

Country Report: Germany



2019
Update



Acknowledgements & Methodology

This report was written by Michael Kalkmann, Coordinator of Informationsverbund Asyl und Migration, and Daniel Kamiab Hesari (Chapter “Reception Conditions”) and was edited by ECRE.

This report draws on information gathered from national authorities, including publicly available statistics and responses to parliamentary questions, national case law, practice of civil society organisations, as well as other public sources. Information on the situation at airport (detention) facilities and on the newly established “AnKER centres” in Bavaria was added by ECRE following a visit in April 2019.

The information in this report is up-to-date as of 31 December 2019, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey, the United Kingdom) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Table of Contents

| | |
|-----------------------------------------------------------------------------------|-----------|
| Glossary | 6 |
| List of Abbreviations | 7 |
| Statistics | 8 |
| Overview of the legal framework | 10 |
| Overview of the main changes since the previous report update..... | 11 |
| Asylum Procedure | 13 |
| A. General | 14 |
| 1. Flow chart | 14 |
| 2. Types of procedures | 15 |
| 3. List of authorities intervening in each stage of the procedure..... | 15 |
| 4. Number of staff and nature of the determining authority..... | 15 |
| 5. Short overview of the asylum procedure | 17 |
| B. Access to procedure and registration | 20 |
| 1. Access to the territory and push backs | 20 |
| 2. Registration of the asylum application..... | 22 |
| C. Procedures | 23 |
| 1. Regular procedure | 23 |
| 2. Dublin | 33 |
| 3. Admissibility procedure | 45 |
| 4. Border procedure (border and transit zones) | 47 |
| 5. Accelerated procedure | 51 |
| D. Guarantees for vulnerable groups | 52 |
| 1. Identification | 52 |
| 2. Special procedural guarantees..... | 55 |
| 3. Use of medical reports | 57 |
| 4. Legal representation of unaccompanied children | 59 |
| E. Subsequent applications | 60 |
| F. The safe country concepts | 62 |
| 1. Safe country of origin | 62 |
| 2. Safe third country | 64 |
| 3. First country of asylum | 65 |
| G. Information for asylum seekers and access to NGOs and UNHCR | 65 |
| 1. Provision of information on the procedure | 65 |
| 2. Access to NGOs and UNHCR..... | 68 |
| H. Differential treatment of specific nationalities in the procedure | 70 |
| Reception Conditions..... | 73 |
| A. Access and forms of reception conditions | 73 |
| 1. Criteria and restrictions to access reception conditions | 73 |

| | | |
|-----------|-----------------------------------------------------------------------------|------------|
| 2. | Forms and levels of material reception conditions | 74 |
| 3. | Reduction or withdrawal of reception conditions | 76 |
| 4. | Freedom of movement | 80 |
| B. | Housing | 84 |
| 1. | Types of accommodation | 84 |
| 2. | Conditions in reception facilities | 88 |
| C. | Employment and education | 93 |
| 1. | Access to the labour market..... | 93 |
| 2. | Access to education | 94 |
| D. | Health care | 96 |
| E. | Special reception needs of vulnerable groups | 98 |
| F. | Information for asylum seekers and access to reception centres | 101 |
| 1. | Provision of information on reception | 101 |
| 2. | Access to reception centres by third parties | 101 |
| G. | Differential treatment of specific nationalities in reception | 101 |
| | Detention of Asylum Seekers | 103 |
| A. | General | 103 |
| B. | Legal framework of detention | 106 |
| 1. | Grounds for detention..... | 106 |
| 2. | Alternatives to detention | 111 |
| 3. | Detention of vulnerable applicants | 112 |
| 4. | Duration of detention | 114 |
| C. | Detention conditions | 115 |
| 1. | Place of detention..... | 115 |
| 2. | Conditions in detention facilities | 118 |
| 3. | Access to detention facilities | 122 |
| D. | Procedural safeguards | 124 |
| 1. | Judicial review of the detention order..... | 124 |
| 2. | Legal assistance for review of detention | 124 |
| E. | Differential treatment of specific nationalities in detention | 126 |
| | Content of International Protection | 127 |
| A. | Status and residence | 127 |
| 1. | Residence permit..... | 127 |
| 2. | Civil registration | 127 |
| 3. | Long-term residence..... | 130 |
| 4. | Naturalisation..... | 131 |
| 5. | Cessation and review of protection status | 132 |
| 6. | Withdrawal of protection status | 137 |
| B. | Family reunification | 137 |
| 1. | Criteria and conditions..... | 137 |
| 2. | Status and rights of family members | 140 |

| | |
|------------------------------------------------------------------------|------------|
| C. Movement and mobility | 140 |
| 1. Freedom of movement | 140 |
| 2. Travel documents | 142 |
| D. Housing | 143 |
| E. Employment and education | 145 |
| 1. Access to the labour market | 145 |
| 2. Access to education | 146 |
| F. Social welfare | 146 |
| G. Health care | 147 |
| ANNEX – Transposition of the CEAS in national legislation | 148 |

Glossary

| | |
|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AnKER centre | <i>Ankunfts-, Entscheidungs-, Rückführungszentrum</i> (also <i>Ankunft, Entscheidung- kommunale Verteilung und Rückkehr</i>) – Initial reception centre where all actors of the asylum procedure and return are concentrated. AnKER centres were set up in Bavaria, Saxony and Saarland in 2018. In Bavaria, AnKER centres replaced the “transit centres” (<i>Transitzentren</i>) operated in three locations in Bavaria (Manching/Ingolstadt, Regensburg, Deggendorf). AnKER centre is not a legal term. |
| Arrival centre | <i>Ankunftszentrum</i> – Centre where various authorities are concentrated to streamline processes such as registration, identity checks, interview and decision-making in the same facility. Arrival centre is not a legal term. |
| Arrival certificate | <i>Ankunftsnachweis</i> – Certificate received upon arrival in the initial reception centre. |
| Dependance | In Bavaria, an accommodation centre attached to an AnKER centre, which serves for the accommodation of asylum seekers. No steps of the asylum procedure are carried out in the <i>Dependancen</i> . |
| Formal decision | Cases which are closed without an examination of the asylum claim's substance, e.g. because it is found that Germany is not responsible for the procedure or because an asylum seeker withdraws the application. |
| Geographical restriction | Also known as “residence obligation” (<i>Residenzpflicht</i>), this refers to the obligation placed on asylum seekers not to leave the district to which they have been assigned for a maximum period of three months, pursuant to Section 56 Asylum Act . An important exception applies to applicants who are obliged to stay in initial reception centres, the geographical restriction applies to them as long as they are staying in those centres (Section 59a Asylum Act). |
| Initial reception centre | <i>(Erst-)Aufnahmeeinrichtung</i> – Reception centre where asylum seekers are assigned to reside during the first phase of the asylum procedure. |
| Residence rule | <i>Wohnsitzregelung</i> – Obligation on beneficiaries of international protection to reside in the Federal State where their asylum procedure was conducted, pursuant to Section 12a Residence Act . This is different from the geographical restriction imposed on asylum seekers. |
| Revision | Appeal on points of law before the Federal Administrative Court. |
| Secondary application | Under Section 71a Asylum Act , this is a subsequent application submitted in Germany after the person has had an application rejected in a safe third country or a Dublin Member State. |
| Special officer | <i>Sonderbeauftragter</i> – Specially trained BAMF officer dealing with vulnerable asylum seekers. |
| Special reception centre | <i>Besondere Aufnahmeeinrichtung</i> – Reception centre where accelerated procedures are carried out in accordance with Section 30a Asylum Act . |

List of Abbreviations

| | |
|---------------|-----------------------------------------------------------------------------------------------|
| AnKER | Arrival, Decision and Return Ankunft, Entscheidung, Rückführung |
| ARE | Arrival and Return Centre Ankunfts- und Rückführungseinrichtung |
| BAMF | Federal Office for Migration and Refugees Bundesamt für Migration und Flüchtlinge |
| BÜMA | Confirmation of Reporting as Asylum Seeker Bescheinigung über die Meldung als Asylsuchender |
| BVerfG | Federal Constitutional Court Bundesverfassungsgericht |
| CEFR | Common European Framework of Reference for Languages |
| CJEU | Court of Justice of the European Union |
| CPT | European Committee for the Prevention of Torture |
| EASY | Initial Distribution of Asylum Seekers Erstverteilung der Asylbegehrenden |
| ECHR | European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| GGUA | Gemeinnützige Gesellschaft zur Unterstützung Asylsuchender |
| GU | Collective accommodation Gemeinschaftsunterkunft |
| ILGA | International Lesbian and Gay Association |
| OVG | Higher Administrative Court Oberverwaltungsgericht |
| VG | Administrative Court Verwaltungsgericht |
| ZAB | Central Aliens Office Zentrale Ausländerbehörde |

Statistics

Overview of statistical practice

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

| | Applicants in 2019 | Pending at end 2019 | Refugee status | Subsidiary protection | Rejection | Refugee rate | Subs. Prot. rate | Rejection rate |
|--------------|--------------------|---------------------|----------------|-----------------------|-----------|--------------|------------------|----------------|
| Total | 165,938 | 57,012 | 45,053 | 19,419 | 54,034 | 36.2% | 15.6% | 43.4% |

Breakdown by countries of origin of the total numbers

| | | | | | | | | |
|--------------|--------|--------|--------|--------|-------|-------|-------|-------|
| Syria | 41,094 | 14,210 | 22,705 | 15,173 | 57 | 59% | 39.5% | 0.2% |
| Iraq | 15,348 | 5,550 | 4,639 | 705 | 5,761 | 38.8% | 5.9% | 48.2% |
| Turkey | 11,423 | 6,497 | 4,871 | 39 | 4,435 | 51.2% | 0.4% | 36.9% |
| Aghanistan | 11,306 | 4,188 | 1,734 | 480 | 2,688 | 23.8% | 6.6% | 36.9% |
| Nigeria | 10,533 | 2,466 | 446 | 93 | 5,480 | 7% | 1.5% | 85.5% |
| Iran | 9,498 | 4,392 | 1,906 | 133 | 5,334 | 25.7% | 1.8% | 71.8% |
| Undetermined | 4,228 | 1,975 | 2,189 | 328 | 876 | 63.1% | 9.5% | 25.2% |
| Somalia | 4,154 | 1,618 | 1,663 | 319 | 997 | 51.3% | 9.8% | 30.7% |
| Eritrea | 3,743 | 1,421 | 2,125 | 858 | 376 | 56.6% | 22.9% | 10% |
| Georgia | 3,880 | 642 | 4 | 1 | 2,827 | 0.1% | 0% | 99.2% |

Source: BAMF, *Aktuelle Zahlen* December 2019, available in German at: <https://bit.ly/3iO0nv8>, 3; BAMF, *Asylgeschäftsstatistik* 12/2019; Federal Government, Response to information request by The Left, 19/18498, 2 April 2020, 4.

In addition, a “humanitarian status” (impediment to deportation) was granted in 5,857 cases (4.7%). The figures presented in the table above represent the “adjusted protection rates” (*bereinigte Schutzquoten*). This means that “formal decisions” are not taken into account. There were 59,591 “formal decisions” in 2019, in which the applications were rejected as “inadmissible” or in which the asylum procedure was terminated for other reasons. In all of these cases, the substance of the case was not examined by the asylum authorities. In contrast, official statistics usually represent the “overall protection rate” (*Gesamtschutzquoten*), which is determined by including the formal decisions. The overall protection rates for 2019 are:

- Refugee rate: 24.5%, Subsidiary protection rate: 10.6%, “Humanitarian status”: 3.2%, Rejection: 29.4%, Formal decisions: 32.4%.

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

Gender/age breakdown of the total number of applicants: 2019 (first applications)

| | Number | Percentage |
|-----------------------------------|---------|------------|
| Total number of applicants | 142,509 | 100% |
| Men | 42,696 | 30% |
| Women | 28,392 | 19.9% |
| Children | 71,421 | 50.1% |
| Unaccompanied children | 2,632 | 1.8% |

Source: BAMF, *Aktuelle Zahlen*, December 2019, available in German at: <https://bit.ly/3iO0nv8>, 8; Federal Government, Response to information request by The Left, 19/18498, 2 April 2020, 36. Note that the figures on unaccompanied children is part of the number on children.

Comparison between first instance and appeal decision rates: 2019 (“adjusted decision rates”, excluding formal decisions):

| | First instance | | Appeal | |
|----------------------------------|----------------|------------|--------|------------|
| | Number | Percentage | Number | Percentage |
| Total number of decisions | 124,363 | 100% | 84,324 | 100% |
| Positive decisions | 70,329 | 56.6% | 22,302 | 26.4% |
| <i>Refugee status</i> | 45,053 | 36.2% | 8,956 | 10.6% |
| <i>Subsidiary protection</i> | 19,419 | 15.6% | 2,484 | 2.9% |
| <i>humanitarian status</i> | 5,857 | 4.7% | 10,862 | 12.9% |
| Negative decisions | 54,034 | 43.4% | 62,022 | 73.6% |

Source: BAMF, *Aktuelle Zahlen* Dezember 2019, available at: <https://bit.ly/3iO0nv8>, 3, and Federal Government, Response to information request by The Left, 19/18498, 2 April 2020, 45.

Overview of the legal framework

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

| Title in English | Original Title (DE) | Abbreviation | Web Link |
|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|--------------|----------------------------------------------------------------------------------------------------------------------------------|
| Asylum Act | Asylgesetz | AsylG | http://bit.ly/1K3bGbv (DE) http://bit.ly/2tZaS9E (EN) |
| Residence Act | Aufenthaltsgesetz | AufenthG | http://bit.ly/1SiAxKm (DE) http://bit.ly/1M5sZvW (EN) |
| Asylum Seekers' Benefits Act | Asylbewerberleistungs-gesetz | AsylbLG | http://bit.ly/1yuVyOx (DE) |
| Basic Law (German Constitution) | Grundgesetz | GG | http://bit.ly/1Twi9QM (DE) http://bit.ly/1Rteu8M (EN) |
| Act on Procedures in Family Matters and in Matters of Voluntary Jurisdiction | Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit | FamFG | http://bit.ly/1HAT3Yv (DE) http://bit.ly/1M117bo (EN) |

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions, detention and content of protection

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

Overview of the main changes since the previous report update

The report was previously updated in **March 2019**.

Covid 19 related measures

Please note that this report has largely been written prior to the outbreak of COVID-19 in Germany. Subsequently measures have been taken which impact the situation of asylum seekers and beneficiaries of international protection. While these measures have not been inserted throughout the AIDA report, this box aims to present some of the main measures applied as of 30 June 2020:

- ❖ **Access to the procedure:** In the second half of March 2020, the BAMF generally did not register asylum applications. Since April 2020, asylum applications have to be submitted using a form in order to minimise personal contacts with staff members.
- ❖ **Examination of applications for international protection:** Interviews in the asylum procedure were suspended for most cases. According to the BAMF, a limited number of interviews can now be carried out in specially equipped rooms in which health protection measures can be observed. Negative decisions were not handed out to asylum seekers between April 2020 and 11 May 2020, in order to take into account the difficulties to contact lawyers or NGOs.
- ❖ **Reception conditions:** No country-wide regulations were in place, so the prevention and management of COVID-19 outbreaks in accommodation centres lay with Federal States and municipalities. Some courts have ruled that the obligation for asylum seekers to stay in collective accommodation centres had to be lifted, but other courts have upheld this obligation.
- ❖ **Detention:** Pre-deportation detention centres were not closed, but according to reports many persons were released when it became evident that a deportation could not be carried out in the near future. For example, media reported that all detainees were released from the detention centre in Hannover-Langenhagen (Federal State of Lower Saxony) as early as March 2020, but in the facility of Büren (North-Rhine Westphalia) several dozen persons were still in detention in May 2020.
- ❖ **Suspension of Dublin transfers:** Dublin transfers were suspended from 18 March 2020 onwards. The BAMF also decided to suspend the time-limit for transferring the applicants, so that Germany does not become responsible for the asylum procedure while transfers are suspended. Asylum seekers affected by this practice were notified accordingly. Some courts have decided in summary proceedings that the time-limit cannot be interrupted as announced by the BAMF. This would mean that the time-limit for transfers could expire in many cases.

The year 2019 was marked by an extensive reform of German asylum and migration legislation. Seven laws were enacted as part of the so-called “migration package” in July 2019 and introduced numerous changes to the Asylum Act (*Asylgesetz*), the Residence Act (*Aufenthaltsgesetz*), the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz*) and several other accompanying laws. Some of the most notable amendments include the following:

Asylum Procedure

- ❖ **Provision of information:** A state-run counselling service for asylum-seekers shall be established in all initial reception centres. This service is supposed to provide general information to asylum seekers about the proceedings but it does not amount to legal advice.

- ❖ **Medical reports:** Medical grounds brought forward in the asylum procedure must now be verified through a comprehensive medical certificate.

Reception conditions

- ❖ **Obligation to stay in initial reception centres:** In general, asylum seekers are now obliged to stay in initial reception centres (*Aufnahmeeinrichtungen*) for a maximum period of 18 months. Some exceptions which allow for an extension of this period for certain groups of asylum seekers (especially persons from safe countries of origin) remain in place. An important new exception applies to children and their families, for whom a maximum period of six months is now foreseen. Prior to the amendment, the duration of stay in initial reception centres had been limited to 6 months for most asylum seekers.
- ❖ **Access to the labour market:** Asylum seekers who are obliged to stay in initial reception centres are excluded from the labour market for a period of nine months.
- ❖ **Access to benefits:** Asylum seekers' benefits have been reduced for single adult persons living in collective accommodation centres. Access to social benefits has improved for asylum seekers who start vocational training.
- ❖ **Reduction and withdrawal of benefits:** Authorities may reduce and even withdraw asylum seekers' benefits based on a range of newly introduced reasons. For example, reductions may now be imposed for the following groups:
 - asylum seekers who do not immediately apply for asylum following their arrival in Germany;
 - asylum seekers who do not comply with obligations in connection with the clarification of their identities (e.g. obligation to be fingerprinted and obligation to hand over smartphones);
 - asylum seekers who do not comply with the obligation to stay in a place of residence assigned to them by the authorities;
 - a complete withdrawal of benefits is now possible for asylum seekers who have been granted international protection in another European state.

Detention of asylum seekers

- ❖ **Grounds for detention:** The authorities continued to face criticism for their failure to carry out deportations as a total of 32,482 deportations (i.e. returns or Dublin transfers) which had been scheduled in 2019 did not take place. The government was unable to state the reasons for the failure of deportations in the overwhelming majority of cases. Nevertheless, the focus in the political debate remained on deportations which supposedly failed as a result of absconding. As a result, a reform was carried in August 2019 to improve the enforcement of the obligation to leave the country. The new measures include (i) increased powers for law enforcement authorities to access apartments for the purpose of deportation; (ii) new criteria to order detention based on an alleged risk of absconding – such as the refusal to cooperate in obtaining travel documents or the non-compliance with instructions of the authorities. (iii) a new ground for detention to enforce the 'obligation to cooperate' with the authorities' and (iv) the possibility to hold pre-removal detainees in regular prisons until June 2022.

Content of international protection

- ❖ **Place of residence for beneficiaries of international protection:** The obligation for persons with protection status to take up residence in a particular Federal State or town for three years (*Wohnsitzregelung* pursuant to Section 12a Residence Act) has become permanent. This provision had been introduced in 2016 as a temporary measure and was supposed to run out in 2019, but it has been extended permanently instead.

Other legal issues

In addition to these legislative developments, several issues with a crucial impact on the outcome of many asylum procedures were of high importance in 2019. Some of the most prominent are:

- ❖ **Family reunification:** Significant problems were noted in the context of family reunification of asylum seekers living in another European state (such as Greece and Italy) with family members in Germany pursuant to the provisions of the Dublin regulation. Several issues are also reported in family reunification procedures with family members trying to join a beneficiary of protection in Germany. This includes a lack of coordination among the relevant authorities (i.e. local authorities, the Federal Administrative Office, embassies, consulates, IOM), an increase in the number of pending family reunification procedures, and waiting periods that can reach up to a year or more. The length of family reunification procedures raises particular concern when it comes to unaccompanied children, as Courts have argued that their right to family reunification may end once they become adults. Nevertheless, courts have also repeatedly urged the authorities to prioritise family reunification procedures of unaccompanied minors who are about to turn 18 years old.
- ❖ Legal issues were reported concerning persons who have been granted international protection in another European State and admissibility of asylum applications of these persons.
- ❖ **Revocation and withdrawal of protection status:** A new provision introduced in 2019 has extended the period for so-called “revocation examination procedures” from three years to four or five years after a protection status has been granted. This affects cases in which protection status was granted between 2015 and 2017. In 2019, the BAMF carried out 170,406 of these “revocation examination procedures”, which doubles the number of such procedures recorded in 2018 (85,502) and marks an enormous increase compared to 2017 where only 2,527 revocation procedures were carried out. In the vast majority of the 2019 “revocation examination procedures”, the BAMF found no reason to revoke or withdraw the protection statuses (96.7%). However, the total number of revocation or withdrawal decisions must not be underestimated as it concerned a total of 5,610 persons in 2019.

High proportion of “family protection” cases

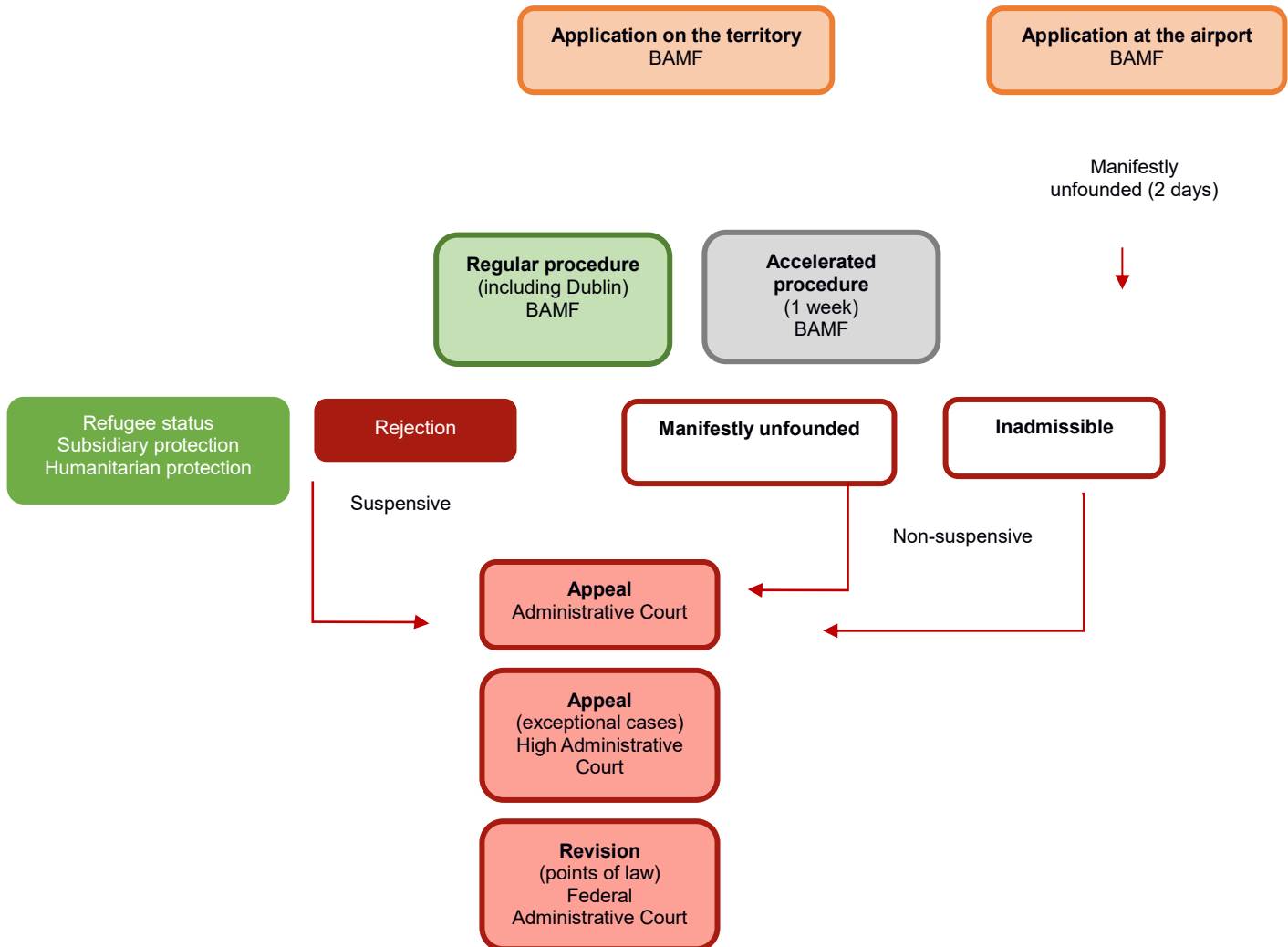
Around 80% of persons recognised as refugees in Germany in 2019 were granted protection status because they were family members (spouses or minor children) of a person who had been granted protection status before. The proportion of such “family protection” decisions has increased dramatically in recent years. In more than 50% of these cases, protection was granted to children who were born in Germany.

The high percentage of asylum procedures which were carried out for children born in Germany also had an impact on asylum statistics. Since the autumn of 2019, the Federal Ministry of the Interior distinguishes between the total number of (first) asylum applications and the number of “formal border-crossing applications”. The new statistics show that more than 31,000 applications were lodged for children born in Germany. Accordingly, out of the total number of 142,509 applications, only 111,094 asylum applications are considered to be “border crossing” applications.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

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

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

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

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

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

| Name in English | Number of staff | Ministry responsible | Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority? |
|--------------------------------------------------|-----------------------------------------------------------------------|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| Federal Office for Migration and Refugees (BAMF) | 6,980 (about 3,600 full-time positions in various asylum departments) | Federal Ministry of Interior | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

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

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

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

⁴ Labelled as “accelerated procedure” in national law. See Article 31(8) recast Asylum Procedures Directive.

The BAMF has branch offices in all Federal States. The branch offices process the asylum procedures, but also carry out additional tasks (for instance, they function as contact points for authorities and organisations active in the area of integration of foreign nationals). In cooperation with the Federal States, the BAMF manages a distribution system for asylum seekers known as Initial Distribution of Asylum Seekers (*Erstverteilung der Asylbegehrenden*, EASY) system, which allocates places according to a quota system known as “*Königsteiner Schlüsse*”. 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 February 2020, the BAMF had 6,980 positions or “full-time job equivalents” (meaning that the actual number of staff is likely to be much higher, since many of these positions are shared by people working part-time). Since the office is responsible for several other tasks on top of the asylum procedure (e.g. research, integration), not all staff members are working in the area of asylum.

The government provided the following numbers for positions in the relevant departments:⁵

- asylum department (excluding revocation and Dublin procedures): 1,998 full-time equivalents
- revocation procedures: 830.3 full-time equivalents
- procedures (appeal procedures, representation of the BAMF in court): 370.6 full-time equivalents
- quality management: 223.5 full-time equivalents
- Dublin-procedures: 174.4 full-time equivalents

In total, this amounts to 3,596.8 full-time equivalents for jobs in the departments which deal with asylum procedures.

Quality

The quality of BAMF asylum decisions has been much debated in recent years given the high number of appeals filed at the courts, but also because of “scandals” which prompted extensive media coverage. In 2017, one of these cases became known as the “Franco A. scandal”. It concerned a German soldier who had successfully posed as a Syrian refugee, allegedly preparing a terrorist attack.⁶ In 2018, alleged irregularities at a branch office of the BAMF in the Federal State of Bremen triggered the “BAMF-affair”: According to allegations (partly from staff members of the Bremen branch office), the office had taken over a high number of cases for which it had not been responsible and had unlawfully granted refugee status to up to 1,200 asylum seekers. These reports resulted in re-examinations of tens of thousands of decisions. According to preliminary results of the revision, it appears that the allegations in the “BAMF-affair” have been wildly exaggerated: out of 43,298 cases which were re-examined in the first half of 2018, only 309 (0.7%) resulted in a revocation of a protection status, while the original decision taken by the BAMF was confirmed in more than 99% of cases (see [Cessation and Review of Protection Status](#)).⁷

In the course of the debate on the quality of BAMF decisions, it turned out that many decision-makers had not been fully qualified as they had not completed the training modules which the BAMF provides as part of its in-house training programme. According to a media report, based on information submitted by the BAMF, 454 decision-makers had not received any kind of relevant training in May 2017, although most of them had been handling asylum applications for many months at the time. As of February 2018, the number of decision-makers without any relevant training had been reduced to 36, according to the report.

⁵ Federal Government, Response to information request by The Left, 19/18498, 2 April 2020, 66.

⁶ Deutsche Welle, ‘German soldier charged with plotting to kill politicians while posing as refugee’, 12 December 2017, available at: <http://bit.ly/2FVuyRy>.

⁷ Federal Government, Reply to parliamentary question by The Left, 19/3451, 19 July 2018, available in German at <https://bit.ly/2O4R3nV>; Süddeutsche Zeitung, ‘Nur wenige Flüchtlinge haben Bleiberecht erschlichen’, 20 August 2018, available in German at <https://bit.ly/2MsHLED>.

Nevertheless, 769 out of 2,139 staff members who were deciding on asylum applications as of February 2018 had not completed the full training programme.⁸

According to the BAMF, training measures at the in-house qualification centre had fully resumed by 2019. Newly employed decision-makers had to complete a 12-week course which included the following modules:⁹

- Refugee law,
- Interview techniques
- Preparation of decision-making
- Data protection
- Dublin system
- Cooperation with security services
- Information service point and Database Medical Country of Origin Information (MedCoi)
- Physical/technical examination of documents

In addition, the following EASO-ETC core modules were used for training of all decision-makers:

- Granting of protection
- Interview techniques
- Assessment of evidence

Furthermore, there are other training schemes available for persons who already work as decision-makers. These are carried out on a “regular basis” according to the BAMF and consist of the following modules.

