reception centres in cases of overcrowding.<sup>818</sup> Nevertheless, so far only Berlin has used this derogation clause and allows asylum seekers who have been allocated to Berlin under the “Königssteiner Schlüssel” to live in private accommodations since the end of January 2023.<sup>819</sup> In emergency shelters e.g. in **Berlin**, it has been reported that the tents at the former Berlin-Tegel airport do not protect from the cold causing numerous illnesses and facilitating the spread of Covid-19 (on conditions in reception facilities during the Covid-19 pandemic see the 2021 Update).<sup>820</sup> Additionally, since the airport is surrounded by barbed wire no systematic access for NGOs and volunteers is granted. At the same time protection seekers need to

<sup>805</sup> Augsburg, *Müssen bald wieder Schulturnhallen als Notunterkünfte für Geflüchtete erhalten?*, press release 16 January 2023, available in German at: <http://bit.ly/3HgW6yt>.

<sup>806</sup> InfoMigrants, Refugees: German cities are reaching their limits, 26 September 2022, available at: <https://bit.ly/3wpxjCp>.

<sup>807</sup> Silke Mehring, Leichtbauhallen in Tegel geplant Unterbringung von Ukraine-Flüchtlingen in Berlin wird immer komplizierter, rbb24, 02 December 2022, available in German at: <http://bit.ly/3wdFPUT>.

<sup>808</sup> Ibid.

<sup>809</sup> Silke Mehring, Leichtbauhallen in Tegel geplant Unterbringung von Ukraine-Flüchtlingen in Berlin wird immer komplizierter, rbb24, 02.12.2022, available in German at: <http://bit.ly/3wdFPUT>; Migration Media Service, *Flüchtlinge aus der Ukraine*, lastly amended 10 January 2023, available in German at: <http://bit.ly/3D0Jvgr>.

<sup>810</sup> Migration Media Service, *Flüchtlinge aus der Ukraine*, lastly amended 10 January 2023, available in German at: <http://bit.ly/3D0Jvgr>.

<sup>811</sup> Thomas Frey, *Ukraine-Ankunftszenrum wird um 3200 Plätze erweitert*, Berliner Woche 06 January 2023, available in German at: <http://bit.ly/3CY9Jjy>.

<sup>812</sup> Augsburg, *Müssen bald wieder Schulturnhallen als Notunterkünfte für Geflüchtete erhalten?*, press release 16 January 2023, available in German at: <http://bit.ly/3HgW6yt>.

<sup>813</sup> §44 AsylG in conjunction with the different Federal state's Reception laws: e.g. §1 Landesaufnahmegesetz Hesse; §4 Landesaufnahmegesetz Brandenburg; §2 Flüchtlingsaufnahmegesetz North Rhine-Westphalia.

<sup>814</sup> The Federal Network of Municipalities (Städtetag) already asked for financial assistance in June and September 2022, see: Deutscher Städtetag, *Städtetag fordert neuen Flüchtlingsgipfel*, press release of 09.06.2022 and 13.09.2022, available in German at: <http://bit.ly/3kvk8gw> and <http://bit.ly/3ZLsgto>.

<sup>815</sup> Zeit online, *Länder und Kommunen fordern mehr Abstimmung bei der Aufnahme*, 17.03.2022, available in German at: <http://bit.ly/3WhSbG8>.

<sup>816</sup> Deutschlandfunk, *NRW-Ministerpräsident Wüst fordert bei Unterbringung mehr Unterstützung vom Bund*, 16 January 2023, available in German at: <http://bit.ly/3QPVaUY>.

<sup>817</sup> Westfälische Nachrichten, *Notunterkünfte in NRW fallen durch - nur drei geeignete Bundes-Immobilien*, 04 January 2023, available in German at: <http://bit.ly/3kiPzdG>.

<sup>818</sup> Section 49 para. 2 Asylum Act.

<sup>819</sup> Refugee Council Berlin, *Asylsuchenden wird wegen Unterbringungsnotlage privates Wohnen erlaubt*, 26 January 2023, available in German at: <https://bit.ly/3LejhMu>.

<sup>820</sup> Refugee Council Berlin, *Statement Flüchtlingsrat Berlin zur LAF-Pressekonferenz zur akuten Unterbringungsnotlage*, 19 December 2022, available in German at: <https://bit.ly/3H8u5YG>.



take a shuttle bus to enter and exit the emergency shelter, thereby making it difficult for protection seekers to access legal aid and social assistance. In the emergency tents in **Bremen** protection seekers report of non-functional and unclean sanitary facilities, coldness due to non-functional heating systems and a tense atmosphere.<sup>821</sup> Only one month later the municipality of Bremen decided to evacuate the tents due to the non-functionality of the infrastructure. Inhabitants were partially relocated to emergency shelters on exhibition grounds. This solution seems to be again only temporary since the exhibition grounds are only available until the end of January. The local authorities hope that the infrastructure in the tents will be repaired by that time.<sup>822</sup>

In arrival centres, the overcrowding mostly leads to backlogs in the registration procedure and conflicts among the protection seekers stemming from the lack of privacy. Asylum seekers at the arrival centre in **Hamburg-Rahlstedt**, for example, have reported *inter alia* a backlog of registration,<sup>823</sup> 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 attached to each bed, there is one common light for the whole warehouse, which is switched on from 8:00am to 22:00pm.<sup>824</sup> A backlog of registration, lack of access to health care and social assistance has been reported also from the arrival centre in **Berlin**.<sup>825</sup> In the arrival centre in **Thuringia**, many violent conflicts have been reported stemming from the lack of staff members, stressed social workers and non-trained security personnel.<sup>826</sup>

More generally, studies published in 2020 have come to the conclusion that the accommodation in initial reception centres infringes upon children's' 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.<sup>827</sup> Health care and psychosocial support provided for young refugees in the mass accommodations were described as worryingly inadequate for most of the facilities.<sup>828</sup> The study of PROASYL and the Refugee Council Berlin support these findings. According to the study of 2022, especially the access to health care, access to adequate hygienic and other products such as strollers for toddlers are scarce.<sup>829</sup>

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 the mental stabilisation of asylum-seekers at the facility and the NGO was no longer capable to bear responsibility

<sup>821</sup> Radio Bremen, Geflüchtete frieren in Zelt-Unterkünften in der Bremer Überseestadt, 24 November 2022, available in German at: <https://bit.ly/3XVJHpn>.

<sup>822</sup> Buten und Binnen, *Darum muss die Bremer Zeltstadt für Geflüchtete evakuiert werden*, 15 December 2022, available in German at: <http://bit.ly/3WDYELN>.

<sup>823</sup> Redaktionsnetzwerk Deutschland (RND), *Streit in Hamburg: CDU wirft Senat unhaltbare Zustände in zentraler Ankunftsstelle vor*, 8 March 2022, available in German at: <https://bit.ly/3XXoR9e>.

<sup>824</sup> Fluchtpunkt, *Mitten in Hamburg, und doch am Rand: Unzumutbare Bedingungen im Ankunftszentrum Rahlstedt*, November 14th 2019, available in German at: <https://bit.ly/3iJgGtb>.

<sup>825</sup> Taz.de, *Ankunftszentrum überlaufen*, 5 January 2023, available in German at: <http://bit.ly/3ZZmEMf>.

<sup>826</sup> MDR, *Personalnot und Überforderung: Probleme in Erstaufnahmeeinrichtung nehmen zu*, 29 November 2022, available in German at: <https://bit.ly/3GZS6B6>.

<sup>827</sup> Terre des hommes, *Zur Lebenssituation von minderjährigen Geflüchteten in Aufnahmeeinrichtungen*, June 2020, 7, available in German at: <https://bit.ly/38Etah0>, 7.

<sup>828</sup> 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>.

<sup>829</sup> PROASYL und Refugee Council Berlin, *Das Asylbewerberleistungsgesetz – Einschränkungen des Grundrechts auf ein menschenwürdiges Existenzminimum für Geflüchtete*, 192f., November 2022, available in German at: <https://bit.ly/3XrdSox>.



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.<sup>830</sup>

### 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 differ 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).<sup>831</sup> 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.<sup>832</sup>

Facilities are often isolated or in remote locations. Many temporary facilities do not comply with basic standards and do not guarantee privacy.<sup>833</sup> 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.<sup>834</sup> In **Lower-Saxony** for example, one protection seeker reports that the food was insufficient and inadequate especially for his special needs due to his cancer disease.<sup>835</sup> In one accommodation centre in **Rhineland-Palatinate** it has further been reported that the lightweight construction of the accommodation centre alongside with the asphalted surrounding without any shadow in summer the accommodation centre becomes nearly uninhabitably warm.<sup>836</sup>

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<sup>830</sup> Frankfurter Rundschau, 'Krankmachende Lebensbedingungen' - Ärzte der Welt zieht sich aus Ankerzentrum zurück', 26 September 2019, available in German at: <https://bit.ly/2Z7NyUE>.

<sup>831</sup> BAMF, *Die Wohnsituation Geflüchteter*, February 2018, available in German at: <https://bit.ly/3HxQH6B>.

<sup>832</sup> Ibid.

<sup>833</sup> ProAsyl, 'Ein Leben ohne Privatsphäre? Sammelunterbringung darf nicht zum Dauerzustand werden!', 10 January 2017, available in German at: <http://bit.ly/2kWy5U>.

<sup>834</sup> Ibid.

<sup>835</sup> Refugee Council Lower Saxony, Kritik an Misständen und Gewalt durch Mitarbeiter des Sicherheitsdienstes in der Landesaufnahmebehörde in Osnabrück, 14 December 2022, available in German at: <http://bit.ly/3XS5Jt6>.

<sup>836</sup> Refugee Council Rhineland-Palatinate: Hitzeinseln – Die Unterbringung von Geflüchteten im Kreis Worms steht im Sommer vor großen Problemen, 29 August 2022, available in German at: <http://bit.ly/405LKcu>.

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.<sup>837</sup>

Additionally, criticism has been raised in the last years against restrictive house rules. Already in 2018 the German Institute for Human Rights published an analysis of common house rules in accommodation facilities and plead that the right to privacy under Art. 13 (1) of the German Constitution applies to collective accommodations and that therefore security personnel cannot unreasonably enter the private rooms.<sup>838</sup> In 2022 the Higher Administrative Court Baden-Wuerttemberg agreed with the position. It decided that indeed private rooms in collective accommodations are protected under Art. 13 (1) of the German Constitution checks of private rooms therefore need to be regulated by law and justified, which is not the case if house rules generally allow for security personnel to enter private rooms.<sup>839</sup>

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 as problematic.<sup>840</sup>

## 2.2. Physical security

In addition to overall living conditions, the security of residents can also be an issue of concern. According to preliminary police statistics up to October 2022, 65 attacks on accommodation centres were reported, compared to 61 in 2021, 84 in 2020 and 128 in 2019. In addition, 167 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.<sup>841</sup>

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.<sup>842</sup> 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.<sup>843</sup> To counter this problem, most Federal States have developed violence protection concepts in recent years.<sup>844</sup> Additionally, the Federal Ministry for Family, Seniors, Women and Youth introduced in 2019 a monitoring and evaluating programme which serves to develop common standards for violence protection concepts.<sup>845</sup> Despite the introduced violence protection concepts, protection seekers continue to report violent and/or racial harassment from security personnel. Refugee Councils

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<sup>837</sup> *Ibid.*

<sup>838</sup> Deutsches Institut für Menschenrechte, *Hausordnungen menschenrechtskonform gestalten*, 4 November 2022, available in German at: <https://bit.ly/3JfFN6O>.

<sup>839</sup> VGH Baden-Wuerttemberg, Decision 12 S 4089/20, 2 February 2022, available at: <https://bit.ly/3HvQJf1>.

<sup>840</sup> 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>.

<sup>841</sup> Federal Government, Reply to parliamentary questions by The Left, 20/4253, 1 November 2022, available in German at: <http://bit.ly/3JeCGvC>; tagesschau.de, *Wieder mehr Anschläge auf Flüchtlingsunterkünfte*, 8 November 2022, available in German at: <http://bit.ly/3iXRhBb>.

<sup>842</sup> Mut Gegen Rechte Gewalt, 'Chronik flüchtlingsfeindlicher Vorfälle', 16 January 2022, available in German at: <https://bit.ly/3f43DQT>.

<sup>843</sup> ProAsyl, 'Ein Leben ohne Privatsphäre? Sammelunterbringung darf nicht zum Dauerzustand werden!', 10 January 2017, available in German at: <http://bit.ly/2kVyi5U>.

<sup>844</sup> Bundesinitiative Schutz von geflüchteten Menschen in Flüchtlingsunterkünften, *Schutzkonzepte von Bundesländern*, available in German at <http://bit.ly/3yQdzsA>.

<sup>845</sup> Bundesinitiative Schutz von geflüchteten Menschen in Flüchtlingsunterkünften, *Monitoring und Evaluierung eines Schutzkonzeptes für geflüchtete Menschen in Flüchtlingsunterkünften*, 15 December 2022, available in German at: <http://bit.ly/3j4HZ6d>.

from several Federal states therefore call for a more effective implementation of the protection programmes, minimum standards for health care especially for vulnerable groups and the abandonment of big collective accommodation centres.<sup>846</sup>

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.<sup>847</sup>

### 2.3. 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.<sup>848</sup> 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'.<sup>849</sup> It has been argued that a stay in collective accommodation which lasts several years increases health risks, especially with regard to mental health disorders.

## 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
- B.
2. Does the law allow access to employment only following a labour market test? ☐ Yes ☒ No
- C.
3. Does the law only allow asylum seekers to work in specific sectors? ☒ Yes ☐ No
  - ❖ If yes, specify which sectors: No self-employment
- D.
4. Does the law limit asylum seekers' employment to a maximum working time? ☐ Yes ☒ No
  - ❖ If yes, specify the number of days per year
- E.
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

<sup>846</sup> Refugee Council Lower Saxony, *Dokumentation „Sicheres Ankommen und Gesundheitsförderung für Geflüchtete? Gesundheitliche Auswirkungen der Unterbringung in Sammelunterkünften“*, 23 September 2022, available in German at: <http://bit.ly/3WDT6Rs>; Refugee Council Cologne, North Rhine-Westphalia: Gewaltschutzkonzept umsetzen – Gemeinschaftsunterkünfte auflösen!, 30 August 2022, available in German at: <https://bit.ly/3XZw6gT>.

<sup>847</sup> *Ibid.*

<sup>848</sup> Section 53(2) 1<sup>st</sup> Sentence Asylum Act.

<sup>849</sup> Section 61(1d) Residence 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.<sup>850</sup> 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.<sup>851</sup> 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.<sup>852</sup> 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.

### **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.<sup>853</sup>

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.<sup>854</sup> 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.<sup>855</sup>

## **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

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<sup>850</sup> Section 61(1) 1st Sentence Asylum Act.

<sup>851</sup> Section 61(1) 2nd Sentence Asylum Act.

<sup>852</sup> Section 61(2) 5th Sentence Asylum Act.

<sup>853</sup> Section 61(2) 1st Sentence Asylum Act and Section 61(2) 5th Sentence Asylum Act.

<sup>854</sup> Section 21(6) Residence Act.

<sup>855</sup> Section 61(1) 1st Sentence Asylum Act.

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.<sup>856</sup> There are a few exceptions to this rule, e.g. for internships and vocational training.<sup>857</sup> 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.<sup>858</sup>

## 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 highlighted 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.<sup>859</sup> 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.<sup>860</sup>

Access to education is particularly problematic in initial reception centres such as arrival and AnKER centres. Especially the lack of sufficient internet access and digital infrastructure in many reception

<sup>856</sup> Section 61(1) 2<sup>nd</sup> Sentence Number 2 and Section 61(2) 1<sup>st</sup> Sentence Asylum Act.

<sup>857</sup> Section 32(2) Employment Regulation (*Beschäftigungsverordnung*).

<sup>858</sup> 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>.

<sup>859</sup> 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>.

<sup>860</sup> 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>.



centres, make it difficult to access education offers which have been moved online.<sup>861</sup> 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](#)). The Federal Ministry for Education and Research partly acknowledged the shortcomings and launched a programme to facilitate the early access to educational material. Along with the 'Foundation reading' (*Stiftung Lesen*) the Federal Ministry aims to distribute reading material to arrival centres to support children and their families in gaining access to the German language.<sup>862</sup> Furthermore, NGOs have criticised the fact that access to education services is 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.<sup>863</sup>

These problems continue to exist today. In 2021 the Leibniz Institute for Educational Trajectories started a comprehensive study called 'ReGES – Refugees in the German Educational System'.<sup>864</sup> The first preliminary findings suggest, that especially the regional differences in how and when access to the schooling system is granted for children seeking asylum highly impacts the participation opportunities of children.<sup>865</sup> The team of researchers identified four main factors which influence the educational participation. Whereas family and individual resources seem to play a minor role, external factors stemming from the regulatory system of the different Federal states predominantly determine participation in the educational system. Four factors have been identified as influential: First, the duration until school enrolment in Germany.<sup>866</sup> 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**).<sup>867</sup> According to the study, this delays the start of school for one to two months. Second, the type of class attended and third, access to different types of schools is important. Here the preliminary data suggests that the more restricted children are in choosing their path in the educational system, the less chances of participating in the regular educational system they have. Here more research is required, as to the research team. Fourth, the flexibility of the school system on age-appropriate placement in school classes impacts the participation of asylum seeking children in the educational system.<sup>868</sup>

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

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<sup>861</sup> 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>.

<sup>862</sup> Federal Ministry for Education and Research, Stark-Watzinger: Flüchtlingskindern Bildungschancen ermöglichen, press release 3 January 2022, available in German at: <https://bit.ly/3Dm032G>.

<sup>863</sup> See the campaign at: <http://kampagne-schule-fuer-alle.de/>.

<sup>864</sup> Leibniz Institute for Educational Trajectories, ReGES – Refugees in the German Education System, project description available at: <http://bit.ly/407TcDL>.

<sup>865</sup> G. Will et al., Educational Policies Matter: How Schooling Strategies Influence Refugee Adolescents' School Participation in Lower Secondary Education in Germany, *Frontiers in Sociology*, vol 7, 22 June 2022, available at: <http://bit.ly/3wDwV34>.

<sup>866</sup> Ibid.

<sup>867</sup> Deutsches Kinderhilfswerk, 'Beginn der Schulpflicht für asylsuchende Kinder' - Datengrundlage für den Strukturindikator zum Recht auf Bildung, available in German at: <https://bit.ly/3iNtUFq>.

<sup>868</sup> G. Will et al., Educational Policies Matter: How Schooling Strategies Influence Refugee Adolescents' School Participation in Lower Secondary Education in Germany, *Frontiers in Sociology*, vol 7, 22 June 2022, available at: <http://bit.ly/3wDwV34>.