- Interviewing children
- interviewing vulnerable Persons
- Gender, Gender Identity and sexual Orientation

This information provided by the BAMF suggests that there has been a clear improvement of the situation at the office in comparison to the years 2016 and 2017.

5. Short overview of the asylum procedure

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

Since August 2018, asylum seekers can also be denied entry at the Austrian-German land border if the authorities are able to demonstrate within 48 hours that they have already applied for asylum in Greece or Spain. In these cases, the transfer to the concerned Member state is not based on the Dublin Regulation but on administrative arrangements between Germany and these countries.¹⁰ Between August 2018 and October 2019, only 40 forced returns took place on the basis of these agreements and the Administrative Court of Munich raised serious doubts about the legality of the new procedure in a decision of August 2019.¹¹

⁸ Wirtschaftswoche, ‘Eine Behörde arbeitet für die Statistik’, 4 February 2018, available in German at: <http://bit.ly/2oSbU2f>.

⁹ BAMF, Response to information request, e-mail from “Zentrale Ansprechstelle” (central contact point), 28 August 2019; see also: Federal government, Response to parliamentary question by The Left, 6 June 2019, 19/10733, 13.

¹⁰ ECRE, *Bilateral Agreements: Implementing or Bypassing the Dublin Regulation?*, December 2018; available at: <https://bit.ly/2GgVoEf>.

¹¹ Administrative Court Munich, 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/>.

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

Unless entry is denied at the border or at the airport, a regular procedure usually takes place. Applications have to be lodged at the BAMF.

Regular procedure

According to the law, asylum seekers should be accommodated in an initial reception centre (*Aufnahmeeinrichtung*) for a maximum period of 18 months during the first stage of their asylum procedures. Many asylum seekers do not stay in the initial reception centres for the whole 18 months, since they are sent to other locations once a decision on the asylum application has been issued. Furthermore, the maximum period is generally reduced to six months for families with children. 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, but it is not clear whether this provision is applied in practice at the moment in any Federal State.

The initial reception centres are usually located on the same premises as the branch office of the BAMF. Following the initial reception period, most asylum seekers are sent to local accommodation centres where they have to stay for the remaining time of their procedures. The obligation to stay in such decentralised accommodation centres also applies to the whole length of possible appeal procedures, but there are regional differences with some municipalities also granting access to the regular housing market.

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

In addition, “arrival, decision and return” (*Ankunft, Entscheidung, Rückführung*, AnKER) centres were established in August 2018. The main purpose is to centralise all activities at one location and to shorten the asylum procedure, which is a concept that was already applied in the “arrival centres” across Germany and in “transit centres” set up in three locations in **Bavaria** (Manching/Ingolstadt, Regensburg, Deggendorf). Most Federal States have not participated in the AnKER centres scheme. At the end of 2019, only three Federal States (**Bavaria, Saxony and Saarland**) had agreed to establish AnKER centres, in most cases simply by renaming their existing facilities.

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

Accelerated procedure

An accelerated procedure can be carried out *inter alia* for asylum seekers from safe countries of origin and for asylum seekers who have deliberately misled the authorities about their identity. Asylum seekers whose applications were processed in the accelerated procedure shall be accommodated in “special reception centres” (*besondere Aufnahmeeinrichtung*) in which they have to stay for the duration of the accelerated procedure, where a decision must be taken by the BAMF within seven days. However, at the end of 2018, the two special reception centres existing in **Bamberg** and **Manching/Ingolstadt** had been

transformed into AnKER centres, and it is not clear whether the accelerated procedure continues to be applied therein. Furthermore, at least one facility in **North Rhine-Westphalia** was also designated as a special reception centre in 2018, but it is not clear if and how accelerated procedures are carried out in there. In any case, the accelerated procedure does not play a significant role in the German asylum system and no figures are provided by the authorities as to how many accelerated procedures have been carried out since its introduction.

First instance decision

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

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

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

In a high number of cases, which amounted to 59,591 cases in 2019 (32.9%), a “formal decision” – including inadmissibility decisions – was taken, which means that the case was closed without an examination of the asylum claim’s substance.¹² In many instances such formal decisions are issued because another state was found to be responsible for the asylum application under the Dublin Regulation. Furthermore, decisions not to carry out follow-up procedures in cases of second or further asylum applications are qualified as inadmissibility decisions since 2016.

Appeal

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

¹² In the previous years the numbers were as follows: 109,476 (18.1%) in 2017; 87,697 (12.6%) in 2016 and 50,297 (17.8%) in 2015.

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

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.¹³ However, entry to the territory has to be refused if a migrant reports at the border without the necessary documents for legal entry and if an immediate removal to the neighbouring country (as [Safe Third Country](#)) is possible.¹⁴

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 Residence Act - they have not necessarily entered the territory,¹⁵ and it is possible that a removal to the neighbouring state (*Zurückweisung*) is still carried out at this point.

In recent years, Germany has regularly re-introduced border controls at its borders with Austria. Media reports from 2016 suggest that, at the Austrian-German border, people were immediately sent back to Austria, although it had not been clarified whether they intended to apply for asylum in Germany.¹⁶ In response to an information request, the Federal Police stated that persons who had applied for asylum had not been returned on the basis of national law or on the basis of the readmission agreement with Austria. However, in the same statement the Federal Police mentioned that there had been returns of people who had asked for asylum in Germany but were returned to other Member States of the [Dublin Regulation](#). The Federal Police did not provide information on the number of such cases. It claimed that the BAMF had not been carrying out Dublin procedures in these cases, but had been involved in these returns by determining the responsible Member State under the Dublin Regulation. The Federal Police also claimed that procedural guarantees, in particular access to an effective remedy as regulated in the Dublin Regulation, were provided to in these return procedures.¹⁷ The government clarified in 2017 that Dublin procedures at the borders are conducted by the BAMF (see [Dublin: Procedure](#)).

In 2018, following a heated political debate, a new procedure was introduced which enables the Federal Police to refuse entry at the border. This procedure is based on administrative regulations only; i.e. no legislative changes were implemented. In 2019, it was only applied to the Austrian-German border, as this was the only border where controls took place. The current temporary re-introduction of border controls with Austria is valid until 11 November 2020. The aim of the new approach is to facilitate the immediate removal of persons who have already applied for asylum in a southern European country with which Germany has concluded a special readmission agreement; namely Spain and Greece. According to the Federal Ministry of the Interior, refusals of entry are possible if it can be immediately established with the help of a Eurodac “hit” which proves that the person trying to cross the border and seeking protection in Germany has already applied for asylum elsewhere. An immediate return then has to take place within 48 hours.¹⁸ These returns are therefore not based on the Dublin Regulation, but on a refusal of entry

¹³ Section 18 (1) Asylum Act.

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

¹⁵ Section 13(2) Residence Act.

¹⁶ See e.g. ZDF, ‘Ein Jahr Grenzkontrollen in Deutschland’, 13 September 2016, available in German at: <http://bit.ly/2nG9y3u>.

¹⁷ Information provided by the Federal Police Head Office, 23 February 2017.

¹⁸ Federal Ministry of the Interior, ‘Zurückweisung an der Grenze’, 9 August 2018, available in German at: <https://bit.ly/2T5vHHL>.

under the (national) notion of “safe third countries” in combination with administrative arrangements concluded with other EU Member States.

In a decision of the Administrative Court of Munich of August 2019, a return procedure based on the readmission agreement with Greece is described as follows:¹⁹ an Afghan asylum-seeker was apprehended by the Federal Police after having entered Germany on a train from Austria. He was taken into custody at the directorate of the Federal Police. A Eurodac-hit showed that he had applied for asylum in Greece in 2018 and in Austria in 2019. Although he expressed his intention to apply for asylum in Germany, he was not referred to the BAMF, but the Federal Police issued a formal notification of “refusal of entry”, based on the grounds that Greece was obliged under the Dublin III Regulation to take charge of the asylum procedure. The document also stated that an “appropriate admission or re-admission procedure” was to be initiated. However, only a “notification of refusal of entry” was sent to Greece, with a reference to the German-Greek agreement. The Greek authorities confirmed receipt of this notification and on this basis a short-term detention order was issued by a local court and the deportation to Greece was carried out the next day.

The legality of the new procedure has been questioned by legal experts.²⁰ Moreover, three forced returns which had taken place on the basis of the readmission agreements with Greece were challenged in court in 2019 - two of which were accompanied with requests for interim measures in order to have the asylum seekers brought back from Greece.²¹ The responsible court for these cases was the Administrative Court of Munich (because of the location of the competent regional department of the Federal Police), and it published its decisions on the requested interim measures in May and August 2019 respectively.

- In a first decision of 9 May 2019, the court decided against the request to have the asylum seeker brought back from Greece, because it considered the chances of a success of the legal action in the main proceedings as low. In this decision, the court also saw no sufficient reason to doubt that Greece was responsible for carrying out the asylum procedure under the Dublin III regulation.²²
- On the contrary, in a second decision of 8 August 2019, another judge of the Administrative Court of Munich ordered the German Federal Police to bring back the asylum seeker from Greece.²³ In this decision, the Administrative Court expressed important doubts about the legality of the return procedure at the border. It ruled that the Dublin III regulation, including a full-scale examination of the responsible Member State, was very likely applicable as soon as an asylum seeker had entered the German territory. Therefore, the argument brought forward by the Federal Police, according to which the asylum seeker in the present case had not effectively entered the territory and that the return was the result of a “Pre-Dublin-Procedure” was unlikely to stand up to a legal examination in the main proceedings.²⁴

Since the main proceedings in these cases are pending, the legal argument has not been resolved. In any case, the introduction of the new procedure had little effect in practice: Between August 2018 and October 2019, only 40 persons were returned (38 returns to Greece and 2 to Spain) on the basis of the

¹⁹ Administrative Court Munich, 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/>.

²⁰ 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>.

²¹ As of October 2019 according to the Federal Government, *Response to parliamentary question by The Left*, 19/13857, 9 October 2019, 5-6.

²² Administrative Court Munich, Decision M 5 E 19.50027, 9 May 2019; See: asyl.net: M27257, available in German at: <https://www.asyl.net/rsdb/m27257/>.

²³ Administrative Court Munich, 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/>.

²⁴ Bellinda Bartolucci, *„Vielzahl an Kritikpunkten“ an Einreiseverweigerung nach „Seehofer-Deal“*. Zum Beschluss des VG München vom 8. August 2019, Asylmagazin 10-11/2019, 334-338.

readmission agreements with these countries. Furthermore, following the decision of the Administrative Court of Munich of 8 August 2019, one of these persons was brought back to Germany from Greece ²⁵ 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.²⁶

2. Registration of the asylum application

Indicators: Registration

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| 1. Are specific time limits laid down in law for making an application? ❖ If so, what is the time limit for lodging an application? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 2. Are specific time limits laid down in law for lodging an application? ❖ If so, what is the time limit for lodging an application? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 3. Are registration and lodging distinct stages in the law or in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 4. Is the authority with which the application is lodged also the authority responsible for its examination? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

1.1. Making and registering the application

Irrespective of special regulations which apply in the border region only, most applications are made by asylum seekers who have already entered the territory. Under these circumstances the law obliges asylum seekers to “immediately” report to a “reception facility” (*Aufnahmeeinrichtung*). Alternatively, they can report to a police station or to an office of the foreigners’ authorities.²⁷ Following this first contact with the authorities, the asylum application has to be filed “immediately”. There is no strict definition of an “immediate” application and there are no exclusion rules for applications which are filed at a later date. However, a delay in filing the application may be held against the asylum seeker in the course of the asylum procedure, unless reasonable justification for the delay is brought forward.

Once asylum seekers have reported to the “reception facility” mentioned above, they have to be issued an “arrival certificate” (*Ankunftsnachweis*). Afterwards, the responsible branch office of the BAMF is determined with the help of distribution system known as Initial Distribution of Asylum Seekers (*Erstverteilung der Asylbegehrenden*, EASY). This distribution system allocates places according to a quota system known as “*Königsteiner Schlüsse*l” 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](#)).²⁸ 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

²⁵ Federal Government, Response to parliamentary question by The Left, 19/3451, 19 July 2018, available in German at: <https://bit.ly/2O4R3nV>; Süddeutsche Zeitung, ‘Nur wenige Flüchtlinge haben Bleiberecht erschlichen’, 20 August 2018, available in German at <https://bit.ly/2MsHLED>.

²⁶ Süddeutsche Zeitung, *Der Streit war absurd*, 3 November 2019, available in German at: <https://bit.ly/3011Y8e>.

²⁷ Section 13 Asylum Act.

²⁸ BAMF, *Asylum and refugee protection*, available at: <http://bit.ly/1O5qPus>.

depends on the way the Federal States have organised the reception system and how they cooperate with the BAMF at the respective location.

Only the BAMF is entitled to register an asylum application. Hence asylum seekers reporting to the police or to another authority will be referred to the BAMF and they do not have the legal status of asylum seekers as long as they have not arrived at the responsible branch office of the BAMF and until their applications have been registered. Asylum seekers are obliged to appear in person without delay or on the date determined by the authorities at the responsible branch office of the BAMF. Asylum seekers who fail to comply with this obligation face the sanction of “failure to pursue” the asylum procedure. The asylum procedure thus can be abandoned before it has begun.²⁹ Problems with delayed registration of applications for which the authorities were responsible have not been reported in recent years.

1.2. Lodging the application

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

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

- | | |
|----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: | None |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance of 31 December 2019: | 57,012 |

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

Time limits

The law does not set a time limit for the BAMF to decide on an application. If no decision has been taken within 6 months, the BAMF has to notify asylum seekers upon request about when the decision is likely to be taken.³⁰

The overall number of pending applications at the Federal Office was 57,012 at the end of 2019. This number is roughly on the same level as it was at the end of 2018 (58,325 pending applications in 2018, thus representing a decrease of 2.3%).³¹

²⁹ Sections 20, 22 and 23 Asylum Act.

³⁰ Section 24(4) Asylum Act.

³¹ BAMF, *Aktuelle Zahlen*, December 2019, available in German at: <https://bit.ly/2XL4gsp>.

In 2019, procedures at the BAMF took 6.1 months on average. This average time is similar to previous years, with the exception of the year 2017 during which the average time was 10.7 months. The BAMF had explained that the increase in 2017 was due to the backlog of cases, which were eventually processed in 2017.³² As regards the average time of asylum procedures until a final decision is issued (i.e. including possible court procedures), it was 17.6 months in 2018 according to the government – but no comparable figures were available for the year 2019.

For the years 2013 to the mid-year 2019, statistics show significant variation in length of procedures, depending on the countries of origin of asylum seekers:

| Average duration of the procedure (in months) per country of origin | | | | | | | |
|---------------------------------------------------------------------|------------|------------|------------|------------|-------------|------------|--------------------|
| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 (mid-year) |
| All countries | 7.2 | 7.1 | 5.2 | 7.1 | 10.7 | 7.5 | 5.9 |
| Serbia | 2.1 | 4 | 4.2 | 8.9 | : | 3 | 2.3 |
| Afghanistan | 14.1 | 13.9 | 14.0 | 8.7 | 11.9 | 10.6 | 6.3 |
| Syria | 4.6 | 4.2 | 3.2 | 3.8 | 7.0 | 4.9 | 5.1 |
| Iraq | 9.5 | 9.6 | 6.8 | 5.9 | 9.1 | 6.0 | 5.6 |
| North Macedonia | 2.4 | 5.3 | 4.5 | : | : | 2.6 | 2.0 |
| Iran | 13 | 14.5 | 17.1 | 12.3 | 10.3 | 6.3 | 5.5 |
| Pakistan | 15 | 15.7 | 15.3 | 15.5 | 13.9 | 10.6 | 5.2 |
| Russia | 5.6 | 10 | 11.8 | 15.6 | 15.7 | 12.9 | 8.5 |

Source: Federal Government, Reply to parliamentary questions by The Left: 18/705, 5 March 2014; 18/3580, 28 January 2015; 18/7625, 22 February 2016; 18/11262, 21 February 2017, 19/1631, 13 April 2018; 19/13366, 19 September 2019 (detailed statistics for countries of origin not available for the whole year of 2019).

Since 2016, branch offices of the BAMF are entitled to set their own priorities in dealing with caseloads, in order to respond effectively to the local situation.³³ “Clustering” of cases, which had been introduced in late 2015 and which meant that both caseloads with an alleged high and those with an alleged low success rate would be prioritised, does not take place anymore.³⁴

1.2. Prioritised examination and fast-track processing

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 2020, 20 out of 58 branch offices of the BAMF were integrated in arrival centres in 14 different Federal States.³⁵ The concept of arrival centres is not based in law but has been developed by business consultants under the heading “integrated refugee management”.³⁶ Accordingly, this method for fast-tracking of procedures must not be confused with the **Accelerated Procedure** introduced into law in March 2016.

³² Federal Government, Response to parliamentary question by The Left, 19/1371, 22 March 2018, 42; 18/11262, 21 February 2017, 13.

³³ Federal Government, Response to parliamentary question by The Left, 18/9415, 17 August 2016, 23.

³⁴ Information provided by the BAMF, 23 January 2018.

³⁵ BAMF, *Locations*, , <https://bit.ly/3dFTd8w>, lists 58 “branch offices” and “regional offices”, with some offices having both functions. The official list still refers to two “arrival centres” in the Federal State of Saxony (Chemnitz and Leipzig), although these facilities were renamed as “AnkER-centres”, according to other reports.

³⁶ 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

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.³⁷ The report illustrates how asylum seekers go through the various stages of the reception procedure and the asylum procedure within a few days and thus is still typical of a procedure in an arrival centre, although the conditions may differ at other centres.

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

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

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

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

Day 3 Asylum seekers again have to report to the arrival centre where the asylum application is now lodged with the BAMF. The arrival certificate is then replaced with the “permission to stay” (*Aufenthaltsgestattung*). If the “direct procedure” applies, the [Personal Interview](#) can be carried out on the same day.

Day 4 It is possible that the decision is handed out on the fourth day. If protection is granted, a residence permit can be applied for on the same day. If the asylum application has been rejected, staff

Post, ‘How McKinsey quietly shaped Europe’s response to the refugee crisis’, 24 July 2017, available at: <http://wapo.st/2HdDq0P>.

³⁷ Flüchtlingsrat Berlin, *Das Schnellverfahren für Asylsuchende im Ankunftszentrum Berlin*, November 2017, available in German at: <http://bit.ly/2HdSDzb>.

members of the authorities explain the reasons for the decision. The Berlin Refugee Council notes that this explanation does not include any advice on appeal procedures, however. In contrast, rejected asylum seekers may contact an advice service on voluntary return immediately.

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

The “direct procedure” described here shall only apply in “clear-cut” cases, in which protection can be ‘easily’ recognised or rejected. In contrast, the regular procedure has to take place in the following instances:

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

These stages of the procedure are carried out within a few days. After that, a decision is usually handed out within a period of few weeks up to several months. It should be noted that there are considerable variations to the procedure in the various arrival centres. In particular, there is no common approach on access to social services or other counselling institutions, while in many arrival centres no such access exists. This is dependent on how the Federal States and the BAMF have organised the procedure in the respective centres.

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

AnkER centres (*AnkER-zentren*)

Since August 2018, three Federal States (**Bavaria**, **Saxony** and **Saarland**) further established the so-called 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 **Bavaria**, where the majority of AnkER centres have been set up, asylum seekers are first registered in a so-called “arrival centre”³⁸ in Munich and are transported to an AnkER centre if the responsibility of Bavaria has been established under the EASY system.

In a 2018 report on the situation in the AnkER centre in **Bamberg**, Bavaria, corroborated by findings from the AnkER centres in **Regensburg** and **Manching/Ingolstadt**, Bavaria in 2019,³⁹ the procedure has been described as follows:⁴⁰

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

³⁸ 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.

³⁹ ECRE, *The AnkER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

⁴⁰ Markus Kraft: “Die ANKER-Einrichtung Oberfranken”, *Asylmagazin* 10-11/2018, 352-353.

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

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

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

The average duration of the first instance procedure in the AnKER centres in 2019 has been estimated at two months.⁴¹ 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.⁴² However, these measures are not unique features of the AnKER centres and similar arrangements exist in other facilities as well. It also appears that (rejected) asylum seekers stay in these facilities for prolonged periods (see [Freedom of Movement](#)).

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? Yes No
❖ If so, are interpreters available in practice, for interviews? Yes No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? Yes No
3. Are interviews conducted through video conferencing? Frequently Rarely Never

In the regular procedure, the BAMF conducts an interview with each asylum applicant.⁴³ Only in exceptional cases may the interview be dispensed with, where:

- (1) The BAMF intends to recognise the entitlement to asylum on the basis of available evidence;
- (2) The applicant claims to have entered the territory from a [Safe Third Country](#);⁴⁴
- (3) An asylum application has been filed for children under 6 years who were born in Germany “and if the facts of the case have been sufficiently clarified based on the case files of one or both parents;⁴⁵ or
- (4) The applicant fails to appear at the interview without an adequate excuse.⁴⁶

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”.⁴⁷ This provision has not been applied in 2019.

Interpretation

⁴¹ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

⁴² Markus Kraft: “Die ANKER-Einrichtung Oberfranken”, *Asylmagazin* 10-11/2018, 355.

⁴³ Sections 24 and 25 Asylum Act.

⁴⁴ 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.

⁴⁵ Section 24(1) Asylum Act.

⁴⁶ Section 25 Asylum Act.

⁴⁷ Section 24(1a) Asylum Act.

The presence of an interpreter at the interview is required by law.⁴⁸ The BAMF recruits its own interpreters on a freelance basis.

Following discussions about the quality of translations during interviews, the BAMF announced in 2017 that procedures for the deployment of interpreters had been revised. For example, a new training programme of online modules and in-house trainings was established. Both experienced and newly employed interpreters are now required to complete the training programme. Apart from basic information on the asylum procedure and general communication skills, several training modules are supposed to deal with specifics of the asylum interview such as the “role of the interpreter during the interview” or “handling psychological burden caused by asylum seekers’ traumatic backgrounds”. Interpreters for many languages now need advanced German language skills; level C1 of the Common European Framework of Reference for Languages. Moreover, the BAMF has stated that a system for complaint management in the context of interpretation at the BAMF has been established.⁴⁹

In addition, the BAMF has published a code of conduct for interpreters.⁵⁰ According to this document, interpreters at the BAMF have to commit to various principles, such as “integrity”, “qualification” and “professional and financial independence” (including neutrality, an obligation to provide full and correct translations, and to clarify misunderstandings immediately). Following the introduction of the new concept and the code of conduct in 2017, more than 2,100 interpreters have been declared unfit for further employment by the BAMF, most of them apparently due to insufficient language skills. In 30 cases, interpreters were declared unfit because they were found to be in breach of the code of conduct.⁵¹

Transcript of the interview

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

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

Furthermore, asylum seekers are frequently asked if the retranslation of the transcript may be dispensed with. Few asylum seekers insist on the retranslation, therefore mistakes in the transcript go unnoticed, as reported in observations from a network of 12 German NGOs (“Memorandum Alliance”).⁵²

⁴⁸ Section 17 Asylum Act.

⁴⁹ BAMF, ‘Online-Videotraining für Sprachmittler gestartet’, 28 September 2017, available in German at: <http://bit.ly/2oWwbTH>.

⁵⁰ BAMF, *Verhaltenskodex für Sprachmittler*, June 2017, available in German at <https://bit.ly/2XZADBF>.

⁵¹ Federal Government, Response to parliamentary question by The Left, 19/1631, 13 April 2018, available in German at: <https://bit.ly/2F2kvqq>, 40-41.

⁵² Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland: Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, available in German at: <http://bit.ly/2gZGhBq>, 18-19.

Interviews at the BAMF have frequently been criticised for being too superficial and not sufficiently aiming to establish the facts of the case. In particular, it has been reported that no further questions are asked in cases of inconsistencies in the asylum seekers' accounts.⁵³ For this reason, it is impossible to establish in later stages of the procedure whether inconsistencies result from contradictions in the asylum seekers' statements or merely from misunderstandings or translation errors.

Video recordings of interviews do not take place. Video conferencing was used, albeit rarely,⁵⁴ until 2013, but its use seems to have been abandoned completely since then. Audio or video recording or video conferencing is not used in appeal procedures either.

1.4. Appeal

Indicators: Regular Procedure: Appeal

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

| | | |
|-------------------------------------|----------------------------------------------|-----------------------------------------|
| | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| ❖ If yes, is it suspensive | | |
| - Rejection | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> 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: 17.6 months

1.4.1. Appeal before the Administrative Court

Appeals against rejections of asylum applications have to be lodged at a regular Administrative Court (*Verwaltungsgericht*, VG). There are 50 Administrative Courts, at least 47 of which are competent to deal with appeals in asylum procedures.⁵⁵ The responsible court is the one with regional competence for the asylum seeker's place of residence. Procedures at the administrative court generally fall into 2 categories, depending on the type of rejection of the application:

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

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

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

⁵³ Uwe Berlit, *Sonderasylprozessrecht – Zugang zu gerichtlichem Rechtsschutz im Asylrecht*, Informationsbrief Ausländerrecht 9/2018, 311.

⁵⁴ 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.

⁵⁵ 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.

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.⁵⁶ In any case, suspensive effect is only granted in exceptional circumstances.

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

In 2019, the average processing period for appeals was 17.6 months, which was significantly longer than in 2018 (12.5 months) and represented a dramatic increase in comparison to 2017 (7.8 months).⁵⁷ It should be noted that a high number of appeal procedures (44.7%) was terminated without an examination of the substance of the case, and therefore often without a hearing at the court. These terminations of procedures take place, for instance, if the appeal is withdrawn by the asylum seeker or if an out-of-court settlement is reached between the asylum seeker and the BAMF. Therefore, it has to be assumed that the average period for appeals is considerably longer than the 17.6 months referred to above, if the court decides on the merits of the case.

The increase in the average duration of appeal procedures can still be traced back to a dramatic increase in the number of appeals filed in 2017. At the end of the year 2017, 361,059 cases were pending before the Administrative Courts. It appears that courts are still trying to address this backlog, with 252,250 cases pending at the end of 2019 (compared to 310,959 pending cases at the end of 2018).⁵⁸

If the appeal to the Administrative Court is successful (or partly successful), the court obliges the authorities to grant asylum and/or refugee status or to declare that deportation is prohibited. The decision of the Administrative Court is usually the final one in an asylum procedure. Only in exceptional cases is it possible to lodge further appeals to higher instances.

1.4.2. Onward appeal

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

⁵⁶ See more references in Dominik Bender and Maria Bethke. "Dublin III', Eilrechtsschutz und das Comeback der Drittstaatenregelung.", *Asylmagazin* 11/2013, 362.

⁵⁷ Federal Government, Responses to parliamentary question by The Left, 19/18498, 2 April 2020, 47; 19/8701, 25 March 2019, 48; 19/1371, 22 March 2018, 42.

⁵⁸ Federal Government, Response to parliamentary question by The Left, 19/18498, 2 April 2020, 47; 19/8701, 25 March 2019, 43; 19/1371, 22 March 2018, 34.

administrative law. According to Section 78 of the Asylum Act, a further appeal against an asylum decision of an Administrative Court is only admissible if:

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

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

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

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

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

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

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

Legal assistance is not systematically available to asylum seekers in Germany. Welfare organisations and other NGOs offer free advice services which include basic legal advice.⁵⁹ In some initial reception centres (including the arrival centres and AnKER centres) welfare organisations or refugee councils have regular office hours or asylum seekers can easily access the offices of such organisations close to the centres. However, such advice services are not available in all centres and not all of the time, so very often interviews take place before asylum seekers have had a chance to contact an NGO or a lawyer. There is no mechanism which ensures that asylum seekers are getting access to legal advice from an independent institution before the interview.

The so-called "Orderly-Return-Law", in force since 21 August 2019,⁶⁰ created a new section in the Asylum Act (Section 12a). This provision establishes a "voluntary independent state-run" counselling service with a two-stage approach: the first stage consists of group lectures with basic information on the asylum procedure as well as on return procedures; in the second stage individual counselling sessions can take

⁵⁹ A database of advice services for asylum seekers is available at: <https://bit.ly/2Ho73Az>.

⁶⁰ Second law to enhance enforcement of the obligation to leave, 20 August 2019, Official Gazette I, 1294.

place upon demand, these can be carried out either by the Federal Office or by welfare organisations, according to the law. However, the government has made it clear that it does not intend to commission welfare organisations to carry out the counselling service on its behalf, but rather plans to extend advice services offered only by BAMF staff members throughout Germany. Moreover, the government has also pointed out that the counselling service on asylum procedures is “definitely is not legal advice”.⁶¹ (see chapter [Provision of information on the procedure](#)).

1.5.1. Legal assistance at first instance

Once asylum seekers have left the initial reception centres and have been transferred to other accommodation, the accessibility of legal advice depends strongly on the place of residence. For instance, asylum seekers accommodated in rural areas might have to travel long distances to reach advice centres or lawyers with special expertise in asylum law.

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

1.5.2. Legal assistance in appeals

During court proceedings, asylum seekers can apply for legal aid to pay for a lawyer. The granting of legal aid is dependent on how the court rates the chances of success. This “merits test” is carried out by the same judge who has to decide on the case itself, and is reportedly applied strictly by many Courts.⁶² Therefore some lawyers do not always recommend to apply for legal aid, since they are concerned that a negative decision in the legal aid procedure may have a negative impact on the main proceedings.

Furthermore, decision-making in the legal aid procedure may take considerable time so lawyers regularly have to accept a case before they know whether legal aid is granted or not. Lawyers often argue that fees based on the legal aid system do not always cover their expenses. As a consequence, specialising only on asylum cases is generally supposed to be difficult for law firms. Most lawyers specialising in this area have additional areas of specialisation while a few also charge higher fees on the basis of individual agreements with their clients.