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.<sup>869</sup>

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 their capacity to attend classes in regular schools is conducted, namely to assess German language level.<sup>870</sup> 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.<sup>871</sup>

The problem of 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 is of six months for families with minor children. Because of this amendment, children should be housed in 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.<sup>872</sup>

In legal terms, asylum seekers generally have access to vocational training. In order to start vocational training, they need an employment permit.<sup>873</sup> However, the fact that asylum seeker's permission to stay (*Aufenthaltsgestattung*) are issued for a 6-month-period frequently renders 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 by 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 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.<sup>874</sup> Funded with EUR 100,000 million by the Federal Ministry of Education and Research, the German Academic Exchange Service for example introduced from 2016 onwards several measures and programmes to facilitate access to university for refugees.<sup>875</sup> In a study it has been observed that whether in 2015 and 2016 inclusionary efforts were mainly self-organised by volunteers, informal and

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<sup>869</sup> ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

<sup>870</sup> *Ibid.*

<sup>871</sup> Süddeutsche Zeitung, 'Flüchtlingskinder aus Transitzentrum dürfen reguläre Schule besuchen', 9 March 2018, available in German at: <http://bit.ly/2Dzi9fX>.

<sup>872</sup> 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>  
Section 32(2)(1) Employment Regulation.

<sup>874</sup> 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>.

<sup>875</sup> German Academic Exchange Service, Refugees at Higher Education institutions, available at: <http://bit.ly/425go6C>.

spontaneous, universities formalised support structures in establishing first contact persons for beneficiaries and applicants for international protection.<sup>876</sup> The 'German Rectors' Conference' (*Hochschulrektorenkonferenz* (HRK)) of higher education facilities stated that the numbers of newly registered refugees at German continue to rise or remain at a higher level. In 2020 around 3,000 beneficiaries of international protection registered for universities. The HRK confirms the findings of the study in stating that there is a growing synergy between support programmes of universities and the special need of refugee students.<sup>877</sup> However, other studies suggest that once accepted at universities, refugees continue to face difficulties in their studies. The difficulties mainly stem from a lack of mixed social networks between refugee and German students. Accordingly, this is rooted in forms discrimination, different teaching and studying approaches in Germany compared to countries of origin and deficiencies in the German language.<sup>878</sup>

## 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.<sup>879</sup>
- 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.<sup>880</sup> According to the government, a registration as unemployed requires that access to the labour market exists in the first place.<sup>881</sup> 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.<sup>882</sup> Participation is free of charge for asylum seekers.<sup>883</sup> In their general form, integration courses 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'.<sup>884</sup>

In 2019 the BAMF concluded the first part of an evaluation study on the integration programmes. According to the first findings, only half of the enrolled participants reach the level B1 in German language after the completion of the course, although according to the teaching schedule this is the goal.<sup>885</sup> The BAMF explains this by the increasing heterogeneity of the participants in their general educational

<sup>876</sup> J. Berg et al., Formalising organisational responsibility for refugees in German higher education: the case of first contact positions, *Studies in Higher Education* vol. 47, Issue 6, 2022, available at: <https://bit.ly/3wGNpaA>.

<sup>877</sup> German Rectors' Conference, *Studium für Geflüchtete – Zahl der Neuimmatrikulierten von Geflüchteten stabil auf hohem Niveau*, 2020, available in German at: <http://bit.ly/3RIsR11>.

<sup>878</sup> A. Bouchara, Bildungsbedürfnisse und Hindernisse von Geflüchteten in Deutschland: eine empirische Studie zu sozialen Netzwerken von Geflüchteten an deutschen Hochschulen, *interculture Journal* vol. 18, Issue 31, 2019, available in German at: <https://bit.ly/3WOxy4u>.

<sup>879</sup> BAMF, 'Trägerschreiben Integrationskurse 01/22. Anpassung der Herkunftsländer „mit guter Bleibeperspektive', 12 January 2022, available in German at: <https://bit.ly/37RNPIp>; BAMF, 'Was heißt gute Bleibeperspektive?', lastly updated 17 January 2022, available in German at: <http://bit.ly/3wzFQ5R>.

<sup>880</sup> Section 44 para. 4 Residence Act.

<sup>881</sup> 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>.

<sup>882</sup> Section 44a para. 1 Residence Act.

<sup>883</sup> BAMF, 'Integration courses for asylum applicants and persons whose deportation has been temporarily suspended', 298 November 2018, available at: <https://bit.ly/3uuHeFk>.

<sup>884</sup> See BAMF, 'The content and stages of the procedure', available at <https://bit.ly/3fNqh1S>

<sup>885</sup> Migration Media Service, *Wie entwickeln sich die Integrationskurse?*, 25 June 2020, available in German at: <http://bit.ly/3j9PsB9>.

background, their knowledge of the latin characters and possible trauma.<sup>886</sup> Other researchers criticise though that in the report of the BAMF systematic and didactic shortcomings have been left out. According to their experience, teachers for integration courses work under precarious conditions, which leads to not well prepared classes and a lack of a didactic concept. Instead of a holistic approach, participants often memorise the answers for class tests and do not gain profound knowledge of the democratic system in Germany.<sup>887</sup> 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?  
☒ Yes ☐ No
2. Do asylum seekers have adequate access to health care in practice?  
☐ Yes ☒ Limited ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
☒ Yes ☐ Limited ☐ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?  
☒ Yes ☐ Limited ☐ No

The law restricts health care for asylum seekers 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'.<sup>888</sup> Furthermore, vaccination and 'necessary preventive medical check-ups' shall be provided.<sup>889</sup> 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.<sup>890</sup> In addition, the law states that further benefits can be granted 'if they are indispensable in an individual case to secure health'.<sup>891</sup>

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 extended the previous waiting period of 15 months by an additional 3 months.<sup>892</sup>

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.<sup>893</sup> 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

<sup>886</sup> BAMF, Forschungsprojekt "Evaluation der Integrationskurse", 16 September 2019, available in German at: <http://bit.ly/3RtZFbH>.

<sup>887</sup> Friedrich-Ebert Stiftung, Integrationkurse auf dem Prüfstand, 22 April 2020, available in German at: <http://bit.ly/3Jie45j>.

<sup>888</sup> Section 4(1) 1st Sentence Asylum Seekers' Benefits Act.

<sup>889</sup> Section 4 Asylum Seekers' Benefits Act.

<sup>890</sup> Section 4(2) Asylum Seekers' Benefits Act.

<sup>891</sup> Section 6(1) Asylum Seekers' Benefits Act.

<sup>892</sup> 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'.

<sup>893</sup> Higher Administrative Court Baden-Württemberg, Decision 7 S 920/98, 4 May 1998.

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.<sup>894</sup>

Even if a chronic disease is not causing pain momentarily, asylum seekers might still be entitled to treatment, if it is indispensable to secure their 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.<sup>895</sup>

In general, the practice with regard to access to health care varies between Federal States and at times between municipalities.<sup>896</sup> 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 at the social welfare offices, who usually have no medical expertise.<sup>897 898</sup> The necessity to distribute health insurance vouchers individually also imposes significant administrative burden on the social services.

In response, the Federal States of **Berlin, Brandenburg, Bremen, Hamburg, Schleswig-Holstein and Thuringia** issue 'normal' health insurance cards to 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.<sup>899</sup> Other Federal States (e.g. **Bavaria and Baden-Württemberg, Saxony, Mecklenburg-Vorpommern**) have announced that they will not participate in the scheme. In a policy paper it has been shown that not only the access to regular health insurance cards but also the scope of benefits awarded highly impact the access to health care in practice in the different Federal states.<sup>900</sup>

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 **Error! Reference source not found.**). 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.<sup>901</sup> A further practical problem

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<sup>894</sup> Georg Classen, *Leitfaden zum Asylbewerberleistungsgesetz* (Guideline to the Asylum Seekers' Benefits Act), September 2018, 13, available in German at: <https://bit.ly/3ef7zwl>.

<sup>895</sup> 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.

<sup>896</sup> 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', MIDE-M-Policy Paper 01/22, available in German at <https://bit.ly/3inplgt>.

<sup>897</sup> Gesundheit für Geflüchtete, Healthcare vouchers, available at: <https://bit.ly/2BXoxme>.

<sup>898</sup> Georg Classen, *Leitfaden zum Asylbewerberleistungsgesetz* (Guideline to the Asylum Seekers' Benefits Act), September 2018, 13, available in German at: <https://bit.ly/3iJEDAB>.

<sup>899</sup> See overview of Federal States, see Gesundheit für Geflüchtete, *Regelung in den Bundesländern*, available at: <https://bit.ly/2U7GRRL>.

<sup>900</sup> K. Lindner, *Gesundheitsversorgung von Asylsuchenden in den Bundesländern – Rahmenbedingungen und Reformbedarfe*, January 2022, available in German at: <https://bit.ly/40c5URM>, 17ff.

<sup>901</sup> Information provided by local social workers of Komm Mit e.V. June 2020.

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.<sup>902</sup>

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.<sup>903</sup> 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 2020, access to over 9,720 of applicants was refused, and others had to wait an average of 6,73 months to start treatment. The treatment centres have to cover most of the costs for therapies (96,7%) through donations or other funds since therapies are often not covered by the health and social authorities for asylum seekers.<sup>904</sup> Large distances between asylum seekers' places of residence and treatment centres may also render an effective therapy impossible in practice. The Psychosocial Support Centres for Refugees and Victims of Torture (BAFF) criticises that Germany is not meeting its obligations under international law. The BAFF calls for financial stability for psychological support programmes, funding for translation within these programmes and access to regular health insurance cards everywhere in Germany.<sup>905</sup>

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 were 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.<sup>906</sup> However, the organisation of vaccinations has 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.<sup>907</sup> At the beginning, a lack of vaccines

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<sup>902</sup> Section 60(7 in conjunction with Section 60a(2c) Residence Act.

<sup>903</sup> ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

<sup>904</sup> Bundesweite Arbeitsgemeinschaft der Psychosozialen Zentren für Flüchtlinge und Folteropfer (BAfF), *Versorgungsbericht - Zur psychosozialen Versorgung von Flüchtlingen und Folteropfern in Deutschland*, 2022, available in German at: <https://bit.ly/3HNgZSx>.

<sup>905</sup> Bundesweite Arbeitsgemeinschaft der Psychosozialen Zentren für Flüchtlinge und Folteropfer (BAfF), *Versorgungsbericht - Zur psychosozialen Versorgung von Flüchtlingen und Folteropfern in Deutschland*, 2022, available in German at: <https://bit.ly/3HNgZSx>.

<sup>906</sup> Flüchtlingsrat Niedersachsen e.V., 'Flüchtlingsrat bemängelt Aufklärung von Geflüchteten über Impfungen', 22 April 2021, available in German at: <https://bit.ly/3qnFXPb>.

<sup>907</sup> Taz, 'Eindruck, als Testkaninchen zu dienen', 11 August 2021, available in German at: <https://bit.ly/36AhrDq>.



also led to delays in the start of vaccination campaigns.<sup>908</sup> In some places, the readiness of asylum seekers 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.<sup>909</sup>

## 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 accommodating asylum seekers in initial reception centres.<sup>910</sup> Even before this provision was introduced, authorities were required to provide specific support to those with special reception needs in accordance with the Reception Conditions Directive.<sup>911</sup> 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.<sup>912</sup> However, whether or not protection of vulnerable groups is taken seriously in practice often depends on the local management of reception centres.<sup>913</sup> For example, there are reports of women travelling alone being housed next to men with psychological difficulties.<sup>914</sup>

By way of example, in **Rhineland-Palatinate**, the regional government has adopted a protection concept which also includes methods for the identification of vulnerabilities.<sup>915</sup> 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;

<sup>908</sup> Zdf.de, 'Corona in Sammelunterkunft - Kaum Impf-Fortschritt bei Geflüchteten', 30 April 2021, available in German at: <https://bit.ly/3N00rXX>.

<sup>909</sup> Flüchtlingsrat Niedersachsen e.V., 'Flüchtlingsrat bemängelt Aufklärung von Geflüchteten über Impfungen', 22 April 2021, available in German at: <https://bit.ly/3qnFXPb>.

<sup>910</sup> Section 44(2a) Asylum Act.

<sup>911</sup> Section 21 et seq. Directive 2013/33/EU.

<sup>912</sup> 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>.

<sup>913</sup> 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.

<sup>914</sup> 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>.

<sup>915</sup> 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>.



- ❖ 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.

In December 2022, the Refugee Council of Rhineland-Palatinate started a survey on how well the concept has been implemented, no data is available yet.<sup>916</sup>

## 1. Reception of unaccompanied children

Unaccompanied children should be placed in the care of a youth welfare office which has to seek 'adequate accommodation'.<sup>917</sup> Adequate accommodation can consist of private accommodation with other relatives, at foster families, general children's homes or specific children's homes tailored to the need of foreign unaccompanied children (*Clearinghäuser*).<sup>918</sup> The type of accommodation varies according to the different Federal States and the available capacities. 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 2021: during that year, 11,278 newly arriving unaccompanied minors were placed in the care of a youth welfare office (in comparison to 7,563 in 2020).<sup>919</sup> The total number of unaccompanied foreign children and young adults under the care of youth authorities remains at a lower level compared to 2016 where 64,045 were taken care of, but their number is on the rise again, with 27,862 in December 2021 compared to 21,276 in December 2020.<sup>920</sup> 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 2021 show that unaccompanied children were sent to all 16 Federal States. Compared to 2019 the numbers do not correspond to the distribution system of the *Königsteiner Schlüssel*. The states who constitute larger cities or where larger cities are located were mostly over their quota (**Berlin** 343%, **Bremen** 396%, **Hamburg** 128%, **Hesse** 139%, **North Rhine-Westphalia** 127%). Most East German States did not fulfil the quota (**Thuringia**, **Saxony**, **Saxony-Anhalt**) as well as **Baden-Wuerttemberg**, **Bavaria**, **Lower-Saxony**, **Saarland** and **Schleswig-Holstein**. In 2021 only three states roughly meet the quota (**Brandenburg**, **Mecklenburg-Vorpommern** and **Rhineland-Palentine**).<sup>921</sup> 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

<sup>916</sup> Refugee Council Rhineland-Palatinate, Umfrage zur Unterbringung vulnerabler Personen in RLP, 12 December 2022, available in German at: <http://bit.ly/3kGbxHI>.

<sup>917</sup> Section 42(1) Social Code, Vol. VIII.

<sup>918</sup> Federal Office for Migration and Refugees, Unbegleitete Minderjährige, 14. November 2019, available at: <http://bit.ly/3Hlg7P0>.

<sup>919</sup> Federal Statistical Office, 'Child protection: youth welfare offices took 5% more children and young people into care in 2021', 27 July 2022, available at <http://bit.ly/3Rez8M3>. For 2016 : Federal Government, *Bericht über die Situation unbegleiteter ausländischer Minderjähriger in Deutschland (Report on the situation of unaccompanied foreign minors in Germany)*, Parliamentary report no. 19/17810, 05 March 2020, available in German at: <https://bit.ly/38Q1VQU>, 13.

<sup>920</sup> Mediendienst Integrator, 'Unbegleitete minderjährige Flüchtlinge', available in German at <https://bit.ly/3FKaWtC>.

<sup>921</sup> Federal Association for Unaccompanied Refugee Minors, Die Situation geflüchteter junger Menschen in Deutschland, June 2022, available in German at: <http://bit.ly/3wDbW0e>.

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.<sup>922</sup>

A study of the BumF, published in March 2021, shows significant disparities between regions as far as reception conditions for unaccompanied children are concerned.<sup>923</sup> Around 1,000 persons working in youth welfare institutions and NGOs 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 primarily be housed in regular collective accommodation or face homelessness once they turn 18. This happens most frequently in the Federal States of **Bavaria, Thuringia, North Rhine-Westphalia** and **Brandenburg**. Youth welfare offices however have the possibility under the law to continue to offer care and accommodation up to the age of 21 and up to 27 in individual cases.<sup>924</sup> It has been observed that at least in North Rhine-Westphalia the local authorities are rather good willing to grant prolonged care and accommodation if needed in the individual case.<sup>925</sup> In the update of June 2022 to the study, it was additionally stated there was an increase in legal insecurity against local distribution decisions and age assessment. The June 2022 report also emphasised racism by the German society.<sup>926</sup>

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.<sup>927</sup> 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.<sup>928</sup> In November 2022 the Refugee Council **Berlin** reported alarming conditions for unaccompanied children who reside in regular reception centres. Due to the general overcrowding of reception facilities in Berlin, unaccompanied children even more suffer from the bad conditions there. According to the report of the Refugee Council Berlin, unaccompanied minors do not receive adequate assistance are badly treated by overburdened staff members, do not receive adequate food and access to schooling is postponed. Additionally, given the rise of arrivals in 2022, there are not enough legal guardians available for unaccompanied children which take care of support and assistance programmes.<sup>929</sup> The rising numbers of arrivals not only caused problems to the reception of unaccompanied minors in Berlin but in all over Germany, several organisations therefore called upon the local authorities to guarantee the standards provided by the law for unaccompanied

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<sup>922</sup> 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>.

<sup>923</sup> Federal Association for Unaccompanied Refugee Minors, *Die Situation unbegleiteter minderjähriger Flüchtlinge in Deutschland*, March 2021, 40, available in German at <https://bit.ly/3GMm1f5>

<sup>924</sup> 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>

<sup>925</sup> Individual Interview with Institute for Youth Support, Duisburg, 30 January 2023, contact: <http://bit.ly/3Yc3ocJ>.

<sup>926</sup> Federal Association for Unaccompanied Refugee Minors, *Die Situation geflüchteter junger Menschen in Deutschland*, June 2022, available in German at: <http://bit.ly/3wDbW0e>.

<sup>927</sup> 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>.

<sup>928</sup> FRA, *Migration – Fundamental Rights Concerns – Bulletin 1 January 2022*, available at: <https://bit.ly/3Ng4gbF>, 23.

<sup>929</sup> Refugee Council Berlin, *Kinderschutz in Berlin jetzt gewährleisten!*, 9 November 2022, available in German at: <https://bit.ly/3JpysBq>.

children.<sup>930</sup> 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.<sup>931</sup>

## 2. Reception of LGBTQI+ persons

The situation of LGBTQI+ persons in reception centres and other collective accommodation centres has been frequently discussed, after many reports emerged about LGBTQI+ persons being harassed and attacked by other asylum seekers. In several cities, authorities and/or NGOs have opened specialised accommodation centres for LGBTQI+ persons.<sup>932</sup> Regional guidelines for protection against violence in refugee accommodation centres regularly refer to LGBTQI+ persons as a particularly vulnerable group.<sup>933</sup> 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 LGBTQI+ persons should be given priority when (single) rooms are allocated in accommodation centres. In **Hamburg** in 2022, civil society organisations started a petition to urge the Senate to introduce similar guidelines after several cases of harassment and re-traumatisation have been reported.<sup>934</sup> Furthermore, LGBTQI+ 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.<sup>935</sup> Some of the AnKER and functionally equivalent centres provide for separate accommodation for LGBTQI+ persons, but sometimes upon request of the individuals only.<sup>936</sup>

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

The law imposes an obligation upon the authorities to provide general information on the 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.'<sup>937</sup>

<sup>930</sup> Deutsche Institut für Jugendhilfe und Familienrecht e. V. (DIJuF), Forderungen zur Unterbringung von unbegleiteten minderjährigen Flüchtlingen, 20 December 2022, available in German at: <http://bit.ly/3RdQ4SQ>.

<sup>931</sup> 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>.

<sup>932</sup> 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>.

<sup>933</sup> 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>.

<sup>934</sup> Change.org, Umfassende Schutzmaßnahmen für LGBTQIA\* Geflüchtete – von Tag 1 im Asylverfahren, available at: <http://bit.ly/3Y2otpM>. Report on harassment: Lesben- und Schwulenverband (LSVD), Ausgangsbeschränkungen verschärfen LSBTI-feindliche Gewalt, available in German at: <http://bit.ly/3XOXBK7>.

<sup>935</sup> Ministry of the Interior for North Rhine-Westphalia, 'Landesgewaltschutzkonzept für Flüchtlingseinrichtungen des Landes Nordrhein-Westfalen', March 2017, available at: <https://bit.ly/2ul7CCQ>.

<sup>936</sup> 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>

<sup>937</sup> Section 47(4) Asylum Act.

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 social services in the reception centres to get more detailed information on reception conditions. Information about what kind of advice was handed out on the Covid-19 pandemic can be found in the AIDA country report on Germany 2021.<sup>938</sup>

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.<sup>939</sup> 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.<sup>940</sup>

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

## G. Differential treatment of specific nationalities in reception

Asylum seekers from a [Safe country 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 *Dependence* of **Schwandorf**, while Ethiopian nationals are accommodated in the **Regensburg Pionierkaserne Dependence**.<sup>941</sup>

<sup>938</sup> AIDA, *Country Report Germany - Update on the year 2021*, April 2022, available at <https://bit.ly/3XnN7RS>, 111-115.

<sup>939</sup> Section(9) Asylum Act.

<sup>940</sup> For further information on restrictions during Covid-19 see AIDA country report Germany 2021.

<sup>941</sup> 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 (as of August 2021):	14
4. Total capacity of detention centres (as of August 2021):	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.<sup>942</sup> 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).

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 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 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,<sup>943</sup> with an overall average of 20.8% (2019: average of 30.8%, 2018: average of 34.4%).<sup>944</sup> 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.<sup>945</sup> In 2022, 4,158 persons were transferred following a Dublin procedure, compared to 2,656 in 2021, 2,953 in 2020 and 8,423 in 2019 (see [Dublin](#)).

Pre-removal detention facilities existed in twelve Federal States in 2022 (see [Place of detention](#)).<sup>946</sup> The capacity of these detention facilities has increased significantly in recent years, from around 400 places

<sup>942</sup> Section 67 Asylum Act.

<sup>943</sup> Hesse, North Rhine-Westphalia, Rhineland Palatinate, Saxony, Saxony Anhalt, Schleswig-Holstein, Thuringia.  
<sup>944</sup> Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021.

<sup>945</sup> 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.

<sup>946</sup> Stefan Keßler, *Abschiebungshaft*, socialnet.de, 14 January 2019, available in German at: <https://bit.ly/2TiNCji>.



in 2016,<sup>947</sup> to 821 available places at the beginning of 2022.<sup>948</sup> 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, which resulted in a suspension of removals for a certain period (see below).

Number of removals: 2017-2022					
2017	2018	2019	2020	2021	2022
23,966	26,114	22,097	10,800	11,982	12,945

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, 20/3130, 16 August 2022, 2, Reply to written question by Bernd Baumann (AfD), 20/765, 17 and Reply to parliamentary question by The Left, 20/6052, 24 February 2023, available in German at: <https://bit.ly/3nGxgRt>, 2.

Number of persons detained for removal or Dublin transfer: 2015-2020			
2017	2018	2019	2020
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 application is filed in written form to the BAMF, who then designates the responsible branch office.<sup>949</sup> 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 in 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

The Covid-19 pandemic affected detention practices and conditions considerably in 2020 and 2021. In many Federal States, detainees were released in the spring of 2020 since removals and Dublin transfers were temporarily suspended. Detention numbers started to increase again in the summer of 2020, but with reduced capacities in detention facilities.<sup>950</sup> For more information see the 2021 Update to the AIDA Country Report for Germany.<sup>951</sup>

<sup>947</sup> 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, 38, available at <https://bit.ly/3fRwsIn>

<sup>948</sup> 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.

<sup>949</sup> Section 14(2) Asylum Act.

<sup>950</sup> Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 3.

<sup>951</sup> AIDA, *Country Report Germany - Update on the year 2021*, April 2022, 131, available at <https://bit.ly/3XnN7RS>.

## 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.<sup>952</sup> This has led to a demand for increased use of detention in the removal procedure. Available statistics on the year 2022 indicate that a total of 21,035 removals failed, compared to 12,945 effective removals.<sup>953</sup> This does not mean that all 21,035 persons were not returned, however, since authorities often carry out another removal attempt after the failed one.<sup>954</sup> The reasons for failure to carry out removals were as follows:

Failed removals in focus: 2022		
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)	13,370	1,285
Failure by local authorities to hand over persons to be deported to the Federal Police (reasons unknown)	6,736	3,684
Resistance of persons to be deported	256	131
Refusal of pilots or other flight personnel to transport the person to be deported	206	83
Refusal of Federal Police or escort personnel to take over persons to be deported from local authorities	153	81
Cancellation of flights (for technical reasons, strikes etc.)	52	12
Medical concerns	90	33
Legal actions (appeals or interim measures)	43	2
(Attempted) suicides or self-harm	7	0
Attempt to flee or abscond	2	1
Refusal by receiving states to accept deported persons	4	3
Lack of travel documents	7	2
Lack of escort personnel	18	0
Failure during transit	12	0
Other reasons	81	34

Source: Federal Government, *Reply to parliamentary question by The Left*, 20/5795, 24 February 2023, available in German at: <https://bit.ly/3nGxgRt>, 20-21.

<sup>952</sup> Deutsche Welle, How do removals work in Germany?, 16 July 2018, available at: <https://bit.ly/2Hhh3uM>.

<sup>953</sup> Federal Government, *Reply to parliamentary question by The Left*, 20/5795, 24 February 2023, available in German at: <https://bit.ly/3nGxgRt>, 20-21.

<sup>954</sup> PRO ASYL, *Das angebliche »Abschiebungsvollzugsdefizit«: Statistisch fragwürdig, aber gut für Schlagzeilen*, 14 July 2020, available in German at <https://bit.ly/3XLnGtl>.

The above statistics show that in most 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.). Since removals are not announced to the persons concerned, 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 arrest.<sup>955</sup> Nevertheless, despite the lack of empirical evidence, the comparatively high number of cancellations of removal attempts is often associated with the absconding of the persons concerned.<sup>956</sup>

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 must 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 [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 allowed 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.<sup>957</sup> The provision ceased to be in effect as of 1 July 2022 (see [Place of detention](#)).

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 and an extension of detention possibilities for criminal offenders which entered into force on 31 December 2022 (see [Grounds for detention](#)).

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<sup>955</sup> 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.

<sup>956</sup> See for example *DIE ZEIT*; *Mehr als jede zweite Abschiebung gescheitert*, 24 February 2019, available in German at <http://bit.ly/3wobZ06>.

<sup>957</sup> 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 an asylum application is 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 for detention during the asylum procedure was introduced in 2020 and relates 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.<sup>958</sup> 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.<sup>959</sup>

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.<sup>960</sup>

#### 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

<sup>958</sup> Deutscher Bundestag, 'Bundestag verschiebt Zensus in das Jahr 2022, 5 November 2020, available in German at <https://bit.ly/3H2nY6U>.

<sup>959</sup> PRO ASYL, *Stellungnahme zum Entwurf eines Gesetzes zur Einführung eines § 62c Aufenthaltsgesetz*, 16 July 2019, available in German at <https://bit.ly/3ltbtSy>.

<sup>960</sup> Section 14(3) Asylum Act.

abscond to avoid removal and if a judge cannot be requested to issue a detention order beforehand. In such cases, the detention order must be subsequently obtained from a court as soon as possible.

A judge may issue a detention order as 'preparatory 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.<sup>961</sup> In most cases, however, a detention order is issued for the purpose of 'securing the removal' (*Sicherungshaft*). This type of detention is defined in Section 62(3) of the Residence Act.

This provision underwent 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:<sup>962</sup>

- ❖ there is a risk of absconding;
- ❖ the foreigner is required to leave the country on account that they 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'.

However, detention remains lawful only when removal cannot be ensured by other, less severe means.<sup>963</sup> Authorities have discretion to refrain from ordering detention if the person credibly demonstrates that they do not intend to evade the removal.<sup>964</sup> The detention order is unlawful in cases where it is clear that the removal cannot take place within 3 months for reason outside the control of the detained person.<sup>965</sup> This period was extended to six months for persons with a criminal conviction (unless the person is subjected to juvenile criminal law) with a reform that entered into force on 31 December 2022.<sup>966</sup>

### 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), if:<sup>967</sup>

- ❖ the foreigner is providing the authorities with misleading information about their 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;
- ❖ the foreigner has been asked to remain at the disposal of the authorities at a certain place to carry out an official hearing or a medical examination and was not present at this place without good reason;
- ❖ the deadline set for leaving the country has expired and the foreigner has changed their place of residence without notifying the foreigners' authority of an address at which they can be reached, in spite of having been informed about his/her obligation to do so;
- ❖ 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;
- ❖ the foreigner has avoided removal in the past;
- ❖ the foreigner has expressly declared that they will resist removal.

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<sup>961</sup> Section 62(2) Residence Act.

<sup>962</sup> Unofficial translation by the author, with minor abridgements.

<sup>963</sup> Section 62(1) Residence Act.

<sup>964</sup> Section 62(3) Residence Act.

<sup>965</sup> Section 62(3) Residence Act.

<sup>966</sup> Section 62(3) Residence Act.

<sup>967</sup> Unofficial translation by the author, with abridgements.



Section 62(3b) of the Residence Act then defines ‘specific indications’ for a risk of absconding as follows:

- ❖ The foreigner has provided the authorities with misleading information about their 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;
- ❖ 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 they will resist removal, because otherwise their expenditures would have been of no avail;
- ❖ The foreigner poses a significant risk to life and limb of third persons or to ‘significant legal interests of national security’;
- ❖ The foreigner has been sentenced repeatedly to at least one prison term for intentional criminal offenses;
- ❖ 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 they did not comply with the aforementioned obligations;
- ❖ 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 secure and enforce the removal order;
- ❖ A foreigner who has entered the country legally but is now obliged to leave, cannot be apprehended by the authorities, because they do not have a place of residence at which they are predominantly staying.

It has been noted that the relationship between the newly introduced sub-paragraphs 62(3a) and 62(3b) Residence Act is not entirely clear.<sup>968</sup> 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’ as to whether a person is trying to avoid removal.<sup>969</sup> 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.<sup>970</sup>

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<sup>968</sup> 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).

<sup>969</sup> Explanatory memorandum to draft bill, Parliamentary document 19/10047, 10 May 2019, 39.

<sup>970</sup> 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/2WqrSlt>, 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 to assess 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.<sup>971</sup> 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':

- ❖ An asylum seeker has left another Dublin Member State before their asylum procedure (or Dublin procedure) had been concluded in this state and if there is no indication that they are going to return to the responsible Member State in the near future.
- ❖ 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.<sup>972</sup>

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 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 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'.<sup>973</sup> This form of detention is limited to a period of 10 days and shall apply in cases in which the 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 this assumption. According to this provision, it is to be assumed that a foreigner is likely to obstruct removal measures, if:

- ❖ they violated their legal obligations to cooperate;

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<sup>971</sup> Ibid., 5.

<sup>972</sup> 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/2WqrSlt>, 5.

<sup>973</sup> Section 62b(2) Residence Act.

- ❖ they misled the authorities on their identity or nationality;
- ❖ they have 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)
- ❖ they have 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.<sup>974</sup> Between 2018 and 2021, custody pending departure was carried out in 10 out of 16 Federal States.<sup>975</sup>

### 1.3. Detention to enforce cooperation (*Mitwirkungshaft*)

The amendments introduced in 2019 through the 'Orderly Return Act' (*Geordnete-Rückkehr-Gesetz*) also established a new ground of detention to 'enforce cooperation' with the 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 is no information or case-law available as to whether this ground for detention has been 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,<sup>976</sup> 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.<sup>977</sup>

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 they go outside the facility for the fiction to be maintained.<sup>978</sup>

<sup>974</sup> Section 62b(3) Residence Act.

<sup>975</sup> Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021.

<sup>976</sup> br.de, Bericht: 'Kein Bundesland nutzt 'Geordnete-Rückkehr-Gesetz'', 3. January 2020.

<sup>977</sup> 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>.

<sup>978</sup> 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.'<sup>979</sup>

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.<sup>980</sup> In court decisions, alternatives to detention are rarely discussed.<sup>981</sup> The practice in 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%).<sup>982</sup>

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](#)).<sup>983</sup> 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.<sup>984</sup> In particular, these sanctions may consist of reporting duties, but also of an obligation to consult a counselling service for returnees.<sup>985</sup> Passports of foreigners obliged to leave the country can be confiscated.<sup>986</sup> 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.<sup>987</sup> However, the law does not allow for security deposits which may be used as bail and confiscated in cases of 'absconding'.<sup>988</sup>

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.<sup>989</sup>

<sup>979</sup> Section 62(1) Residence Act.

<sup>980</sup> Die Rechtsberaterkonferenz, *50 Forderungen zum Flüchtlings-, Aufenthalts, Staatsangehörigkeits- und Sozialrecht*, November 2017, available in German at: <http://bit.ly/2HOWd2J>, 32-34. See also Positionspaper Pflichtbeordnung von Anwält:innen in der Abschiebungshaft, available in German at <http://bit.ly/3knqnTI>, 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](#).

<sup>981</sup> Stefan Keßler, *Abschiebungshaft*, socialnet.de, 14 January 2019, available in German at: <https://bit.ly/2TiNCji>.

<sup>982</sup> Federal Government, Reply to parliamentary questions by The Left, 19/31669, 4 August 2021, 9-12, 19/18201, 19 March 2020, 19.

<sup>983</sup> Section 61(1)(c) Residence Act.

<sup>984</sup> Section 61(1)(e) Residence Act.

<sup>985</sup> Section 46(1) General Administrative Regulations relating to the Residence Act.

<sup>986</sup> Section 50(5) Residence Act.

<sup>987</sup> Section 66(5) Residence Act.

<sup>988</sup> 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.

<sup>989</sup> 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.

## 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 must 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 the 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.<sup>990</sup>

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.<sup>991</sup> The latter category may also include Dublin cases, but these are less significant in this context than 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.

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<sup>990</sup> 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>.

<sup>991</sup> 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 may 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 2022, 2,196 children (under 18 years) were deported to third countries or transferred to another state under the Dublin Regulation.<sup>992</sup> These measures usually involve that children are taken into custody for a few hours on the day the transfer takes place. Furthermore, 349 minors were returned to neighbouring countries after being refused entry on the territory, out of which 120 were unaccompanied by parents or legal guardians.<sup>993</sup> 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.<sup>994</sup> 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’,<sup>995</sup> and **Bavaria and Hamburg** equally report that minors are not detained as a rule.<sup>996</sup> 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.<sup>997</sup>

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 the 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 he was younger than 18. As a result, the detention order had apparently

<sup>992</sup> Federal Government, *Reply to parliamentary question by The Left*, 20/5795, 24 February 2023, available in German at: <https://bit.ly/3nGxgRt>, 9.

<sup>993</sup> Federal Government, *Reply to parliamentary question by The Left*, 20/5795, 24 February 2023, available in German at: <https://bit.ly/3nGxgRt>, 15.

<sup>994</sup> Federal Government, *Reply to parliamentary questions by The Left*, 19/31669, 4 August 2021, 107-123.

<sup>995</sup> 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.

<sup>996</sup> Federal Government, *Reply to parliamentary questions by The Left*, 19/31669, 4 August 2021, 7;36.

<sup>997</sup> Federal Government, *Reply to parliamentary question by The Left*, 19/31669, 4 August 2021, 10.,

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.<sup>998</sup>

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.<sup>999</sup>

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),<sup>1000</sup> 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.<sup>1001</sup> 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.<sup>1002</sup>

#### 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.<sup>1003</sup>

The maximum time limit for the duration of custody pending departure (*Ausreisegewahrsam*) is 10 days.<sup>1004</sup>

<sup>998</sup> 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>.

<sup>999</sup> ze.tt, 'Eingesperrt ohne Straftat: So sind die Bedingungen in einem Abschiebegefängnis', 14 December 2019, available in German at <https://bit.ly/2T0KZ3g>.

<sup>1000</sup> Regulations regarding vulnerable groups can be found in the law on removal detention for **Bremen** (available in German at <http://bit.ly/3wlsJVD>), **Lower Saxony** (draft of January 2022, available in German at <https://bit.ly/3HkroET>). In **Hesse**, the law (available in German at <http://bit.ly/3XvPOkv>) requires that special attention be paid to the healthcare of particularly vulnerable persons. In **Schleswig-Holstein**, the respective law (available in German at <https://bit.ly/3Hn50KS>) contains a provision on the detention of minors, which must be in compliance with Art. 37 UN Convention on the Rights of the Child. No specific provisions could be found in the laws and regulations of **Berlin** (available in German at <http://bit.ly/3H69Efg>), **Baden-Württemberg** (available in German at <https://bit.ly/3HkMOBE>), **Brandenburg** (available in German at <http://bit.ly/3HI9z8l>), **Hamburg** (available in German at <http://bit.ly/3HmWaNi>), **North Rhine Westphalia** (available in German at <http://bit.ly/3QZ55b0>), and **Saxony** (available in German at <http://bit.ly/3ZUSDNI>). **Bavaria** and **Rhineland Palatinate** do not have a specific law or regulation on detention.

<sup>1001</sup> Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 23-25.

<sup>1002</sup> Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 10.

<sup>1003</sup> Section 62(4) Residence Act.

<sup>1004</sup> Section 62b(1) Residence Act, as amended by the Law of 20 July 2017.

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.<sup>1005</sup>

Average duration in days of pre-removal detention: 2018 – Q 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
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
<b>Overall average</b>	<b>27.1</b>	<b>23.6</b>	<b>20.2</b>	<b>17.2</b>

Source: Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 67-68

<sup>1005</sup> Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 38 et seq.

## C. Detention conditions

### 1. Place of detention

#### Indicators: Place of Detention

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

#### 1.1. Pre-removal detention centres

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,<sup>1006</sup> most Federal States which did not have specialised facilities before announced that the necessary institutions would be established; deportees were sent to facilities in other Federal States in the meantime. As of January 2023, not all Federal States have dedicated detention centres, since some Federal States use facilities jointly (see below).

Between August 2019 and June 2022, due to a temporary change in the law, detention pending removal could also be carried out in regular prisons. The relevant provision of Section 62a (1) of the Residence Act was amended as part of the so-called 'Orderly Return Act'<sup>1007</sup> and read:

Persons in detention pending removal have to be accommodated separately from prisoners [Strafgefangene, i.e. persons detained in the penal system].

Since 1 July 2022 the wording of the provision has changed back to: 'As a rule, detention pending removal is to be carried out in specialised detention facilities.'<sup>1008</sup>

In the Explanatory Memorandum to the Orderly Return Act, the government stated 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 was an alleged acute shortage of such places in light of a high number of third-country-nationals who are obliged to leave the country. In light of this situation, the government also claimed 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.<sup>1009</sup> However, available statistics suggest that Federal States hardly used regular prisons for detention pending removal. Only 10 cases (3 in Mecklenburg-Vorpommern and 7 in Saxony Anhalt) had been recorded by the Federal States as of March 2021.<sup>1010</sup> This suggests that the existence of an 'emergency situation' was hardly based on an objective lack of detention capacity.<sup>1011</sup>

The provision was challenged before the CJEU, as critics and serious doubts were raised as to whether Germany was facing such an emergency situation when the provision entered into force in 2019. Even if

<sup>1006</sup> CJEU, Joined Cases C-473/13 and C-514/13 *Bero v Regierungspraesidium Kassel & Bouzalmane v Kreisverwaltung Kleve*, Judgment of 17 July 2014.