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

⁶¹ „Die Asylverfahrensberatung des BAMF ist gerade keine Rechtsberatung“, Federal government, response to information request by The Left, 19/19535, 26 May 2020, 17.

⁶² For a recent overview of practice in **Regensburg**, Bavaria, see ECRE, *The AnkER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

2. Dublin

2.1. General

Dublin statistics: 2019

| Outgoing procedure | | | Incoming procedure | | |
|--------------------|---------------|--------------|--------------------|---------------|--------------|
| | Requests | Transfers | | Requests | Transfers |
| Total | 48,847 | 8,423 | Total | 23,717 | 6,087 |
| Italy | 14,175 | 2,575 | France | 11,194 | 2,022 |
| Greece | 9,870 | 20 | Netherlands | 3,116 | 1,125 |
| France | 5,021 | 1,212 | Belgium | 1,934 | 301 |
| Sweden | 2,603 | 565 | Greece | 1,684 | 730 |
| Spain | 2,827 | 591 | Italy | 1,325 | 221 |
| Poland | 1,981 | 508 | Switzerland | 997 | 444 |
| Netherlands | 1,916 | 571 | Austria | 835 | 433 |
| Austria | 1,638 | 517 | United Kingdom | 794 | 115 |
| Switzerland | 1,215 | 375 | Sweden | 429 | 246 |
| Bulgaria | 851 | 21 | Denmark | 250 | 117 |
| Belgium | 823 | 293 | Ireland | 219 | 1 |
| Denmark | 766 | 149 | Luxembourg | 187 | 100 |
| Portugal | 733 | 193 | Portugal | 89 | 16 |
| Czech Rep. | 613 | 179 | Finland | 71 | 33 |
| Romania | 585 | 83 | Slovenia | 68 | 12 |
| Croatia | 565 | 29 | Czech. Rep. | 66 | 23 |
| Finland | 491 | 150 | Malta | 66 | 1 |
| Lithuania | 478 | 70 | Norway | 62 | 53 |
| Slovenia | 347 | 88 | Poland | 57 | 29 |
| Norway | 331 | 207 | Croatia | 55 | 6 |
| Malta | 264 | 16 | Cyprus | 49 | 3 |
| Latvia | 241 | 54 | Hungary | 32 | 11 |
| Slovak Rep. | 121 | 39 | Iceland | 32 | 10 |
| United Kingdom | 118 | 22 | Bulgaria | 28 | 8 |
| Luxembourg | 92 | 11 | Lithuania | 28 | 9 |
| Estonia | 76 | 5 | Spain | 25 | 5 |
| Cyprus | 54 | 2 | Romania | 16 | 6 |
| Hungary | 32 | 0 | Liechtenstein | 5 | 3 |
| Iceland | 14 | 0 | Slovak Rep. | 3 | 4 |
| Ireland | 5 | 4 | Latvia | 1 | 0 |
| Liechtenstein | 1 | 0 | Estonia | 0 | 0 |

Source: Federal Government, Response to parliamentary information request by The Left, 19/17100, 20 February 2020, 52, Update

The number of outgoing requests decreased from 2018 to 2019, but it was still high in comparison with previous years:

| Outgoing Dublin requests from Germany | | | | | | | |
|---------------------------------------|--------|--------|--------|--------|--------|--------|--------|
| Year | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
| Requests | 35,280 | 35,115 | 44,982 | 55,690 | 64,267 | 54,910 | 48,847 |

Source: Federal Government, Responses to parliamentary questions from 2013 to 2019.

Application of the Dublin criteria

The majority of outgoing Dublin requests was based on so-called “Eurodac hits” (64.6% in 2019, in comparison to 65.4% in 2018, 65.1% in 2017, 69.2% in 2016, 76% in 2015, 68.5% in 2014, 66.7% in 2013 and 72.8% in 2012).⁶³ Details on the criteria used for requests are only available for the outgoing requests which were based on “Eurodac hits”. Statistics for 2019 refer to a total of 31,544 requests based on Eurodac, out of which:

- 25,159 (79.8%) after an application for international protection (CAT 1);⁶⁴
- 3,737 (11.8%) after apprehension upon illegal entry (CAT 2);⁶⁵
- 2,648 (8.4%) after apprehension for illegal stay (CAT 3).⁶⁶

The number of transfers from other European countries to Germany decreased from 7,580 in 2018 to 6,087 in 2019. This decrease was particularly notable in the numbers of transfers from **Greece** (730 transfers in 2019 compared to 3,495 in 2018). The overwhelming majority of transfers from Greece (690 out of 730) were carried out on the basis of the family unity provisions of the Dublin Regulation. The German government provided following details on the transfers carried out from Greece:

| Incoming Dublin transfers from Greece: 2019 | |
|------------------------------------------------------------------------|---------------------|
| Criterion | Number of transfers |
| Unaccompanied children with family members or relatives: Article 8 | 205 |
| Family members of beneficiaries of international protection: Article 9 | 325 |
| Family members of asylum seekers: Article 10 | 114 |
| Dependent persons: Article 16 | 22 |
| Family reunification based on the humanitarian clause: Article 17(2) | 23 |
| Family procedure: Art. 11 a) | 1 |
| Others | 40 |
| Total | 730 |

Source: Federal Government, Response to parliamentary question by The Left, 19/17100, 20 February 2020, 64.

The decrease in transfers from Greece can partly be explained by the fact that a backlog of family reunification cases had been cleared in 2018. In February 2018 some 3,100 asylum seekers for whom Germany had already accepted “take charge” requests had still been waiting for their transfer.⁶⁷

⁶³ Federal Government, Response to parliamentary question by The Left, 19/17100, 20 February 2020, 3; 19/8340, 13 March 2019, 2; 19/921, 26 February 2018, 19; 18/11262, 21 February 2017, 35; 18/7625, 22 February 2016, 32.

⁶⁴ Article 9 recast Eurodac Regulation.

⁶⁵ Article 14 recast Eurodac Regulation.

⁶⁶ Article 17 recast Eurodac Regulation.

⁶⁷ Federal Government, Response to parliamentary question by The Left, 19/921, 26 February 2018, 22-24.

Another important reason for the decrease in transfers from Greece is that the BAMF has been handling applications for family reunification under the Dublin regulation more restrictively in comparison to former years. It has been reported that 75% of incoming Dublin requests from Greece were rejected by the German authorities in the first half of 2019, often 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.⁶⁸

The dependent persons and discretionary clauses

The government's statistics do not contain exact information on the number of cases in which the humanitarian clause or the sovereignty clause has been used. Available information only refers to 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.⁶⁹

During the year 2015, Syrian nationals had been exempted from transfers under the Dublin Regulation. However, given that there is no more distinction made between Syrians and other nationalities as far as Dublin procedures are concerned, 549 Syrians were transferred to other countries in 2018 (representing 6% of all transfers). In 2019, 310 transfers of Syrian nationals took place, this represented 3.7% of all transfers.⁷⁰

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.⁷¹ The examination of whether another state is responsible for carrying out the asylum procedure (either based on the Dublin Regulation or on the German “safe third country” rule) is an admissibility assessment and as such a part of the regular procedure. Thus, in the legal sense, the term “Dublin procedure” does not refer to a separate procedure in the German context, but merely to the shifting of responsibility for an asylum application within the administration (i.e. takeover of responsibility by the “Dublin Units” of the BAMF).

Fingerprints are usually taken from all asylum seekers on the day that the application is registered and they are subjected to Eurodac queries on a routine basis. Eurodac queries are the major ground for the initiation of Dublin procedures. No cases of asylum seekers refusing to be fingerprinted have been reported, only several cases where manipulation of fingerprints took place i.e. persons scraping off or etching their fingertips, making fingerprints unrecognisable.

In principle, only the BAMF is responsible for conducting the Dublin procedure. However, there are indications that there have also been Dublin procedures managed by the Federal Police in 2016 (see [Access to the Territory](#)).⁷² The German government confirmed in August 2017 that Dublin procedures had been taking place at the border.⁷³ However, in contrast to earlier reports, the government explained in this

⁶⁸ Anne Pertsch, „Dublin reversed“ vor Gericht. Aktuelle Rechtsprechung zu Dublin-Familienzusammenführungen. Asylmagazin 8-9/2019, available at: <https://bit.ly/2W018tM>, 287-294.

⁶⁹ Federal Government, Response to parliamentary question by The Left, 19/17100, 20 February 2020, 12.

⁷⁰ Federal Government, Response to parliamentary question by The Left, 19/8340, 13 March 2019, 15; and 19/17100, 20 February 2020, 33.

⁷¹ Section 29(1)(a) Asylum Act.

⁷² Federal Government, Response to parliamentary question by The Left, 18/13428, 18 August 2017, 23-24.

⁷³ *Ibid.*

statement that these Dublin procedures were not carried out by the Federal Police. According to the statement, the Federal Police informs the BAMF if there is evidence or if statements of an asylum seeker apprehended at the border indicate that another Dublin State might be responsible for the procedure. The Dublin procedure then is carried out by the BAMF which can issue a deportation order. A possible forced return to the responsible Member State is carried out by the Federal Police. The Federal Police may also ask a court to issue a detention order if there is a considerable risk of “absconding”. This implies that asylum seekers are not sent to the “normal” reception centres but remain under the authority of the Federal Police for the whole duration of the Dublin procedure. Furthermore, in 2018 a new procedure was introduced at the Austrian-German border which enables the Federal Police to refuse entry at the border without applying the Dublin Regulation. This procedure is based on readmission agreements with Spain and Greece, but it apparently has not been applied in many cases (see [Access to the territory and push backs](#)). This new procedure seems to have replaced the practice of Dublin procedures managed by the Federal Police as described above, but it cannot be ruled out that other “improvised” procedures resulting in forced returns are still carried out at the border.

In a ruling of the CJEU in *Mengesteab* on 26 July 2017, an important element of the Dublin procedure has been clarified with an important impact on the handling of Dublin procedures by the German authorities. Before this decision the German authorities held that the time limit for sending a request to another country would start with the lodging of an asylum application. Furthermore, requests were frequently submitted to other states after the Dublin Regulation time limits for these requests had expired, in the hope that the other state would take charge of the procedure nevertheless. The CJEU made clear that both practices were incompatible with the Dublin Regulation: the time limit for Dublin requests thus starts with the moment that a Member State becomes aware of an asylum seeker’s intention to apply for asylum. If a Member State fails to submit a request within the time limits as defined in the Regulation, this Member State automatically becomes responsible for carrying out the procedure.⁷⁴

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.

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.⁷⁵

Even before the ECtHR’s ruling in the case of *Tarakhel v. Switzerland*,⁷⁶ the Federal Constitutional Court (BVerfG) had decided that the BAMF has to take precautionary measures against possible health risks in cases of deportations or transfers to other states. With regard to transfers to **Italy**, the Constitutional Court specified that children up to the age of three might face such health risks because of scarce capacities of the Italian reception system and possible homelessness. Therefore, the Constitutional Court obliged the BAMF to make sure, in coordination with the Italian authorities, that families with children up to the age of three would have access to accommodation in case of transfers to Italy.⁷⁷ The BAMF therefore had to request individual guarantees for these families from the Italian authorities. According to the Federal Government, no transfers to Italy were carried out in 2018 if families and children aged less than three-years-old were concerned.⁷⁸ However, this policy has been terminated as of March 2019 following the

⁷⁴ 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.

⁷⁵ Information provided by the BAMF, 1 August 2017.

⁷⁶ ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

⁷⁷ BVerfG, Decision 2 BvR 1795/14, 17 September 2014, *Asylmagazin* 10/2014, 341, available at: <http://bit.ly/110Lplo>.

⁷⁸ Federal Government, Response to parliamentary question by The Left, 19/8340, 13 March 2019, 21-22.

latest Circular of the Italian Dublin Unit dated 8 January 2019, which informed all Member States that families with children are accommodated in the same first reception centres and temporary reception centres as other asylum seekers.⁷⁹ This practice was maintained throughout 2019, according to the government. Apparently, the BAMF still asks the Italian authorities for individualised guarantees concerning families with children below the age of three years, but it has not made it fully clear whether this is a routine procedure in all of these cases.⁸⁰

In March 2017, the Administrative Court of Trier halted the transfer of a pregnant woman to **Italy** and stated that German asylum authorities have to obtain individualised guarantees in all cases of possible transfers of vulnerable persons to Italy.⁸¹ Similar decisions were issued in 2018. In the last quarter of 2018, some courts ruled that requests for individual guarantees had to be submitted for vulnerable persons, especially because the situation in Italy had become less predictable for Dublin returnees in the light of the 2018 legislative reform.⁸² However, the High Administrative Court of Bavaria held that a pregnant woman would not be at risk of inhuman or degrading treatment following her transfer to Italy, hereby confirming the ruling of the Administrative Court of Munich.⁸³

Similar divisions were noted in jurisprudence in 2019, with several courts holding that the BAMF could be obliged to obtain individualised guarantees from Italy, e.g. in cases of families (including families with children older than 3 years),⁸⁴ pregnant women,⁸⁵ and with regard to persons with serious medical conditions.⁸⁶ Other courts disagreed and generally held that conditions in Italy would not lead to particular risks for Dublin returnees, which rendered individualised guarantees unnecessary (these decisions included cases with young children,⁸⁷ and pregnant women).⁸⁸

Currently, the BAMF requests individual guarantees for all transfers to **Hungary** and **Greece**, to ascertain whether asylum seekers will be treated in accordance with the Asylum Directives.⁸⁹ This policy has led to a standstill in transfers to **Hungary** since May 2017, as the Hungarian authorities have not submitted individual guarantees.⁹⁰ As regards **Greece**, Germany has issued a comparably high number of take charge requests (9,807) and received 574 positive replies from the Greek authorities which apparently were combined with individualised guarantees. However, only 20 transfers were carried out in 2019. The BAMF was informed by the Greek authorities that all persons transferred were issued a temporary residence permit upon arrival in Greece and were accommodated either in reception centres (Camp Eleonas, Camp Shisto) or in private apartments. One transferred person was reported to have left Greece for his country of origin after having participated in a voluntary return programme.⁹¹

The Federal Constitutional Court defined some important standards concerning Dublin transfers in a ruling of October 2019. According to the Federal Constitutional Court, 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 in Greece. 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

⁷⁹ Informationsverbund Asyl und Migration, ‘BAMF führt Überstellungen nach Italien wieder “uneingeschränkt” durch’, 29 March 2019, available in German at: <https://bit.ly/2Uobbqu>.

⁸⁰ Federal Government, Response to parliamentary question by The Left, 19/8340, 13 March 2019, 33-34 and 37.

⁸¹ Administrative Court Trier, Decision 5 L 1846/17.TR, 16 March 2017, asyl.net, available at: <http://bit.ly/2FupouH>.

⁸² Administrative Court Arnsberg, Decision 5 L 1831/18.A, 29 November 2018; Administrative Court Braunschweig, Decision 1 B 251/18, 16 October 2018.

⁸³ High Administrative Court of Bavaria, Decision 10 CE 19.67, 9 January 2019.

⁸⁴ Administrative Court Magdeburg, decision of 15 January 2019 - 2 B 806/18 MD - asyl.net: M26942

⁸⁵ Administrative Court Trier, decision of 31 January 2019 - 7 L 181/19.TR - asyl.net: M27030.

⁸⁶ Administrative Court Darmstadt, decision of 27 March 2019 - 4 L 489/19.DA.A - asyl.net: M27122.

⁸⁷ Administrative Court Trier, decision of 5 April 2019 - 7 L 1263/19.TR - asyl.net: M27648.

⁸⁸ Administrative Court Frankfurt a.M., decision of 17 January 2019 - 3 L 50/19.F.A - asyl.net: M27018.

⁸⁹ Information provided by the BAMF, 1 August 2017.

⁹⁰ Federal Government, Response to parliamentary question by The Left, 19/8340, 13 March 2019, 1 (preliminary remark).

⁹¹ *Ibid.*, 52 and 59-60.

of the European Charter of Fundamental Rights. In line with the CJEU's ruling in the case of *Jawo*,⁹² the court held that authorities and courts in Germany had to examine this point when deciding about the possibility of a transfer.⁹³ This decision might also influence the question of whether individualised guarantees by the Greek authorities can be considered to provide sufficient protection from possible inhuman treatment.

Transfers

Transfers under the Dublin Regulation are usually carried out as deportations since no deadline is set for "voluntary departure" to the responsible Member State. Even if asylum seekers offer to leave Germany on their own, this is frequently not accepted and an escorted return is carried out instead.

Generally, in line with the Residence Act,⁹⁴ dates of deportations were not previously announced to asylum seekers in Dublin procedures. The police performed unannounced visits to places of residence e.g. reception centres with a view to apprehending the person and proceed to the transfer.

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

The extension of the deadline to 18 months has been heavily debated in the context of "church asylum" (*Kirchenasyl*), the temporary sanctuary offered by religious institutions to protect people facing deportation from undue hardship. The new guidelines of the Federal Office for Migration and Refugees (BAMF) which took effect on 1 August 2018 state that an extension of the transfer deadline to 18 months for reasons of "absconding" can be ordered under a number of circumstances, including where: (a) church asylum is not notified on the day it is provided; (b) the file is not transmitted to the BAMF within a four-week period to justify grounds of hardship; or (c) church asylum was only provided after a negative decision from the BAMF.⁹⁵ 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.⁹⁶

In its recent ruling in *Jawo*, the CJEU clarified that absconding "may be assumed that that is the case where the transfer cannot be carried out due to the fact that the applicant has left the accommodation allocated to him without informing the competent national authorities of his absence, provided that he has been informed of his obligations in that regard".⁹⁷

⁹² CJEU, *Judgment in case C-163/17, Jawo*, 19 March 2019, available at: <https://bit.ly/304sXA2>.

⁹³ Federal Constitutional Court, decision of 7 October 2019 - 2 BvR 721/19 - Asylmagazin 1-2/2020, S. 37 f. - asyl.net: M27758.

⁹⁴ Section 59(1) Residence Act.

⁹⁵ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

⁹⁶ 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>.

⁹⁷ CJEU, Case C-163/17 *Jawo*, Judgment of 19 March 2019, para 70.

“Absconding” from the Dublin procedure also has repercussions on [Reduction and Withdrawal of Reception Conditions](#), which are systematically applied in AnKER centres in **Bavaria** in such cases, and can also constitute a ground for ordering [Detention](#).⁹⁸

There are no publicly available statistics on how many Dublin transfers are preceded by detention. If asylum seekers have already accessed the regular procedure, they must not be detained for the duration of the procedure. However, detention may be imposed once an application has finally been rejected as “inadmissible” because another country was found to be responsible for the asylum procedure. In these cases, the legal basis for ordering and prolongation of detention is the same as for other forms of detention pending deportation. This implies that certain preconditions for the lawfulness of detention have to be fulfilled: In particular, any placing into custody under these circumstances should generally be ordered in advance by a judge, since it does not constitute a provisional arrest which may be authorised by a court at a later stage. However, a judge should generally not issue a detention order until the formal request to leave Germany – usually a part of the rejection of the asylum application – has been handed out to the person concerned and if sufficient grounds for detention exist. However, it has been alleged that these preconditions continue to be often ignored by authorities and courts in Dublin cases (in the same manner as in other cases of detention pending deportation). 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.

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 2018.⁹⁹ 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.¹⁰⁰

2.3. Personal interview

Indicators: Dublin: Personal Interview

Same as regular procedure

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

A personal interview is mandatory.¹⁰¹ There is no consistent practice for interviews in Dublin procedures. For the authorities a Dublin procedure means that responsibilities are referred to the “Dublin units” of the BAMF, which may take place at various stages of the procedure. In practice, the Dublin and regular procedure are carried out simultaneously, therefore a regular interview is conducted according to the standards of the [Regular Procedure: Personal Interview](#). In this context it has been noted that questions on the travel routes of asylum seekers may take up a considerable part of the interview, which may result in a shifting of focus away from the core issues of the personal interview.

⁹⁸ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

⁹⁹ See Federal Government, Response to parliamentary question by The Left, 19/7401, 29 January 2019, available in German at: <https://bit.ly/2HWaiQQ>.

¹⁰⁰ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

¹⁰¹ *Entscheiderbrief*, 9/2013, 3.

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

2.4. Appeal

Indicators: Dublin: Appeal

Same as regular procedure

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

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

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

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

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

In addition, serious practical difficulties result from the 7-day time limit for the necessary application to the court. This short deadline is often difficult to meet for asylum seekers since the application for suspensive effect has to be fully substantiated. To prepare such an application requires expert knowledge of the asylum law, but in the absence of systematic legal counselling asylum seekers regularly have to turn to a lawyer or to refugee counsellors for assistance. However, it might prove impossible for asylum seekers to make an appointment with lawyers or counsellors within the short timeframe. Even if they manage to 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.¹⁰²

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

¹⁰² Dominik Bender and Maria Bethke, “Dublin III’, Eilrechtsschutz und das Comeback der Drittstaatenregelung.” Asylmagazin 11/2013, 362.

independence, the Constitutional Court did not define which kind of information was necessary to clarify the factual situation. It only pointed to the general obligation for authorities and courts to obtain information about conditions in other countries and to obtain individual guarantees, if necessary.¹⁰³

The following table illustrates the number of court decisions on requests for urgent legal protection i.e. requests to restore suspensive effect of appeals in Dublin cases between January and November 2019. 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, Jan- Nov 2019 | | |
|------------------------------------------------------------------------------|----------------------------|----------------------------|
| Country | Granting suspensive effect | Refusing suspensive effect |
| Belgium | 30 | 261 |
| Bulgaria | 90 | 137 |
| Denmark | 58 | 213 |
| Estonia | 3 | 29 |
| Finland | 24 | 138 |
| France | 171 | 1,3461 |
| Greece | 125 | 129 |
| UK | 1 | 13 |
| Ireland | 0 | 1 |
| Iceland | 2 | 2 |
| Italy | 1,762 | 4,951 |
| Croatia | 20 | 169 |
| Latvia | 13 | 95 |
| Lithuania | 31 | 178 |
| Luxemburg | 1 | 5 |
| Malta | 14 | 66 |
| Netherlands | 82 | 463 |
| Norway | 20 | 115 |
| Austria | 26 | 420 |
| Poland | 106 | 767 |
| Portugal | 28 | 249 |
| Romania | 77 | 287 |
| Sweden | 113 | 599 |
| Switzerland | 24 | 307 |
| Slovakia | 17 | 89 |
| Slovenia | 24 | 120 |
| Spain | 141 | 866 |
| Czech Republic | 38 | 274 |
| Hungary | 7 | 19 |
| Cyprus | 4 | 16 |

Source: Federal Government, Response to parliamentary question by The Left, 19/17100, 20 February 2020, 58. Note that the Government does not give a total number of these decisions and explains that these figures do not represent official statistics. Rather, they were produced on the basis of the BAMF's internal document management system. Therefore, deviations from court statistics are possible.

¹⁰³ 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 [Regular Procedure: Legal Assistance](#) applies equally to the Dublin procedure.

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

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

Hungary: According to information provided by the BAMF, any Dublin request to the Hungarian authorities is accompanied by a request of individualised guarantees, i.e. that Dublin returnees will be treated in accordance with the Reception Conditions Directive and the Asylum Procedures Directive.¹⁰⁴ As a result, no Dublin transfers to Hungary have taken place since 11 April 2017.¹⁰⁵ 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 requests were sent to Hungary also in 2019.

Greece: A formal suspension of transfers to Greece, which had been in place for several years, ended in March 2017. In 2019, Germany sent a comparably high number of take charge requests to Greece (9,807) and received 574 positive replies from the Greek authorities which apparently were combined with individualised guarantees. However, only 20 transfers were carried out in 2019.¹⁰⁶ In addition, nine persons were deported to Greece between August 2018 and January 2019 on the basis of an administrative agreement between Germany and Greece (see [Access to the Territory](#)).

Italy: The BAMF stated in March 2019 that it now carries out Dublin transfers to Italy without obstacles, after discontinuing a previous policy of requesting individual guarantees for families with children below

¹⁰⁴ Federal Government, Response to parliamentary question by The Left, 19/921, 26 February 2018, 19.

¹⁰⁵ Preliminary remark to Federal Government, Response to parliamentary question by The Left, 19/17100, 20 February 2020, 1.

¹⁰⁶ *Ibid.*, 52 and 59-60.

the age of three.¹⁰⁷ Transfers to Italy are systematically ordered, including for vulnerable persons such as pregnant women or persons with severe mental health conditions.¹⁰⁸

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.¹⁰⁹ The Constitutional Court overruled two decisions by the Administrative Court of Würzburg in which transfers to Italy had been declared permissible. The Constitutional Court pointed out that the lower court had not sufficiently examined the reception conditions in Italy and the possible risks upon return which might result from homelessness and from possible systemic deficiencies in the asylum system.

Furthermore, several hundred court cases have resulted in suspension of transfers to other countries by means of issuance of interim measures. At the same time, however, other courts have decided in favour of transfers to these countries, which is mainly due to the fact that the definition of requirements for a suspension of transfers remains highly controversial. For example, courts continue to render diverging decisions on the issue of whether problems in the Italian asylum system amount to “systemic deficiencies” or not, or whether the situation of Dublin returnees in Italy calls for individualised guarantees or not.

A detailed analysis of case law on this issue, which consists of hundreds of decisions, has not been possible within the scope of this report. By way of illustration, recent decisions concerning transfers of asylum seekers and beneficiaries of international protection to Italy are listed below:

| Examples of Administrative Court rulings on Dublin transfers and transfers of persons with protection status in another European country: 2019 | | |
|------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Country | Halting transfer | Upholding transfer |
| Italy | <p>Administrative Court of Düsseldorf, Decision 22 K 1273/18.A, 4 February 2020</p> <p>Administrative Court of Minden, Decisions 10 K 7608/17.A, 10 K 2275/19.A , 10 K 2221/18.A, 10 K 2747/19.A, 13 November 2019</p> <p>Administrative Court of Braunschweig, Decision 3 A 16/18, 17 October 2019, Decision 1 B 165/19, 7 August 2019, Decision 3 B 220/19, 23 July 2019</p> <p>Administrative Court of Freiburg, Decision A 5 K 1977/19, 10 October 2019</p> <p>Administrative Court of Karlsruhe, Decision A 3 K 4406/19, 25 September 2019</p> <p>Administrative Court of Darmstadt, Decision 3 L 1694/19.DA.A, 23 September 2019</p> <p>Administrative Court of Trier, 7 K 4270/18.TR, 29 August 2019</p> <p>Administrative Court of Köln, Decision 23 K 401/16.A, 29 May 2019</p> | <p>Administrative Court of Trier, Decision 1 K 12662/17.TR, 29 October 2019, Decision 7 L 1226/19.TR, 10 April 2019, Decision L 1263/19.TR, 5 April 2019</p> <p>VGH (High Administrative Court) of Baden-Württemberg, Decision A 4 S 749/19, 29 July 2019</p> <p>Administrative Court of Aachen, Decision 9 K 4004/17.A, 27 May 2019</p> <p>Administrative Court of Cottbus Decision 5 K 811/14.A, 7 May 2019</p> <p>Administrative Court of Kassel, Decision 1 L 1011/19.KS.A , 30 April 2019</p> |

¹⁰⁷ Informationsverbund Asyl und Migration, ‘BAMF führt Überstellungen nach Italien wieder "uneingeschränkt" durch’, 29 March 2019, available in German at: <https://bit.ly/2Uobbqu>.

¹⁰⁸ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

¹⁰⁹ Bundesverfassungsgericht (BverfG), Decision 2 BvR 1380/19, 10 October 2019, asyl.net: M27757.

In other cases, courts have stopped short of discussing these basic questions and have stopped transfers on individual grounds e.g. lack of adequate medical treatment for a rare disease in the Member State.

It has to be noted that many court decisions which have been published in 2019 were dealing with cases of persons who had been granted international protection in other European states such as Bulgaria, Greece or Italy. In many of these cases, transfers were suspended by courts on the grounds that a risk of inhuman or degrading treatment could not be excluded for beneficiaries of international protection in these countries. However, similarly to the existing case law on “systemic deficiencies”, the case law on this issue was not consistent and other courts upheld transfers of beneficiaries of international protection to Bulgaria, Greece or Italy. These decisions have not been included to the list above as the cases do not fall under the Dublin Regulation. A list of such cases can be found online.¹¹⁰

2.7. The situation of Dublin returnees

Germany received 6,087 incoming transfers in 2019. Dublin transfers are usually carried out individually through commercial flights. In 2019, there were some exceptions with persons who were directly transferred to a “waiting room” in **Erding**, close to Munich Airport. This place served as reception point for the following persons: (a) Transfers in the context of *ad hoc* relocation arrangements following disembarkation and in Malta and Italy, except for unaccompanied children; and (b) Dublin returns from the United Kingdom, which were implemented through charter flights preceded by detention and physical restraints. The persons concerned arrived in **Munich Airport**. Upon arrival, returnees were transferred to the “waiting room” (*Warteraum*) in **Erding** managed by the BAMF and the German Red Cross, where they received accommodation and assistance for a period of 72 hours before being distributed to different regions in the country.¹¹¹

According to reports from November 2019, activities at the “waiting room” in Erding were to be suspended at the end of 2019. This means that the facility has not been closed permanently, but put on “stand-by mode”, so it can be reactivated at short notice in case it is needed for new arrivals.¹¹²

In addition, as mentioned in [General](#), a high number of transfers to Germany took place from Greece under the family unity provisions of the Dublin Regulation. Upon arrival in Germany, persons are sent to the place where their relatives are staying and local authorities provide them accommodation and other related reception services.