<sup>1007</sup> 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*.

<sup>1008</sup> Article 6 of the 'Second Act for an improved enforcement of the obligation to leave the country'.

<sup>1009</sup> 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.

<sup>1010</sup> Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 6,8, 20-21.

<sup>1011</sup> Informationsverbund Asyl & Migration, *Gesetzesänderung ab dem 1. Juli 2022: Abschiebungshaft und Strafvollzug sind wieder zu trennen*, 07 July 2022, available in German at <http://bit.ly/3wCLuUQ>.

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.<sup>1012</sup> The CJEU issued its decision on 10 March 2022.<sup>1013</sup> 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.<sup>1014</sup> In **Bavaria**, the appeals court of Coburg found on 24 November 2022 that conditions in the detention centre in Eichstätt are not in line with the CJEU's ruling (see [Conditions in detention facilities](#)).

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.<sup>1015</sup> The facility was still under construction as of January 2023.<sup>1016</sup> 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 2022, a new detention centre was opened at Munich airport (Bavaria) in January 2022 which replaced the more provisional detention facility 'Hangar 3'.<sup>1017</sup> In 2021, two new detention facilities had 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,<sup>1018</sup> 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.

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.<sup>1019</sup> 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.<sup>1020</sup> The Federal States of **Thuringia** and **Berlin** do not intend to build facilities of their own and make use of detention facilities in other Federal States.<sup>1021</sup>

<sup>1012</sup> 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).

<sup>1013</sup> CJEU, Case C-519/20, 10 March 2022, available in German at: <https://bit.ly/3NtZt6u>.

<sup>1014</sup> PRO ASYL, 'Abschiebehaft: Der EuGH schiebt Deutschland einen Riegel vor', 16 March 2022, available in German at: <https://bit.ly/3wIGz5S>.

<sup>1015</sup> Passauer Neue Presse, 'JVA Passau wird mit Neubau eigenständig', 3 August 2018, available in German at: <https://bit.ly/3cG3bH6>.

<sup>1016</sup> Staatliches Bauamt Passau, *Moderne "Kombi-Anstalt" für Strafvollzug und Abschiebehaft*, available in German at <http://bit.ly/3D271JR>.

<sup>1017</sup> Süddeutsche Zeitung, 'Hafteinrichtung am Airport: "Überteuertes Symbol bayerischer Abschreckung"', 12 January 2022, available in German at <https://bit.ly/33XJcEG>

<sup>1018</sup> NDR, 'Abschiebehaft in Glückstadt fertig, Insassen sollen bald kommen', 5 August 2021, available in German at <https://bit.ly/33L1toG>.

<sup>1019</sup> Mdr.de, 'Abschiebegefängnis in Dessau kommt nicht', 29 January 2021, Available in German at <https://bit.ly/3GW47GO>

<sup>1020</sup> 100-jahre-abschiebehaft.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>.

<sup>1021</sup> welt.de, 'Die Kapazität genügt nicht dem tatsächlichen Bedarf', 7 October 2019, available in German at <https://bit.ly/2Z2nPNQ>.

As of 2022, facilities for detention pending removal existed in ten Federal States. The reported capacities are based on an information request to the Federal Government published in August 2021.

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
Lower Saxony	Hannover (Langenhagen)	48
North Rhine-Westphalia	Büren	175
Rhineland-Palatinate	Ingelheim am Rhein	40
Saxony	Dresden	58
Schleswig-Holstein	Glückstadt	60
<b>Total</b>	<b>14</b>	<b>821</b>

Source: Source. Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021, 23.

### Other types of detention facilities

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.<sup>1022</sup> The Federal States of **Berlin** and **Brandenburg** run a facility for custody with 10 places at the Berlin Brandenburg Airport, according to press reports (BER).<sup>1023</sup> As of December 2022, planning for the new ‘arrival and departure centre’ at the Berlin airport includes 48 places for custody pending departure (see [Airport detention facilities](#)). A similar facility with 25 places of custody pending departure is planned at the airport of Düsseldorf (**North Rhine Westphalia**), but as of March 2023 it was unclear whether the new State government – in power since June 2022 and including the Greens, who had positioned themselves against the facility during the election campaign – will continue the planning process.<sup>1024</sup>

<sup>1022</sup> Federal Government, Reply to parliamentary question by The Left, 19/31669, 4 August 2021.

<sup>1023</sup> Rbb.de, *BER-Ausreisegewahrsam bekommt ein Viertel weniger Plätze*, 22 December 2022, available in German at <http://bit.ly/3HrJwJ>.

<sup>1024</sup> See *Kein Abschiebegefängnis in Düsseldorf oder anderswo – Bleiberecht statt Abschiebung, Pressemitteilung: Bündnis fordert Aufklärung zum Planungsstand zum Abschiebeknast in Düsseldorf. Landesregierung bleibt intransparent*, 15 December 2022, available in German at <http://bit.ly/3kITRet>.



## 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.<sup>1025</sup>

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 'combined transit and detention facility' (*Kombinierte Transit- und Abschiebungshafteinrichtung*).<sup>1026</sup> The new facility opened in January 2022 hosts both pre-removal detention (22 places) and the 'transit centre' for persons subject to the airport procedure (29 places).<sup>1027</sup> At the new airport of **Berlin and Brandenburg (BER)**, the opening of a new 'arrival and departure centre' is foreseen for 2026. The centre is to include facilities to carry out the airport procedure (60 places are planned as of December 2022) 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.<sup>1028</sup> The plans also include facilities for custody pending removal. Original plans foresaw a total of 64 such places, but this was reduced to 48 after controversies within the Brandenburg government, with the Greens criticising that the facility was oversized compared to actual needs.<sup>1029</sup>

Detention facilities used for the airport procedure are not to be confused with pre-removal detention centres or facilities for custody pending departure, which may be located close to the airport e.g. the **Munich Airport** detention centre, the detention centre in **Hamburg**, or the facility for custody pending departure at the airport of Berlin-Schönefeld (see [Pre-removal detention centres](#)).

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

National law only provides basic rules for detention centres. As a result, conditions differ very much throughout the country.<sup>1030</sup> Health care in detention is in general provided according to the provisions of the Asylum Seekers Benefits Act, which foresees emergency care only (see [Health care](#)).<sup>1031</sup> 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 first in September 2018 is directly managed by

<sup>1025</sup> ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

<sup>1026</sup> Bayerisches Landesamt für Asyl und Rückführungen, *Kombinierte Transit- und Abschiebungshafteinrichtung*, available in German at <http://bit.ly/3wrzdCf>.

<sup>1027</sup> Bayerisches Landesamt für Asyl und Rückführungen, *Kombinierte Transit- und Abschiebungshafteinrichtung*, available in German at <http://bit.ly/3wrzdCf>.

<sup>1028</sup> Der Tagesspiegel, *Planung für Behördenzentrum am BER: Brandenburgs Innenminister streicht Plätze im Ausreisegewahrsam zusammen*, 22 December 2022, available in German at <http://bit.ly/3WwMwMI>; Information provided by the BAMF, 10 March 2022.

<sup>1029</sup> Der Tagesspiegel, *Planung für Behördenzentrum am BER: Brandenburgs Innenminister streicht Plätze im Ausreisegewahrsam zusammen*, 22 December 2022, available in German at <http://bit.ly/3WwMwMI>.

<sup>1030</sup> Jesuit Refugee Service, *Detention in Europe: Germany*, available at: [www.detention-in-europe.org](http://www.detention-in-europe.org).

<sup>1031</sup> PRO ASYL, 'Schutzlos hinter Gittern. Abschiebungshaft in Deutschland', June 2013, 24, available in German at: <https://bit.ly/3JCqxOv>.

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.<sup>1032</sup> 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 'considerably higher' than in the previous facility.<sup>1033</sup> The State law of 2017 sets out some basic principles for the facility.<sup>1034</sup> These include the following: (a) Detainees are allowed to move freely within the facility during the day and 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 2022 detainees were only allowed one hour of yard exercise per day, and visits are limited to three persons at a time and one hour.<sup>1035</sup> Local activists say the yard is comparable to a cage, surrounded by barbed wire and exposed to the view of other parts of the building and the prison attached to the detention facility, making it an unpleasant space especially for women and families.<sup>1036</sup> There are two social workers at the facility, one of which is employed by the police who is also in charge of the detention facility.<sup>1037</sup> One external person employed by the Diakonie provided counselling for 4 hours a week.<sup>1038</sup> Detainees are allowed to use their mobile phones but without the camera function, and they have to buy mobile subscriptions at their own costs.<sup>1039</sup> They receive € 20 of 'pocket money' per week with which they can buy products from a pre-defined shopping list,<sup>1040</sup> However delivery is only every two weeks, which is criticised by local activists as the often short stays in detention make it impossible for some detainees to actually make use of this, and there is no possibility of handing

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<sup>1032</sup> 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>.

<sup>1033</sup> Frankfurter Rundschau, 'Hessen vervierfacht Haftplätze in Abschiebegefängnis in Darmstadt', 30 January 2021, available in German at <https://bit.ly/3ot0ot1>.

<sup>1034</sup> Official Gazette for the Federal State of Hesse, Gesetz über den Vollzug ausländerrechtlicher Freiheitsentziehungsmaßnahmen (VaFG), 18 December 2017, available at: <https://bit.ly/2Cael74>.

<sup>1035</sup> Community for All, 'Knastreport', Newsletter Volume 5, December 2021. Available in German at <https://bit.ly/3iGnrgu>.

<sup>1036</sup> Information provided by the local activist and assistance group 'Support PiA – Hilfe für Personen in Abschiebehäft', 13 February 2023.

<sup>1037</sup> Information provided by the local activist and assistance group 'Support PiA – Hilfe für Personen in Abschiebehäft', 13 February 2023.

<sup>1038</sup> 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.

<sup>1039</sup> Section 14, Gesetz über den Vollzug ausländerrechtlicher Freiheitsentziehungsmaßnahmen (VaFG), 18 December 2017, available at: <https://bit.ly/2Cael74>.

<sup>1040</sup> 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.

out the pocket money.<sup>1041</sup> Health care in detention is described by local activists as insufficient, especially for detainees with serious conditions as there is no possibility for continuous treatment.<sup>1042</sup>

### **Büren, North Rhine-Westphalia:**

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 that are still in place as of January 2023.<sup>1043</sup> The most important amendment consists of a detailed list of 'regulatory measures', ranging from a temporary limitation or deprivation of the use of internet, TV and mobile phones to temporary limitations or suspension of freedom of movement within the facility (Section 19). Another new section of the law regulates 'accommodation in special cases', which refers to persons considered to pose a risk and to which limitations can be imposed without any time-limit (Section 20). Furthermore, the use of mobile phones with a camera function was banned.

In a statement submitted to a parliamentary committee, the Refugee Council of North Rhine-Westphalia highlighted that the new restrictions are very similar to the restrictions used in the regular prison system.<sup>1044</sup> 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.<sup>1045</sup>

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:<sup>1046</sup>

- ❖ 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

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<sup>1041</sup> Information provided by the local activist and assistance group 'Support PiA – Hilfe für Personen in Abschiebehaft', 13 February 2023.

<sup>1042</sup> Information provided by the local activist and assistance group 'Support PiA – Hilfe für Personen in Abschiebehaft', 13 February 2023.

<sup>1043</sup> Ministry of the Interior North Rhine Westphalia, *Gesetz über den Vollzug der Abschiebungshaft in Nordrhein-Westfalen*, version of 11 January 2023, available in German at: <https://bit.ly/3QZ55b0>.

<sup>1044</sup> Flüchtlingsrat Nordrhein-Westfalen, *Stellungnahme: Referentenentwurf Gesetz zur Änderung des Abschiebungshaftvollzugsgesetzes Nordrhein-Westfalen*, 9 August 2018, available in German at <https://bit.ly/2XxduGq>.

<sup>1045</sup> Hilfe für Menschen in Abschiebehaft Büren, *Stellungnahme zur Anhörung zum Abschiebungshaftvollzugsgesetz*, 7 November 2018, available in German at: <https://bit.ly/2UmjGiG>.

<sup>1046</sup> ze.tt, *Eingesperrt ohne Straftat: So sind die Bedingungen in einem Abschiebegefängnis*, 14 December 2019, available in German at: <https://bit.ly/2T0KZ3g>.

measures taken in the context of the pandemic.<sup>1047</sup> This was aggravated by the lack of access to support groups (see [Access to detention facilities](#)).

**Pforzheim, Baden-Württemberg:** According to the Federal State government, detainees in Pforzheim can move around freely within the facilities' accommodation and 'leisure' areas and are allowed to sue mobile phones.<sup>1048</sup> A Protestant priest reported in May 2019 that the facility did not have a room to hold religious ceremonies.<sup>1049</sup> 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 highlighted 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.<sup>1050</sup> 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 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.<sup>1051</sup> In October 2022 another demonstration took place in front of the deportation prison which was organised by the youth organisation of the Green Party. The protesters highlighted that well-integrated people were deported again and again<sup>1052</sup> and that psychological support is inadequate.<sup>1053</sup> According to the Refugee Council, to date, the state government of Baden-Württemberg has not implemented any of the promises made in the coalition agreement<sup>1054</sup> adopted in 2021 with regard to improving the situation in the detention centre. For example, no "round table" has been set up to date, at which representatives of the ministries and subordinate authorities, as well as full-time and voluntary staff, are to exchange information on a regular basis. Nor has the promise to set up and make available separate premises for full-time and voluntary staff and pastoral care been implemented.<sup>1055</sup>

**Hof, Bavaria:** The detention centre in Hof opened on 26 October 2021 and has a capacity of 150 places. It is administrated by the prison in Hof, but separated from it 'through structural and organisational measures'.<sup>1056</sup> 16 of the 150 places are foreseen for female detainees, and 4 places are suitable for persons with disabilities, according to the Ministry of Justice. Over the course of 2022, the maximum number of detained persons at the same time was 112, on 21 November 2022 (the lowest was 28 detainees on 13 March 2022).<sup>1057</sup> As of October 2022, 54 law enforcement officials and 20 social workers,

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<sup>1047</sup> 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>.

<sup>1048</sup> State Ministry Baden-Württemberg, *Lorek zu Besuch in Abschiebungshafteinrichtung Pforzheim*, 22 July 2022, available in German at <http://bit.ly/3XDURPJ>.

<sup>1049</sup> bnn.de, 'AG Abschiebehaft Pforzheim klagt über Umgang mit Betroffenen', 10 May 2019, available in German at: <https://bit.ly/3fMY5uY>.

<sup>1050</sup> 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>.

<sup>1051</sup> Aktionbleiberecht.de, 'Fragwürdiger Umgang der Landesregierung mit der institutionellen Gewalt in der Abschiebehaft in Pforzheim', 31 August 2020, available in German at: <https://bit.ly/3iCDCLQ>.

<sup>1052</sup> SWR.de, *Demonstration gegen baden-württembergische Asylpolitik in Pforzheim*, 2 October 2022, available in German at <http://bit.ly/408ddtH>.

<sup>1053</sup> Radio dreyeckland, *Kundgebung zur Abschaffung der Abschiebehaft in Pforzheim*, 2 October 2022, available in German at <http://bit.ly/42kr1T6>.

<sup>1054</sup> The Greens Baden Württemberg, *Jetzt für morgen, der Erneuerungsvertrag für Baden-Württemberg*, 2021, available in German at: <https://bit.ly/40C28Rr>.

<sup>1055</sup> Information provided by the Caritasverband Karlsruhe e. V. who offers counselling in the detention centre together with the Diakonie Rastatt (see <http://bit.ly/404RnXC> for more information).

<sup>1056</sup> Bavarian Ministry of Justice, *Einrichtung für Abschiebungshaft Hof*, 02 January 2023, available in German at <https://bit.ly/3H5S1Mo>.

<sup>1057</sup> Bavarian Ministry of Justice, *Einrichtung für Abschiebungshaft Hof*, 02 January 2023, available in German at <https://bit.ly/3H5S1Mo>.

psychologists, chaplains, and medical staff worked at the facility.<sup>1058</sup> The average number of detainees at a given time was 42 in the first half of 2022 and 80 in the second half. The average duration of stay in detention was 27 days. According to the Ministry of justice, detainees have access to a range of leisure facilities including sports, and each room has a TV with access to international channels. Leisure activities are offered by the social services present in the facilities. According to press reports, detainees can be outside their rooms between 9 am and 7 pm.<sup>1059</sup> As of October 2022, persons put in detention were first had to isolate for 5 to 12 days to prevent transmission of Covid-19. Often, detainees only have access to support structures after this time.<sup>1060</sup>

**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 Abschiebungshaft*) 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.<sup>1061</sup>

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); [...].<sup>1062</sup>

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

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<sup>1058</sup> BR24, "Panische Angst vor Rückführung": Ein Jahr Abschiebehaft in Hof, 26 October 2022, available in German at <https://bit.ly/3HvaQKe>.

<sup>1059</sup> BR24, "Panische Angst vor Rückführung": Ein Jahr Abschiebehaft in Hof, 26 October 2022, available in German at <https://bit.ly/3HvaQKe>.

<sup>1060</sup> BR24, "Panische Angst vor Rückführung": Ein Jahr Abschiebehaft in Hof, 26 October 2022, available in German at <https://bit.ly/3HvaQKe>.

<sup>1061</sup> ECRE, *The Anker centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

<sup>1062</sup> 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.



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 the 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.<sup>1063</sup> On 24 November 2022, the court of appeal of Coburg issued a ruling according to which a detention order was unlawful based on the detention conditions in Eichstätt, which are considered too similar to prisons so that the detention centre does not meet the standards of a "specialised detention facility" as defined by the CJEU in its decision of 10 March 2022 (see [Place of detention](#)).<sup>1064</sup> Following the decisions, the Green opposition demanded to end detention in Eichstätt, while the Federal State government claims that several changes have been implemented in response to the ruling, such as an extension of visiting times and allowing detainees to wear their own clothes, and that the conditions do meet the standards of the EU Return Directive as set out in the CJEU's ruling.<sup>1065</sup> As of January 2023, the website of the facility did not provide information on current conditions (which are said to be 'under revision').<sup>1066</sup>

**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 was gradually increased to the maximum capacity of 60 places. As of January 2023, the maximum capacity was not used yet, and as only one department of the centre with 27 places was in use.<sup>1067</sup> 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. As of January 2023, detainees are allowed to use their own smartphones if a sticker is put over the camera.<sup>1068</sup> The facility employs six full-time medical staff, including a psychologist as of January 2023. The almost exclusive use of internal medical personnel is seen critically by local support groups, who argue that this increases the tendency to deal with all issues 'internally' decreasing the availability of information on the quality of medical and psychological support provided in the facility. In addition, psychologists cannot issue medical reports which might give rise to a removal ban based on the applicant's condition (e. g. in case of post traumatic stress disorder), and the presence of doctors and a psychologist in the detention centre makes it more difficult to obtain outside medical treatment and reports.<sup>1069</sup> 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.<sup>1070</sup> Independent legal advice is not provided by the authorities. Instead, the Refugee Council of **Schleswig-Holstein** as well as a student-led initiative of three Law Clinics based in Hamburg and Kiel provide free legal advice in coordination with the Diakonie staff.<sup>1071</sup> 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.<sup>1072</sup> 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

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<sup>1063</sup> Ibid. 28 and 31.

<sup>1064</sup> Landgericht Coburg, *Decision of 24 November 2022, 41 T 25/21*, available in German at <https://bit.ly/40dt3nc>.

<sup>1065</sup> BR24, *Grüne halten Abschiebehaft in Eichstätt für rechtswidrig*, 8 December 2022, available in German at <http://bit.ly/3HvBHpH>.

<sup>1066</sup> Bavarian Ministry of Justice, *Justizvollzugsanstalt Eichstätt - Einrichtung für Abschiebungshaft*, available in German at <http://bit.ly/3R4vWSS>.

<sup>1067</sup> Information provided by the legal advice and support group *Abschiebehaftberatung Nord* in January 2023, see <https://abschiebehaftberatung-nord.de/>.

<sup>1068</sup> Information provided by the legal advice and support group *Abschiebehaftberatung Nord*. in January 2023, see <https://abschiebehaftberatung-nord.de/>.

<sup>1069</sup> Information provided by the legal advice and support group *Abschiebehaftberatung Nord*. in January 2023, see <https://abschiebehaftberatung-nord.de/>.

<sup>1070</sup> Nordkurier, 'Abschiebe-Haftanstalt in Norddeutschland wird eröffnet', 5 August 2021, available in German at <https://bit.ly/3tGHqSt>.

<sup>1071</sup> Information provided by the legal advice and support group *Abschiebehaftberatung Nord* in April 2022, see <https://abschiebehaftberatung-nord.de/>

<sup>1072</sup> The state government website hosts a 'virtual tour of the facility before its opening which is openly accessible, see <https://bit.ly/3NtTQFw>.



computers, making private communication difficult.<sup>1073</sup> NGOs such as PRO ASYL, church organisations 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.<sup>1074</sup> Over the course of 2021, a total of 38 persons were detained in Glückstadt.<sup>1075</sup> The number of detainees has been rising over the course of the year and in early 2022 with new parts of the detention centre opening.<sup>1076</sup>

### 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 |

#### 3.1 Access to pre-removal detention centres

Section 62a of the Residence Act states: ‘Upon application, staff of relevant support and assistance organisations shall be permitted to visit detainees awaiting removal if the latter so request.’ Access of NGOs to detention centres varies in practice (see below).

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 allowed for only one visitor until the autumn of 2022 (see also below).<sup>1077</sup> In **Bavaria**, Covid-related restrictions in detention facilities were lifted as of 26 May 2022.<sup>1078</sup>

The Refugee Council of Baden-Württemberg compiled the following information on counselling services in some facilities:<sup>1079</sup>

- **Ingelheim, Rhineland-Palatinate:** An ecumenical counselling centre 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.

An overview of existing detention facilities and support services is also available on the website of the activist group ‘No Border Assembly’.<sup>1080</sup> In contrast to the mentioned examples, the facility at Pforzheim,

<sup>1073</sup> Information provided by the legal advice and support group *Abschiebehaftberatung Nord* in April 2022, see <https://abschiebehaftberatung-nord.de/>.

<sup>1074</sup> Evangelische Kirche in Mecklenburg-Vorpommern, ‘Abschiebehaft in Glückstadt eröffnet’, 16 August 2021, available in German at <https://bit.ly/3uDjVoe>.

<sup>1075</sup> Norddeutsche Rundschau, ‘Alltag in der Abschiebehafteinrichtung Glückstadt’, 30 December 2021, available in German at: <https://bit.ly/37SLHKb>.

<sup>1076</sup> Information provided by the « Abschiebehaftberatung Nord’ on 15 April 2022,, see <https://abschiebehaftberatung-hh.de/>

<sup>1077</sup> Community for All, ‘Knastreport’, Newsletter Volume 2, April 2021, available in German at <https://bit.ly/3iGnrgu> and information provided by the local activist and assistance group ‘Support PiA – Hilfe für Personen in Abschiebehaft’, 13 February 2023.

<sup>1078</sup> Bavarian Ministry of Justice, Corona-Virus: Maßnahmen der bayerischen Justiz - Fragen und Antworten, available in German at <http://bit.ly/3Df7qsZ>.

<sup>1079</sup> 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>.

<sup>1080</sup> No border assembly, available in English at: <http://bit.ly/41e9QC7>.

**Baden-Württemberg**, does not provide priests and other persons offering advice with a separate room. In August 2022 the inadequate conditions for chaplaincy were again highlighted by chaplains and priests. For example, there is still no extra room for pastoral care. Conversations take place in sterile visiting rooms. In addition, no church services can take place and there is no space for worship. Finally, unlike in normal prisons, priests are not allowed to work internally in the prison.<sup>1081</sup> According to the catholic and the protestant priest working with detainees and imprisoned people in Pforzheim, this makes contact with detainees difficult in practice, especially since detainees are not informed adequately about the possibility to get in contact with them.<sup>1082</sup> 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.<sup>1083</sup> The group reiterated its criticism in a statement to a parliamentary committee in November 2018.<sup>1084</sup> 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 website<sup>1085</sup> 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.<sup>1086</sup>

**Darmstadt-Eberstadt, Hesse:** According to the law which sets out basic principles for the facility,<sup>1087</sup> 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 'Support PiA' 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 was restricted during the outbreak of Covid-19. Until autumn 2022, only one person was allowed to visit at a time with the exception of family members and translators, 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).<sup>1088</sup> In addition, practical difficulties for family and civil society visits were reported by a local activist visitors group in 2021, such as denial of access even when appointments were made.<sup>1089</sup>

**Hof, Bavaria:** Detainees have a right to free worldwide phone calls of up to 30 minutes a day with a maximum of 10 persons and to a video phone service 'comparable to Skype'. Visits are limited to maximum 60 minutes, but the number of visits per detainee is not limited. A maximum of three persons can visit at the same time for each detainee. Visitors must respect distancing rules to prevent Covid-19

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<sup>1081</sup> SWR, 'Vorwurf: Wenig Raum für Seelsorge im Pforzheimer Abschiebegefängnis', 15 August 2022, available in German at: <http://bit.ly/3n8C2Xy>.

<sup>1082</sup> SWR, *Vorwurf: Wenig Raum für Seelsorge im Pforzheimer Abschiebegefängnis*, 15 August 2022, available in German at <http://bit.ly/3ZVD3Bn>.

<sup>1083</sup> Hilfe für Menschen in Abschiebehaft Büren, 'Schwere Menschenrechtsverletzungen in der Abschiebehaft Büren', 24 January 2018, available in German at: <https://bit.ly/2pYgn3k>.

<sup>1084</sup> Hilfe für Menschen in Abschiebehaft Büren, 'Stellungnahme zur Anhörung zum Abschiebungshaftvollzugsgesetz', 7 November 2018, available in German at: <https://bit.ly/2UmjGiG>.

<sup>1085</sup> Hilfe für Menschen in Abschiebehaft Büren, 'Die Betreuungsarbeit', available in German at <https://bit.ly/3KBBm4r>

<sup>1086</sup> 100-jahre-abschiebehaft.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>.

<sup>1087</sup> Official Gazette for the Federal State of Hesse, Gesetz über den Vollzug ausländerrechtlicher Freiheitsentziehungsmaßnahmen (VaFG), 18 December 2017, available at: <https://bit.ly/2Cael74>.

<sup>1088</sup> Information provided by the local activist and assistance group 'Support PiA – Hilfe für Personen in Abschiebehaft', 13 February 2023.

<sup>1089</sup> Community for All, 'Knastreport', Newsletter Volume 2, April 2021. Available in German at <https://bit.ly/3iGnrgu>

transmission, but no masks are required as of January 2023.<sup>1090</sup> The Jesuit Refugee Service, the association 'Support for persons in detention Hof' and the Refugee Law Clinic Regensburg provide counselling and support to detainees, but the government does not state how this is organised in practice.<sup>1091</sup>

**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.<sup>1092</sup>

**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).<sup>1093</sup> A support and visit group was formed in September 2021; in addition the Refugee Council Schleswig-Holstein provides counselling in the detention facility.<sup>1094</sup>

### 3.2 Access to airport detention facilities

Access to airport detention facilities is also regulated by the relevant Federal State and is often difficult due to their location. At the 'initial reception centre' (*Erstaufnahmeinrichtung*) 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 'combined transit and detention facility' (*Kombinierte Transit- und Abschiebungshafteinrichtung*) 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.<sup>1095</sup>

## 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

<sup>1090</sup> Bavarian Ministry of Justice, *Einrichtung für Abschiebungshaft Hof*, available in German at <http://bit.ly/3Dee826>.

<sup>1091</sup> Bavarian Ministry of Justice, *Einrichtung für Abschiebungshaft Hof*, 02 January 2023, available in German at <https://bit.ly/3H5S1Mo>.

<sup>1092</sup> ECRE, *The AnkER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

<sup>1093</sup> Information provided by the legal advice and support group *Abschiebehaftberatung Nord* in April 2022, see <https://abschiebehaftberatung-nord.de/>

<sup>1094</sup> Ndr.de, 'Glückstadt: Ehrenamtliche Hilfe für Bewohner in Abschiebehaft', 15 September 2021, available in German at: <https://bit.ly/3DcxWSk>.

<sup>1095</sup> ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

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 must apply to the court for a detention order. The application has to lay out the detailed reasons for the necessity of detention and the authorities' entire file should be presented to the court. The foreigners should be heard by the court and 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 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.<sup>1096</sup> 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.<sup>1097</sup> The court has to inform the foreigner of 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. The immigration authority has the responsibility to monitor whether the grounds for detention continue to apply and, according to administrative guidelines of the Federal Ministry of the Interior, 'shall immediately suspend the execution of detention for up to one week and immediately apply for the revocation of the order if the grounds on which it was based no longer exist (62.3.3 of the General Administrative Regulation to the Residence Act)'.<sup>1098</sup> Once the requested period of detention has expired, the detained person either has to be released or an automatic judicial review of detention takes place.<sup>1099</sup>

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.<sup>1100</sup> A monitoring project on removals in **North Rhine Westphalia** reports that persons are frequently arrested and taken into detention when they come to the immigration authorities for appointments.<sup>1101</sup> 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.<sup>1102</sup>

There are no encompassing statistics regarding judicial review of detention.<sup>1103</sup> Available information is thus based on testimonies and data collected by activists, lawyers and NGOs.

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<sup>1096</sup> Federal Supreme Court, Decision V ZB 67/12, 18 April 2013.

<sup>1097</sup> Federal Supreme Court, Decision V ZB 141/11, 1 July 2011.

<sup>1098</sup> 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, 37, available at <https://bit.ly/3fRwsln>

<sup>1099</sup> 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, 37, available at <https://bit.ly/3fRwsln>

<sup>1100</sup> This is a recurrent concern. See Peter Fahlbusch, *Haft in Verfahren nach der Dublin II-Verordnung*, *Asylmagazin* 9/2010, 289-295.

<sup>1101</sup> Abschiebungsreporting NRW, *Ausländerbehörden als Orte der Angst*, 19 December 2022, available in German at <http://bit.ly/3X2KCU3>.

<sup>1102</sup> Die Rechtsberaterkonferenz, *50 Forderungen zum Flüchtlings-, Aufenthalts-, Staatsangehörigkeits- und Sozialrecht*, November 2017, available in German at: <http://bit.ly/2HOWd2J>, 32-34.

<sup>1103</sup> 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

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.<sup>1104</sup> 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 they 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.

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 are sometimes violated.<sup>1105</sup> The Federal Supreme Court has therefore frequently ruled such detention orders as unlawful. According to the lawyer Peter Fahlbusch, this occurred in around two thirds of all cases brought before the Federal Supreme Court in 2021.<sup>1106</sup> Recent decisions of the Federal Supreme Court in which a detention order was ruled unlawful include cases where:

- ❖ The detention order was not given by a judge but by an executive authority without due justification of not awaiting a court order;<sup>1107</sup>
- ❖ A lawyer was not given the opportunity to attend a hearing;<sup>1108</sup>
- ❖ 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.<sup>1109</sup>
- ❖ The authorities were not able to justify the necessity and the proportionality of a 21 days pre-removal detention period;<sup>1110</sup>
- ❖ The court had wrongfully assumed that a delay in presenting identity documents was in itself constituting a 'risk of absconding';<sup>1111</sup>
- ❖ The detainee had filed a secondary application for asylum that was accepted as admissible by the BAMF,<sup>1112</sup>

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<sup>1104</sup> 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).

<sup>1105</sup> ze.tt, *Eingesperrt ohne Straftat: So sind die Bedingungen in einem Abschiebegefängnis*, 14 December 2019, available at <https://bit.ly/2T0KZ3g>.

<sup>1106</sup> Stefan Keßler, *Abschiebungshaft*, socialnet.de, 14 January 2019, available in German at: <https://bit.ly/2TiNCji>.

<sup>1107</sup> PRO ASYL, »Es ist skandalös, welche Fehler in Abschiebungshaft passieren«, 29 July 2022, available in German at <http://bit.ly/3JH3FQF>.

<sup>1108</sup> Federal Constitutional Court (BVerfG), Decision 2 BvR 2247/19, 10 February 2022, asyl.net: M30479.

<sup>1109</sup> Federal Supreme Court, Decision XIII ZB 74/20, 22 February 2022, asy.net: M30748; 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>.

<sup>1110</sup> 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>.

<sup>1111</sup> 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>.

<sup>1112</sup> Federal Supreme Court, Decision V ZB 151/17, 13 September 2018, available in German at: <https://bit.ly/2SL9wqg>.

<sup>1113</sup> Federal Supreme Court, Decision XIII ZB 10/21, 20 July 2021, available in German at: <https://bit.ly/3NloBXk>.



- ❖ The Court had not examined the person's casefile before ordering detention;<sup>1113</sup>
- ❖ The Court failed to adequately assess the risk of absconding based on a previous evasion of removal by the detainee;<sup>1114</sup>
- ❖ The detention resulted in an unjustified separation of a mother and her minor children;<sup>1115</sup>
- ❖ The Court had not sufficiently examined whether the detainee was a minor;<sup>1116</sup>
- ❖ The authorities did not adequately speed up the removal procedure;<sup>1117</sup>
- ❖ 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.<sup>1118</sup>

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.<sup>1119</sup>

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 were 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.<sup>1120</sup>

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.<sup>1121</sup> 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.<sup>1122</sup>

<sup>1113</sup> Federal Constitutional Court, Decision 2 BvR 2345/16 of 14 May 2020, available in German at <https://bit.ly/36VIPwP>.

<sup>1114</sup> Federal Supreme Court, Decision XIII ZB 47/20 of 20 April 2021, available in German at: <https://bit.ly/38h83pb>.

<sup>1115</sup> Federal Supreme Court, Decision XIII ZB 95/19, 23 March 2021, available in German at: <https://bit.ly/3LnImRZ>.

<sup>1116</sup> Federal Supreme Court, Decision XIII ZB 101/19, 25 August 2020, available in German at <https://bit.ly/3wKJQ4E>.

<sup>1117</sup> Federal Supreme Court, Decision XIII ZB 9/19, 24 June 2020, available in German at <https://bit.ly/3uGHfG6>

<sup>1118</sup> Federal Supreme Court, Decision XIII ZB 17/19, 19 May 2020, available in German at <https://bit.ly/3DnrMPi>

<sup>1119</sup> A collection of the most important court decisions in that regard can be found in German at: <https://bit.ly/2HieAjB>.

<sup>1120</sup> Peter Fahlbusch, Attorney, Information provided on 9 May 2020. See also PRO ASYL, »Es ist skandalös, welche Fehler in Abschiebungshaft passieren«, 29 July 2022, available in German at <http://bit.ly/3JH3FQF>.

<sup>1121</sup> Flüchtlingsrat Niedersachsen, »Rechtswidrige Abschiebungshaft in Niedersachsen: Kein Ende in Sicht«, Press release of 13 November 2019, available in German at: <https://bit.ly/2Lo4E9b>.

<sup>1122</sup> Section 14(3) Asylum Act.

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 the lawyer that the next available opportunity to contact her client was on the day of the removal.<sup>1123</sup> 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.<sup>1124</sup>

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. In October 2022, a coalition of over 50 NGOs, including PRO ASYL, Amnesty International, welfare associations and lawyer associations, published a position paper to demand free legal representation of all persons subject to detention, pointing to the frequent errors in detention orders as well as the high number of detention cases found to be unlawful by courts.<sup>1125</sup> The legal changes adopted in late 2022 did not address this, issue however.

## 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.

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<sup>1123</sup> Federal Constitutional Court, Decision 2 BvQ 45/18, 22 May 2018.

<sup>1124</sup> Section 62a II of the Residence Act.

<sup>1125</sup> Flüchtlingsrat Brandenburg, *Gesetzeslücke endlich schließen: Menschen in Abschiebehaft brauchen einen Pflichtanwalt!*, 12 October 2022, available in German at <http://bit.ly/3RdsRjw>.

## 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. In 2017 the Federal government introduced the Act to Improve Online Access to Administrative Services, following which most of the administrative services should be made available online by 2022. In the field of Migration *inter alia* the application for the issuance and renewal of residence permits, the application for citizenship and social benefits for beneficiaries of and applicants for international protection or subsidiary protection shall be made possible.<sup>1126</sup> However, the first evaluations on the implementation show that only very few of the overall administrative services have been moved online and that the online availability sometimes means that a pdf document with the application form can be downloaded but without the possibility to hand in the form and the necessary documents online.<sup>1127</sup> According to the evaluation the main reason for the delay are unclear responsibilities between the Federal level, the states and the municipalities.<sup>1128</sup>

Renewal of residence permits is generally subject to the same regulations as apply to issuance.<sup>1129</sup> 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.<sup>1130</sup>

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.<sup>1131</sup> 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.<sup>1132</sup> It has been reported that many beneficiaries of international protection did not know about the newly introduced possibility to apply via e-mail or mail and that the local authorities in many cases did not

<sup>1126</sup> Federal Ministry of Interior, OZG-Umsetzungskatalog, April 2018.

<sup>1127</sup> Deutschlandfunk, Deutschland bleibt offline, 16 December 2022, available in German at: <http://bit.ly/3JpZZCR>.

<sup>1128</sup> Ibid.

<sup>1129</sup> Section 8(1) Residence Act.

<sup>1130</sup> Sections 73a to 73c Residence Act.

<sup>1131</sup> Pro Asyl, 'Newsticker Coronavirus: Informationen für Geflüchtete und Unterstützer\*innen', available in German at <https://bit.ly/3n5bqEe>.

<sup>1132</sup> Make it in Germany, 'Special regulations on entry and residence', last update 1 June 2021, available at: <https://bit.ly/3DIBNfK>.

process the mails in time. The Refugee Council Berlin therefore recommended to include deadlines for responses in all communication concerning the renewal of residence permits.<sup>1133</sup>

## 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.<sup>1134</sup>

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:<sup>1135</sup>

- ❖ 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 or subsidiary protection 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.
- ❖ 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 upon the individual circumstances and 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.<sup>1136</sup>

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 study by the Humboldt Law Clinic found that offices have various strategies to deal with these cases of 'unclarified identity':<sup>1137</sup>

- ❖ 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. In practice however, some local authorities are not aware that the extract has the same legal effect which in effect lead to difficulties in access to health care and other social benefits.<sup>1138</sup>
- ❖ 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;

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<sup>1133</sup> Refugee Council Berlin, Kein Termin beim Berliner Landesamt für Einwanderung – was tun?, 12 February 2021, available in German at: <https://bit.ly/3HK2lv8>.