There have been no reports of Dublin returnees facing difficulties in re-accessing an asylum procedure or facing any other problems after having been transferred to Germany. There is no uniform procedure for the reception and further treatment of Dublin returnees. If they had already applied for asylum in Germany, they are usually obliged to return to the region to which they had been assigned during the former asylum procedure in Germany. If their application had already been rejected by a final decision, it is possible for them to be placed in pre-removal detention upon return to Germany.¹¹³

¹¹⁰ The website is available in German at: <https://www.asyl.net/recht/dublin-entscheidungen/>. Search with the keyword “Anerkannte” (recognised persons).

¹¹¹ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

¹¹² br.de, Erdinger “Warteraum Asyl” nur noch im Standby-Modus, 20 November 2019, available at: <https://bit.ly/321g4t9>.

¹¹³ 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:¹¹⁴

1. Another country is responsible for carrying out the asylum procedure, according to the Dublin Regulation or based on other European or international treaties;
2. Another EU Member State has already granted the applicant international protection;
3. A country that is willing to readmit the foreigner is regarded as a “safe third country” for the asylum seeker;¹¹⁵
4. A country that is not an EU Member State and is willing to readmit the foreigner is regarded as “another third country”;¹¹⁶
5. The applicant has made a subsequent,¹¹⁷ or secondary,¹¹⁸ application.

The BAMF took the following inadmissibility decisions in 2019:

| Inadmissibility decisions: 2019 | |
|-----------------------------------------------------------------|--------|
| Ground | Number |
| Applicability of the Dublin Regulation | 24,490 |
| International protection in another EU Member State | 12,452 |
| Safe third country | 40 |
| Another third country | 38 |
| Secondary application (after procedure in a safe third country) | 3,434 |
| Subsequent application (after procedure in Germany) | 14,020 |

Source: Statistics on “abandonment of procedures for other reasons” (“*sonstige Verfahrenserledigungen*”) by the Federal Government, Response to parliamentary question by The Left, 19/18498, 2 April 2020, available at: <https://bit.ly/3bhlikR>, 6.Insert

The provision that asylum applications may be considered inadmissible in case of safety in “another third country” (*sonstiger Drittstaat*) has been based on the concept of **First Country of Asylum** of Article 35 of the recast Asylum Procedures Directive.¹¹⁹ “Another third country” may refer to any country which is not defined a **Safe Third Country** under German law.¹²⁰ 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.

¹¹⁴ Section 29(1) Asylum Act.

¹¹⁵ Section 29(1)(3) Asylum Act, citing Section 26a Asylum Act.

¹¹⁶ Section 29(1)(4) Asylum Act, citing Section 27 Asylum Act.

¹¹⁷ Section 29(1)(5) Asylum Act, citing Section 71 Asylum Act.

¹¹⁸ Section 29(1)(5) Asylum Act, citing Section 71a Asylum Act.

¹¹⁹ Maria Bethke und Stephan Hocks, *Neue „Unzulässigkeits“-Ablehnungen nach § 29 AsylG*, Asylmagazin 10/2016, 336-346 (343).

¹²⁰ “Safe third countries” are all member states of the European Union plus Norway and Switzerland: Section 26a Asylum Act and addendum to Asylum Act.

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

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

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

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

Same as regular procedure

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

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

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

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

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

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

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

4. Border procedure (border and transit zones)

4.1. General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? Yes No
2. Can an application made at the border be examined in substance during a border procedure? Yes No
3. Is there a maximum time limit for a first instance decision laid down in the law? Yes No
❖ If yes, what is the maximum time limit? 2 days

There is no special procedure at land borders, although as part of the reintroduction of border controls, a refusal of entry and return procedure has been installed on the German-Austrian border for cases of persons who have previously sought asylum in Spain and Greece (see [Access to the Territory](#)). The following section refers to the **airport procedure** (*Flughafenverfahren*).

The “procedure in case of entry by air” is legally defined as an “asylum procedure that shall be conducted prior to the decision on entry” to the territory.¹²¹ Accordingly, it can only be carried out if the asylum seekers can be accommodated on the airport premises during the procedure, with the sole exception that an asylum seeker has to be sent to hospital and therefore cannot be accommodated on the airport premises, and if a branch office of the BAMF is assigned to the border checkpoint. The necessary (detention) facilities exist in the airports of **Berlin (Schönefeld)**, **Düsseldorf**, **Frankfurt/Main**, **Hamburg** and **Munich**, although the BAMF does not have a branch office assigned to all of those places (see [Place of Detention](#)).

The airport procedure applies to applicants who do not have valid documents upon arrival at the airport, but it may also apply to applicants who ask for asylum at the border authorities in the transit area and to those who come from a “safe country of origin”.¹²² In practice, it was not applied to unaccompanied children in 2018,¹²³ although its applicability to unaccompanied children is not excluded.

In 2019, the airport procedure was applied in 489 cases, 395 at the **Frankfurt/Main Airport**, 63 at the **Munich Airport**, 19 at the **Berlin Airport** and 12 at the **Hamburg Airport**. No airport procedures took place at the Düsseldorf airport in 2019. As the statistics show, the overwhelming majority of procedures continue to take place at Frankfurt/Main Airport.

The countries of origin of persons subject to the airport procedure in 2019 were as follows:

| Applicants subject to the airport procedure: 2019 | |
|---------------------------------------------------|--------|
| Nationality | Number |
| Iran | 128 |
| Syria | 43 |
| Turkey | 28 |
| Afghanistan | 25 |
| Iraq | 20 |
| Somalia | 15 |
| Unknown | 6 |
| Nigeria | 3 |
| Eritrea | 1 |

¹²¹ Section 18a(1) Asylum Act.

¹²² Section 18a(1) Asylum Act.

¹²³ Federal Government, Response to parliamentary question by The Left, 19/18498, 2 April 2020, available at: <https://bit.ly/3bhlikR>, 43.

| | |
|--------------|------------|
| Total | 489 |
|--------------|------------|

Source: Federal Government, Response to parliamentary question by The Left, 19/18498, 2 April 2020, available at: <https://bit.ly/3bhlikR>, 43-44.

Potential outcomes of airport procedures are as follows:

1. The BAMF decides within 2 calendar days that the application is “manifestly unfounded” and entry to the territory is denied. A copy of the decision is sent to the competent Administrative Court.¹²⁴ The applicant may ask the court for an interim measure against deportation within three calendar days;
2. In theory, the BAMF can decide within the 2 calendar days that the application is successful or it can reject the application as “unfounded”. In these cases, entry to the territory and, if necessary, access to the legal remedies of the regular procedure would have to be granted. However, this option seems to be irrelevant in practice since the BAMF always grants entry to the territory for the asylum procedure to be carried out in a regular procedure if an application is not rejected as manifestly unfounded;
3. The BAMF declares within the first 2 calendar days following the application that it will not be able to decide upon the application at short notice. Entry to the territory and access to the regular procedure are granted;¹²⁵ or
4. The BAMF has not taken a decision within 2 calendar days following the application. Entry to the territory and to the regular procedure is granted.

In practice, the third option is the most common outcome, including in cases where the Dublin Regulation is considered to be applicable. The outcome of airport procedures in 2019 was as follows:

| Outcomes of airport procedures: 2019 | | |
|--------------------------------------|-----------------------------|----------------------|
| Airport | No decision within two days | Manifestly unfounded |
| Frankfurt/Main | 203 | 175 |
| Munich | 0 | 39 |
| Berlin | 4 | 9 |
| Hamburg | 0 | 8 |
| Total | 207 | 231 |

Source: Source: Federal Government, Response to parliamentary question by The Left, 19/18498, 2 April 2020, available at: <https://bit.ly/3bhlikR>, 44.

Whereas in previous years, the majority of airport procedures were halted because the BAMF notified the Federal Police that no decision would be taken within the timeframe required by law (264 out of 444 in 2017; 191 out of 273 in 2016, 549 out of 627 in 2015), a notable increase in decisions rejecting the application as manifestly unfounded was seen in 2018 and 2019. In the case of **Hamburg** and **Munich Airport**, the airport procedure led to rejection as manifestly unfounded in all cases according to government statistics, *albeit* in a comparably low number of total cases.

Concerns persist regarding the quality of decision-making in the airport procedure in 2018 and 2019. The assessment of applications by the BAMF seems to be more restrictive in the airport procedure compared to procedures elsewhere, resulting in “manifestly unfounded” rejections even for nationalities such as

¹²⁴ Section 18a(2)-(4) Asylum Act.

¹²⁵ Section 18a(6) Asylum Act.

Afghanistan, Iran, Turkey or Iraq which benefit from significant recognition rates nationwide. At **Frankfurt/Main Airport**, the BAMF reportedly places considerable emphasis on potential contradictions and inconsistencies in the applicant's statements, and often relies on the report of the initial interview with the Federal Police upon arrival, even though the asylum seeker receives no copy thereof. At **Munich Airport**, concerns are expressed with regard to the lack of risk assessment prior to rejections of applications as manifestly unfounded, even in cases where asylum seekers bring forth evidence such as political activity in the country of origin.¹²⁶

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.¹²⁷

4.2. Personal interview

Indicators: Border Procedure: Personal Interview

Same as regular procedure

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

| | |
|------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If so, are questions limited to nationality, identity, travel route? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| ❖ If so, are interpreters available in practice, for interviews? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

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

In the airport procedure, the 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.¹²⁸

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

The standards for this interview are identical to those described in the context of the regular procedure (see [Regular Procedure: Personal Interview](#)). However, quality concerns have been raised at **Munich Airport** vis-à-vis the lack of interpretation and lack of proper understanding of the interview report prior to signature.¹²⁹

¹²⁶ ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

¹²⁷ *Ibid.*

¹²⁸ ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

¹²⁹ *Ibid.* See also Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland: Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, 28.

4.3. Appeal

Indicators: Border Procedure: Appeal

Same as regular procedure

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

- ❖ If yes, is it Yes No
- ❖ If yes, is it suspensive 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. The necessary application to the court can be submitted at the border authorities.¹³⁰

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.¹³¹ The denial of entry, including possible measures to enforce a deportation, is suspended as long as the request for an interim measure is pending at an Administrative Court. If the court does not decide on this request within 14 calendar days, the asylum seeker has to be granted entry to the territory.¹³²

4.4. Legal assistance

Indicators: Border Procedure: Legal Assistance

Same as regular procedure

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

- ❖ Does free legal assistance cover: 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

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

For legal aid in appeals before the Administrative Court, the association of lawyers of the airport's region coordinates a consultation service with qualified lawyers. If an applicant wants to speak to a lawyer, the Federal Police contacts one of the lawyers on the list of the association as soon as the rejection of the asylum application is issued. However, it has been pointed out by NGOs that the short timeframe foreseen in the airport procedure hinders effective access to a lawyer (see [Access to Detention Facilities](#)).¹³³

Consultation with the lawyer following a decision of the BAMF in the airport procedure is free of charge for the applicant as far as it concerns the possibilities of legal remedy. The lawyer may also assist with the drafting of the request to the Administrative Court. In this regard, the airport procedure is the only procedure in Germany in which asylum seekers are entitled to a form of free legal assistance. This requirement does not have a basis in legislation but results from a decision of the Federal Constitutional

¹³⁰ Section 18a(4) Asylum Act.

¹³¹ Section 18a(4) Asylum Act.

¹³² Section 18a(6) Asylum Act.

¹³³ Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland: Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, 27.

Court.¹³⁴ Any other actions undertaken by the lawyer are not included in the free assistance. In particular, representation before the court is not part of this free legal assistance. In the appeal procedure following an airport procedure, the preconditions for legal assistance are identical to those of the [Regular Procedure: Legal Assistance](#).

5. Accelerated procedure

An accelerated procedure exists since March 2016. According to Section 30a of the Asylum Act, the accelerated procedure can be carried out in branch offices of the BAMF which are assigned to a “special reception centre” (*besondere Aufnahmeeinrichtung*). Only in these locations can accelerated procedures be carried out for the asylum seekers who:¹³⁵

1. Come from a [Safe Country of Origin](#);
2. Have clearly misled the authorities about their identities or nationalities by presenting false information or documents or by withholding relevant documents;
3. Have in bad faith destroyed or disposed of an identity or travel document that would have helped establish their identities or nationalities, or if the circumstances clearly give reason to believe that this is so;
4. Have filed a subsequent application, in case they have left Germany after their initial asylum procedure had been concluded;¹³⁶
5. Have made an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in their deportations;
6. Refuse to be fingerprinted in line with the Eurodac Regulation; or
7. Were expelled due to serious reasons of public security and order or if there are serious reasons to believe that they constitute a serious threat to public security and order.

In the accelerated procedure, the BAMF has to decide within 1 week (7 calendar days).¹³⁷ If it rejects the asylum application as manifestly unfounded or inadmissible within this timeframe, the procedure is carried on as an accelerated procedure and the asylum applicants are obliged to stay in the “special reception centres”. If the BAMF does not decide within one week, or if the application is rejected as simply “unfounded” or if protection is granted, the applicant is allowed to leave the special reception centre and the procedure is carried on as a regular procedure, if necessary.¹³⁸

During an accelerated procedure, asylum seekers are obliged to stay in the special reception centres.¹³⁹ These are not closed facilities, but asylum seekers may leave the premises and are free to move around in the local area (town or district). In this respect, the same rules apply to them as to asylum seekers in the regular procedure who also face a “residence obligation” in the first months of an asylum procedure (see [Freedom of Movement](#)). However, asylum seekers in the accelerated procedure face significantly stricter sanctions for non-compliance with the “residence obligation”: If they leave the town or district in which the special reception centre is located, it shall be assumed that they have failed to pursue the asylum procedure.¹⁴⁰ This may lead to the termination of their asylum procedure and rejection of their application.

¹³⁴ Federal Constitutional Court, Decision of 14 May 1996, 2 BvR 1516/93, cf. Reinhard Marx. *AsylVfG – Kommentar zum Asylverfahrensgesetz (Asylum Procedures Act – Commentary)*, 7th edition, 2009, 432.

¹³⁵ Section 30a(1) Asylum Act.

¹³⁶ This qualification (that only asylum seekers who have left Germany after a first asylum procedure are subject to this provision) is not contained in the law. However, a representative of the BAMF stated in a committee hearing in Parliament that the authorities were obliged to make use of this qualification for legal reasons. The Federal Government later explained that the authorities would “presumably” apply the law in this manner: Federal Government, Response to a parliamentary question by Member of Parliament Volker Beck, 18/7842, 8 March 2016, 19.

¹³⁷ Section 30a(2) Asylum Act.

¹³⁸ Section 30a(2)-(3) Asylum Act.

¹³⁹ Section 30a(3) Asylum Act.

¹⁴⁰ Section 33(2)(3) Asylum Act.

From 1 August 2018 onwards, the “special reception centres” existing in **Bamberg** and **Manching/Ingolstadt** were renamed as AnKER centres.¹⁴¹ The accelerated procedure does not seem to have been applied therein since then. The BAMF does not collect statistics on the use of the accelerated procedure.¹⁴² By and large, it can be concluded that introduction of the accelerated procedure under Section 30a of the Asylum Act has only had little impact on asylum procedures in general.

In the Federal State of **North Rhine-Westphalia**, a directive is in place which enables the regional government to establish „special reception centres“ in which persons, for whom an accelerated procedure under Section 30a Asylum Act has been carried out, should be accommodated.¹⁴³ According to local media reports, a facility in the town of **Echtrop** has been designated a „special reception centre“ in April 2018.¹⁴⁴ Since the BAMF does not have a branch office in this facility, it is not clear how accelerated procedures are actually carried out at this facility. Apparently, persons from safe third countries are accommodated in this facility after their applications have been rejected elsewhere. Thus, the main purpose of this facility does not seem to be the acceleration of procedures but to impose stricter sanctions (as described above) on certain groups of persons whose applications have been found to be „manifestly unfounded“.

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

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

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

1.1. Screening of vulnerability

There is no requirement in law or mechanism in place to systematically identify vulnerable persons in the asylum procedure, with the exception of unaccompanied children. The BAMF and the Federal Ministry of Interior drafted a “concept for the identification of vulnerable groups” in 2015, which was intended to be codified in law as part of the transposition of the recast Asylum Procedures and Reception Conditions Directives. However, the concept has not been implemented and instead has been only made available to BAMF staff as an internal guideline.¹⁴⁵

A 2016 amendment to the German Asylum Act has introduced wording relevant to the identification of vulnerable asylum seekers.¹⁴⁶ However, the law stops short of requiring Federal States to transmit personal information about an applicant’s vulnerabilities to the BAMF, as it only confers them the power to do so. It also fails to properly transpose the recast Asylum Procedures Directive, as it only requires the

¹⁴¹ Markus Kraft, Die ANKER-Einrichtung Oberfranken, Asylmagazin 10-11/2018, p. 351-353.

¹⁴² Information provided by the BAMF, 1 August 2017.

¹⁴³ Federal State of North Rhine-Westphalia, Verordnung über Zuständigkeiten im Ausländerwesen (ZustAVO), 10 September 2019 (last amendment), Section 11,

¹⁴⁴ Soester Anzeiger, ZUE Echtrop nun "besondere Aufnahmeeinrichtung", 18 May 2018, available at: <https://bit.ly/2ZSbkDs>.

¹⁴⁵ Information provided by the BAMF, 1 August 2017.

¹⁴⁶ Section 8(1b) Asylum Act.

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.”¹⁴⁷

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

Some Federal States have introduced special schemes for the identification of vulnerable groups. In **Berlin**, a “Network for persons with special protection needs” has developed concepts for the identification of vulnerable persons and their needs since 2008. The network, which refers to itself as a unique project in Germany, consists of seven NGOs which cooperate with the social services of the regional government. The NGOs have special expertise in the support of the following groups: traumatised persons and victims of torture; LGBTI*; single women and pregnant women; children and unaccompanied children; persons with disabilities, with chronic diseases and older persons.¹⁴⁸ The network has been involved in the development of guidelines for the social services to assist with the identification of vulnerable groups.¹⁴⁹ The guidelines, published in August 2018, provide detailed information on how vulnerable persons can be identified and on the determination of special support needs. If the social services find during the reception procedure at the arrival centre **Berlin** 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 accordingly.¹⁵⁰ In spite of these efforts, participating NGOs of the Berlin network have reported that measures to accelerate procedures in the “arrival centre” have had a negative impact on the identification process, since the interview in the asylum procedure is often scheduled before the persons concerned have a chance to speak to staff members of NGOs or of the Federal State institutions. Asylum seekers at this point are mainly in contact with staff members of the BAMF which is not involved in the identification scheme and which does not seem to have a concept for identification of vulnerable groups.¹⁵¹ Recent practice shows that when an asylum seeker needs special procedural guarantees, the BAMF simply assigns “special officers” for the interview (see [Special Procedural Guarantees](#)). Apart from that, the regular procedure is carried out and the interview may take place within a few days. NGOs have criticised the fact that special procedural needs of asylum seekers are not taken into account (i.e. the lack of support and time to prepare for an interview).¹⁵²

Other projects to improve the identification of vulnerable groups have been established in reception centres first in **Friedland** and then also in other reception centres in the Federal State of **Lower**

¹⁴⁷ 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.

¹⁴⁸ A list of the project partners of the „Berliner Netzwerk für besonders schutzbedürftige Flüchtlinge” can be found at: <https://bit.ly/3dR5CGU>.

¹⁴⁹ 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/38kBgme>.

¹⁵⁰ Flüchtlingsrat Berlin, *Das Schnellverfahren für Asylsuchende im Ankunftszentrum Berlin*, November 2017, available in German at: <http://bit.ly/2HdSDzb>.

¹⁵¹ Nina Hager and Jenny Baron, ‘Verfahrensgarantien für psychisch Kranke oder Traumatisierte’, *Asylmagazin 7-8/2017*, 17-26, 22.

¹⁵² Manuel Armbruster, Georg Classen und Katharina Stübinger, ‘Neue Verfahrensabläufe im Ankunftszentrum Berlin’, *Asylmagazin 10-11/2018*, 350.

Saxony,¹⁵³ as well as in **Brandenburg** and **Rhineland-Palatinate**.¹⁵⁴ In the latter, the regional government has adopted a protection concept which also includes methods for the identification of vulnerabilities.¹⁵⁵ This includes the following measures:

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

However, there are considerable variations to the procedure in the different arrival centres, AnKER centres etc. There is no common approach on access to social services or other counselling institutions and, in many centres, this access does not even exist. This depends on how the Federal States and the BAMF have organised the procedure in the respective centres. While other Federal States have also adopted measures for the protection of violence in accommodation centres,¹⁵⁶ the guidelines from **Berlin** and **Rhineland-Palatinate** seem to be the only publicly available examples of detailed measures for the identification and accommodation of vulnerable persons.¹⁵⁷

The BAMF claims that the new counselling service for asylum-seekers, consisting of general information on the procedure as well as the opportunity to make individual appointments with BAMF staff (see [Provision of information on the procedure](#)) has led to vulnerabilities “being partially identified more often”.¹⁵⁸ However, no details were given concerning the number or the type of vulnerabilities which were identified in the course of the new advice service.

With the exception of unaccompanied children, the BAMF does not collect statistics on the number of vulnerable persons applying for asylum in Germany.¹⁵⁹

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*).¹⁶⁰ During the provisional care period, the youth welfare office has to establish the age of the unaccompanied minor. The office has to check identification documents and, if these are not available, an age assessment has to be carried out based on a “qualified inspection”, meaning the visual impressions of two experienced staff members of the

¹⁵³ 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>.

¹⁵⁴ Nina Hager and Jenny Baron, ‘Verfahrensgarantien für psychisch Kranke oder Traumatisierte’, Asylmagazin 7–8/2017, 17-26, 22.-24.

¹⁵⁵ 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>.

¹⁵⁶ A list of six of such protection concepts has been compiled by the Bundesinitiative „Schutz von geflüchteten Menschen in Flüchtlingsunterkünften“ (Federal Initiative for the protection of asylum seekers/refugees in accommodation centres“); available in German at: <https://bit.ly/2uAMF7t>.

¹⁵⁷ For example, the protection concept for the Federal State of North-Rhine Westphalia refers to the concept of vulnerable persons in general terms and it specifies detailed standards for accommodation facilities, but it does not contain any guidelines for the identification of vulnerable groups. See: Landesgewaltschutzkonzept für Flüchtlingseinrichtungen des Landes Nordrhein-Westfalen (Regional concept for protection from violence in refugee facilities of the Federal State of North Rhine-Westphalia), March 2017, available in German at <https://bit.ly/2ul7CCQ>.

¹⁵⁸ BAMF, Entscheiderbrief 11/2019, available in German at <https://bit.ly/2BZqdLY>, 2.

¹⁵⁹ Information provided by the BAMF, 1 August 2017.

¹⁶⁰ BAMF, Dienstweisung Asyl (internal directive for asylum procedures), 21 February 2019, available at <https://bit.ly/2C1XSVi>, 4/14.

office.¹⁶¹ As part of this qualified inspection, the office may hear or gather written evidence from experts and witnesses.

Only in cases in which remaining doubts concerning the age cannot be dispelled by these means, the youth office may initiate a medical examination. This examination has to be carried out by qualified medical experts with the “most careful methods”. The explanatory memorandum to the law states explicitly that the previously practiced examination of the genitals is excluded in this context.¹⁶²

The problem of questionable age assessments carried out by the authorities has been discussed in some court decisions in 2016. For instance, the Administrative Court **Berlin** criticised the authorities for an age assessment based only on outward appearances.¹⁶³ This age assessment had been called into question by a paediatrician. The High Administrative Court of **Bavaria**, in a decision of 16 August 2016, set certain standards for age assessment by the authorities: According to the High Administrative Court, such an age assessment based only on outward appearances cannot be regarded as sufficiently certain if there is possibility that a medical examination might lead to a different result. This means that such an assessment could only be done in exceptional cases in which there can be no doubt that an asylum seeker is older than 18 years. All other cases should be treated as “cases of doubt” and a “grey area” (margin of error) of one to two years should be taken into account in favour of the asylum seeker. Even following a medical examination a margin of error of another two to three years should be considered as a margin of tolerance, in order to avoid any risk of incorrect assessments. The court based its opinion on an expert’s statement, according to which some medical methods for age assessment had a margin of error of up to five years.¹⁶⁴

The decision of the youth welfare office may be challenged with an “objection”, to be filed within one month and to be examined by the youth authorities themselves. If the objection is not successful, the person can appeal before the competent Family Court. However, neither the objection nor the appeal do have suspensive effect.¹⁶⁵ 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.¹⁶⁶

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

¹⁶¹ Section 42f Social Code (SGB), Vol. VIII.

¹⁶² Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, *Vorläufige Inobhutnahme – Was ändert sich zum 1.11.2015?*, October 2015, 2-3.

¹⁶³ Administrative Court Berlin, Decision 18 L 81.16, 19 April 2016, asyl.net, available at: <http://bit.ly/2mJm85c>.

¹⁶⁴ High Administrative Court Bavaria, Decision 12 CS 16.1550, 16 August 2016, asyl.net, available at: <http://bit.ly/2m2hP0w>.

¹⁶⁵ Section 42f(3) Social Code, Vol. VIII.

¹⁶⁶ Nerea González Méndez de Vigo, *Alterseinschätzung – ein Irrgarten ohne Ausweg? Rechtlicher Rahmen und Verfahren der Alterseinschätzung in Deutschland*, Asylmagazin 6-7/2019, available in German at: <https://bit.ly/2VI0w9G>, 206-217.

2.1. Adequate support during the interview

The BAMF does not have specialised units dealing with vulnerable groups but employs “special officers” (*Sonderbeauftragte*) responsible for interviews and decisions on claims by applicants with special needs. In addition to the core modules of the EASO Training Curriculum, these special officers also complete the training module on “Interviewing Vulnerable Persons”.¹⁶⁷ The BAMF guidelines stipulate that the following cases shall be handled in a particularly sensitive manner and, if necessary, by specially-trained decision-makers:¹⁶⁸

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

As of June 2019, the following numbers of special officers were working at the BAMF with these areas of responsibilities: Unaccompanied children (396), victims of gender-specific persecution (211) traumatised persons and victims of torture (218), victims of trafficking (151).¹⁶⁹

If it becomes evident during the interview that an asylum seeker belongs to one of these groups, the officer conducting the interview is obliged to consult a special officer. A note has to be added to the file on how the officers are planning to proceed, particularly if the special officer takes over the case as a result of this consultation. According to recent information provided by the government, there is an obligation in cases of unaccompanied minors for special officers to take over responsibility for the asylum procedures. In other cases of other vulnerable groups, the special officer has to be consulted and there are two options for further procedures: Either the special officer adopts an advisory role or s/he takes over responsibility for the procedure.¹⁷⁰ 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.¹⁷¹

Lawyers have reported that the introduction of the special officers has led to some improvement in the handling of “sensitive” cases, but there have also been examples of cases in which indications of trauma and even explicit references to torture did not lead to special officers being consulted. It has also been reported that the involvement of special officers does not automatically result in a better quality of interviews.¹⁷²

It has been noted that the BAMF seems to operate with a very limited understanding of “adequate support” for vulnerable groups.¹⁷³ Thus, in a BAMF guideline for the establishment of arrival centres, vulnerable groups are defined as persons who should be interviewed by a special officer, “following a transposition of the relevant provisions of the Asylum Procedures Directive into German law.” It is not clear which transposition is referred to here, since the law does not contain any reference to the concept of “adequate support” at the moment. Furthermore, no other procedural guarantees for vulnerable groups are referred to in this document.

¹⁶⁷ Federal Government, Reply to parliamentary question by The Left, 18/12001, 20 April 2017, 3.

¹⁶⁸ BAMF, *DA-Asyl (Dienstanweisung Asylverfahren) – Belehrungen*, 2010, 139.

¹⁶⁹ The government notes that the figures cannot be added since some officers may have qualified in more than one area; furthermore, for unknown reasons branch offices did not report the number of their special officers if this was lower than 3; Federal Government, *Reply to parliamentary question by The Left, 19/10733*, 6 June 2019, 7-8.

¹⁷⁰ Federal Government, Reply to parliamentary question by The Left, 19/10733, 6 June 2019, 6-8.

¹⁷¹ BAMF, response to information request, e-mail from “Zentrale Ansprechstelle” (central contact point), 28 August 2019.

¹⁷² See e.g. FRA, *Monthly data collection: Highlights – Migrants with disabilities*, August 2016, available at: <http://bit.ly/2kWFgLT>, 14.

¹⁷³ Nina Hager and Jenny Baron, ‘Verfahrensgarantien für psychisch Kranke oder Traumatisierte’, *Asylmagazin* 7–8/2017, 17-26, 19.

In August 2019, the BAMF provided the following information on “special officers”:¹⁷⁴ Staff members who become „special officers“ have to complete a training module for the specialisation they want to achieve. There are training modules for the the following areas:

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

Special officers for security issues are responsible for a whole range of issues and should be involved in asylum procedures whenever indications arise for instances of “extremism, terrorism, criminality, human trafficking, war crimes, crimes against humanity and smuggling of human beings”.¹⁷⁵ 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

Guarantees for unaccompanied children are identical in prioritised and non-prioritised cases. Although there is no provision for this in the law, unaccompanied children were not placed in the airport procedure in 2019.¹⁷⁶ That said, the detention facility at **Frankfurt/Main Airport** contains dedicated rooms for unaccompanied boys and girls.¹⁷⁷ 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).¹⁷⁸

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.¹⁷⁹

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.¹⁸⁰ As a general rule, an applicant is not expected to provide written evidence, but is only obliged to hand over to the authorities those certificates and documents which are already in his or her possession and which are necessary “to substantiate his claim or which are relevant for the decisions and measures to be taken under asylum and foreigners law, including the decision and enforcement of possible deportation to another country”.¹⁸¹ This is not only relevant with regard to past persecution, but also with a view to the future, since the German asylum procedure includes an examination of “serious concrete risks” to life and limb which an applicant might face upon return.¹⁸² Such a risk may also consist in a potential serious harm

¹⁷⁴ BAMF, response to information request, e-mail from “Zentrale Ansprechstelle” (central contact point), 28 August 2019.

¹⁷⁵ BAMF, Entscheiderbrief (newsletter for decision-makers) 4/2020, 1.

¹⁷⁶ Federal Government, *Reply to parliamentary question by The Left, 19/18498*, 2 April 2020, 43.

¹⁷⁷ ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

¹⁷⁸ Federal Government, *Reply to parliamentary question by The Left, 19/18498*, 2 April 2020, 44.

¹⁷⁹ *Ibid.*

¹⁸⁰ Section 24(1) Asylum Act.

¹⁸¹ Section 15(3) Asylum Act.

¹⁸² Section 60(7) Residence Act.

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.¹⁸³
- 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.¹⁸⁴

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 deportation” which might result in a toleration (*Duldung*) based on national law.¹⁸⁵ 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 humanitarian status.¹⁸⁶ 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:¹⁸⁷

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

Even before the new law came into effect, there have been frequent debates on the standards which medical reports have to fulfil in order to be accepted by authorities or courts, particularly in cases of alleged Post-Traumatic Stress Disorder. The Federal Administrative Court found in 2007 that a medical expertise attesting a Post-Traumatic Stress Disorder has to adhere to certain minimum standards but does not necessarily have to meet all requirements of an expertise based on the criteria of the International Classification of Diseases (ICD-10). Accordingly, if a medical report complies with minimum standards, it must not simply be disregarded by authorities or courts, but they have to seek further opinions if doubts remain on the validity of the report submitted.¹⁸⁸ This ruling by the Federal Administrative Court still provides for an important standard in the asylum procedure: While authorities or

¹⁸³ 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>.

¹⁸⁴ BAMF, *DA-Asyl (Dienstanweisung Asylverfahren) – Krankheitsbedingte Abschiebungsverbote* (Stand 2/19), available in German at: <https://bit.ly/3iFnYOF>.

¹⁸⁵ Section 60a IIc of the Residence Act.

¹⁸⁶ Section 60 VII 2nd sentence of the Residence Act.

¹⁸⁷ Section 60a IIc 2nd and 3rd sentences of the Residence Act.

¹⁸⁸ Federal Administrative Court, Decision of 11 September 2007 - 10 C 8.07 – (asyl.net, M12108).

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.¹⁸⁹ For example, it is often extremely difficult for asylum seekers to get access to an appropriate therapy because of a lack of specialised therapists or because authorities reject applications to take over the costs for therapy (including costs for interpreters). In such cases, it may also prove highly difficult to even find a specialist to submit a medical opinion.

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

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

Unaccompanied children who are not immediately refused entry or returned after having entered Germany irregularly, are taken into provisional care of the youth welfare office (*Jugendamt*) in the municipality in which they have had the first contact with authorities or in which they have been apprehended.¹⁹⁰

In some Federal States, the youth welfare office carries out a so-called “clearing procedure”, which includes an examination of whether there are alternatives to an asylum application, such as family reunification in a third country or application for a residence permit on humanitarian grounds.¹⁹¹ Although the government has repeatedly declared its intention to establish a nationwide clearing procedure, this has not been introduced so far.

The role of the guardian in the asylum procedure has been described as “unclear”,¹⁹² and the law does not contain any provisions which might help improve this situation. Often, guardians appointed by the youth welfare offices are not in a position to sufficiently support the children in the asylum procedure, because of overburdening or because they have no specific knowledge of asylum laws.¹⁹³ It has been noted that the current legal situation is not in line with relevant provisions of the recast Asylum Procedures Directive and other European legal acts which state that children should be represented and assisted by representatives with the necessary expertise.¹⁹⁴

¹⁸⁹ 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.

¹⁹⁰ 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.

¹⁹¹ 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>.

¹⁹² Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher, Official Gazette I of 28 October 2015, 1802. The most important regulations of the law are summarised in ‘Federal Association for Unaccompanied Refugee Minors’, *Vorläufige Inobhutnahme – Was ändert sich zum 1.11.2015?*, October 2015, 30.

¹⁹³ Uta Rieger and 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/2DmvtTE>, 62-64.

¹⁹⁴ Stephan Hocks, ‘Die Vertretung unbegleiteter minderjähriger Flüchtlinge’, *Asylmagazin* 11/2015, 367-373.

E. Subsequent applications

Indicators: Subsequent Applications

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

The law defines a subsequent application (*Folgeantrag*) as any claim which is submitted after a previous application has been withdrawn or has been finally rejected.¹⁹⁵ 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.¹⁹⁶ According to this, a new asylum procedure is only initiated if:

1. The material or legal situation on which the decision was based has subsequently changed in favour of the applicant;
2. New evidence is produced which would have resulted in a more favourable decision for the applicant in the earlier procedure; or
3. There are grounds for resumption of proceedings, for example because of serious errors in the earlier procedure.¹⁹⁷

Further requirements are that:¹⁹⁸

4. The applicant was unable, without grave fault on his or her part, to present the grounds for resumption in earlier proceedings, particular by means of legal remedy; and
5. The application must be made within 3 months after the applicant has learned of the grounds for resumption of proceedings.

Only if these requirements are met, the applicant regains the legal status of asylum seeker and the merits of the case will be examined in a subsequent asylum procedure. The procedure is the same for third or further applications.

The legal status of applicants pending the decision on the admissibility of their subsequent application is not expressly regulated by law. It is generally assumed, though, that a deportation order has to be suspended until the Federal Office has taken a decision on the commencement of a new asylum procedure. Accordingly, the stay of applicants is to be “tolerated” (*geduldet*) until this decision has been rendered.¹⁹⁹ However, a deportation may proceed from the very moment that the Federal Office informs the responsible Foreigners’ Authority that a new asylum procedure will not be initiated. If an enforceable deportation order already exists, a new deportation order or other notification is not required to enforce

¹⁹⁵ Section 71 Asylum Act.

¹⁹⁶ Section 51(1)-(3) Administrative Procedure Act (*Verwaltungsverfahrensgesetz*).

¹⁹⁷ The relevant grounds for this third alternative are listed in Section 580 of the Code of Civil Procedure (“action for retrial of a case”), to which the Asylum Act makes a general reference. Serious errors according to this provision include false testimony by witnesses or experts. Apart from that, Section 580 of the Code of Civil Procedure contains several grounds which are either not relevant for the asylum procedure or are covered by the grounds referred to under the first and second alternatives mentioned here. Although it is conceivable that the third alternative may apply in certain cases, it hardly seems to be of significance in practice, cf. Kerstin Müller, *AsylVfG* § 71, para. 32, in Hofmann/Hoffmann, eds. *HK-AusIR (Handkommentar Ausländerrecht)*, 2008, 1826.

¹⁹⁸ Section 51(2) Administrative Procedure Act.

¹⁹⁹ Kerstin Müller, ‘AsylVfG § 71, para. 44’, in Hofmann/Hoffmann, eds., *HK-AusIR (Handkommentar Ausländerrecht)*, 2008, 1830.

deportation.²⁰⁰ The applicant may also be detained pending deportation until it is decided that a subsequent asylum procedure is carried out.²⁰¹

The decision on admissibility of a subsequent application can be carried out without hearing the applicant.²⁰² This means that the BAMF has full discretion in deciding whether to conduct an interview or not at this stage. Therefore, it is often recommended that subsequent applications, which generally have to be submitted in person, should be accompanied with a detailed written motivation.

If the BAMF decides not to carry out a subsequent procedure, the application is rejected as “inadmissible”.²⁰³ This decision can be appealed before an Administrative Court. It is also necessary to request an interim measure from the court in order to suspend deportation.

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

In contrast, if the Federal Office decides to carry out a new procedure, this will usually be in the form of a “regular procedure” and the applicant regains the status of asylum seeker, including access to reception conditions and including the other rights and obligations connected with this status. Since March 2016, it is also possible that subsequent applications are dealt with in the “accelerated procedure”, but this type of procedure has only been introduced in two branch offices of the BAMF (see [Accelerated Procedure](#)). Furthermore, accelerated procedures should only take place if the applicant has left Germany after his or her initial asylum procedure had been concluded, so most subsequent applications should not be affected by this provision.²⁰⁴

23,429 persons lodged subsequent applications in 2019. The decisions on subsequent applications in 2019 were as follows:

| Subsequent applicants and decisions on subsequent applications: 2019 | | | | | | |
|----------------------------------------------------------------------|---------------|---------------|---------------|-------------------|-------------------|-------------------------------|
| Nationality | Applications | Decisions | Inadmissible | Admissible | | |
| | | | | Positive decision | Negative decision | Termination / inadmissibility |
| Syria | 1,824 | 1,815 | 899 | 723 | 18 | 175 |
| Afghanistan | 1,784 | 2,488 | 981 | 623 | 145 | 739 |
| Iraq | 1,606 | 1,926 | 752 | 175 | 228 | 771 |
| Serbia | 1,577 | 1,589 | 1,227 | 2 | 179 | 181 |
| Nigeria | 1,463 | 1,714 | 691 | 67 | 143 | 813 |
| Total | 23,429 | 26,208 | 14,020 | 2,594 | 2,641 | 6,953 |

Source: BAMF, Asylgeschäftsstatistik (statistics on applications, decisions and pending procedures), 1-12/2019, available at: <https://bit.ly/38DEdqJ>.

The statistics show that the majority of subsequent applications fail at the level of the admissibility examination, before the asylum procedure is reopened (53.5%), or the follow-up procedure is terminated

²⁰⁰ Section 71(5) Asylum Act.

²⁰¹ Section 71(8) Asylum Act.

²⁰² Section 71(3) Asylum Act.

²⁰³ Section 29(1)(5) Asylum Act.

²⁰⁴ This qualification (that only asylum seekers who have left Germany after a first asylum procedure are subject to this provision) is not contained in the law. However, a representative of the BAMF stated in a committee hearing in Parliament that the authorities were obliged to make use of this qualification for legal reasons. The Federal Government later explained that the authorities would “presumably” apply the law in this manner: Federal Government, Response to a parliamentary question by Member of Parliament Volker Beck, 18/7842, 8 March 2016, 19.

later either for formal reasons or because the application is found to be inadmissible at this stage (26.5%). When looking exclusively at applications decided on the merits (5,235), it appears that almost 50% of these subsequent applications were successful (i.e. 2,594 positive decisions, equalling to 49.4%).

The 2,594 “positive” decisions resulted in the following status decisions:²⁰⁵

- Asylum or refugee status: 1,255
- Subsidiary protection: 329
- (National) humanitarian protection/prohibition of deportation: 1,010

F. The safe country concepts

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

Both the “safe third country” concept and the “safe country of origin” concept are incorporated in the German Constitution (*Grundgesetz*) and further defined in the Asylum Act.²⁰⁶ The concept of “another third country”, akin to the “first country of asylum” concept, has been incorporated in the inadmissibility concept of the Asylum Act following the reform entering into force in August 2016 (see [Admissibility Procedure](#)).

1. Safe country of origin

The Constitution defines as safe countries of origin the countries “in which, on the basis of their laws, enforcement practices and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists”.²⁰⁷

1.1. List of safe countries of origin

Member states of the European Union are by definition considered to be safe countries of origin.²⁰⁸ 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;

²⁰⁵ BAMF, Monthly asylum report, December 2018, available at: <https://bit.ly/2T3P04i>, 7.

²⁰⁶ Article 16a(2)-(3) Basic Law.

²⁰⁷ Article 16a(3) Basic Law.

²⁰⁸ Section 29a(2) Asylum Act.

- Montenegro.

Serbia, North Macedonia and Bosnia-Herzegovina were added to the list following the entry into force of a law on 6 November 2014.²⁰⁹ Albania, Kosovo and Montenegro were added with another law which took effect on 24 October 2015.²¹⁰

A draft law was introduced by the government in April 2016 with the aim of adding the so-called Maghreb states (**Morocco, Algeria, Tunisia**) to the list of safe countries of origin.²¹¹ However, the law required the approval of the second chamber of parliament (*Bundesrat*) which rejected the designation of the three countries on 10 March 2017.²¹² Another attempt to add these countries to the list was made in 2018, but the draft bill was removed from the Bundesrat's agenda in February 2019 as it became obvious that it would be rejected again. Removal from the agenda does not mean that the bill has failed, but that it can be reintroduced at a later date.²¹³ No further developments were reported in 2019 however.

1.2. Procedural consequences

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

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

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

| Asylum applications by nationals of "safe countries of origin" | | | | |
|----------------------------------------------------------------|--------|-------|-------|-------|
| | 2016 | 2017 | 2018 | 2019 |
| Albania | 17,236 | 6,089 | 2,941 | 2,573 |
| Serbia | 10,273 | 4,915 | 2,606 | 2,718 |
| North Macedonia | 7,015 | 4,758 | 2,472 | 2,258 |
| Kosovo | 6,490 | 2,403 | 1,224 | 875 |
| Bosnia and Herzegovina | 3,109 | 1,438 | 870 | 633 |
| Ghana | 2,645 | 1,134 | 992 | 966 |

²⁰⁹ 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.

²¹⁰ Asylverfahrensbeschleunigungsgesetz, BGBl. I, 23 October 2015, 1722.

²¹¹ 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>.

²¹² Bundesrat, 'Keine Zustimmung: Gesetz zu sicheren Herkunftsstaaten', 10 March 2017, available at: <http://bit.ly/1owVXpm>.

²¹³ Spiegel, 'Bundesrat verschiebt Abstimmung über sichere Herkunftsländer', 15 February 2019, available in German at: <https://bit.ly/2urOtiw>.

| | | | | |
|--------------|--------|--------|--------|--------|
| Montenegro | 1,630 | 730 | 377 | 252 |
| Senegal | 767 | 378 | 366 | 365 |
| Total | 49,165 | 21,845 | 11,848 | 10,640 |

Source: BAMF, Asylgeschäftsstatistik (statistics on applications, decisions and pending procedures), 1-12/2019, available in German at: <https://bit.ly/38DEdQJ>.

It should be noted that many asylum applications of persons from safe countries of origin are subsequent applications (e.g. 34.2% for Albania, 58% for Serbia and 50.5% for North Macedonia). Hence the number of newly arriving asylum seekers from these countries is considerably lower than the numbers provided above.

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

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

Source: BAMF, Antrags-, Entscheidungs- und Bestandsstatistik, 2016, 2017 and 2018 and Asylgeschäftsstatistik (statistics on applications, decisions and pending procedures), 1-12/2019, available at: <https://bit.ly/38DEdQJ>.

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.²¹⁴ In those countries the application of the 1951 Refugee Convention and of the European Convention on Human Rights (ECHR) has to be “ensured”. The list is an addendum to the Asylum Act and has to be adopted by both chambers of the German Parliament. The Federal Government is entitled to remove a country from that list if changes in its legal or political situation “give reason to believe” that the requirements for a safe third country are not met any longer. At present, the list of further safe third countries consists of **Norway** and **Switzerland**.

From its wording, the safe third country concept only applies to the German (constitutional) asylum, but the Federal Constitutional Court found in a landmark decision in 1996 that its scope extends to refugee protection and to other forms of protection as well.²¹⁵ 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.²¹⁶ 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.²¹⁷ Asylum applications may not be accepted or referred to the responsible authority by the Federal Police if entry to the territory

²¹⁴ Section 26a(2) Asylum Act.

²¹⁵ Federal Constitutional Court, Decision of 14 May 1996, 2 BvR 1938/93, 2 BvR 2315/93, BVerfGE 94, 49 (189).

²¹⁶ Section 18 Asylum Act.

²¹⁷ The border area is defined as a strip of 30 kilometres.

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). It is only applied at the Austrian-German border, since this is the only border where controls are in force at the moment (See [Access to the Territory](#)).

3. First country of asylum

The “first country of asylum” concept is not referred to as such in German law. However, Sections 27 and 29(1)(4) of the Asylum Act refer to cases where a person was already safe from persecution in “another third country” (*sonstiger Drittstaat*) as a ground for inadmissibility. Such safety is presumed where the applicant holds a travel document from that country,²¹⁸ or has resided there for more than 3 months without being threatened by persecution.²¹⁹

Important restrictions to the application of the provision have been removed in 2016. In particular, the former provision could only be applied if return to the safe “other third country” was possible within 3 months. Although this qualification has been removed, the provision has been applied rarely, only 37 times in 2018 and 38 times in 2019 (see [Admissibility Procedure](#)).²²⁰

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

1. Provision of information on the procedure

Indicators: Information on the Procedure

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

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

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

1.1. Written information

Various other sections of the Asylum Act also contain obligations on the authorities to inform asylum seekers on certain aspects of the procedure. Accordingly, asylum seekers receive various information sheets when reporting to the authorities and/or upon arrival at the initial reception centre,²²¹ including the following:

- An information sheet on the rights and duties during the procedure and on the proceedings in general (“*Belehrung nach § 10 AsylG und allgemeine Verfahrenshinweise*”);
- An instruction on the obligation to comply immediately with a referral to the competent branch office

²¹⁸ Section 27(2) Asylum Act.

²¹⁹ Section 27(3) Asylum Act.

²²⁰ Federal Government, *Response to parliamentary question by The Left, 19/18498*, 2 April 2020, 6.

²²¹ BAMF, *DA-Asyl (Dienstanweisung Asylverfahren) – Belehrungen* (internal directives of the BAMF), parts of these directives, as at October 2016, were made available by the BAMF upon request: BAMF, Email of 27 February 2017.

of the BAMF and to appear in person immediately or on a date determined for the formal registration of the asylum application (“*Belehrung nach § 14 Abs. 1 und § 23 Abs. 2 AsylG*”);²²²

- An instruction on the obligation to comply immediately with a referral to the initial reception centre (“*Belehrung nach § 20 Abs. 1 AsylG*”)²²³;
- 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*”).²²⁴

These information sheets are available in German and around 45 other languages.

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

- Information on the appointment for the interview in the asylum procedure (Informationsblatt zum Anhörungstermin),²²⁵
- Information on the asylum application (Informationsblatt zur Asylantragstellung).²²⁶
- The stages of the German asylum procedure (Ablauf des deutschen Asylverfahrens).²²⁷

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

In addition, a personal interview as foreseen in Article 5 of the Dublin III Regulation has to be conducted. This interview shall contribute to a correct understanding of the written information leaflet.²²⁸

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

It has been a long-standing criticism from lawyers and NGOs that both the written instructions and the oral briefings provided by the Federal Office are “rather abstract and standardised”.²²⁹ 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.²³⁰

1.2. Oral information

The so-called “Orderly-Return-Law”, in force since 21 August 2019,²³¹ established a new provision in the Asylum Act (Section 12a) to regulate the counselling on asylum procedures (*Asylverfahrensberatung*). This section reads:²³²

²²² Available on the BAMF website at <https://bit.ly/2U0lyyv>.

²²³ Available on the BAMF website at <https://bit.ly/39Lf2Cy>.

²²⁴ Available on the BAMF website at <https://bit.ly/2xylVrx>.

²²⁵ Available on the BAMF website at <https://bit.ly/2UiWc0k>.

²²⁶ Available on the BAMF website at <https://bit.ly/3bok08E>.

²²⁷ Available in English at <https://bit.ly/3drFPWF>.

²²⁸ *Ibid.*

²²⁹ Amnesty International et al., ed. *Memorandum zur derzeitigen Situation des deutschen Asylverfahrens (Memoranda on current situation of the German asylum procedure)*, 2005, 21.

²³⁰ Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland. Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, 14.

²³¹ Second law to enhance enforcement of the obligation to leave, 20 August 2019, Official Gazette I, 1294.

²³² Non-literal translation by the author.

“The Federal Office (BAMF) provides an independent state-run counselling service on asylum procedures, participation at this service is voluntary for the asylum seekers. The service is provided in two stages. The first stage consists of group lectures in which all asylum seekers are given information on the course of the asylum procedure and on return options, before the application is made. The second stage consists of individual counselling on asylum procedures which is provided in individual appointments and is carried out either by the Federal Office or by welfare organisations.”

Welfare organisations and other non-governmental organisations had been advocating for independent asylum procedure counselling for many years,²³³ and in 2018 the coalition agreement between the parties that formed the new German government indeed called for independent and nationwide asylum procedure counselling services. However, the wording of the new provision has now introduced the concept of an “independent state-run” service and the government insists that this advice service must be offered by the BAMF exclusively. Therefore, the same authority that decides on the asylum applications is now obliged by law to offer “independent” advice on procedures. The wording of the new provision has been introduced “at the last minute” (i.e. after the hearing of experts in the parliamentary committee had taken place) and therefore the new provision was pushed through parliament almost without debate.²³⁴ The government failed to provide an explanation on the wording of the new provision and how the latter should be interpreted.

Following a pilot phase, which took place in certain locations since August 2018, the BAMF is working on the gradual introduction of its asylum counselling throughout the country since January 2020. Before beginning their deployment, the BAMF's asylum procedure advisers attend a one-week training course. During their assignment, they are separated from the department carrying out the asylum procedure in organisational terms. They receive professional support from the "quality" department. According to the BAMF's website, initial results indicate that asylum procedure counselling “helps improve compliance with the rule of law, as well as contributing to the equity, quality and efficiency of the asylum procedure”.²³⁵

The new BAMF “counselling” sessions represent an improvement compared to the situation prior to August 2019 when no information was systematically provided to asylum seekers.²³⁶ Nevertheless, the new system is heavily criticised by NGOs as group counselling sessions tend to be organised within a very short period before the personal interview with the BAMF and the information provided is limited (i.e. the BAMF tends to provide general information on the asylum procedure, sometimes focusing only on asylum seekers' obligations and also on information which has nothing to do with the procedure, such as the so-called “return options”).²³⁷

While the law does foresee the advice services of the second stage to be carried out by welfare organisations, the government has made it clear that it does not intend to commission NGOs to carry out an advice service on its behalf. Rather, it claims that welfare organisations are free to run their own services alongside the counselling offered by the BAMF.²³⁸ At the same time, NGOs have voiced concerns that funding of independent advice centers could be jeopardised as they might be replaced by the BAMF services. In a press release of November 2019, the “AMBA”-network,²³⁹ which has been providing

²³³ 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, 75.*

²³⁴ Preliminary remarks to information request by The Left, 26 May 2020, 19/19535, 2-3.

²³⁵ BAMF, Voluntary, independent, state asylum procedure counselling, 10th August 2019, available at: <https://bit.ly/2NTfUeW>.

²³⁶ Markus Kraft, 'Die ANKER-Einrichtung Oberfranken', *Asylmagazin* 10-11/2018, 353, available in German at <https://bit.ly/2P36MEe>.

²³⁷ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

²³⁸ Federal government, response to information request by The Left, 26 May 2020, 19/19535, 3.

²³⁹ AMBA (Aufnahmemanagement und Beratung für Asylsuchende in Niedersachsen) is a network of the welfare organisations Caritas, Diakonie, several local NGOs and the Refugee Council of Lower Saxony. Over the years, member organisation of the network have run advice services for asylum seekers in reception centres at Friedland, Braunschweig, Osnabrück, Oldenburg and Bramsche; further information available at:

independent advice services in several reception centres in **Lower Saxony** for many years, referred to government officials who had stated that the BAMF was willing to cooperate with NGO advice services, but that public funding would not be available any longer for NGO advice services, since advice on asylum procedures was now considered to be a government task. In particular, funding which had been provided through the AMIF programme, was now at risk, according to AMBA.²⁴⁰ The government confirmed in May 2020 that counseling services by NGOs would no longer be funded through the AMIF programme.²⁴¹

Another point of criticism is that the law does not specify when the individual counselling of the so-called second stage is supposed to take place. Thus, it is not guaranteed that the individual counselling will take place before the asylum interview. This may contradict the purpose of individual asylum counselling whose core function lies in the preparation of the asylum seeker for his or her interview.²⁴²

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.²⁴³ 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.²⁴⁴

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.²⁴⁵

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

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

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

In 2016, numerous arrival centres and other offices of the BAMF were opened (see [Short Overview of the Asylum Procedure](#)) and some of these have already been closed or reorganised since then. This is one of the main reasons why there is no uniform practice concerning the presence of NGOs and/or access to these centres. In many of the newly established centres, access to NGOs is made even more difficult as these do not have offices in the town or region where the new centres are located. One exception is the

<https://bit.ly/31ZDwae>.

²⁴⁰ Koordination AMBA: *Unabhängige Asylverfahrensberatung vor dem Aus?* 12 November 2019, available in German at <https://bit.ly/2W3ajY6>.

²⁴¹ Federal Government, response to information request by The Left, 26 May 2020, 19/19535, 8.

²⁴² 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.

²⁴³ BAMF, *Das deutsche Asylverfahren – ausführlich erklärt. Zuständigkeiten, Verfahren, Statistiken, Rechtsfolgen (The German asylum procedures – an elaborate explanation. Responsibilities, Procedures, Statistics, Consequences)*, December 2012, 17.

²⁴⁴ Memorandum Alliance, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland. Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, 14.

²⁴⁵ ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

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

Furthermore, interviews are scheduled at very short notice in the arrival centres, at a time when asylum seekers have to come to terms with other administrative regulations and with their new surroundings in general. In this situation, it has proven difficult to create an adequate setting for the preparation for the interview.²⁴⁶ 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 from public funds in exceptional cases. Accordingly, access to NGOs can be severely restricted under such circumstances.

The so-called “geographical restriction” or “residence obligation” (*Residenzpflicht*) also poses a legal obstacle for many asylum seekers who wanted to contact an NGO or lawyer. Beyond the obligation to stay in initial reception centres, a general residence obligation is imposed for asylum seekers from safe countries of origin for the whole duration of their procedures (see [Freedom of Movement](#)).²⁴⁷ Therefore the “residence obligation” and the obligation to remain in a particular reception centre pose serious obstacles for access to NGOs and UNHCR in many cases.

In AnKER centres in **Bavaria**, access of NGOs depends on the management of the centre. In the AnKER **Regensburg** for example, Caritas, Amnesty International, the Refugee law clinic Regensburg and Campus Asyl have access to the facility, while in **Manching/Ingolstadt**, only Caritas has established presence. In the experience of certain NGOs, asylum seekers are not systematically re-directed to NGOs for further information. In centres such as **Manching/Ingolstadt** and **Regensburg**, NGOs have further no way of ensuring systematic counselling sessions with every new arrival, since they do not receive the registration list of residents in the AnKER centre.²⁴⁸

²⁴⁶ Johannes Moll, ‘Das verkürzte Asylverfahren im Ankunftszentrum Heidelberg. Ein Modell im Spannungsfeld von effizientem Verfahren und effektiven Rechtsschutz’, *Asylmagazin* 12/2016, 412, 415-416.

²⁴⁷ Section 47(1a) Asylum Act.

²⁴⁸ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

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?²⁴⁹ Yes No
❖ If yes, specify which: Albania, Bosnia and Herzegovina, Ghana, Kosovo, North Macedonia, Montenegro, Senegal, Serbia

Prioritisation of applications from certain countries was revoked in the second quarter of 2016.²⁵⁰ It was partially replaced by a system of “clustering” applications with the aim of prioritising the caseloads from countries of origin with a high and from those with a low protection rate. The clustering system was also abandoned in the first half of 2017.²⁵¹ 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.

In August 2019 the Federal government reported that average duration of procedures at the BAMF had been reduced to 3.1 months in general and to 1.9 months in the AnKER-centres.²⁵² However, this does not correspond with other official statistics which show that in the second quarter of 2019 the average duration of procedures was at 5.9 months in general and at 3 months in the AnKER-centres.²⁵³ As of mid-2019, the average duration of procedures was significantly below average for asylum seekers from the European “safe countries of origin” and from Georgia:²⁵⁴

- Montenegro: 1.9 months
- Albania: Kosovo, North Macedonia: 2 months
- Bosnia and Herzegovina: 2.1 months
- Serbia: 2.3 months
- Georgia: 2.5 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 the remaining two “safe countries” (Ghana and Senegal). Procedures at the BAMF for asylum seekers from these countries were not significantly faster than they were on average (5.3 months for Senegal, 5.4 months for Ghana).

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

- Tunisia: 7.5 months
- Russian Federation: 8.5 months
- Somalia: 9.9 months

1. Syria

Due to a policy change in the first months of 2016, the BAMF since then has granted subsidiary protection instead of refugee protection in a previously unrecorded number of cases. This policy change affected Syrian nationals in particular, but also asylum seekers from Iraq or Eritrea. For instance, 95.8% of Syrians had been granted refugee status in 2015, this rate dropped to 56.4% in 2016 and to 35% in 2017. Since

²⁴⁹ Whether under the “safe country of origin” concept or otherwise.

²⁵⁰ Federal Government, Reply to parliamentary question by The Left, 18/9415, 17 August 2016, 23.

²⁵¹ Information provided by the BAMF, 23 January 2018.

²⁵² Federal Ministry of the Interior, ‘Anker-Einrichtungen sind Erfolgsmodell (Anker facilities are a model of success)’, Press release, 1 August 2019, available at: <https://bit.ly/38EKKQD>.

²⁵³ Federal Government, Response to parliamentary question by The Left, 19/13366, 19 September 2019, 4 and 14, available at <https://bit.ly/3aLt72G>.

²⁵⁴ Federal Government, Response to parliamentary question by The Left, 19/13366, 19 September 2019, 4-5, available at <https://bit.ly/3aLt72G>.

then, the percentage of refugee recognitions has increased again, reaching 49.5% in 2019 (compared to 41.6% in 2018).