<sup>1134</sup> 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/2pw1Dln>, 10-11.

<sup>1135</sup> Section 33 Personenstandsverordnung

<sup>1136</sup> Deutsches Institut für Menschenrechte 'How to register your newborn - Information for refugees', 2nd ed., 20 July 2017, available at: <http://bit.ly/2c5Esku>.

<sup>1137</sup> 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.

<sup>1138</sup> Deutsches Institut für Menschenrechte, *Papiere von Anfang an*, 13, September 2021, available in German at: <https://bit.ly/3W1Yfrf>.

- ❖ 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.<sup>1139</sup> 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.<sup>1140</sup>

Refusal by the German authorities to issue birth certificates to newborn 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'.<sup>1141</sup>

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;
- ❖ 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 the 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.<sup>1142</sup> 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.<sup>1143</sup> Since problems in the issuance of birth certificates in cases where the necessary identity documents from the parents are missing persist, the German Institute for Human Rights published in 2022 in different languages a website for beneficiaries of and applicants for international or subsidiary protection on their rights and legal steps to take.<sup>1144</sup>

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<sup>1139</sup> *Ibid*, 18.

<sup>1140</sup> 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>.

<sup>1141</sup> 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; Deutsches Institut für Menschenrechte, *Papiere von Anfang an*, 13, September 2021, available in German at: <https://bit.ly/3WlYfrf>.

<sup>1142</sup> 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.

<sup>1143</sup> 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>.

<sup>1144</sup> Deutsches Institut für Menschenrechte, *Recht auf Geburtsurkunde*, April 2022, available at: <https://bit.ly/3JvbrNL>,



## 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.<sup>1145</sup>

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:<sup>1146</sup>

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

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

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

## 3. Long-term residence

### Indicators: Long-Term Residence

1. Number of permanent residence permits issued to beneficiaries in 2022:	59,890
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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.<sup>1147</sup>

- ❖ After three years from the issuance of a residence permit, persons with refugee status can be granted a *Niederlassungserlaubnis* if they have become 'outstandingly integrated' into society.<sup>1148</sup> 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

<sup>1145</sup> 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>.

<sup>1146</sup> 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>.

<sup>1147</sup> Section 26(3) Residence Act.

<sup>1148</sup> 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.

sufficient living space for themselves and their families;<sup>1149</sup> The 'overwhelming part' leaves the local authorities some discretion. Reliable numbers only exist for Berlin, where more than 75% of their living costs have to be provided.<sup>1150</sup>

- ❖ 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. As above, the authorities may exercise some discretion in the interpretation of 'better part'. In Berlin the 'better part' of the cost of living is reached if beneficiaries provides for 50% of their living costs.<sup>1151</sup>

Under these provisions of the Residence Act, 40,810 persons were granted a *Niederlassungserlaubnis* in 2022, compared to 53,474 in 2021. This is still much higher than in previous years (in 2019, 14,028 persons were granted a permanent residence permit on this basis; in 2018 it was only 1,807 persons).<sup>1152</sup> The sharp increase in 2021 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 was re-established in 2019 for all cases in which persons had 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.<sup>1153</sup>

## 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.<sup>1154</sup> However, they have to meet all the legal requirements for the *Niederlassungserlaubnis*,<sup>1155</sup> 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 19,080 permanent residence permits were issued in 2022 based on this general provision, compared to 17,231 in 2021 and 11,117 in 2020 (2019: 9,918, 2018: 5,731), but the statistics do not

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<sup>1149</sup> Section 26(3) Residence Act

<sup>1150</sup> Netzwerk Berlin Hilft, Lebensunterhaltssicherung für Aufenthalts- oder Niederlassungserlaubnis, lastly updated 2020, available in German at: <https://bit.ly/3jjBUD5>.

<sup>1151</sup> Netzwerk Berlin Hilft, Lebensunterhaltssicherung für Aufenthalts- oder Niederlassungserlaubnis, lastly updated 2020, available in German at: <https://bit.ly/3jjBUD5>.

<sup>1152</sup> Federal Government, *Responses to parliamentary questions by The Left*, 20/5870, 28 February 2023, available in German at: <https://bit.ly/40KZhWi>, 47, 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.

<sup>1153</sup> Amendment to Section 26(3) Residence Act, entered into force on 21 August 2019.

<sup>1154</sup> Section 26(4) Residence Act.

<sup>1155</sup> Section 9 Residence Act.

indicate how many were issued specifically to persons with a subsidiary protection or a humanitarian status.<sup>1156</sup>

#### 4. Naturalisation

##### Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?	8 years
2. Number of citizenship grants to beneficiaries in 2022:	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:<sup>1157</sup>

- ❖ 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, which is the case if the applicant's level of German exceeds the B1 certificate, if the applicant obtained outstanding educational or professional degrees in Germany or if the applicant was involved in voluntary work in Germany;<sup>1158</sup>
- ❖ 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 criminal offences. All actions and omissions which are sanctioned by the German Criminal Code are considered as grounds for denial if the person has been convicted. Criminal offences which have been committed abroad are also considered if the action or omission is equally sanctioned in the German Criminal Code and if the verdict was reached by due process and if the charges of the foreign country are proportionate.<sup>1159</sup>

In contrast to other foreign nationals, **refugees** are not required to give up their former nationality.<sup>1160</sup> 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.<sup>1161</sup>

Fees for naturalisation are €255 for an adult person and €51 for children.<sup>1162</sup>

<sup>1156</sup> 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.

<sup>1157</sup> Section 10 German Nationality Act (*Staatsangehörigkeitsgesetz*). An overview on the naturalisation procedure is available in English on the BAMF website: <http://bit.ly/2ms1va9>.

<sup>1158</sup> Section 10 (3) Nationality Act.

<sup>1159</sup> Hailbronner et al., *Staatsangehörigkeitsrecht*, Beckscher Kurz-Kommentar, 7th Edition, 2022, Section 10 Nationality Act, para. 108f.

<sup>1160</sup> Section 12 (1)(Nr. 6) Nationality Act.

<sup>1161</sup> Hailbronner et al., *Staatsangehörigkeitsrecht*, Beck'scher Kurz-Kommentar, 7th Edition, 2022, Section 8 Nationality Act, para. 103ff.

<sup>1162</sup> Section 38 Nationality Act.

In 2021 131 600 persons received German citizenship, but available statistics do not differentiate between residence and/or protection statuses.<sup>1163</sup> The number of former Syrian nationals tripled from 2020 to 2021 which might stem from the fact that those who fled the Syrian war in 2015 or 2016 now fulfil the criteria of 6 or more years of legal stay in Germany. No breakdown of other former nationalities is available for 2021.

## 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

With its entry into force on the 1<sup>st</sup> January 2023, the grounds for Cessation (*Erlöschen*) have been amended in the context of the Act on the Acceleration of asylum court proceedings and asylum procedures (see [Regular procedure](#)). The aim of the legal reforms was to relieve courts and the Federal Office for Migration and Refugees from case overload. Elsewhere (See Overview) the Act has been criticised by civil society organisations that the relief for the authorities comes at the price of restricted legal protection for asylum seekers and refugees. Concerning grounds for cessation and revocations however, the reforms seem to extend the protection of the status, since the grounds for cessation and revocation have been restricted. The Federal government emphasises in the draft of the Act, that the amendments of the cessation grounds also serve to a more coherent and certain legal framework in line with Directive 2011/95/EU and respectively extended the scope of the cessation clause to beneficiaries of subsidiary protection. Following the reforms, cessation is only possible if the refugee has acted voluntarily. Cessation (*Erlöschen*) of a protection status is defined in Section 72(1) of the Asylum Act as follows:

Recognition of constitutional asylum and **international protection** (including refugees and beneficiaries for subsidiary protection) shall cease to have effect if the foreigner:

- ❖ Unequivocal, voluntarily and in writing declares in front of the Federal Office for Migration and Refugees the renunciation of the status
- ❖ has obtained upon his application the German nationality.

According to the new Act, the authorities may only start the cessation procedure upon application or declaration of the refugee. In this case the authorities ask them 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.<sup>1164</sup>

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

With the Act on the Acceleration of asylum court proceedings and asylum procedures, the grounds and the procedure for revocations (*Widerruf*) have been changed drastically. Since the aim of the reforms was to relieve the workload of the authorities, the routine revision of the status under the former Section 73 (2a) Asylum Act has been abandoned completely. Prior to the reforms a revision of the status was initiated

<sup>1163</sup> Federal Statistical Office, *20% mehr Einbürgerungen im Jahr 2021*, 10 June 2022, available in German at: <https://bit.ly/3RwYx3P>.

<sup>1164</sup> Section 74 Asylum Act.

automatically by the BAMF three years after the first final decision on the status.<sup>1165</sup> Additionally, the grounds for revocation (*Widerruf*) shall be bound more closely to the concrete events.

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 Department for revocations and cessation at the BAMF.<sup>1166</sup> The law distinguishes between revocation grounds for refugees in Section 73 (1) Asylum Act, for beneficiaries of subsidiary protection in Section 73 (2) Asylum Act and revocation grounds for family members of beneficiaries of international protection in Section 73a Asylum Act. The procedure for revocations and cessations is now regulated in Section 75b Asylum Act.

Additionally, for all beneficiaries of international protection (refugees and subsidiary protection holders) Revocation is also possible after they have been granted the status, they 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](#)).

#### **a) Revocation of the refugee status: 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. A cessation of the conditions may especially be assumed in cases where refugees:

- ❖ voluntarily avail themselves of the protection of their country of origin;
- ❖ after loss of their nationality voluntarily regain the nationality of the country of origin
- ❖ have obtained another nationality upon application and enjoy the protection of the states from which they obtained the nationality
- ❖ voluntarily and permanently returned to the country which they left due to former fear of persecution can no longer refuse to claim the protection of the country of which they are citizens, or if they, as stateless persons, are able to return to the country where they had their usual residence'.<sup>1167</sup> Accordingly, a change of circumstances in the country of origin must be substantial and permanent and in a way that the fear of persecution in the country of origin can no longer be maintained in the individual case,<sup>1168</sup> but it also has to be ascertained whether the refugee can be reasonably expected to return to the country of origin. Case law which so far only exists on the former legal framework, has established that trauma or mental disorders which result from persecution constitute compelling reasons within the meaning of this provision.<sup>1169</sup> The assessment does not look at the strength of the person's ties with Germany since settling there.

#### **b) Revocation of subsidiary protection: Section 73 (2) Asylum Act**

Subsidiary protection may be revoked, if the circumstances on which the recognition of status was based have ceased to exist or changed in such a way that subsidiary protection is no longer necessary. The change of circumstances must be permanent and in such a significant way that in practice the risk of serious harm no longer exists.<sup>1170</sup>

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<sup>1165</sup> AIDA, *Country Report Germany - Update on the year 2021*, April 2022, available at <https://bit.ly/3XnN7RS>, 163-168.

<sup>1166</sup> BAMF, *Dienstanweisung Asyl*, 1 January 2023, available in German at: <https://bit.ly/3Ht4JVw>, 519.

<sup>1167</sup> Section 73(1) Asylum Act.

<sup>1168</sup> Section 73 (1) Sentence 3 Asylum Act.

<sup>1169</sup> 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), 2<sup>nd</sup> edition (2016), 105.

<sup>1170</sup> Section 73 (5) Asylum Act.



### **c) Revocation of the status of family members of beneficiaries of international protection Section 73a Asylum Act**

The so called ‘family asylum’ (see [Status and rights of family members](#)) and the status of family members of beneficiaries of international protection can be revoked if family members have committed offences which fulfil the criteria of exclusion from refugee status (see above). The status is also revoked if the status of the person the family members are dependent on ceases, is revoked or withdrawn and no independent grounds for protection exist.<sup>1171</sup>

### **d) Revocation procedure – applicable for all beneficiaries of international protection (Section 73 and Section 73a Asylum Act)**

While the legal reforms in the Act on the Acceleration of asylum court proceedings and asylum procedures the legal basis changed for the revocation procedure, the procedure itself mainly remained the same.<sup>1172</sup> If the BAMF intends to revoke or withdraw the status, the beneficiary of international protection 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, beneficiaries of international protection and constitutional asylum are now forced to cooperate fully with authorities in revocation and withdrawal procedures. Since January 2019, the law authorises the BAMF to impose obligations that are very similar to the obligations that apply during the asylum procedure. This includes:

- ❖ Obligation to attend a hearing (personal attendance is necessary, so representation 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.<sup>1173</sup>

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 had not already been carried out on an earlier occasion.<sup>1174</sup>

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 summoned to these hearings on a regular basis. There is a specialised unit for revocation procedures at the BAMF which initiates the procedures. The local authorities are then responsible for conducting the oral hearing.<sup>1175</sup> 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

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<sup>1171</sup> Section 73a Asylum Act.

<sup>1172</sup> Prior to the reforms the legal framework on the procedure was Section 73 Asylum Act, it now changed to Section 73b Asylum Act.

<sup>1173</sup> Michael Kalkmann, ‘Das Gesetz zur Einführung der Mitwirkungspflicht in Widerrufsverfahren’, *Asylmagazin* 1-2/2019, 6.

<sup>1174</sup> Kirsten Eichler, GGUA Flüchtlingshilfe: ‘Einführung von Mitwirkungspflichten im Widerrufs- und Rücknahmeverfahren’, 12 December 2018, available in German at at: <https://bit.ly/3auqFxF>.

<sup>1175</sup> See Federal Office for Migration and Refugees, Organigramm, lastly updated 01 December 2022, available at: <http://bit.ly/3XQEkYZ>.

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 BIP's integration in Germany or their exercise of religion.<sup>1176</sup> 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.<sup>1177</sup> 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.<sup>1178</sup>

If the BAMF decides to revoke or withdraw the status, the BIP has two weeks' time to appeal the decision before an Administrative Court. The appeal has suspensive effect, so the BIP retains such status until the court has decided upon the appeal. If BIPs 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 international protection status is revoked or withdrawn, this does not necessarily mean that a foreigner loses their 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 on another ground.

The legal framework still applicable in 2022 for revocation procedures is explained in the AIDA country report Germany – update on the year 2021.<sup>1179</sup> The following numbers of revocation procedures thus rely on the former legal framework.

The total number of revocation procedures that have been initiated in recent years still is as follows:

Total number of revocation procedures initiated: 2017-2022					
2017	2018	2019	2020	2021	2022
77,106	192,664	205,285	187,565	117,093	51,537

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. BAMF, Aktuelle Zahlen, December 2022, available at: <http://bit.ly/3DvmlPI>.

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 from 2020. As regards the outcome of these revocation and withdrawal procedures that were already examined, they were as follows (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)):

<sup>1176</sup> 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>.

<sup>1177</sup> Ibid.

<sup>1178</sup> Federal Government, Responses to parliamentary questions by The Left, 20/940, 7 March 2022, 7.

<sup>1179</sup> AIDA, *Country Report Germany - Update on the year 2021*, April 2022, available at <https://bit.ly/3XnN7RS>.

Outcome of revocation procedures			
	2020	2021	2022
Revocation or withdrawal of national asylum status	155 (0.1%)	157 (0.1%)	96 (0.3%)
Revocation or withdrawal of refugee status	6,339 (3.7%)	3,776 (2.2%)	1,361 (4.18%)
Revocation or withdrawal of subsidiary protection	1,027 (0.6%)	1,531 (0.9%)	767 (2.36%)
Revocation/withdrawal of prohibition of removal	1,189 (0.5%)	1,166 (0.7%)	425 (1.3%)
No revocation or withdrawal	244,230 (96.6%)	162,693 (96.1%)	29,889 (91.86%)
<b>Total</b>	<b>252,940</b>	<b>169,323</b>	<b>32,538</b>

Source: BAMF, *Aktuelle Zahlen*, December 2022, available at <http://bit.ly/3DvmlPI>.

In the vast majority of these cases, the BAMF found no reason to revoke or withdraw the protection statuses. The total number of revocation or withdrawal decisions affected a total of 2,649 persons in 2022. 114,632 revocation procedures were still pending at the end of 2022. Nationalities with a comparatively high number of revocations in 2022 include Syria, Iraq and Afghanistan.

Outcome of revocation procedures in 2022 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	13	555	369	24	13,412	<b>14,168</b>
Iraq	7	277	320	88	3,275	<b>3,901</b>
Afghanistan	4	88	42	33	3,813	<b>3,950</b>
Türkiye	19	35	43	11	1,447	<b>1,524</b>
Iran	11	91	13	10	1,784	<b>1,897</b>
Eritrea	4	93	45	5	1,186	<b>1,312</b>
undetermined	0	112	69	10	1,139	<b>1,265</b>
Somalia	0	33	26	18	962	<b>1,023</b>
Pakistan	0	15	2	8	557	<b>577</b>
Stateless	0	14	2	4	240	<b>255</b>

Source: Federal Government, *Responses to parliamentary questions by The Left*, 20/5850, 2 March 2023, available in German at: <https://bit.ly/41cx7Uv>, 3.

In 2022 1,059 court decisions regarding challenges of revocation decisions were registered. Only 279 appeals against revocation or withdrawal decisions by the BAMF were successful (12.5%).<sup>1180</sup> This rate is higher than in 2020 (8.9%) but comparable to previous years (2019: 9.6%, 2018: 12.6%). In 778 cases (34.9%), the BAMF decision to withdraw or revoke a protection status was upheld by the courts, and in

<sup>1180</sup> Federal Government, *Response to parliamentary questions by The Left*, 20/5709, 17 February 2023, available in German at: <https://bit.ly/3K3w3MX>, 37.

1,171 cases (52.6%) 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 (23.0%, 150 successful appeals) Ukraine (25%, 2 successful appeals), Tunisia (16.7%, 1 successful appeal) and Ethiopia (16%, 4 successful appeals).<sup>1181</sup>

## 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(4) of the Asylum Act: **international protection** '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.'

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 their 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 on another ground. Since this is decided on the local level, no statistics are available concerning the number of cases in which people were granted a new residence permit after revocation or withdrawal of protection status.

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

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

<sup>1181</sup> 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.

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 local authorities within 3 months after the refugee status has become incontestable (final) that they wish to be reunited with a close family member (notification).<sup>1182</sup> This notification by the refugee can be done online through the website of the Federal Foreign Office or at the local authorities.<sup>1183</sup> The application itself has to be handed in by the family members at the embassy of the country where the family members are staying.

Persons eligible for family reunification under this provision are:

- ❖ Spouses or ‘registered same-sex partners’;<sup>1184</sup>
- ❖ Minor unmarried children;
- ❖ Parents of unaccompanied children, if no other parent with entitlement to custody is living in Germany;
- ❖ Minor siblings of unaccompanied children.