Conversely, the rate of Syrians being granted subsidiary protection rose from 0.1% in 2015 to 41.2% in 2016, 56% in 2017. Since then, it has decreased to 39.7% in 2018 and 33.1% in 2019. The policy change at the BAMF coincided with a legislative change in March 2016, according to which [Family Reunification](#) was suspended for beneficiaries of subsidiary protection until March 2018. Family reunification is now possible for beneficiaries of subsidiary protection since August 2018, but limited to a monthly quota of 1,000 visas for relatives of this group. Tens of thousands of beneficiaries of subsidiary protection have appealed against the authorities' decisions in order to gain refugee status ("upgrade-appeals"). As a result, 15,399 "upgrade-appeals" filed by Syrian nationals were pending at the courts at the end of 2019. This represented roughly three quarters of the total number of upgrade-appeals (20,549) pending at courts.²⁵⁵

In April 2019 it was reported that the BAMF had in some cases only granted a so-called humanitarian status (under Section 60 V of the Residence Act) instead of subsidiary protection to Syrian nationals. These decisions were supposedly based on new internal guidelines by the BAMF, which had concluded that possible risks upon return would in many cases only result from the poor general circumstances in Syria, rather than from deliberate acts of certain parties.²⁵⁶ Following media reports, decisions in which this legal question was relevant, were suspended by the BAMF. The Ministry of the Interior announced that it would discuss the matter with the Foreign Office. Finally, the Ministry announced that the internal guidelines would remain unchanged, so decision-making practice would, as a rule, also remain the same as before April 2019 – meaning that subsidiary protection was again granted in most cases of Syrian nationals who were not recognised as refugees.²⁵⁷

Statistics for 2019 show, that the "humanitarian status" under Section 60 V of the Residence Act was indeed only granted in 489 cases of Syrian nationals in 2019, thus representing 3.2% of the total number of decisions. The overwhelming majority of Syrian applicants were granted asylum or refugee status (50.6%) or subsidiary protection (33.1%). Almost all rejections were rejections for formal reasons (inadmissibility or termination of the case). This means that in cases, in which the substance of the case was examined, 99.9% of Syrian nationals were granted some kind of protection status in 2019.²⁵⁸

2. Afghanistan

The legal debate concerning decision-making practices has focused on single male adults. The BAMF generally assumes that "healthy young men who are able to work" can be referred to an internal protection alternative in big cities in Afghanistan (Kabul, Herat oder Mazar-e Sharif) or in the provinces of Bamiyan and Panjshir. Because of the alleged existence of an internal protection alternative, the BAMF often does not fully examine the risks which an asylum seeker might face upon return. The BAMF decisions therefore have been criticised for regularly lacking a thorough examination of the individual circumstances of the case.²⁵⁹

Appeals at Administrative Courts against such decisions still have a comparably high success rate, with 8,649 Afghan nationals being granted some form of protection in 2019 in court procedures, in comparison to 9,103 rejections of appeals and 7,627 court procedures which were abandoned for formal reasons.

²⁵⁵ Federal Government, Response to parliamentary question by The Left, 19/18498, 2 April 2020, 50.

²⁵⁶ asyl.net, 'BAMF setzt Entscheidungen über subsidiären Schutz bei syrischen Asylsuchenden aus', 29 April 2019, available in German at: <https://bit.ly/320Dmz1>.

²⁵⁷ zeit.de, 'Horst Seehofer will Asylpraxis für Syrer vorerst nicht ändern', 15 May 2019, available in German at: <https://bit.ly/2BIYU8X>.

²⁵⁸ Federal Government, Response to parliamentary question by The Left, 19/18498, 2 April 2020, 3.

²⁵⁹ For an overview of decision-making and case law in cases of Afghan asylum seekers, see Susanne Giesler and Christopher Wohnig, *Uneinheitliche Entscheidungspraxis zu Afghanistan*, June 2016, available in German at: <http://bit.ly/2G1FSIq>.

This represents a rate of 48.7% of at least partially successful appeals in those cases, in which the substance of the matter was examined. 27,070 appeals of Afghan nationals were pending at the court at the end of 2019.²⁶⁰

²⁶⁰ Federal Government, Response to parliamentary question by The Left, 19/18498, 2 April 2020, 45.

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

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

Asylum seekers are entitled to reception conditions from the moment they request asylum (*Asylgesuch*) in accordance with the Asylum Seekers' Benefits Act (*Asylbewerberleistungsgesetz*).²⁶¹ 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.²⁶² In practice, this usually happens within a few days after they have reported to the authorities.²⁶³

Foreigners remain entitled to these reception conditions, at a minimum, as long as they have the status of an asylum seeker. After a rejection, asylum seekers usually retain their status for the duration of the appeal proceedings. If the asylum application has been rejected as “manifestly unfounded” or “inadmissible”, however, and their request for suspensive effect is rejected, asylum seekers will lose their status and instead be issued a temporary suspension of deportation, 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.

However, 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*”), may be excluded from all social benefits after a transition period of two weeks.²⁶⁴ This can include persons whose appeal against a return decision is pending, when their emergency appeal was rejected.

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.²⁶⁵ Accordingly, they will not be entitled to benefits in other parts of Germany, unless they get permission by the authorities to move there.

Assessment of resources

²⁶¹ Section 1 (1a) Asylum Seekers' Benefits Act.

²⁶² Section 11 (2a) Asylum Seekers' Benefits Act.

²⁶³ Section 63 (1) Asylum Act

²⁶⁴ Third law amending the Asylum Seekers' Benefits Act, 13 August 2019, Official Gazette I, 1290, further amendments to the Asylum Seekers' Benefits Act were included in the „Orderly Return Law“ (Second law to enhance enforcement of the obligation to leave), 20 August 2019, Official Gazette I, 1294.

²⁶⁵ Section 10 and 10a Asylum Seekers' Benefits Act.

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.²⁶⁶ This provision does not seem to be applied often in practice, however.

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

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 1 January 2020 (in original currency and in €):²⁶⁷

| | |
|---------------------------------------------|------|
| ❖ Single adult in accommodation centre | €139 |
| ❖ Single adult outside accommodation centre | €351 |

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*)²⁶⁸ – 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.²⁶⁹ “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.²⁷⁰

In 2019, the amount of benefits under the Asylum Seekers' Benefits Act was adjusted for the first time since March 2016, even though the law foresees an annual adjustment of rates. This resulted in a reduction of benefits for many asylum seekers, *inter alia* by excluding certain costs from the basic benefits which were considered to be unnecessary for asylum seekers compared to recipients of regular social benefits (e.g. expenditures for leisure, entertainment, culture). Additionally, asylum seekers who live in apartments on their own no longer receive an automatic reimbursement of costs related to electricity. Instead, they need to apply for such reimbursement individually. Benefits were also reduced for adults under 25 who live with their parents.²⁷¹

One of the most controversial changes introduced in 2019 has been the adjustment of benefits for single adults who are required to stay in an accommodation centre. Whereas they used to be treated in the same manner as single adults living outside of these centres, they now only receive an allowance that amounts to benefits that one receives when living together with another adult, spouse or partner.²⁷² As a result, their monthly allowance was increased by €1 only. To justify this change, the government argued that asylum seekers living in an accommodation centre can be expected to run a common household similarly to adult partners, which was heavily criticised by different actors. Several Social Courts have found this change of practice likely to be unconstitutional. In summary proceedings they have ordered the authorities to temporarily pay the same benefits as received by single adults outside of accommodation

²⁶⁶ Section 7 Asylum Seekers' Benefits Act.

²⁶⁷ This includes hygienic items allowance and pocket money only.

²⁶⁸ Section 3(1) Asylum Seekers' Benefits Act.

²⁶⁹ Section 4 Asylum Seekers' Benefits Act; for access to health care see below.

²⁷⁰ Section 6 Asylum Seekers' Benefits Act.

²⁷¹ Sections 3a(1)(3)(a) and 3a(2)(3)(a) Asylum Seekers' Benefits Act.

²⁷² Sections 3a(1)(2)(b) and 3a(2)(2)(b) Asylum Seekers' Benefits Act.

centres.²⁷³ However, two Appeal Social Courts have overruled such decisions arguing that courts cannot order the government to temporarily pay higher benefits in summary proceedings without a statutory basis.²⁷⁴ They did not decide on the constitutionality of the provision, which would require the intervention of the Federal Constitutional Court on the matter.

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”.²⁷⁵ 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”.²⁷⁶ 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”.²⁷⁷

After a second adjustment in January 2020, the current 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” | €153 | €139 | €139 | €122 | €80 | €99 | €86 |
| Further basic benefits (excl. costs related to accommodation) | €198 | €177 | €177 | €158 | €200 | €174 | €132 |
| Total | €351 | €316 | €316 | €280 | €280 | €273 | €218 |
| Regular Social Benefits | €432 | - | €389 | €345 | €328 | €308 | €250 |

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

Before the amendments were introduced in 2019, asylum seekers were usually granted access to regular social benefits after 15 months of benefits received under the Asylum Seekers’ Benefits Act. This meant that, after this period, higher benefits were paid and certain restrictions of the Asylum Seekers’ Benefits Act no longer applied, in particular the limited access to health care. However, the waiting period to access regular social benefits was extended by an additional 3 months in 2019.²⁷⁸ Consequently, asylum seekers now have to wait up to 18 months before they are entitled to regular social benefits. Even when receiving regular social benefits, however, single adults in accommodation centres will continue to receive the lower rates for adult partners.²⁷⁹

²⁷³ 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.

²⁷⁴ Regional Social Court of Baden-Württemberg, Decision L 7 AY 4273/19 ER-B, 13 February 2020 and Regional Social Court of Berlin-Brandenburg, Decision L 15 AY 2/20 B ER, 2 February 2020.

²⁷⁵ Section 3(2) Asylum Seekers’ Benefits Act.

²⁷⁶ Section 3(3) Asylum Seekers’ Benefits Act.

²⁷⁷ Section 3(3) 3rd Sentence Asylum Seekers’ Benefits Act.

²⁷⁸ Section 2(1) Asylum Seekers’ Benefits Act.

²⁷⁹ Section 2 (1) 4th Sentence Number 1 Asylum Seekers’ Benefits Act.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

Reduction of benefits

Since 2016, the grounds for reduction of material reception conditions expressly include asylum seekers. The amendments introduced to the Asylum Seekers' Benefits Act in 2019 further extended the possibilities to reduce benefits. As listed in Section 1a of the Asylum Seekers' Benefits Act, material reception conditions can now be reduced for the following categories of persons:²⁸⁰

| Reduction of benefits in accordance with Section 1a Asylum Seekers' Benefits Act | | |
|----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | Paragraph | Analysis |
| 1 | <i>Beneficiaries of benefits who have been asked to leave Germany until a certain date and have not left the country, although this would have been feasible</i> | This provision only applies to foreign nationals whose obligation to leave the territory is enforceable (<i>vollziehbar ausreisepflichtig</i>) – meaning that it does generally not affect asylum seekers as long as their asylum procedure is ongoing |
| 2 | <i>Beneficiaries of benefits who have entered Germany (solely) for the purpose of receiving benefits</i> | This provision only applies to persons whose obligation to leave is enforceable (<i>vollziehbar ausreisepflichtig</i>) or who are in possession of a “tolerated stay” (<i>Duldung</i>). Thus, it also does not affect asylum seekers as long as their asylum procedure is ongoing. Even after a negative decision, this provision does not generally apply to asylum seekers, as it can hardly be deduced that their only motivation for entering Germany was to claim benefits. |
| 3 | <i>Beneficiaries of benefits for whom removal procedures cannot be carried out due to reasons for which they are responsible</i> | This provision only applies to foreign nationals whose obligation to leave is enforceable (<i>vollziehbar ausreisepflichtig</i>) or whose stay is tolerated (<i>Duldung</i>). Asylum seekers can be affected after the asylum procedure, however, e.g. in cases where an application has been rejected as “inadmissible” following a Dublin procedure. Benefits for family members of beneficiaries must only be reduced if the family member him- or herself bears responsibility. |
| 4(1) | <i>Beneficiaries of benefits who have been allocated to another European state within the framework of a European distribution mechanism</i> | This provision does not apply in the context of Dublin procedures, but refers to a European distribution mechanism which could be initiated on an <i>ad hoc</i> basis. |
| 4(2) | <i>Beneficiaries of benefits who have been granted international protection in an EU Member State or Dublin State or have 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. ²⁸¹ |
| 5 | <i>Beneficiaries of benefits who have failed to cooperate with the authorities during a subsequent asylum procedure</i> | This paragraph refers to a number of other provisions in which the following acts are defined as “failure to cooperate”; <ul style="list-style-type: none"> - Failure to apply for asylum “immediately” after entry into the territory (Section 13 (3) Asylum Act) - Failure to present or hand over a passport or passport substitute to the authorities (Section 15 (2) no. 4 Asylum Act) ; - Failure to present or hand over other documents necessary for the clarification of his or her identity (Section 15 (2) no. 5 Asylum Act) ; - Failure to hand over data carriers such as smartphones that could be important for establishing identity and nationality (Section 15 (2) No. 6 Asylum Act); - Failure to undergo the required identification measures (especially taking of fingerprints, Section 15 (2) no. 7 Asylum Act); - Failure to keep the appointment for the formal registration of their application at the BAMF; or - Refusal to provide information about his or her identity or nationality in the course of the asylum procedure (Section 30 (3) no. 2 Asylum Act). |
| 6 | <i>Beneficiaries in the asylum procedure who violate their obligation to provide information about existing assets and fail to notify relevant changes immediately</i> | |
| 7 | <i>Beneficiaries of benefits whose asylum application was rejected as "inadmissible" on the grounds that another European country was responsible for the examination in accordance with the Dublin III Regulation</i> | This provision was introduced by the 2019 amendments. This category of persons will now receive reduced benefits following a negative decision from the BAMF, even if an appeal against the latter is still pending before the court. However, this does not apply (retroactively) if the court grants suspensive effect. Some Social Courts have questioned the constitutionality of this provision in summary proceedings as the reduction of benefits in such cases is not contingent on a wrongdoing on part of the beneficiary affected. ²⁸² Others have ruled the opposite, however. ²⁸³ <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> |

On top of Section 1(a), the Asylum Seekers' Benefits 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.²⁸⁴

²⁸¹ 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.

²⁸² 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.

²⁸³ Social Court Osnabrück, Decision S 44 AY 76/19 ER, 27 January 2020.

²⁸⁴ Section 11(2a) Asylum Seekers' Benefits Act.

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.²⁸⁵ It has been estimated that this may result in the reduction of almost 50% of the benefits in many cases.²⁸⁶ 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.²⁸⁷

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.²⁸⁸ 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 deportation 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,²⁸⁹ 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.²⁹⁰ The debate has been revived in November 2019 by another decision of the Federal Constitutional Court. In this decision, the Court did not comment on the Asylum Seekers’ Benefits Act, but made some important observations on the legality of cuts in unemployment benefits and in the social support system in general.²⁹¹ The court argued that temporary sanctions, even to the point of a complete withdrawal of benefits, could be lawful if an unemployed person did not undertake reasonable efforts to overcome the need for support. However, given the extraordinary burden resulting from such sanctions, the court also highlighted that legal provisions which reduce reductions of benefits have to be based on an analysis of their necessity, suitability and reasonableness of the regulations. Persons affected by cuts should be able to regain standard benefits once they comply with reasonable obligations. Moreover, individual circumstances must be taken into consideration. Sanctions which are imposed for a fixed period of time and regardless of individual circumstances have to be considered as violating the constitution, according to the Constitutional Court.

As a result of this decision, the legality of the Asylum Seekers’ Benefits Act has been questioned again.²⁹² 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”.²⁹³ Other courts have also questioned the legality of certain aspects of the Asylum Seekers’ Benefits Act.²⁹⁴ However, these questions have so far only

²⁸⁵ Section 1a(1) Asylum Seekers’ Benefits Act.

²⁸⁶ Joachim Genge, ‘Das geänderte Asylbewerberleistungsgesetz’ in *Informationsverbund Asyl und Migration (ed), Das Migrationspaket: Beilage zum Asylmagazin 8-9/2019*, September 2017, 20.

²⁸⁷ 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/213Obav>.

²⁸⁸ Section 14(1) and (2) Asylum Seekers’ Benefits Act.

²⁸⁹ Federal Constitutional Court, Decision 1 BvL 10/10, 1 BvL 2/11, 18 July 2012.

²⁹⁰ Social Court Stade, Decision S 19 AY 19/17 ER, 10 May 2017.

²⁹¹ Federal Constitutional Court, Decision 1 BvL 7/16, 5 November 2019.

²⁹² Claudius Voigt, “Gesetzlich minimierte Menschenwürde. Das Sanktions-Urteil des Bundesverfassungsgerichts und seine Auswirkungen auf das AsylbLG”, *Asylmagazin 1-2/2020*, 12-21.

²⁹³ Regional Social Court for the Federal States of Niedersachsen (Lower Saxony) and Bremen, decision of 19 March 2019 – L 8 AY 4/20 B ER asyl.net: M28258, <https://www.asyl.net/rsdb/m28258/>; decision of 4 December 2019 – L 8 AY 36/19 B ER - asyl.net: M27897, <https://www.asyl.net/rsdb/m27897/>.

²⁹⁴ Social Court Landshut, S 11 AY 79/19 ER, decision of 23 January 2020, available in German at:

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. Nevertheless, a constitutional complaint about the reduction of benefits under the Asylum Seekers' Benefits Act before the June 2019 amendment is pending before the Federal Constitutional Court.²⁹⁵

In practice, reduction of benefits rarely applies to asylum seekers as long as their asylum procedure is ongoing. It may, however, still affect former asylum seekers whose application has been rejected as "manifestly unfounded" or "inadmissible" (e.g. in cases of Dublin decisions or protection in another EU country) and in whose cases no emergency legal protection has been granted. For example, the monthly cash allowance ("pocket money") is often withdrawn or substantially reduced if the person has "absconded", i.e. failed to be present at the appointment for pick-up by the police for a "Dublin transfer" (see [Dublin: Procedure](#)). In some cases, Social Courts have argued that a reduction of benefits could be unlawful as long as no final decision on a possible deportation (or transfer to another Dublin state) has been made at the Administrative Court.²⁹⁶ However, such decisions are rare because only a few asylum seekers appeal against reductions of benefits upon rejection of their asylum application.

A directive issued in the Federal State of **Berlin** states that minors are generally exempt from reductions of benefits, because the alleged misconduct cannot be held against them (e.g. if their parents have failed to provide the authorities with information about their identities).²⁹⁷ 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.²⁹⁸

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.²⁹⁹ 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.³⁰⁰

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 deportation 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.

<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>.

²⁹⁵ Court case file number 1 BvR 2682/17.

²⁹⁶ 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.

²⁹⁷ Regional social administration of the Federal State of Berlin, Directive no. 10/2015, 9 December 2015.

²⁹⁸ Information provided by GGUA, Münster, 19 June 2018.

²⁹⁹ Section 1(4) Asylum Seekers' Benefits Act.

³⁰⁰ Section 1(4) Asylum Seekers' Benefits Act.

4. Freedom of movement

Indicators: Freedom of Movement

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

1.1. Dispersal and geographical restriction

The freedom of movement of asylum seekers is restricted and they have no right to choose their place of residence. According to the Asylum Act, their right to remain on the territory under a permission to stay (*Aufenthaltsgestattung*) is generally limited to the district of the foreigners' authority in which the responsible reception centre is located.³⁰¹ This "residence obligation" (*Residenzpflicht*), legally called "geographical restriction" (*räumliche Beschränkung*), means that asylum seekers are not allowed to leave that area even for short periods of time without permission of the BAMF. However, Federal States have the possibility to extend this geographical restriction to the jurisdiction of other foreigners' authorities or the area encompassing a whole Federal State, or even to another Federal State, provided that there is agreement between the concerned Federal States.³⁰² 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 temporary leave the assigned area for urgent public interest reasons, where it is necessary for compelling reasons or where refusal of permission would constitute undue hardship.³⁰³ 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.³⁰⁴

The law provides that the geographical restriction shall generally expire after 3 months.³⁰⁵ 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**.³⁰⁶ 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 deportation is imminent.³⁰⁷

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.³⁰⁸

Distribution of asylum seekers to the Federal States is determined by the following aspects:³⁰⁹

1. Capacities of initial reception centres;

³⁰¹ Sections 55(1) and 56(1) Asylum Act.

³⁰² Section 58(6) Asylum Act.

³⁰³ Section 58(1) Asylum Act.

³⁰⁴ Section 58(2) Asylum Act.

³⁰⁵ Section 59a(1) Asylum Act.

³⁰⁶ Section 59a(1) Asylum Act.

³⁰⁷ Section 59b(1) Asylum Act.

³⁰⁸ BAMF, 'Initial Distribution of Asylum-Seekers (EASY)', 1 October 2016, available at: <http://bit.ly/2DASJOS>.

³⁰⁹ Section 46(2) Asylum Act.

2. Competence of the branch offices of the BAMF for the particular applicant's country of origin. This means that certain initial reception centres tend to host specific nationalities (see [Differential Treatment of Specific Nationalities in Reception](#));
3. A quota system called "*Königsteiner Schlüssel*",³¹⁰ according to which reception capacities are determined for Germany's 16 Federal States. The *Königstein* key takes into account the tax revenue (accounting for $\frac{2}{3}$ of the quota) and the number of inhabitants ($\frac{1}{3}$) of each Federal State.

The quota for reception of asylum seekers in 2019 ("*Königsteiner Schlüssel*") in comparison to number of (first) asylum applications in 2019 was as follows:

| Distribution of asylum seekers in Germany: 2019 | | | |
|-------------------------------------------------|---------|------------------------------|----------------------|
| Federal State | Quota | (First) applications in 2019 | Actual share in 2019 |
| Baden-Württemberg | 13.01 % | 14,990 | 10.52 % |
| Bavaria | 15.56 % | 18,368 | 12.89 % |
| Berlin | 5.14 % | 8,221 | 5.77 % |
| Brandenburg | 3.02 % | 4,151 | 2.91 % |
| Bremen | 0.96 % | 1,683 | 1.18 % |
| Hamburg | 2.56 % | 3,551 | 2.49 % |
| Hesse | 7.44 % | 11,901 | 8.35% |
| Mecklenburg-Vorpommern | 1.98 % | 2,548 | 1.79 % |
| Lower Saxony | 9.41 % | 13,741 | 9.64 % |
| North Rhine-Westphalia | 21.09 % | 33,879 | 23.77 % |
| Rhineland-Palatinate | 4.82 % | 7,406 | 5.17 % |
| Saarland | 1.20 % | 2,141 | 1.50 % |
| Saxony | 4.99% | 6,310 | 4.43 % |
| Saxony-Anhalt | 2.75 % | 4,168 | 2.92 % |
| Schleswig-Holstein | 3.40 % | 5,729 | 4.02 % |
| Thuringia | 2.65 % | 3,558 | 2.47 % |

Source: BAMF, *Das Bundesamt in Zahlen 2019*, 2020.

The above table demonstrates that the distribution of applicants has only roughly been in line with the "*Königsteiner Schlüssel*" in 2019. Deviations from the quota can (at least partially) be explained by the fact that the distribution of applicants takes into account additional criteria, as mentioned above.

It is possible for the asylum seeker to apply to the authorities to be allocated to a particular town or district, but such applications are only successful in exceptional cases (e.g. if a rare medical condition requires that an asylum seeker has to stay close to a particular hospital). The allocation of the asylum seeker to a particular area is not a formal decision that can be legally challenged by the individual.

1.2. Obligation to stay in initial reception centres

As a rule, asylum seekers are required to stay in the initial reception centre where they lodged their application for international protection. Initial reception centres can be designated as "arrival centres" (*Ankunftscentren*), 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

³¹⁰ Section 45 Asylum Act.

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.³¹¹

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.³¹²
- Since 2019, under certain circumstances, asylum seekers who have failed to cooperate with the authorities have to stay in initial reception centres indefinitely.³¹³
- Federal States are allowed to impose an obligation on applicants to stay in initial reception centres for up to 24 months.³¹⁴

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.³¹⁵

Since 2019, the Asylum Act also provides for a maximum stay of 6 months in initial reception centres for families with minor children. This maximum time period applies to all asylum seekers with minor children pursuant to Section 47(1) of the Asylum Act, as well as to families from safe countries of origin pursuant to Section 47(1a) of the Asylum Act. However, it does not explicitly apply to asylum seekers subject to a Federal State regulation, which extends the stay in initial reception centres to 24 months pursuant to Section 47 (1b) Asylum Act. It has been argued that - because of the clear legislative intent to protect families with children - the maximum stay of 6 months must apply to these asylum seekers as well.³¹⁶ However, so far there have not been any court decisions addressing this issue, mainly because it is not entirely clear whether the provision of Section 47(1b) Asylum Act is currently applied in any Federal State. As far as it has become known, this provision was mainly applied in the so-called “transit centres” in the Federal State of Bavaria, but Bavaria has re-organised its reception system in 2018 and has introduced AnkER-centres throughout the Federal State. The Bavarian Reception Act still contains the obligation to stay in reception centres for up to 24 months,³¹⁷ but it is not clear, if this obligation is still enforced in practice.

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.³¹⁸ Moreover, the obligation has to be terminated if a threat of deportation (*Abschiebungsandrohung*) is enforceable and deportation is not possible within a reasonable period of time.³¹⁹ The asylum seeker shall also be released from the initial reception centre if the administrative court granted suspensive effect, with the exception of Dublin cases and those already granted international protection in another Member state.³²⁰

In **Bavaria** for example, the obligation to stay in initial reception centres for up to 24 months under Section 47(1b) of the Asylum Act had already been introduced in 2017 in three “transit centres”

³¹¹ Section 47(1) Asylum Act.

³¹² Section 47(1a) Asylum Act.

³¹³ Section 47(1) 3rd Sentence Asylum Act.

³¹⁴ Section 47 (1b) Asylum Act.

³¹⁵ Section 47(1b) Asylum Act.

³¹⁶ 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.

³¹⁷ Section 2(2) Bavarian Reception Act (Aufnahmegesetz), as amended by the Act of 5 December 2017, available in German at: <https://bit.ly/2uE71MT>.

³¹⁸ Section 49(2) Asylum Act.

³¹⁹ Section 49 (1) Asylum Act.

³²⁰ Section 50 (1) Number 1 Asylum Act.

(Manching/Ingolstadt, Regensburg, Deggendorf).³²¹ All of these centres were renamed as AnKER centres in 2018, together with the other Bavarian reception centres. The Bavarian Reception Act in its latest version now generally obliges the following groups to stay in reception centres:

- ❖ All asylum seekers until the BAMF has decided upon their applications;
- ❖ Asylum seekers whose application has been rejected as manifestly unfounded or inadmissible until they leave the country or are deported, but limited to a maximum period of 24 months.³²²

There is no exception for families with minor children in the Bavarian law, which might call into question its conformity with the new Section 47 of the Asylum Act as mentioned above. In 2018, the average duration of the stay varied by nationality e.g. 3-4 months for Syrians, over 36 months for safe country of origin nationals who cannot be returned e.g. due to health reasons, and 10-11 months for others if they appeal a rejection.³²³

Similarly, in **Saxony**, where an AnKER centre also exists, an obligation to stay in reception centres under Section 47(1b) Asylum Act had also been introduced through the state's Refugee Reception Act on 11 December 2018 in conjunction with the Saxon Residence Restriction Extension Decree (*Sächsische Wohnpflichtverlängerungsverordnung*). This obligation affects the following groups of asylum seekers:³²⁴

- ❖ 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.³²⁵
- ❖ 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.³²⁶

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.³²⁷ The latter will be applicable until 1 September 2024.

Finally, the Federal State of **Saxony Anhalt** has made use of Section 47(1b) of the Asylum Act, but extended the obligation to 18 months only. Additionally, the State did not only exempt families with children, but also single women, persons with severe physical and psychological illnesses, victims of torture and sexual violence, LGBTIQ and asylum seekers who belong to persecuted minorities.³²⁸

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

³²¹ Bayerischer Flüchtlingsrat, 'Abschiebelager Manching/Ingolstadt', available in German at: <http://bit.ly/2pnLtRg>.

³²² Section 2(2) Bavarian Reception Act (Aufnahmegesetz), as amended by the Act of 5 December 2017, available in German at: <https://bit.ly/2uE71MT>.

³²³ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

³²⁴ 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/2Zgckgu>.

³²⁵ Addendum to the Saxon Residence Restriction Extension Decree of 3 May 2019, available in German at <https://bit.ly/2CBBAKI>.

³²⁶ Section 3 Saxon Residence Restriction Extension Decree (*Sächsische Wohnpflichtverlängerungsverordnung*).

³²⁷ Section(1) Implementing Act to Section 47(1b) of the Asylum Act, available in German at: <https://bit.ly/2BcfuO5>.

³²⁸ Section(1a) Reception Act, as amended by the Act of 14 February 2019, available in German at: <https://bit.ly/2YAXTbC>.

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.³²⁹ 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.³³⁰ 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: | |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input checked="" type="checkbox"/> Private housing <input type="checkbox"/> Other | |
| 5. Type of accommodation most frequently used in an accelerated procedure: | |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other | |

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

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

Emergency shelters were used in particular in 2015 and 2016 but have mostly been closed down since. One notable exception was the reception facility at the **Berlin** arrival centre which continued to operate on the premises of the former airport of Tempelhof where newly arrived asylum seekers were still accommodated, sometimes for several weeks, under conditions described as “inhumane” by NGOs. In December 2018, the Refugee Council of Berlin reported that 1,000 asylum seekers were still living in emergency shelters at the Tempelhof facility and in former army barracks, while more than 1,000 places in newly built facilities were not allocated to asylum seekers due to organisational problems.³³¹ The

³²⁹ ECRE, *The AnkER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

³³⁰ *Ibid.*

³³¹ Refugee Council Berlin, ‘Gesamtkonzept zur Integration und Partizipation von Geflüchteten in Berlin: Viel Worte statt Taten’, 17 December 2018, available in German at: <https://bit.ly/2YDmkD3>.

closure of the facility at Tempelhof was finally announced on 20 December 2018.³³² In April 2019, Tempelhof was replaced by a new arrival centre in Berlin-**Reinickendorf**.³³³

Moreover, a waiting room (*Warteraum*) in **Erding** was another unique facility, which served as a first arrival and distribution centre where persons could stay for 72 hours. It was closed at the end of 2019.³³⁴

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*).³³⁵ An obligation to stay in these centres for a maximum of 24 months can be imposed by Federal States since July 2017.³³⁶ Furthermore, asylum seekers from safe countries of origin are obliged to stay there for the whole duration of their procedures (see

³³² Berlin.de, 'Senat beginnt Schließung des Flüchtlingszentrums Tempelhof', 20 December 2018, available in German at: <https://bit.ly/2uGkGCM>.

³³³ Berlin.de, 'Neues Ankunftscenter für geflüchtete Menschen im Berliner Bezirk Reinickendorf ab 29. April 2019', April 18 2020, available in German at: <https://bit.ly/3f5iDhs>.

³³⁴ Süddeutsche.de, 'Warteraum Asyl außer Betrieb', 17 December 2019, available in German at: <https://bit.ly/38A98Eu>.

³³⁵ Section 47(1) Asylum Act.

³³⁶ Section 47(1b) Asylum Act.

Freedom of movement).

The Federal States are required to establish and maintain the initial reception centres.³³⁷ Accordingly, there is at least one such centre in each of Germany's 16 Federal States with most Federal States having several initial reception facilities.

As of June 2020, the BAMF website listed 62 branch offices (including branch offices in Arrival and AnKER centres) and regional offices in 54 locations (down from 58 offices in 50 locations at the beginning of 2019).³³⁸ In most of these places, an initial reception centre is assigned to the branch office of the BAMF, or combined with a branch office to constitute an arrival centre or AnKER centre.

Arrival centres

Since 2016, several reception centres have either been opened as arrival centres (*Ankunftszentren*) or existing facilities have been transformed into arrival centres. In these centres, the BAMF and other relevant authorities apply **Fast-Track Processing**. The concept of "arrival centres" is not established in law, therefore technically the initial reception centres are still functioning as part of the arrival centres, together with a branch office of the BAMF. As of June 2019, the BAMF lists 19 arrival centres which are located across 14 Federal States (down from 22 in 2018):³³⁹

- Berlin
- Brandenburg: Eisenhüttenstadt
- Bremen
- Hamburg
- Baden-Württemberg: Heidelberg
- North Rhine-Westphalia: Bielefeld, Bonn, Dortmund, Mönchengladbach
- Saxony: Chemnitz, Leipzig
- Lower Saxony: Bad Fallingbostel, Bramsche
- Saxony-Anhalt: Halberstadt
- Hessen: Gießen
- Mecklenburg-Vorpommern: Schwerin
- Thuringia: Suhl
- Rhineland-Palatinate: Trier, Speyer
- Schleswig-Holstein: Neumünster

AnKER centres

Since August 2018, Bavaria has established and/or rebranded all facilities run by the seven districts of the Federal State as AnKER centres.³⁴⁰ 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.³⁴¹ Outside of Bavaria, there is one AnKER centre in **Saxony** and **Saarland**, respectively, for a total of 8 AnKER centres:³⁴²

AnKER centres & *Dependancen* in Germany

³³⁷ Section 44(1) Asylum Act.

³³⁸ BAMF, *Locations*, available at: <https://bit.ly/2Z74Uko>.

³³⁹ BAMF, *Locations*, available at: <https://bit.ly/2Z74Uko>.

³⁴⁰ Süddeutsche Zeitung, Das sind die sieben neuen Ankerzentren in Bayern, 1 August 2018, available at <https://bit.ly/2MeAYKy>.

³⁴¹ Bayerischer Rundfunk, *Ankerzentren: Augsburger Flüchtlingsrat begrüßt neuen Kurs*, 28 June 2019, available at: <https://bit.ly/2NJxyC1>.

³⁴² BAMF, *Locations*, available at: <https://bit.ly/3i38BPN>.

| Federal State | AnKER centre | Location of AnKER Dependancen ³⁴³ |
|---------------|-------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Bavaria | Manching/Ingolstadt (Upper Bavaria) | Ingolstadt: Manchingerstraße Ingolstadt: Marie-Curie-Straße Ingolstadt: Neuburgerstraße Munich: Funkkaserne Munich: Am Moosfeld Garmisch Waldkraiburg Fürstenfeldbruck |
| | Deggendorf (Lower Bavaria) | Hengersberg Osterhofen Stephansposching |
| | Regensburg: Zeißstraße (Upper Palatinate) | Regensburg: Pionierkaserne Schwandorf |
| | Bamberg (Upper Franconia) | - |
| | Zirndorf (Middle Franconia) | Nuremberg: Beuthener Straße Nuremberg: Witschelstraße Roth Neuendettelsau |
| | Schweinfurt (Lower Franconia) | - |
| Saxony | Dresden | - |
| Saarland | Lebach | - |
| Total | 8 | 17 |

³⁴³ Anker-Watch.de, ANKER-Zentren und Dependancen, available at: <https://bit.ly/3ewPdbE>.

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).³⁴⁴ 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.³⁴⁵

According to the “geographical restriction”, asylum seekers are obliged to stay in the district to which they have been allocated for the whole duration of their procedure, i.e. including appeal proceedings (see *Freedom of Movement*). The Federal States are entitled by law to organise the distribution and the accommodation of asylum seekers within their territories.³⁴⁶ 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

For many municipalities the establishment and maintenance of collective accommodation has often not proven efficient, in particular against the background of decreasing numbers of asylum applications from the mid-1990s onwards, and especially between 2002 and 2007. Accordingly, many collective accommodation centres were closed during that period and municipalities increasingly turned to accommodating asylum seekers in apartments.

Statistics on the year 2019 are not available. For the year 2018, the German Federal Statistical Office recorded the following numbers for accommodation of “recipients of benefits under the Asylum Seeker’s Benefits Act”. It has to be noted that this law applies not only to asylum seekers, but also to people with a “tolerated stay” (*Duldung*) and even to certain groups of people who have been granted a temporary residence permit. Among these groups, there are many people who have been staying in Germany for several years and therefore are more likely to live in decentralised accommodation than asylum seekers whose application is still pending:

| Recipients of asylum seekers benefits in the Federal States: 31 December 2018 | | | | |
|-------------------------------------------------------------------------------|---------------------------|--------------------------|-----------------------------|--------|
| Federal State | Initial reception centres | Collective accommodation | Decentralised accommodation | Total |
| North Rhine-Westphalia | 13,522 | 47,617 | 37,341 | 98,480 |
| Bavaria | 7,750 | 30,124 | 26,640 | 64,514 |
| Baden-Württemberg | 4,099 | 20,288 | 22,110 | 46,497 |
| Lower Saxony | 2,583 | 9,135 | 28,088 | 39,806 |
| Hesse | 1,557 | 18,194 | 9,449 | 29,200 |

³⁴⁴ Section 53 Asylum Act.

³⁴⁵ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

³⁴⁶ Section 10 Asylum Seekers' Benefits Act.

| | | | | |
|------------------------|---------------|----------------|----------------|----------------|
| Berlin | 3,060 | 6,399 | 15,637 | 25,096 |
| Saxony | 763 | 13,388 | 7,046 | 21,197 |
| Rhineland-Palatinate | 2,964 | 2,083 | 11,491 | 16,538 |
| Schleswig-Holstein | 1,394 | 1,277 | 13,091 | 15,762 |
| Brandenburg | 1,637 | 8,721 | 4,892 | 15,250 |
| Hamburg | 2,515 | 945 | 7,743 | 11,203 |
| Sachsen-Anhalt | 1,387 | 3,605 | 3,753 | 8,745 |
| Thuringia | 418 | 3,673 | 3,768 | 7,859 |
| Mecklenburg-Vorpommern | 483 | 3,044 | 2,326 | 5,853 |
| Bremen | 16 | 1,040 | 2,642 | 3,698 |
| Saarland | 59 | 959 | 495 | 1,513 |
| Total | 44,207 | 170,492 | 196,512 | 411,211 |

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

Although Section 53 of the Asylum Act provides that asylum seekers “should, as a rule, be housed in collective accommodation” following the initial reception period, the above figures show that policies vary considerably between the Federal States.³⁴⁷ In some states such as **North Rhine-Westphalia** or **Brandenburg**, most asylum seekers are indeed living in this type of accommodation. In contrast, there are other Federal States, including **Rhineland-Palatinate**, **Hamburg** or **Lower Saxony**, in which the majority of recipients of asylum seekers' benefits are staying in so-called “decentralised accommodation”, so usually in apartments of their own.³⁴⁸ The latter might also at least partially be the result of authorities generally being more restrictive when it comes to issuing (long-term) holders of a tolerated stay with residence permits, which would entitle them to regular social benefits.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

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

2.1. Conditions in initial reception centres

There is no common standard for initial reception centres, although Federal States have laid down standards to varying degrees in regional legislation through the various State Reception Acts (*Landesaufnahmegesetz*) and in regulations and directives. Where no standards for the accommodation of asylum seekers exist, the Federal States often 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).

³⁴⁷ 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.

³⁴⁸ It is possible, though, that some Federal States subsume smaller types of collective accommodation under “decentralised” housing as well.

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.³⁴⁹ Following public criticism, the authorities have started renovation works in the facility of early April 2019 and have transferred several residents to other facilities.³⁵⁰

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.³⁵¹

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.³⁵²

As far as regulations on accommodation standards in the initial reception centres exist, these show considerable variety in terms of the required living space and equipment. The Refugee Reception Act of **Baden-Württemberg** provides that asylum seekers should have 4.5m² of living space, while other regulations provide for 6 or 7m² per person.³⁵³ A typical room in an initial reception centre has between 2 and 4 beds, there are chairs and a table and each resident has a locker for herself or himself. Size of rooms may vary, but rooms with a single bed are highly exceptional.

Most initial reception centres have a policy to accommodate single women and families in separate buildings or separate wings of their buildings. The AnKER centre in **Manching/Ingolstadt** for example provides separate rooms for vulnerable persons.

Bath and toilet facilities usually consist of shower rooms and toilets which people have to share. Where guidelines are available, it is recommended that one shower should be available for 10 to 12 persons, but in some reception centres the ratio is worse than that, particularly in situations of overcrowding. Cleaning of shared space (halls, corridors) as well as of sanitary facilities is carried out by external companies in the initial reception centres.

Food is supplied in the initial reception centres and is usually served in canteens on the premises of the centres. In general, two or more menus are on offer for lunch and the management of the catering facilities tries to ensure that specific food is provided with regard to religious sentiments. Some, but not all initial reception centres also have shared kitchen space which enables asylum seekers to cook their own food;

³⁴⁹ Süddeutsche Zeitung, "Die Regierung muss hier sofort einschreiten", 26 March 2019, available in German at: <https://bit.ly/2OGa40d>.

³⁵⁰ Süddeutsche Zeitung, 'Die Funkkaserne wird angeblich unter Hochdruck saniert', 5 April 2019, available in German at: <https://bit.ly/2KA8Rcv>.

³⁵¹ Refugee Council Bavaria, 'Abschiebelager Manching/Ingolstadt', available in German at: <http://bit.ly/2pnLtRg>.

³⁵² Markus Kraft, ANKER-Einrichtung Oberfranken – Grundlagen, Kritik und Alternative, Asylmagazin 10-11/2018, 352; ECRE, 'The Bamberg model and transit camp system in Germany – Op-ed by Aino Korvensyrjä', 2 February 2018, available at: <http://bit.ly/2Fiz6KP>. See also Bayerischer Flüchtlingsrat, 'Abschiebelager Bamberg', available in German at: <http://bit.ly/2lwD471>.

³⁵³ European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in Germany*, 2013, 26.

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

The living conditions in many initial reception centres have been criticised by asylum seekers, volunteers and NGOs – especially in light of the extended obligatory stay in these facilities. Asylum seekers at the arrival centre in **Hamburg-Rahlstedt**, for example, have reported *inter alia* a lack of privacy, unclean sanitary facilities and disturbances at night. The sleeping areas are placed in former warehouses and divided by thin partitions into several compartments, which do not allow for privacy. Besides reading lamps attached to each bed, there is one common light for the whole warehouse, which is switched on from 8:00am to 22:00pm.³⁵⁴

More generally, studies published in 2020 have come to the conclusion that the accommodation in initial reception centres is infringing childrens' rights and constitutes a danger to their mental health. The spatial confinement, the experience of violence and deportations, as well as the permanent uncertainty cause psychological stress and have a negative impact on children.³⁵⁵ Health care and psychosocial support provided for young refugees in the mass accommodations was described as worryingly inadequate for most of the facilities.³⁵⁶

The NGO "Ärzte der Welt" (Doctors of the World) announced in September 2019 that an advice service run by the organisation in the AnKER-centre of **Manching/Ingolstadt** was to be terminated. The NGO described living conditions in the facility as "morbid" and claimed that adequate treatment, in particular treatment of persons with psychological disorders, was impossible under the circumstances. Insufficient protection against assaults, lack of privacy and nocturnal disturbances were impeding mental stabilisation of asylum-seekers at the facility and the NGO was no longer capable to bear responsibility for the mental health of its patients. Moreover, the organisation claims that there was no system for the identification of vulnerable persons in place at the facility.³⁵⁷

Following the COVID-19 pandemic, there has also been rising concern that the conditions in initial reception centres (and other form of collective accommodation) do not allow for sufficient protection against the virus. In **Ellwangen**, for example, 50% of the asylum seekers were tested positive.³⁵⁸ For this reason, some courts have ruled that asylum seekers must be allowed to take residence outside of initial reception centres.³⁵⁹ Whether the obligation to take up residence in initial reception centres will end because of the virus depends on local circumstances and individual cases – especially since other courts have decided that the risks caused by COVID-19 do not generally justify an exemption from the obligation to stay in initial reception centres.³⁶⁰

³⁵⁴ Fluchtpunkt, *Mitten in Hamburg, und doch am Rand: Unzumutbare Bedingungen im Ankunftszentrum Rahlstedt*, November 14th 2019, available in German at: <https://bit.ly/3iJgGtb>.

³⁵⁵ Terre des hommes, *Zur Lebenssituation von minderjährigen Geflüchteten in Aufnahmeeinrichtungen*, June 2020, 7, available in German at: <https://bit.ly/38Etah0>, 7.

³⁵⁶ 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>.

³⁵⁷ Frankfurter Rundschau, „Krankmachende Lebensbedingungen“ - Ärzte der Welt zieht sich aus Ankerzentrum zurück', 26 September 2019, available in German at: <https://bit.ly/2Z7NyUE>.

³⁵⁸ Frankfurter Allgemeine Zeitung, 'Jeder zweite Flüchtling in Ellwangen hat Corona', 15 April 2020, available in German at: <https://bit.ly/31ZspxV>.

³⁵⁹ Administrative Court Leipzig, Decision 3 L 204/20.A, 22 April 2020; Administrative Court Dresden, Decision 11 L 269/20.A, 24th April 2020; Administrative Court Münster, Decision 6a L 365/20, 7 May 2020.

³⁶⁰ Administrative Court Gießen, Decision 4 L 1755/20.GI.A, 20 May 2020, Administrative Court Leipzig, Decision 4 L 211/20.A, 18 May 2020.

2.2. Situation in collective accommodation centres and decentralised housing

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

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

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

It has also been pointed out that living conditions in individual apartments are not necessarily better than in accommodation centres (e.g. if apartments are provided in run-down buildings or if decentralised accommodation is only available in isolated locations). Nevertheless, the collective accommodation centres, and particularly the bigger ones (often referred to as “camps” by critics) are most often criticised by refugee organisations and other NGOs.

While occupancy rates have improved in recent years, some aspects of collective accommodation centres continue to be identified as problematic by asylum seekers and NGOs. Facilities are often isolated or in remote locations. Many temporary facilities do not comply with basic standards and do not guarantee privacy.³⁶¹ 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.³⁶²

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.³⁶³

Furthermore, many facilities lack qualified staff, thus highlighting the crucial role played by NGOs and volunteers, particularly regarding counselling and integration. A lack of communication between authorities and NGOs and/or volunteers has also been flagged problematic.³⁶⁴

³⁶¹ ProAsyl, ‘Ein Leben ohne Privatsphäre? Sammelunterbringung darf nicht zum Dauerzustand werden!’, 10 January 2017, available in German at: <http://bit.ly/2kWyI5U>.

³⁶² *Ibid.*

³⁶³ *Ibid.*

³⁶⁴ For both positive and negative examples of cooperation, see Robert-Bosch-Stiftung, *Die Aufnahme von Flüchtlingen in den Bundesländern und Kommunen - Behördliche Praxis und zivilgesellschaftliches Engagement*, 2015, available in German at: <http://bit.ly/2kIKN9M>.

2.3. Physical security

In addition to overall living conditions, the security of residents can also be an issue of concern. According to official statistics, 128 attacks on accommodation facilities took place in 2019, compared to 173 in 2018. In addition, 1,620 attacks on individual asylum seekers or refugees were recorded in 2019. Most of these attacks are classified as racially motivated crimes.³⁶⁵

According to statistics compiled by NGOs, the number of attacks on reception centres during 2019 was significantly higher – namely 913 attacks on facilities, including 3 arson attacks, compared to 1,535 attacks including 9 arson attacks in 2018.³⁶⁶ Nevertheless, NGO statistics also show a significantly lower number of attacks (198) on individual asylum seekers or refugees, 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.³⁶⁷ To counter this problem, most Federal States have developed violence protection concepts in recent years.³⁶⁸

Fences are used around premises, particularly for large-scale centres, former industrial buildings or former army barracks.

In some facilities asylum seekers have to report to staff upon leaving and upon return. Visitors have to report to staff and there are only limited visiting hours. In some cases, no overnight stays are allowed for visitors, even for spouses (see [Access to Reception Centres](#)).³⁶⁹

2.4. Duration of stay

The duration of stay in initial reception centres has been generally set at a maximum of 18 months following the reform in 2019 (see [Freedom of Movement](#)). Following the initial reception period, a stay in other collective accommodation centres is also obligatory, until a final decision on the asylum application is reached.³⁷⁰ 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”.³⁷¹ It has been argued that a stay in collective accommodation which lasts several years increases health risks, especially with regard to mental disorders.

³⁶⁵ Federal Government, Reply to parliamentary question by The Left, 19/18269, 19 March 2020, available in German at: <https://bit.ly/38ArLYP>.

³⁶⁶ Mut Gegen Rechte Gewalt, ‘Chronik flüchtlingsfeindlicher Vorfälle’, July 4th 2020, available in German at: <https://bit.ly/3f43DQT>.

³⁶⁷ ProAsyl, ‘Ein Leben ohne Privatsphäre? Sammelunterbringung darf nicht zum Dauerzustand werden!’, 10 January 2017, available in German at: <http://bit.ly/2kWyI5U>.

³⁶⁸ Bundesinitiative Schutz von geflüchteten Menschen in Flüchtlingsunterkünften, Schutzkonzepte von Bundesländern, available in German at <https://bit.ly/3eYOMqZ>.

³⁶⁹ *Ibid.*

³⁷⁰ Section 53(2) 1st Sentence Asylum Act.

³⁷¹ Section 61(1d) Residence Act.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

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

1.1. Time limit for the right to work

Access to the labour market for asylum seekers has been subject to further restrictions in recent years. The applicable legislation was amended again in 2019 by the Skilled Workers' Immigration Act (*Fachkräfteeinwanderungsgesetz*) which entered into force in March 2020. As a result, the regulatory system has become more restrictive and complex.

Prior to March 2020, asylum seekers were barred from access to employment as long as they were under an obligation to stay in an initial reception centre. Outside these centres, they could be permitted to take up employment after having stayed in the federal territory for 3 months.

Access to employment for asylum seekers in reception centres

Since March 2020, the general rule still is that asylum seekers in initial reception centres are not allowed to take up employment.³⁷² 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.³⁷³ 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.³⁷⁴ 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.

³⁷² Section 61(1) 1st Sentence Asylum Act.

³⁷³ Section 61(1) 2nd Sentence Asylum Act.

³⁷⁴ Section 61(2) 5th Sentence Asylum Act.

Access to employment for asylum seekers staying outside of reception centres

Outside of reception centres, asylum seekers with a permission to stay (*Aufenthaltsgestattung*) are not allowed to take up employment during the first 3 months of their stay on the territory, after which they can be permitted to do so on a discretionary basis.³⁷⁵

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.³⁷⁶ 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.³⁷⁷

1.2. Restrictions on access to the labour market

On top of the restrictions mentioned above, there are additional limitations to the access to the labour market in practice. Firstly, asylum seekers have to apply for an employment permit each time they want to take up employment. To that end, they have to prove that there is a “concrete” job offer, i.e. an employer has to declare that the asylum seeker will be employed in case the employment permit is granted, and a detailed job description must be shared with the authorities.

Secondly, employment is only granted upon approval of the Federal Employment Agency.³⁷⁸ There are a few exceptions to this rule, e.g. for internships and vocational training.³⁷⁹ 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.

2. Access to education

Indicators: Access to Education

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

As a matter of principle, the right and the obligation to attend school 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

³⁷⁵ Section 61(2) 1st Sentence Asylum Act and Section 61(2) 5th Sentence Asylum Act.

³⁷⁶ Section 21(6) Residence Act.

³⁷⁷ Section 61(1) 1st Sentence Asylum Act.

³⁷⁸ Section 61(1) 2nd Sentence Number 2 and Section 61(2) 1st Sentence Asylum Act.

³⁷⁹ Section 32(2) Employment Regulation (*Beschäftigungsverordnung*).

frequently been criticised that parts of the education system are insufficiently prepared to address the specific needs of newly arrived children. While there are “best practice” examples in some regions for the integration of refugee children into the education system, obstacles remain in other places, such as lack of access to language and literacy courses or to regular schools.

In 2016, an association of various NGOs (regional refugee councils, Federal Association for Unaccompanied Refugee Minors, Youth without Borders) started a campaign called “School for all” (*Schule für alle*) to draw attention to the fact that children in many initial reception centres have only had very basic schooling and no access to the regular school system for the duration of their stay in these facilities (see [Freedom of Movement: Obligation to Stay in Initial Reception Centres](#)). Furthermore, the NGOs have criticised the fact that access to education services was severely limited for asylum seekers 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.³⁸⁰

These problems continue to exist today. Half of all federal states exempt asylum-seeking children from compulsory education until they have been assigned to a municipality (**Bavaria, Hesse, Mecklenburg-Vorpommern, Lower Saxony, North Rhine-Westphalia, Rhineland-Platinat, Saxony, Saxony-Anhalt**).³⁸¹ Thus, as long as they stay in initial reception centres, they will not have access to the regular school system. Some initial reception centres do provide educational offers, but they are not comparable to regular schools.

Problems with access to the education system have particularly been reported with regard to initial reception centres renamed as AnKER centres in **Bavaria** in 2018. The general policy foresees the provision inside the AnKER centres of both schooling for children aged 6-16 and professional school (*Berufsschule*) for persons aged 16-21. The AnKER centre in **Regensburg** is one of the only facilities allowing children up to the age of 16 to go to regular schools. This was originally only made possible because the authorities did not manage to build the necessary facilities on time, but has stayed that way. However, persons aged 16-21 are provided education in containers in the centre, not at school.³⁸²

The AnKER centre in **Manching/Ingolstadt** does not allow access to regular schools and classes are therefore provided within the facility. The classes mainly focus on German language, but also cover maths and other subjects. A certificate is provided upon completion of the course. However, asylum seekers do not undergo examinations at the end of the year since people stay for shorter periods. If an asylum seeker wishes to access regular schools, a test assessing his or her capacity to attend classes in regular schools is conducted, namely to assess German language level.³⁸³ 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.³⁸⁴

The problem of a lack of access to the education system in initial reception centres may have been mitigated to a certain extent by the legal clarification, introduced in 2019, according to which the general maximum time-limit for a stay in initial reception centres has been placed at six months for families with minor children. Because of this amendment, children should be allocated to decentralised accommodation after a few months (possibly earlier than the maximum six-months time-limit allows), which should in turn result in them having access to regular schools at their new place of residence.

³⁸⁰ See the campaign at: <http://kampagne-schule-fuer-alle.de/>.

³⁸¹ Deutsches Kinderhilfswerk, „Beginn der Schulpflicht für asylsuchende Kinder“ - Datengrundlage für den Strukturindikator zum Recht auf Bildung, available in German at: <https://bit.ly/3iNtUFq>.

³⁸² ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

³⁸³ *Ibid.*

³⁸⁴ Süddeutsche Zeitung, ‘Flüchtlingskinder aus Transitzentrum dürfen reguläre Schule besuchen’, 9 March 2018, available in German at: <http://bit.ly/2Dzi9fX>.

Asylum seekers generally have access to vocational training. In order to start vocational training, they need an employment permit.³⁸⁵ However, the fact that asylum seeker's permission to stay (*Aufenthaltsgestattung*) are issued for a 6-month-period frequently renders the access to vocational training impossible. Training contracts usually have to be concluded for a duration of two or three years. Hence potential employers are often hesitant to offer vocational training to asylum seekers since there is a considerable risk that the training cannot be completed if the asylum application is rejected.

Studying at university is generally permitted for asylum seekers, but only possible with practical difficulties. The Federal States' laws that regulate access to higher education do not impose any restrictions with regards to a foreigner's residence status. Thus, asylum seekers with a permission to stay (*Aufenthaltsgestattung*) or tolerated stay (*Duldung*) legally have the same access to university as other foreigners. However, the higher education laws set requirements with regard to qualifications (university entrance qualification), knowledge of the German language and health insurance coverage, which are difficult to meet in practice for asylum seekers. Additionally, they are also not entitled to students' financial aid when in possession of a permission to stay (*Aufenthaltsgestattung*).

D. Health care

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

The law restricts health care for asylum seekers to instances “of acute diseases or pain”, in which “necessary medical or dental treatment has to be provided including medication, bandages and other benefits necessary for convalescence, recovery, or alleviation of disease or necessary services addressing consequences of illnesses.”³⁸⁶ Furthermore, vaccination and “necessary preventive medical check-ups” shall be provided.³⁸⁷ 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.³⁸⁸ In addition, the law states that further benefits can be granted “if they are indispensable in an individual case to secure health”.³⁸⁹

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.³⁹⁰ There remains a dispute, however, as to what treatment is necessary in these cases, i.e. if the treatment of pain requires treatment of the causes of the chronic disease, or if a more cost-effective treatment option (usually medication) that eliminates the pain, at least temporarily, is sufficient. It has been reported that necessary but expensive diagnostic measures or

³⁸⁵ Section 32(2)(1) Employment Regulation.

³⁸⁶ Section 4(1) 1st Sentence Asylum Seekers' Benefits Act.

³⁸⁷ Section 4 Asylum Seekers' Benefits Act.

³⁸⁸ Section 4(2) Asylum Seekers' Benefits Act.

³⁸⁹ Section 6(1) Asylum Seekers' Benefits Act.

³⁹⁰ Higher Administrative Court Baden-Württemberg, Decision 7 S 920/98, 4 May 1998.

therapies are not always granted by local authorities, which argue that only “elementary” or “vital” medical care would be covered by the law.³⁹¹

Even if a chronic disease is not causing pain momentarily, asylum seekers might still be entitled to treatment, if it is indispensable to secure health pursuant to Section 6(1) of the Asylum Seekers’ Benefits Act. Recently, some Regional Social Courts have argued that this provision must be interpreted broadly in accordance with the constitution. Thus, apart from a few exceptions, especially in the case of minor illnesses or short stays, a level of benefits must be established that corresponds to regular health insurance.³⁹²

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.³⁹³ ³⁹⁴The 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.³⁹⁵ Other Federal States (e.g. **Bavaria** and **Baden-Württemberg, Saxony, Mecklenburg-Vorpommern**) have announced that they will not participate in the scheme.

It has to be pointed out, however, that even in a Federal State like **Brandenburg**, where almost all municipalities are issuing health insurance cards, the policy does not apply to asylum seekers in initial reception centres, which fall under the responsibility of the Ministry of the Interior. Due to the recently extended obligation to stay in these centres, this affects many asylum seekers for a substantial amount of their asylum procedure (see [Obligation to stay in initial reception centres](#)). This means that they cannot access a medical professional of their choice as they depend on the medical personnel present in the initial reception centres. While nurses are present daily in initial reception centres **Eisenhüttenstadt** and **Doberlug-Kirchhain**, medical doctors are only on site three days a week.³⁹⁶ A further practical problem reported is the fact that the medical staff is very restrictive in referring patients to medical specialists. This makes it almost impossible for asylum seekers to meet the legal requirements for the proof of medical conditions in asylum procedures, which explicitly requires a qualified certificate from a medical specialist.³⁹⁷

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,

³⁹¹ Georg Classen, *Leitfaden zum Asylbewerberleistungsgesetz* (Guideline to the Asylum Seekers’ Benefits Act), September 2018, 13, available in German at: <https://bit.ly/3ef7zwl>.

³⁹² 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.

³⁹³ Gesundheit für Geflüchtete, Healthcare vouchers, available at: <https://bit.ly/2BXoxme>.

³⁹⁴ Georg Classen, *Leitfaden zum Asylbewerberleistungsgesetz* (Guideline to the Asylum Seekers’ Benefits Act), September 2018, 13, available in German at: <https://bit.ly/3iJEDAB>.

³⁹⁵ See overview of Federal States, see Gesundheit für Geflüchtete, *Regelung in den Bundesländern*, available at: <https://bit.ly/2U7GRRL>.

³⁹⁶ Information provided by local social workers of Komm Mit e.V. June 2020.