Depending on who is to be reunited additional criteria apply. For example, spouses need to be above eighteen years and need to have basic knowledge of German if marriage occurred post-flight.<sup>1185</sup>

In order to demonstrate the family link first and foremost official documents are considered by the authorities.<sup>1186</sup> There is no obligation to demonstrate the family link through DNA testing. However, in cases where the family link cannot be proven by official documents and reasonable doubts cannot be removed regarding the existence of a family link, the authorities are required to inform applicants about the possibility to use voluntarily DNA testing as evidence.<sup>1187</sup> The question of who covers the costs for the required documents and the family reunification procedure in total is disputed and differs in individual cases. It is generally established that only the sponsors present in Germany may apply for financial compensation. Additionally, costs will only be compensated if sponsors are unable to cover the costs themselves and if the general social benefits are not sufficient to cover the costs.<sup>1188</sup>

The family link does not need to be established before the entry of the sponsor to Germany. Explicitly family reunification is possible not only for the “protection of family life” but also for the “establishment of family life”.<sup>1189</sup> However, the applicability of additional criteria may depend on whether the link already existed prior to the arrival of the sponsor in Germany. For example basic German knowledge of spouses is not required if the link already existed prior to the arrival of the sponsor in Germany.<sup>1190</sup>

If refugees are entitled to family reunification under this provision, the local authorities in Germany examine the application. They then approve the application if the criteria set out above are fulfilled. The approval is sent to the embassy. Based on the approval, the German embassy in the country where the family members are staying then must issue the necessary visa. An administrative fee of € 75 for adults and half of it for minor children must be paid for the issuance of the visa.<sup>1191</sup> Generally, the reunited

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<sup>1182</sup> Section 29(2)(1) Residence Act.

<sup>1183</sup> Handbook Germany, Familiennachzug für Geflüchtete, lastly amended 20 August 2022, available at: <http://bit.ly/3jh3P6z>.

<sup>1184</sup> ‘registered same-sex partnership’ was introduced in 2001 as equivalent to marriage which was at that time still reserved to heterosexual couples. From 2017 on same-sex marriage is allowed in Germany. However, the term is still used, since there may still be same-sex couples who formerly registered as such and/or a similar concept might exist in other countries.

<sup>1185</sup> Section 30 para 1 Residence Act.

<sup>1186</sup> Federal Ministry of Interior, *Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz* (General Administrative Guidelines for the Residence Act), 26 Oct. 2009, no. 27.0.4.

<sup>1187</sup> Federal Ministry of Interior, *Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz* (General Administrative Guidelines for the Residence Act), 26 Oct. 2009, no. 27.0.5.

<sup>1188</sup> Eva Steffen, Infoblatt für Mitarbeitende in den Migrationsfachdiensten, Zu den rechtlichen Möglichkeiten der Übernahme von Kosten des Familiennachzuges zu international Schutzberechtigten, 18 November 2019.

<sup>1189</sup> Section 27 para. 1 Residence Act.

<sup>1190</sup> See e.g. Section 30 para 1 sentence 2 no. 1 Residence Act.

<sup>1191</sup> Section 46 para 2 Regulation on Residence.



person must be in possession of a valid passport or equivalent travel documents.<sup>1192</sup> As mentioned above, it is contested whether sponsors or family members may apply for financial support. Exemptions are only possible if all other criteria for family reunification are fulfilled and if the identity of the person is established. The person who wishes to be reunited must apply for the exemption of holding valid travel documents and a decision on whether the exemption will be granted is discretionary.<sup>1193</sup> The overall procedure may take several months, depending on the embassies. The sometimes extensive length of the procedure has continuously been criticised by civil society organisations.<sup>1194</sup> According to the answer to an oral parliamentary request, the waiting times in 2022 took over one year in Islamabad and Lagos and one year in Rabat.<sup>1195</sup> The Foreigners Office announced it would introduce an action plan to accelerate the procedure.<sup>1196</sup>

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.<sup>1197</sup> The Federal Administrative Court has requested a preliminary ruling of the CJEU on the matter in April 2020.<sup>1198</sup> In August 2022 the CJEU strengthened the right to family reunification in its decision. The CJEU decided that the child needs to be underage at the time of the application for asylum but not necessarily at the time of their family's departure.<sup>1199</sup> This counts for cases where the underaged child is the sponsor as well as for cases where the parent is the sponsor. As of August 2022 according to the Federal government, 330 cases were pending at German embassies on the matter and another 250 cases were pending before courts.<sup>1200</sup> The Federal government declared that they advised the embassies and Federal states to quickly implement the CJEU's decision to respond to the backlog of cases. The party *The Left* however criticised that the non-compliance with the CJEU decision of 2018 already lead to wrong decisions causing serious harm and trauma to many families in the last years.<sup>1201</sup>

Another discussion arose in 2022 on the additional criteria for family reunification in cases where minor children are the sponsors and want to reunite their parents. Parents of unaccompanied minors may only be granted a visa if the family already existed in the country of origin.<sup>1202</sup> In the case discussed, the child was born in Germany, so it was argued that the 'family' did not exist yet at the time the parents were in the country of origin. However, the Higher Administrative Court decided that the criterion of the 'already existing family' does not necessarily require identical persons but that the family already exists as family tribe, meaning that the child does not need to be born prior to their arrival in Germany in order to later become a sponsor for the parent.<sup>1203</sup>

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

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<sup>1192</sup> Section 3 para 1 Residence Act.

<sup>1193</sup> Federal Foreign Office, Visumhandbuch, Ausnahme von der Passpflicht, 130. Ergänzungslieferung, August 2022.

<sup>1194</sup> German Institute for Human Rights, Hürden beim Familiennachzug, December 2020, available in German at: <https://bit.ly/3HnwBKK>.

<sup>1195</sup> Reply to oral parliamentary request by Clara Bünger (die Linke), 8 February 2023, question no. 37.

<sup>1196</sup> Ibid.

<sup>1197</sup> CJEU, Case C-550/16, *A und S / Staatssecretaris van Veiligheid en Justitie*, Judgement of 12 April 2018.

<sup>1198</sup> Federal Administrative Court, 1 C 9.19 – Decision of 23 April 2020.

<sup>1199</sup> CJEU, Joined Cases *C-273/20*, *C-355/20*, Judgement of 1 August 2022, ECLI:EU:C:2022:617.

<sup>1200</sup> Federal Government, Response to parliamentary question by The Left, 20/4146, 20.10.2022, 20, available in German at: <https://bit.ly/3RkYCYa>.

<sup>1201</sup> Tagesschau.de, Bundesregierung will Familiennachzug erleichtern, 26.10.2022, available in German at: <http://bit.ly/3kXFWSf>.

<sup>1202</sup> Section 26 (3) (no.2) Asylum Act.

<sup>1203</sup> Higher Court of Rhineland-Palatinate, Decision 13 A 11241/21.OVG, 25 June 2022, available in German at: <http://bit.ly/3HolJwj>.

have to prove that they can cover the cost of living for themselves and their families and that they have sufficient living space.<sup>1204</sup> For family reunification of spouses, a further requirement is that both spouses have to be at least 18 years of age.<sup>1205</sup>

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.<sup>1206</sup> In 2022 a total of 19,449 visas for family reunification were issued to beneficiaries of international protection, out of which 10,549 for beneficiaries of refugee protection and 8,900 for beneficiaries of subsidiary protection.<sup>1207</sup> While the number of visas issued in 2022 was higher than in the years 2020 and 2021 where Covid impacted the family reunification procedure,<sup>1208</sup> the overall figure stayed below the 2019 numbers (15,849 visas issued in 2021, compared to 24,835 in 2019).<sup>1209</sup>

### 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.<sup>1210</sup> 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. As such, the beneficiary of subsidiary protection does not have a right to family reunification. Instead, the family members need to apply themselves for reunification and the decision is 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:

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

In addition, the welfare of the child and 'integration aspects' (e.g. language skills, ability to provide for means of living) may be taken into account.<sup>1211</sup>

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.<sup>1212</sup> In practice, this selection does not take place since procedures at the local

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<sup>1204</sup> Sections 27(3) and 29 Residence Act.

<sup>1205</sup> Section 30(1)(1) Residence Act.

<sup>1206</sup> Section 30(1)(3) Residence Act.

<sup>1207</sup> Reply to oral parliamentary question by Clara Bünger (Die Linke), 8 February 2023, question no. 37..

<sup>1208</sup> For information on the impact of Covid-19 on the family reunification procedure, see: AIDA, *Country Report Germany - Update on the year 2021*, April 2022, available at <https://bit.ly/3XnN7RS>, 170.

<sup>1209</sup> Neue Osnabrücker Zeitung, 'Familiennachzug hat im vergangenen Jahr wieder deutlich zugenommen', 10 March 2022, available in German at: <https://bit.ly/389cYbi>.

<sup>1210</sup> Section 36a Residence Act; Section 104(13) Residence Act.

<sup>1211</sup> Detailed information on the legal requirements and the procedure can be found at: <https://familie.asyl.net>.

<sup>1212</sup> A description of the procedure in English has been published by Initiative 'Familienleben für alle', available at <https://bit.ly/2V6QzBg>.

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.<sup>1213</sup> In 2022, 8,900 visas were issued, i.e. 74% of the quota.<sup>1214</sup> Around 17,594 requests for appointments at embassies were pending as of June 2022.<sup>1215</sup> 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.<sup>1216</sup>

Difficulties for family reunification are exacerbated by long waiting periods at embassies.<sup>1217</sup> This has particularly problematic effects on family reunification procedures of unaccompanied minors (see above). In several decisions the Administrative Court of Berlin<sup>1218</sup> 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.<sup>1219</sup> The delay in procedures, in particular on the part of local authorities, might put reunification of young persons with their parents at risk.<sup>1220</sup> 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 18<sup>th</sup> birthday.<sup>1221</sup>

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. However, the Federal government has not initiated any legal reforms yet. Instead, the Federal Administrative Court ruled in

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<sup>1213</sup> 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 2022, available in German at: <https://bit.ly/3H0EwMM>.

<sup>1214</sup> Reply to oral parliamentary request by Clara Büniger (die Linke), 8 February 2023, question no. 37.

<sup>1215</sup> Reply to written parliamentary request by *the Left*, Drucksache 20/2842, 20 July 2022, 3.

<sup>1216</sup> *ibid.*

<sup>1217</sup> 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.

<sup>1218</sup> 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.

<sup>1219</sup> Administrative Court of Berlin, Decision 38 K 27.18 V, 29 March 2019, available at <https://bit.ly/2VGrPQW>.

<sup>1220</sup> 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>.

<sup>1221</sup> 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, 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>.

December 2022 that a distinction between refugees and beneficiaries of subsidiary protection concerning the right to family reunification does not violate the Constitution.<sup>1222</sup>

### **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** (prolonged until end of 2024),<sup>1223</sup> **Brandenburg** (prolonged until end of 2023),<sup>1224</sup> **Bremen** (until end of September 2021), **Hamburg** (until end of November 2023),<sup>1225</sup> **Schleswig-Holstein** (until end of 2023)<sup>1226</sup> and **Thuringia** (until end of December 2024)<sup>1227</sup>. The programme in the Federal State of **Berlin** is also available to family members of Iraqi refugees.<sup>1228</sup>

In 2021 and 2022, several Federal States (**Berlin, Bremen, Hessen, Schleswig-Holstein** and **Thuringia**) decided to put similar family reunification programmes in place for family members of Afghan refugees.<sup>1229</sup> The Federal government approved these programmes.<sup>1230</sup> In October 2022, the Federal Government introduced a reception and family reunification programme for Afghans and family members of Afghans with a monthly quota of 1,000 people (see also [Differential treatment of specific nationalities in the procedure](#)).<sup>1231</sup> Criticism has been raised by the party *The Left* as to the fact that the visa procedure for family reunification from Afghanistan is extremely lengthy. Accordingly, despite the discretion of the local authorities to shorten the procedure in cases of concrete danger, the procedure continues to take over one year.<sup>1232</sup> The Left further criticises that because applications for the special reunification programmes may only be filed in Afghanistan and embassies in Pakistan and India are overburdened with applications for family reunification, many family members in practice do not have access to family reunification.<sup>1233</sup>

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

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<sup>1222</sup> Judgement not available yet. Instead see: Federal Administrative Court, Voraussetzungen für den Familiennachzug zu subsidiär Schutzberechtigten, press release Nr. 78/2022, 8 December 2022, available in German at: <https://bit.ly/3YcL6rO>.

<sup>1223</sup> Berlin, Aufnahmeregelung für syrische und irakische Flüchtlinge mit Verwandten in Berlin, available in German at: <http://bit.ly/3Ri299z>.

<sup>1224</sup> Brandenburg, Allgemeine Weisung Nr. 4/2022, available in German at: <http://bit.ly/3HJGRyj>.

<sup>1225</sup> Hamburg, Anordnung Nr. 2/2022, available in German at: <https://bit.ly/3wLz6T3>.

<sup>1226</sup> Schleswig-Holstein, Landesaufnahmeprogramm für syrische Familien bis Ende 2023 verlängert, 21 December 2022, available in German at: <http://bit.ly/3jh0KDH>.

<sup>1227</sup> Refugee Council Thuringia, Familiennachzug - Syrien Aufnahmeprogramm, available in German at: <http://bit.ly/40g4eqA>.

<sup>1228</sup> An overview of regional programmes can be found at: <http://resettlement.de/aktuelle-aufnahmen/>.

<sup>1229</sup> 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/3Kyl1fv>.

<sup>1230</sup> Federal government, response to parliamentary request, 20/4209, 30, available in German at: <https://bit.ly/3jhzuFc>.

<sup>1231</sup> Federal Ministry of Interior, Aufnahmeanordnung, 21 December 2022, available in German at: <http://bit.ly/3jhXlnY> and Federal Foreign Ministry, 'Action Plan for Afghanistan, 23 December 2021, available at: <https://bit.ly/3uF42IJ>.

<sup>1232</sup> Federal government, response to parliamentary request, 20/3430, 22, available in German at: <https://bit.ly/3HOs4Tk>.

<sup>1233</sup> Federal government, response to parliamentary request, 20/3430, 22, available in German at: <https://bit.ly/3HOs4Tk>.

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).<sup>1234</sup> 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.

## 2. Status and rights of family members

If family members are already in Germany and have applied for asylum at the same time as or prior to the person granted protection or if family members arrive in Germany and immediately apply for asylum while their partner has already been 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.<sup>1235</sup>

If family members arrive without a visa after the partner has been granted protection and do not immediately apply for asylum, they may face charges for illegal entry under Section 95 Residence Act.

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.<sup>1236</sup> 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.<sup>1237</sup>

## 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.<sup>1238</sup>

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

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<sup>1234</sup> 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>.

<sup>1235</sup> Section 26(5) Asylum Act.

<sup>1236</sup> Section 27(4) Residence Act.

<sup>1237</sup> Section 31 Residence Act.

<sup>1238</sup> 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.



period, as opposed to the possible three year-period applied in other states.<sup>1239</sup> 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 Wilhelmshaven) 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.<sup>1240</sup>

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 their 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.<sup>1241</sup> In 2022 the legal framework for the obligatory place of residence has been slightly changed. New exception grounds for the obligation to take up a specific place of residence have been introduced. Accordingly, beneficiaries of international protection may be exempted from the obligation if their participation in an integration course or other qualification measures requires them to move somewhere else. Additionally, for the lifting of the obligation it is now sufficient that the beneficiaries are able to cover the 'overwhelming part' of the cost of living, whereas before beneficiaries had to cover all the living costs.<sup>1242</sup>

According to the official explanatory memorandum, the residence rule is supposed to promote sustainable integration by preventing segregation of communities.<sup>1243</sup> However, it has been questioned whether the way in which the provision has been put into effect is suitable for achieving the intended aim.<sup>1244</sup> 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.<sup>1245</sup>

A brief analysis of the impact of the residence rule was published in January 2020.<sup>1246</sup> 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

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<sup>1239</sup> Welt.de, 'Dort wohnen, wo der Staat es will', 1 March 2019, available in German at <https://bit.ly/2XiTGZH>.

<sup>1240</sup> 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>.

<sup>1241</sup> Section 12a(5) Residence Act.

<sup>1242</sup> GGUA, Änderungen ab 1. June 2022 für Geflüchtete aus der Ukraine mit Aufenthaltserlaubnis nach § 24 AufenthG oder nach Antrag auf § 24 AufenthG, 27 May 2022, available in German at: <https://bit.ly/3JwRohS>.

<sup>1243</sup> Explanatory memorandum, Bundestag Document no. 18/8614, 42-43.

<sup>1244</sup> Clara Schlothuber and Sebastian Röder, *Integrative (?) Zwangsmaßnahme (!), Die neue Wohnsitzregelung nach § 12a AufenthG*, Asylmagazin 11/2016, 364-373.

<sup>1245</sup> Nona Renner, *Die Wohnsitzauflage als Mittel deutscher Integrationspolitik? Das Beispiel Sachsen*, MIDEM-Policy Paper 01/18, Dresden, available at: <http://bit.ly/2HSpzgM>.

<sup>1246</sup> 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>.

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.

An independent study from 'Paritätischer Gesamtverband' from 2022 confirmed these findings. In the study, the obligation has been highly criticised as standing in contrast to the aim of facilitating integration. E.g. access to the job market, access to regular housing and protection for victims of violence is heavily impeded by the obligation.<sup>1247</sup>

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.<sup>1248</sup> 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 enhance the prospects of a sustainable integration'.<sup>1249</sup> In the aftermath of the judgment the government of North Rhine-Westphalia generally evaluated the states rules and amended those parts where the court objected.<sup>1250</sup> 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.<sup>1251</sup> 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'.<sup>1252</sup> 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.<sup>1253</sup> While the amendments in the legal framework slightly improve the situation of beneficiaries since more exceptions and reasons for lifting the obligation have been introduced, still no official evaluation on the obligation has been published. The BAMF started an evaluation in 2021 but no results are available yet.<sup>1254</sup>

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<sup>1247</sup> Der Paritätische Gesamtverband, Die Wohnsitzregelung gem. § 12a AufenthG, April 2022, available in German at: <https://bit.ly/3jmhNEq>.

<sup>1248</sup> High Administrative Court North Rhine-Westphalia, Decision 18 A 256/18, 4 September 2018.

<sup>1249</sup> Claudius Voigt, 'Zum Urteil des OVG Nordrhein-Westfalen: Rechtswidrige pauschale Wohnsitzzuweisung', *Asylmagazin* 12/2018, 454-458.

<sup>1250</sup> Ministry for children, family, refugees and integration North Rhine-Westphalia, Bericht zur Evaluierung der Wohnsitzregelung für anerkannte Schutzberechtigte in Nordrhein-Westfalen, 1 August 2019, available in German at: <http://bit.ly/3Jyhm4E>.

<sup>1251</sup> Act to remove the time-limit of the integration Act (*Gesetz zur Entfristung des Integrationsgesetzes*), Official Gazette I, No. 25, 11 July 2019, 914.

<sup>1252</sup> Section 12a(1)(3) Residence Act.

<sup>1253</sup> Explanatory memorandum to draft bill, 25 March 2019, 19/8692, 9.

<sup>1254</sup> BAMF, Evaluation der Wohnsitzregelung nach §12a AufenthG, 30 August 2021, available at: <http://bit.ly/3YgbqBa>.

## 2. Travel documents

Persons with **refugee status** are entitled to 'travel documents for refugees' ('*Reiseausweis für Flüchtlinge*') in accordance with Article 28 of the 1951 Refugee Convention. The travel document for refugees is either automatically issued together with the residence permit after status determination has become final, or it is issued upon application. The document shall adhere to European standards<sup>1255</sup> and therefore has to include a storage medium with the facial image, fingerprints etc.<sup>1256</sup>

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'.<sup>1257</sup> A prolongation of the document is not possible, so refugees have to apply for a new document once the old one has expired. If their travel document expires on a journey, they may exceptionally apply for a travel document for aliens (see below) from abroad.<sup>1258</sup> In these cases applicants need a valid residence permit and the embassy checks whether a cessation of the German residence permit due to an absence of more than six months from Germany can be assumed.<sup>1259</sup> If the beneficiary has been absent for more than six months, it is assumed that the responsibility for the beneficiary has been shifted to the state where the beneficiary is present. However, the travel document is usually valid for the same period as the residence permit.

In cases where the validity of the residence permit will expire during the time abroad, the beneficiary is required to apply for a renewal of the residence permit prior to his absence. Since online applications for the renewal of residence permits are not (yet) possible and the application for a renewal needs to be done at the responsible local authority (see [Residence permit](#)) the beneficiary needs to make sure that his application for a renewal of residence permit is done prior to his journey. If the application for renewal has been lodged prior to the expiration, a 'Fictional approval' (*Fiktionsbescheinigung*) is granted, which secures the legality of the stay in Germany until the renewal and equally allows travelling abroad and re-entry to Germany in combination with the expired residence permit.<sup>1260</sup>

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.<sup>1261</sup> 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,<sup>1262</sup> this is not the case for beneficiaries of subsidiary protection. Guidelines by the Federal Ministry of Interior stipulate that persons who cannot be deported for legal or humanitarian reasons generally cannot be expected to travel to their countries of origin if this is necessary to obtain a passport.<sup>1263</sup> 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

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<sup>1255</sup> 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.

<sup>1256</sup> Section 4(4) Residence Regulation (*Aufenthaltsverordnung*).

<sup>1257</sup> Section 4(1) Residence Regulation.

<sup>1258</sup> Section 4(1) No. 1, Section 5 and Section 7 and Section 11 Regulation on Residence.

<sup>1259</sup> Foreigners Office, Visumhandbuch, Fiktionsbescheinigung, 487 (pdf Version), 70. Ergänzungslieferung, December 2019.

<sup>1260</sup> Foreigners Office, Visumhandbuch, Fiktionsbescheinigung, 295 (pdf Version), 70. Ergänzungslieferung, December 2019.

<sup>1261</sup> Section 5(1) Residence Regulation.

<sup>1262</sup> Verfahrenshinweise der Ausländerbehörde Berlin (Guidelines for the Aliens Office Berlin), 12 September 2016, available at: <http://bit.ly/2m1sjCe>, 492.

<sup>1263</sup> Federal Ministry of Interior, *Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz* (General Administrative Guidelines for the Residence Act), 26 Oct. 2009, no. 3.3.1.3.

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. Beneficiaries of subsidiary protection often face difficulties in demonstrating that they cannot be reasonably expected to get a passport.<sup>1264</sup> In one recent case, the Federal Administrative Court rebutted the assumption that beneficiaries of subsidiary protection can reasonably be expected to obtain a passport of the embassy of their country of origin if they require the beneficiary to sign a 'repentance statement' (*Reueerklärung*).<sup>1265</sup>

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.<sup>1266</sup> 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 <sup>1267</sup> |
| 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. In 2022 it became even more difficult to find apartments. The reasons are numerous. The general housing situation in Germany is very tense; according to a study, Germany will be lacking more than 700,000 apartments in 2023.<sup>1268</sup> According to the Heinrich Boeckler Foundation, the lack of low-cost units is even higher.<sup>1269</sup> Additionally, beneficiaries of international protection face discrimination on the regular job market or scepticism if the landlords hear that the rent is paid by the Social Welfare Office.<sup>1270</sup> Infomigrants has collected a series of reports on the current situation of housing for beneficiaries of international protection.<sup>1271</sup> As a consequence, 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.<sup>1272</sup>

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

<sup>1264</sup> Federal Association for Unaccompanied Refugee Minors (BumF), Passbeschaffung & Identitätsklärung, available in German at: <http://bit.ly/3jiEAKy>.

<sup>1265</sup> Federal Administrative Court, Decision BVerwG 1 C 9.21, 11 October 2022.

<sup>1266</sup> Section 8 Residence Regulation.

<sup>1267</sup> 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.

<sup>1268</sup> ZDF, Studie: 2023 fehlen 700.000 Wohnungen, 12 January 2023, available in German at: <http://bit.ly/3RnNFVG>.

<sup>1269</sup> Infomigrants, Germany: Finding housing as a refugee – an obstacle course (2/3), 19 September 2022, available at: <https://bit.ly/3Rq1kve>.

<sup>1270</sup> Infomigrants, Germany: Finding housing as a refugee – an obstacle course (1/3), 14 September 2022, available at: <https://bit.ly/3HodAI7>.

<sup>1271</sup> Infomigrants, Germany: Finding housing as a refugee – an obstacle course (1/3), 14 September 2022, available at: <https://bit.ly/3HodAI7>; Infomigrants, Germany: Finding housing as a refugee – an obstacle course (2/3), 19 September 2022, available at: <https://bit.ly/3Rq1kve>; Infomigrants, Germany: Finding housing as a refugee – an obstacle course (3/3), available at: <https://bit.ly/3XWdoa9>.

<sup>1272</sup> 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>.

Germany as asylum seekers between 2013 and the end of January 2016 were living in 'individual accommodation' (i.e. not in collective accommodation centres).<sup>1273</sup>

Some detailed figures are available for the Federal State of Bavaria: In 2022, 20.2% of persons living in collective accommodation centres in March 2022 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. Out of the 36,835 persons living in decentralised accommodation, 25.6% are 'false occupants' (i.e. 9,429 persons).<sup>1274</sup>

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:<sup>1275</sup>

'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

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<sup>1273</sup> 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>.

<sup>1274</sup> Bavarian Ministry for the Interior, Sport and Integration, 'Unterbringung und Versorgung', available in German at <https://bit.ly/3rluDWL>

<sup>1275</sup> 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>.



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.<sup>1276</sup>

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. 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'.<sup>1277</sup> 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.<sup>1278</sup> 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 courses<sup>1279</sup> or integration courses (see below [Access to education](#)).

On the Federal level, the BAMF coordinates several integration measures which are summarized as 'Migration counselling measures for immigrated adults' (Migrationsberatung für erwachsene Zuwanderer).<sup>1280</sup> Next to educational courses (see [Access to education](#)) the programme also includes individual counselling services concerning family life, housing, health issues, education and labour. The counselling is in many cases provided in the mother tongue of the beneficiary or in a language the person can understand. The counselling service is complemented by a programme for young adults under 27 which is specifically tailored to their needs e.g. career planning and youth issues. Since 2019 the service is also provided online through an application which is available in German, Russian, English and Arabic. The counselling measures are available for foreigners in general but can be adopted to the needs of

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<sup>1276</sup> Frankfurter Rundschau, 'Wohngebühren für Flüchtlinge: Monatlich bis zu 930 Euro', 12 August 2019, available at: <https://bit.ly/3nQtMsQ>.

<sup>1277</sup> Section 12a(2) Residence Act.

<sup>1278</sup> Section 25(2) Residence Act.

<sup>1279</sup> See BAMF, 'German for professional purposes', 7 June 2021, available in German at <https://bit.ly/3rP6W6e>.

<sup>1280</sup> Federal Ministry of Interior, Migrationsberatung für erwachsene Zuwanderer, available in German at: <http://bit.ly/40h6DS5>.

beneficiaries of international protection.<sup>1281</sup> For 2023 the Federal government decided to spend in total 81,5 million € for the 'Migration counselling measures for immigrated adults'.<sup>1282</sup>

Some Federal States set up additional integration programmes or fund project of private initiatives which aim at the integration of migrants. **North Rhine-Westphalia** introduced in 2021 the 'Act to support social participation and integration in North Rhine-Westphalia' (*Gesetz zur Förderung der gesellschaftlichen Teilhabe und Integration in Nordrhein-Westfalen*) by which the state's government commits itself to invest at least 130,000€ per year on integration programmes.<sup>1283</sup> For the implementation the state introduced 'municipal centres of integration' (*Kommunale Integrationszentren*) which shall coordinate and conceptualise integration programmes tailored to the needs and existing private initiatives in the municipalities. As for the Federal programmes, the services are open to migrants in general, but some programmes are specifically tailored to beneficiaries of international protection and people with a 'tolerated stay' (*Duldung*).<sup>1284</sup> **Berlin** already introduced a similar Act in 2010 which was though completely revised in 2021. The 'Act to support participation in the migration society' (*Gesetz zur Förderung der Partizipation in der Migrationsgesellschaft*) foresees likewise to support integration programmes but additionally focuses on the diversification of the administration in Berlin.<sup>1285</sup>

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 main reasons identified are the administrative hurdles since the procedure is highly formalised. The first barrier is that depending on which qualification should be recognised foreigners need to approach different authorities. Secondly, foreigners need to understand whether the recognition of their qualification is mandatory. The recognition is mandatory for third country nationals and independently from the nationality for so called 'regulated labour' (*reglementierte Berufe*) e.g. teachers, engineers, health practitioners.<sup>1286</sup> Moreover the recognition usually requires certificates and additional documents. In case foreigners cannot provide these documents, they need to undergo additional tests and contact a counselling person.<sup>1287</sup>

In addition to the bureaucratic barriers, 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 German Law.<sup>1288</sup> If recognitions take place there is a highly positive effect on the income and the formal level of the labour market involvement of migrants in general and persons granted a protection status in particular.<sup>1289</sup> 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.<sup>1290</sup> The German government therefore has set up an information portal offering

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<sup>1281</sup> BAMF, Integrationsangebote im Überblick, available at: <http://bit.ly/3HNkU1o>.

<sup>1282</sup> Filiz Polat, Budgeterhöhung für die Migrationsberatungen für erwachsene Einwanderinnen und Einwanderer, Newsletter Flucht, 28 September 2022.

<sup>1283</sup> North Rhine-Westphalia, Gesetz zur Förderung der gesellschaftlichen Teilhabe und Integration in Nordrhein-Westfalen (Teilhabe- und Integrationsgesetz – TIntG), 25 November 2021, lastly amended 1 January 2022, available in German at: <http://bit.ly/3DwZpPO>.

<sup>1284</sup> See e.g. Kommunales Integrationszentrum Köln, Durchstarten in Ausbildung und Arbeit, available in German at: <http://bit.ly/3YfFHjx>.

<sup>1285</sup> Gesetz zur Förderung der Partizipation in der Migrationsgesellschaft des Landes Berlin (Partizipationsgesetz – PartMigG) 5 July 2021, lastly amended 2 November 2022, available in German at: <http://bit.ly/3kQGA3F>.

<sup>1286</sup> All labour where the scope of practice is defined by law is counted as 'regulated labour'.

<sup>1287</sup> On the procedure of recognition of qualifications, see: Bundesagentur für Arbeit, Anerkennung von Abschluss und Zeugnis, available in German at: <http://bit.ly/3l4l6jP>.

<sup>1288</sup> See Kosyakova, Yuliya; Gundacker, Lidwina; Salikutluk, Zerrin; Trübswetter, Parvati (2021): Arbeitsmarktintegration in Deutschland: Geflüchtete Frauen müssen viele Hindernisse überwinden. (IAB-Kurzbericht, 08/2021), Nuremberg.

<sup>1289</sup> 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.

<sup>1290</sup> 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.

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.<sup>1291</sup>

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 Germany, especially during the first lockdown between March and June 2020 according to a study published in May 2021.<sup>1292</sup> 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.<sup>1293</sup>

Research on 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.<sup>1294</sup> The main conclusions of the study include the following:

- ❖ About 50% of the persons surveyed found employment within five years of their 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.

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<sup>1291</sup> 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.

<sup>1292</sup> 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.

<sup>1293</sup> Ibid.

<sup>1294</sup> 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>.

These findings have been confirmed by the final report on this long-term survey published in November 2020.<sup>1295</sup> 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.<sup>1296</sup> 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.<sup>1297</sup>

## 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'.<sup>1298</sup> 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:<sup>1299</sup>

- ❖ 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.

Concerning the access to higher education (more extensively discussed, see [Access to education](#)) while there have been some improvements, the lack of sufficient language skills, discrimination and the recognition of former degrees, continue to hinder access to higher education for beneficiaries of and applications for international protection.

<sup>1295</sup> 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.

<sup>1296</sup> Ibid. 24 ff.

<sup>1297</sup> Brücker, Herbert; Hauptmann, Andreas; Jaschke, Philipp (2020): *Beschränkungen der Wohnortwahl für anerkannte Geflüchtete: Wohnsitzauflagen reduzieren die Chancen auf Arbeitsmarktintegration*. (IAB-Kurzbericht, 03/2020), Nuremberg.

<sup>1298</sup> See BAMF, 'The content and stages of the procedure', available at <https://bit.ly/3fNqh1S>

<sup>1299</sup> Ibid.

## 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. There have been substantial reforms of the legal framework governing social benefits in Germany through the so called 'citizens benefits law' (*Bürgergeld Gesetz*) which entered into force on 1 January 2023. They entail changes to social benefits which respectively apply for German nationals as well as for beneficiaries of international protection. By way of example, the amount of financial benefits has been lifted from 449 € to 502€ for single adults, 451€ for spouses, children between 14 and 17 years 420€ and children between six and thirteen 348€ and children under six years 318€. Additionally, grounds for penalties upon non-compliance with obligations to cooperate have been reduced and the amount of financial reserves and extra income next to the unemployment benefits has been raised.<sup>1300</sup>

In order to meet the late effects of the Covid-19 pandemic and inflation the Federal government further introduced several ad hoc measures. Children receive a monthly support of 20€ to facilitate social and financial participation, adults who received unemployment benefits in June 2022 received an additional sum of 200€ for July 2022.<sup>1301</sup>

Beneficiaries of international protection are entitled to benefits, starting from the first day of the month after the recognition of their status has become legally valid i.e. usually with the arrival of the decision by the BAMF. Problems with access to social benefits may occur during the period when persons have already been granted protection status but still only have the asylum seeker's permission to stay (*Aufenthaltsgestattung*) because they have not yet received the residence permit (*Aufenthaltserlaubnis*) which officially confirms that they have protection status. This may lead responsible authorities to deny social services for the first couple of weeks following the recognition of the status. However, persons concerned would in any case be entitled to the (lower) asylum seekers' benefits during this period and they can claim payments to which they would have been entitled at a later date.<sup>1302</sup>

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 these cases, social benefits are only provided 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

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<sup>1300</sup> NDR, Bürgergeld statt Hartz IV: Was ändert sich und was bleibt?, last amended 2 January 2023, available in German at: <http://bit.ly/3WU8s4u>.

<sup>1301</sup> Federal Ministry for Labour and Social Affairs, Sofortzuschlags- und Einmalzahlungsgesetz, available in German at: <http://bit.ly/3Hq3B59>.

<sup>1302</sup> Georg Classen, *Ratgeber für Geflüchtete in Berlin*, 2<sup>nd</sup> ed., November 2017, available in German at: <https://bit.ly/2DOV0X5>, 156-157.



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.<sup>1303</sup>

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<sup>1303</sup> 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
<b>Directive 2011/95/EU</b> Recast Qualification Directive	21 December 2013	1 December 2013	Act for the Transposition of the Directive 2011/95/EU	<a href="http://bit.ly/1eVWZfC">http://bit.ly/1eVWZfC</a> (DE)
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	20 July 2015	20 October 2015 6 August 2016 1 January 2023	Asylum Procedures Acceleration Act Integration Act (provisions on inadmissibility only) Act on the acceleration of asylum court proceedings and asylum procedures	<a href="http://bit.ly/1PVCs9T">http://bit.ly/1PVCs9T</a> (DE)
<b>Directive 2013/33/EU</b> 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	<a href="http://bit.ly/1RtIQIb">http://bit.ly/1RtIQIb</a> (DE)  <a href="http://bit.ly/1PVCs9T">http://bit.ly/1PVCs9T</a> (DE)
<b>Regulation (EU) No 604/2013</b> 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	<a href="http://bit.ly/1IbaPmO">http://bit.ly/1IbaPmO</a> (DE)

Note that the Asylum Procedures Directive and the Reception Conditions Directive have only partially been transposed by the corresponding acts referred to here. As of 1 January 2023, amendments of the Asylum Act entered into force through the Act on the acceleration of asylum court proceedings and asylum procedures which transposed several provisions of the APD. This includes the time limits for the first instance procedure and the reasons for dispensing with the personal interview (see [Regular procedure](#)).

Doubt as to the correct transposition or application of EU Directives on Asylum and Return remain regarding the following issues:

- ❖ **Procedural guarantees for vulnerable applicants:** Section on vulnerable groups in the procedure: There is no requirement in law or mechanism in place to systematically identify vulnerable persons in the asylum procedure, except for unaccompanied children. According to the BAMF, the identification of vulnerable applicants as required by the APD is primarily the remit of the Federal States, who are responsible for reception and accommodation. However,

since 2022 the BAMF internal guidelines also acknowledge a duty on the side of the BAMF to identify vulnerabilities to guarantee a fair asylum procedure for the persons concerned. In addition to identification, there are no provisions in German law regarding adequate support for applicants in need of special procedural guarantees throughout the procedure (see [Guarantees for vulnerable groups](#)).

- ❖ **Legal representation of unaccompanied minors:** the current legal situation as to legal guardians is not in line with relevant provisions of the recast APD and other European legal acts which state that children should be represented and assisted by representatives with the necessary expertise, since there is no specific training for legal guardians regarding asylum law or the asylum procedure (see [Legal representation of unaccompanied children](#)).
- ❖ **Border procedure:** The scope of the airport procedure in Germany is not consistent with the boundaries set by the recast APD since German law triggers the airport procedure as soon as it is established that the asylum seeker is unable to prove their identity by means of a passport or other documentation, with no 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. Moreover, the German Asylum Act exempts neither unaccompanied children nor persons with special procedural guarantees from the airport procedure, despite an express obligation under the APD to provide for such exemptions under certain conditions. It also makes no reference to 'adequate support' which should be provided to those requiring special procedural guarantees (see [Border procedure \(border and transit zones\)](#)).
- ❖ **Grounds for detention:** The grounds for detention have been expanded in 2019 through several provisions providing grounds for the assumption of a risk of absconding as well as 'indications' for such a risk. The new provisions have been criticised for being in contradiction with the principle of detention as a 'last resort'. Furthermore, it has been pointed out that the concept of a 'refutable assumption' for the risk of absconding does not exist in the EU Return Directive, which is why the compatibility of national law with this Directive has been put in doubt. In 2020, the possibility of detention during the asylum procedure was introduced for 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). 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 (see [Grounds for detention](#)).
- ❖ **Place of detention:** Between 2019 and July 2022, Federal States had the legal possibility to detain persons in regular prisons, which was justified by an alleged acute shortage of detention places. In March 2022, the CJEU ruled 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 (see [Place of detention](#)).
- ❖ **Detention conditions:** In its March 2022 ruling, the CJEU 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. In **Bavaria**, the appeals court of Coburg found on 24 November 2022 that conditions in the detention centre in Eichstätt are not in line with the CJEU's ruling (see [Conditions in detention facilities](#)).