³⁹⁷ Section 60(7 in conjunction with Section 60a(2c) Residence Act.

while access to specialised doctors can only take place following a referral from the general practitioner.³⁹⁸ 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.

Following the reform of the Asylum Seekers' Benefits Act in 2019, asylum seekers are entitled to social benefits as regulated in the Twelfth Book of the Social Code (*Sozialgesetzbuch*) only after 18 months, thus extending the waiting period by an additional 3 months.³⁹⁹ Once people are entitled to the "standard" social benefits, this includes access to health care under the same conditions that apply to German citizens who receive social benefits.

Specialised treatment for traumatised asylum seekers and victims of torture can be provided by some specialised doctors and therapists and in several specialised institutions (Treatment Centres for Victims of Torture – *Behandlungszentren für Folteropfer*). Since the number of places in the treatment centres is limited, access to therapies is not always guaranteed. Access to around 40 % of applicants is refused, and others have to wait an average of 7,3 months to start treatment. The treatment centres have to cover most of the costs for therapies (93 %) through donations or other funds since therapies are often not covered by the health and social authorities.⁴⁰⁰ Large distances between asylum seekers' places of residence and treatment centres may also render an effective therapy impossible in practice.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

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

In 2019, a provision was introduced requiring Federal States to take appropriate measures to ensure the protection of women and vulnerable persons when accommodation asylum seekers in initial reception centres.⁴⁰¹ Even before this provision was introduced, authorities were required to provide specific support to those with special reception needs in accordance with Reception Conditions Directive.⁴⁰² 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.

Some Federal States have introduced policies that establish systematic screening of all asylum seekers for special reception needs.⁴⁰³ For example, asylum seekers at the arrival centre in **Berlin** undergo a short interview with the social services of the Federal State *inter alia* to identify special reception needs (see also [Identification](#)).

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

³⁹⁹ 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".

⁴⁰⁰ Bundesweite Arbeitsgemeinschaft der Psychosozialen Zentren für Flüchtlinge und Folteropfer (BAfF), *Versorgungsbericht - Zur psychosozialen Versorgung von Flüchtlingen und Folteropfern in Deutschland*, August 2019, available in German at: <https://bit.ly/2O68bKK>, 146-147.

⁴⁰¹ Section 44(2a) Asylum Act.

⁴⁰² Section 21 et seq. Directive 2013/33/EU.

⁴⁰³ Protection concepts of different Federal States are available in German at: <https://bit.ly/2DpE4f3>.

In **Rhineland-Palatinate**, the regional government has adopted a protection concept which also includes methods for the identification of vulnerabilities.⁴⁰⁴ This includes the following measures:

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

According to the authorities in **Brandenburg**, asylum seekers in the Federal State undergo a first screening on arrival in the initial reception centres. Staff is required to report any obvious reception needs and asylum seekers can fill out a questionnaire regarding special reception needs on a voluntary basis. In the next days, trained staff of the psychosocial services at the facilities is supposed to carry out a 20-minute interview with asylum seekers to identify certain criteria that indicate a particular need for protection or assistance.⁴⁰⁵ NGOs criticise, however, that this concept is insufficient as only certain groups undergo the second screening in practice and that the special reception needs of physically healthy men with mental health issues are likely to remain undetected.⁴⁰⁶

1. Reception of unaccompanied children

Unaccompanied children should be placed in the care of a youth welfare office which has to seek “adequate accommodation”.⁴⁰⁷ 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 2018: during that year, 5,817 newly arriving unaccompanied minors were placed in the care of a youth welfare office (in comparison to 44,935 in 2016).⁴⁰⁸ The total number of unaccompanied children and young adults under the care of youth authorities has also been decreasing significantly in recent years, from 64,045 at the end of 2016 to 31,184 in November 2019.⁴⁰⁹ Out of these, 62,8% were older than 18 years but still fell under the competence of youth welfare offices because they were entitled to youth welfare measures. Figures also

⁴⁰⁴ 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>.

⁴⁰⁵ Zentrale Ausländerbehörde Brandenburg, ‚Konzeption der Zentralen Ausländerbehörde für die Feststellung und die Berücksichtigung der Belange Schutzbedürftiger i.S.v. Art. 21 ff. RL 2013/33/EU in der Erstaufnahmeeinrichtung (EAE) des Landes Brandenburg‘, December 2019, available in German at: <https://bit.ly/31XjQn9>.

⁴⁰⁶ Information provided by local social workers of Komm Mit e.V., June 2020.

⁴⁰⁷ Section 42(1) Social Code, Vol. VIII.

⁴⁰⁸ 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.

⁴⁰⁹ Figures based on unpublished statistics by the Federal Administrative Office (*Bundesverwaltungsamt*): Federal Association for Unaccompanied Refugee Minors, *Die Situation unbegleiteter minderjähriger Flüchtlinge in Deutschland*, December 2019, available in German at: <https://bit.ly/3fePy32>, 3

⁴¹⁰ Federal Association for Unaccompanied Refugee Minors, *Die Situation unbegleiteter minderjähriger Flüchtlinge in Deutschland*, December 2019, available in German at: <https://bit.ly/3fePy32>,

show that unaccompanied children were sent to all 16 Federal States, with numbers only roughly corresponding to the distribution system of the *Königsteiner Schlüssel*. Only the city state of **Bremen** shows a significant deviation from this quota system, with the actual number of children and young adults staying in Bremen in November 2019 amounting to 317% of the Federal State's quota. Two other Federal States (**Hamburg**: 140% and **Hessen**: 137%) were also considerably over their quota, while all East German States except Berlin (**Mecklenburg-Vorpommern**, **Brandenburg**, **Saxony**, **Saxony-Anhalt**, **Thuringia**) did not fully meet the quota allocated to them under the distribution key.

A study of the Federal Association for Unaccompanied Refugee Minors, published in December 2019, shows significant disparities between regions as far as reception conditions for unaccompanied children are concerned.⁴¹⁰ Around 1,100 persons working in youth welfare institutions and NGOs had participated in an online survey for this study. The authors of the report observe that reception conditions for unaccompanied children have generally improved in recent years due to a significant decrease in the number of newly arriving asylum seekers. Nevertheless, they also conclude that a good quality of accommodation and of other supportive measures for unaccompanied children is still not ensured in all parts of Germany. According to the authors, the data indicates that especially the Federal States of **Hamburg**, **Bremen** and **Berlin** have to undertake systematic efforts in this regard. Moreover, a major point of concern for them are municipalities where unaccompanied minors will primarily be housed in regular collective accommodation once they turn 18. This happens most frequently in the Federal States of **Bavaria**, **Thuringia**, **North Rhine-Westphalia** and **Brandenburg**. As an encouraging improvement, they point out that temporary housing (youth hostels, hotels, emergency shelters) have continued to decline in all forms of assistance and are now only very rarely used to accommodate young people.⁴¹¹

2. Reception of LGBTI persons

The situation of LGBTI persons in reception centres and other collective accommodation centres has been frequently discussed, after many reports had emerged about LGBTI persons being harassed and attacked by other asylum seekers. In several cities, authorities and/or NGOs have opened specialised accommodation centres for LGBTI persons.⁴¹² Regional guidelines for protection against violence in refugee accommodation centres regularly refer to LGBTI persons as a particularly vulnerable group.⁴¹³ Special protection measures should be taken following an individual assessment of the situation. For example, the guidelines for the Federal State of **North Rhine-Westphalia** state that vulnerable persons, such as pregnant women, single women, families and LGBTI persons should be given priority when (single) rooms are allocated in accommodation centres. Furthermore, LGBTI persons together with victims of trafficking and persons who have suffered from severe violence, are listed among persons for whom "other accommodation" (i.e. not in collective accommodation centres) can be necessary, again following an individual assessment of the situation.⁴¹⁴

⁴¹⁰ Federal Association for Unaccompanied Refugee Minors, *Die Situation unbegleiteter minderjähriger Flüchtlinge in Deutschland*, December 2019, available in German at: <https://bit.ly/3fePy32>.

⁴¹¹ Federal Association for Unaccompanied Refugee Minors, *Die Situation unbegleiteter minderjähriger Flüchtlinge in Deutschland*, December 2019, available in German at: <https://bit.ly/3fePy32>, 84.

⁴¹² 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>.

⁴¹³ 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>.

⁴¹⁴ Ministry of the Interior for North Rhine-Westphalia, Landesgewaltschutzkonzept für Flüchtlingsseinrichtungen des Landes Nordrhein-Westfalen, March 2017, available at: <https://bit.ly/2ul7CCQ>.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

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

“Within 15 days of the filing of an asylum application, the reception centre shall inform the foreigner, if possible in writing and in a language which he can reasonably be assumed to understand, of his rights and duties under the Asylum Seekers Benefits Act. With the information referred to in the first sentence, the reception centre shall also inform the foreigner about who is able to provide legal counsel and which organizations can advise him on accommodation and medical care.”⁴¹⁵

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

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.⁴¹⁶ 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.

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

G. Differential treatment of specific nationalities in reception

Asylum seekers from [Safe Countries of Origin](#) are subject to special reception conditions. Asylum seekers from these countries are obliged to stay in initial reception centres for the whole duration of their procedure. Since asylum seekers are barred from access to the labour market as long as they are obliged

⁴¹⁵ Section 47(4) Asylum Act.

⁴¹⁶ Section(9) Asylum Act.

to stay in an initial reception centre, these provisions also mean that these groups are effectively excluded from employment for the duration of their stay in these centres.

Moreover, given that the distribution of asylum seekers takes into account the capacities of the BAMF to process specific applications, people may be faced with different reception conditions due to their nationality. In Bavaria, for example, the AnKER centre of **Manching/Ingolstadt** accommodates nationals of Moldova, while nationals of Nigeria are usually accommodated in the *Dependancen* of **Garmisch** and **Munich Funkkaserne**, since their applications are processed by the BAMF in Munich. Moldovan asylum seekers are accommodated in the *Dependance* of **Schwandorf**, while Ethiopian nationals are accommodated in the **Regensburg Pionierkaserne Dependence**.⁴¹⁷

⁴¹⁷ 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 2019: | Not available |
| 2. Number of asylum seekers in detention at the end of 2019: | Not available |
| 3. Number of pre-removal detention centres: | 12 |
| 4. Total capacity of detention centres: | Around 600 |

Responsibility for detention, including detention pending deportation (*Abschiebungshaft*), lies with the Federal States. Available statistics on detention pending deportation do not contain information on the number of people who have applied for asylum while in detention.

Asylum seekers are generally not detained as long as their application is not finally rejected and as long as they have a permission to stay (*Aufenthaltsgestattung*). In cases of applications which have been rejected as inadmissible or manifestly unfounded, a deportation order may take effect regardless of legal remedy, unless a court grants an interim measure suspending such a deportation. However, if applicants are detained at this point, they do not have the legal status of asylum seekers, as the asylum seekers' permission to stay ceases to be valid once a deportation order becomes enforceable.⁴¹⁸ Accordingly, within the meaning of German law, detention is only ordered once an asylum application has been finally rejected. Therefore, detention pending deportation does not affect asylum seekers within the scope of the law.

However, it has to be noted that in Dublin cases asylum applications are rejected without any examination of the substance of the case and applicants are referred to another Member State to carry out their asylum procedure. Detention of asylum seekers therefore occurs in Dublin cases in order to prepare the transfer to the responsible Member State. More precisely, transfers are usually preceded by arrests and police custody, which usually lasts for a very short period of time since many people are transferred on the same day. In 2019, 8,423 persons were transferred following a Dublin procedure, compared to 9,209 in 2018 (see

⁴¹⁸ Section 67 Asylum Act.

Dublin).

Available statistics seem to confirm this assumption, as they indicate that the number of Dublin transfers preceded by detention is relatively low. For instance, in the Federal State of **Hessen**, 297 persons were detained in the detention facility of Darmstadt-Eberstadt between March 2018 and June 2019, but only 79 persons (26%) were detained on the basis of Article 28 of the Dublin Regulation.⁴¹⁹ Findings from a survey published in 2018 indicate a similar picture: The Federal State of **North Rhine-Westphalia** reported that 573 persons were held in its detention facility in Büren in the first half of 2018 for the purpose of deportation, out of whom only 173 persons (30%) were detained following a Dublin transfer order.⁴²⁰ In the Federal State of **Hamburg**, there were 101 persons in detention pending deportation in the first half of 2018, but only 12 Dublin detainees.⁴²¹ In the Federal State of **Lower Saxony**, between 1 January and 17 August 2018, only 29 persons had been detained prior to their Dublin transfer.⁴²² Since several Federal States do not distinguish between detention cases in Dublin procedures and detention based on other grounds, these figures do not necessarily represent the overall situation. Nevertheless, these statistics indicate that the majority of persons in detention pending deportation either have never applied for asylum or are no longer asylum seekers at the time of detention. They also suggest that only a comparatively small number of Dublin transfers (8,423 in 2019) is preceded by detention.

One exception is the situation at the German-Austrian border, where detention orders seem to be issued frequently by the Federal Police, including in Dublin cases. The only available figures were collected for the period between February and July 2017. During that period, the Federal Police requested courts to issue 364 detention orders in Dublin cases, of which 344 were eventually issued by the courts.⁴²³ Another indicator is the number of Dublin transfers which were carried out without the concerned persons having applied for asylum in Germany. In 2019, 550 of such transfers took place.⁴²⁴ These cases were probably managed by the Federal Police, but it is not clear how many persons were detained prior to their transfer or if these transfers were carried out immediately after a short-term arrest.

Moreover, the number of deportations from Germany (i.e. returns and/or Dublin transfers) has remained relatively stable in recent years:

| Number of deportations: 2015-2019 | | | | |
|-----------------------------------|--------|--------|--------|--------|
| 2015 | 2016 | 2017 | 2018 | 2019 |
| 20,888 | 25,375 | 23,966 | 26,114 | 22,097 |

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.

In the first three months of 2020, 4,088 people were deported from Germany to their countries of origin or other European countries under the Dublin Regulation, most of them to Italy, France, Serbia, Albania and Georgia according to a response from the Federal Ministry of the Interior to a parliamentary information request.⁴²⁵ This marks a decrease compared to the same period of last year, when 5,613 deportations were carried out, which mainly results from the stop of deportations due to health measures related to the corona virus pandemic.

Nevertheless, an alleged “enforcement deficit” had become the subject of a heated political debate and a “media obsession” in 2018, as the authorities were being criticised for their failure to carry out

⁴¹⁹ Government of the Federal State of Hesse, Response to information request by The Left, 20/773, 16 September 2019, available at <https://bit.ly/2VSjyJJ>, 2.

⁴²⁰ Federal Government, Reply to parliamentary question by The Left, 19/5817, 16 November 2018, 7 and 10.

⁴²¹ *Ibid*, 15 and 17.

⁴²² *Ibid*, 12.

⁴²³ Federal Government, Reply to parliamentary question by The Left, 19/273, 14 December 2017, 27.

⁴²⁴ Federal Government, Reply to parliamentary question by The Left, 19/17100, 29 February 2020, 33.

⁴²⁵ Federal Government, *Response to an oral question submitted by Ulla Jelpke, MP (The Left), Question no. 5/66*, 6 May 2020.

deportations.⁴²⁶ Statistics in 2018 indicated that only 26,114 out of 57,000 deportations were effectively carried out.⁴²⁷ More detailed figures were published for 2019: according to the Government's statistics, 32,482 scheduled deportations did not take place for a variety of reasons. The most prominent reasons were as follows:

| Failed deportations in focus: 2019 | | |
|-----------------------------------------------------------------------------------------------------------------------------|--------------|------------------|
| Reasons for cancellation or abandonment of deportation measures | Deportations | Dublin transfers |
| Revocation of deportation order by local authorities (before persons to be deported were handed over to the Federal Police) | 7,424 | 9,975 |
| Failure by local authorities to hand over persons to be deported to the Federal Police (reasons unknown) | 4,561 | 6,446 |
| Resistance of persons to be deported | 351 | 1,341 |
| Refusal of pilots or other flight personnel to transport the person to be deported | 211 | 385 |
| Refusal of Federal Police to take over persons to be deported from local authorities | 132 | 305 |
| Cancellation of flights (for technical reasons, strikes etc.) | 282 | 80 |
| Medical concerns | 71 | 64 |
| Legal actions (appeals or interim measures) | 92 | 13 |
| (Attempted) suicides or self-harm | 15 | 14 |
| Refusal by receiving states to accept deported persons | 13 | 3 |

Source: Federal Government, Reply to parliamentary question by The Left, 19/18201, 19 March 2020, 29-37.

The above statistics show that in the overwhelming majority of cases, the reasons for the failure of deportations can be found at the level of local authorities, although it is not clear which exact circumstances led to the cancellation of deportation 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 deportation attempts (such as medical reasons, organisational problems etc.). It is also likely that persons can simply not be found on the date of the scheduled deportations, due to them staying at another place rather than because they are deliberately avoiding to be arrested.⁴²⁸ Nevertheless, despite the lack of empirical evidence, the comparatively high number of cancellations of deportation attempts is usually associated with the absconding of the persons concerned.

Against this background of an alleged “enforcement deficit”, requests for a more frequent use of detention pending deportation were introduced into the political debate, subsequently resulting in a 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).

⁴²⁶ Deutsche Welle, How do deportations work in Germany?, 16 July 2018, available at: <https://bit.ly/2Hhh3uM>.
⁴²⁷ Deutsche Welle, ‘More than half of deportees go missing’, 15 July 2018, available at: <https://bit.ly/2unuSQS>; Spiegel, ‘Mehr als die Hälfte aller Abschiebungen 2018 gescheitert’, 24 February 2019, available in German at <https://bit.ly/2tDb5we>.

⁴²⁸ Brief analysis of Dr. Thomas Hohlfeld (assistant to the parliamentary group of The Left) of the Federal Government's reply 19/17100, 20 March 2020, 5.

- It is now expressly regulated in the law that authorities carrying out a deportation are entitled to arrest the person concerned. Thus, this short-term custody (*Festhalten*) is now legally distinguished from “detention” and is not subject to a court order. It has to be limited to the “inevitable” period of time which is necessary to transport the persons to be deported to the airport or to a border control point (Section 58 IV Residence Act). This new provision creates a legal basis for what has already been common practice.
- The grounds for detention pending deportation 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 allows for the execution of detention pending deportation in regular prisons (with certain reservations and limited to a transition period until June 2022), but this new regulation did not have any immediate impact.

In spite of the sometimes-heated political debate and the new legislation, specialised pre-removal detention facilities existed only in eight Federal States in 2019 (see [Place of detention](#)).⁴²⁹ The capacity of these detention facilities was still relatively low at the end of 2019 and did not increase significantly in recent years. The high number of deportations and the comparably low capacity of pre-removal detention facilities indicate that the vast majority of deportations and Dublin transfers are carried out within a few hours or during the same day. This enables the authorities to put persons who are obliged to leave the country in short-term custody and no formal detention order has to be issued by a court.

If an asylum application is lodged after a person has been taken into detention pending deportation, this does not necessarily lead to a release and detention may be upheld for a period of 4 weeks (see [Grounds for Detention](#)). The personal interview may take place in detention during that period. There are no special rules applicable for an interview in detention and the asylum applicants have the same rights and obligations as any other interview carried out in a branch office of the BAMF. All interviews with detained applicants are conducted by the BAMF in person.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained

| | | |
|---------------------|------------------------------|----------------------------------------|
| ❖ on the territory: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ at the border: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
2. Are asylum seekers detained in practice during the Dublin procedure?

| | | |
|-------------------------------------|--------------------------------------------|--------------------------------|
| <input type="checkbox"/> Frequently | <input checked="" type="checkbox"/> Rarely | <input type="checkbox"/> Never |
|-------------------------------------|--------------------------------------------|--------------------------------|
3. Are asylum seekers detained during a regular procedure in practice?

| | | |
|-------------------------------------|---------------------------------|-------------------------------------------|
| <input type="checkbox"/> Frequently | <input type="checkbox"/> Rarely | <input checked="" type="checkbox"/> Never |
|-------------------------------------|---------------------------------|-------------------------------------------|

According to the law, there is only one basis for the detention of asylum seekers whose application is still pending. This relates to asylum applications which are lodged by people who are already in detention, in particular those:

- In pre-trial detention;
- In prison (following a conviction for a criminal or other offence); or
- In detention pending deportation (*Abschiebungshaft*).

⁴²⁹ Stefan Keßler, *Abschiebungshaft*, socialnet.de, 14 January 2019, available in German at: <https://bit.ly/2TiNCji>.

An asylum application lodged after a foreigner has been detained for the purpose of removal does not always lead to release from detention, as detention is legally possible under certain circumstances. However, it has to be noted that detention pending deportation, ordered solely on the grounds of illegal border crossing, is in itself not a sufficient reason to uphold such detention in case that an asylum application has been lodged. In addition, the authorities have to prove that there are further reasons for the prolongation of detention, such as a risk of absconding or an illegal stay for a duration of one month.

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.⁴³⁰

1.1. Pre-removal detention (*Abschiebungshaft*)

The German Constitution provides that detention may only be ordered by a judge. The responsible authorities may only take a person into custody if there is reason to believe that this person is trying to abscond in order to avoid deportation and if a judge cannot be requested to issue a detention order beforehand. In such cases, the detention order has to be subsequently obtained from a court as soon as possible.

A judge may issue a detention order as “preparation of detention” (*Vorbereitungshaft*) in cases of persons who have been expelled (usually following a criminal conviction) and in cases of persons who have been given a deportation order on the grounds that they pose a risk to national security.⁴³¹ In most cases, however, a detention order is issued for the purpose of “safeguarding the deportation” (*Sicherungshaft*). This type of detention is defined in Section 62(3) of the Residence Act. This provision has undergone a major amendment in August 2019 as part of the so-called Second Act for an improved enforcement of the obligation to leave the country (*Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht*, also known as the “Orderly Return Act”/*Geordnete-Rückkehr-Gesetz*). Section 62(3) of the Residence Act now states that a foreigner shall be placed in detention pending deportation “if:⁴³²

- there is a risk of absconding;
- the foreigner is required to leave the country on account that he/she entered the territory unlawfully;
- a deportation order has been issued pursuant to Section 58a [against persons who have been expelled or who have been found to pose a risk to national security] but is not immediately enforceable”.

Risk of absconding

With the 2019 amendments, two new sub-paragraphs 62(3a) and 62(3b) Residence Act were introduced which contain an extensive definition of the grounds which may lead to the assumption of the **risk of absconding** (*Fluchtgefahr*). According to section 62(3a) a risk of absconding is to be assumed (as a refutable assumption), if⁴³³

1. the foreigner is providing the authorities with misleading information about his or her identity or has done so in connection with the planned deportation or with possible impediments to deportation and has not corrected false information on his/her own initiative, in particular by withholding or destroying documents or by claiming a false identity;
2. the foreigner has been asked to remain at the disposal of the authorities at a certain place in

⁴³⁰ Section 14(3) Asylum Act.

⁴³¹ Section 62(2) Residence Act.

⁴³² Unofficial translation by the author, with minor abridgements.

⁴³³ Unofficial translation by the author, with abridgements.

order to carry out an official hearing or a medical examination and has not been present at this place without good reason;

3. the deadline set for leaving the country has expired and the foreigner has changed his or her place of residence without notifying the foreigners' authority of an address at which he or she can be reached, in spite of having been informed about his/her obligation to do so;

4. the foreigner has been banned from (re-)entering Germany and has not been granted an exceptional permission to enter Germany in spite of such a ban;

5. the foreigner has avoided deportation in the past;

6. the foreigner has expressly declared that he or she will resist deportation.

Section 62(3b) of the Residence Act then defines 'specific indications' for a risk of absconding as follows:

1. The foreigner has provided the authorities with misleading information about his or her identity in a manner which might result in an impediment to deportation and has not corrected this piece of information on his/her own initiative, in particular by withholding or destroying documents or by claiming a false identity;

2. the foreigner has paid substantial amounts of money, in particular to a third person [a smuggler or a trafficker] and it can be concluded under the individual circumstances that he or she will resist deportation, because otherwise his or her expenditures would have been of no avail;

3. the foreigner poses a significant risk to life and limb of third persons or to "significant legal interests of national security";

4. the foreigner has been sentenced repeatedly to at least one prison term for intentional criminal offenses;

5. the foreigner has failed to obtain a passport or has refused or omitted to cooperate with authorities to fulfil other legal requirements for the clarification of his/her identity. The foreigner must have been informed in advance about the possibility of detention in case he or she did not comply with the aforementioned obligations;

6. the foreigner has repeatedly failed to comply with an obligation imposed by the authorities to take up residence in a particular region or place [residence obligation] or with other obligations imposed by the authorities to safeguard and enforce the deportation order;

7. a foreigner who has entered the country legally but is now obliged to leave, cannot be apprehended by the authorities, because he or she does not have a place of residence at which he or she is predominantly staying.

It has been noted that the relationship of the newly introduced sub-paragraphs 62(3a) and 62(3b) Residence Act is not entirely clear.⁴³⁴ The Explanatory Memorandum to the new Act states that the "indications" listed in Section 62(3b) aim to define the more concrete grounds, whereas the "assumptions" listed in Section 62(3a) "allow for a more reliable prognosis" on whether a person is trying to avoid deportation.⁴³⁵ 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

⁴³⁴ 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).

⁴³⁵ Explanatory memorandum to draft bill, Parliamentary document 19/10047, 10 May 2019, 39.

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 deportation. 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.⁴³⁶

Detention in the context of the Dublin procedure

Section 2(14) of the Residence Act further contains special provisions for **detention in the course of Dublin procedures** (also referred to as *Überstellungsgewahrsam*/transfer detention). As a general rule, this section provides that most of the grounds for detention referred to above have to be regarded in the context of this provision as well: thus, the grounds listed in Section 62(3a) of the Residence Act shall apply accordingly to constitute a “refutable assumption for a risk of absconding within the meaning of Article 2 of the Dublin III Regulation.” The grounds listed in Section 62 (3b) No. 1-5 of the Residence Act shall be regarded as objective criteria for a risk of absconding within the meaning of Article 2(n) of the Dublin III Regulation.

With the general reference to the “risk of absconding” as defined in Section 62, the expansion of possible grounds for detention is now applicable to the transfer detention in Dublin cases as well. NGOs have raised doubts as regards the compliance of this provision with the Dublin III Regulation.⁴³⁷ According to the latter, Member States may detain the person concerned only if there is a significant risk of absconding and on the basis of an individual assessment (Article 28 II of the Dublin III Regulation). In contrast, German law now lists numerous grounds for detention, some of which are vaguely worded thus raising the question as to whether they constitute significant reasons to assume a risk of absconding.

In addition, Section 2(14) of the Residence Act defines two other criteria for a “risk of absconding”:

1. An asylum seeker has left another Dublin Member State before his or her asylum procedure (or Dublin procedure) had been concluded in this state and if there is no indication that he or she is going to return to the responsible Member State in the near future.
2. An asylum seeker has repeatedly applied for asylum in another Dublin Member State (or several other Dublin Member States) and has left this state before the asylum procedure had been concluded.⁴³⁸

Through the introduction of another amendment in 2019, which is similar to an existing provision on detention pending deportation, the authorities are now expressly given the competence to temporarily detain people if there is a risk of absconding and if a court order cannot be obtained immediately. This can be regarded as providing a legal basis for what has been common practice. In these cases, authorities have to present the case to a court as soon as possible (Section 2 XIV 4th sentence of the Residence Act).

⁴³⁶ PRO ASYL, *Stellungnahme zum Entwurf eines Zweiten Gesetzes zur besseren Durchsetzung der Ausreisepflicht (BT-Drucksache 19/10047)*, 29 May 2019, available in German at <https://bit.ly/2WqrSIt>, 16.

⁴³⁷ *Ibid.*, 5.

⁴³⁸ PRO ASYL, *Stellungnahme zum Entwurf eines Zweiten Gesetzes zur besseren Durchsetzung der Ausreisepflicht (BT-Drucksache 19/10047)*, 29 May 2019, available in German at <https://bit.ly/2WqrSIt>, 5.

1.2. Custody pending departure (*Ausreisegewahrsam*)

According to the Section 62b of the Residence Act, “custody pending departure” can be carried out in the transit zones of airports or in other facilities “from where a direct departure is possible without having to cross a long distance to reach a border crossing point”.⁴³⁹ This form of detention is limited to a period of 10 days and shall apply in cases in which a deadline for leaving the country has expired and in which an immediate deportation (i.e. a deportation 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 deportation 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 deportation measures, if:

1. he or she violated his or her legal obligations to cooperate;
2. he or she misled the authorities on his or her identity or nationality;
3. he or she has been convicted of intentionally committing a criminal offence (with the exception of offences which are subject to a fine of up to 50 daily rates)
4. he or she has exceeded the deadline allowed for voluntary departure by more than 30 days.”

Custody pending departure is subject to the same rules as the regular pre-removal detention procedure. A court order is therefore necessary and the detention can only be carried out in specialised facilities.⁴⁴⁰ In 2019, custody pending departure has only been carried out in a few places (**Dresden/Saxony**, **Hamburg**, **Hannover-Langenhagen/Lower Saxony** and in a new facility at the airport of **Berlin-Schönefeld**, which is located on the territory of **Brandenburg**).⁴⁴¹

1.3. Detention to enforce cooperation (*Mitwirkungshaft*)

The amendments introduced in 2019 through the “Orderly Return Act” (*Geordnete-Rückkehr-Gesetz*) have also established a new ground of detention to “enforce cooperation” with authorities (*Mitwirkungshaft*, Section 62 (6) Residence Act). This form of detention may only be applied in the following cases:

- Failure to appear in person at the diplomatic mission or at a meeting with authorised officials of the foreigner’s assumed state of origin;
- Failure to appear in person for a medical examination for the purpose to establishing the foreigner’s ability to travel.

The maximum period foreseen for this detention ground is 14 days and is subject to a court order, which means that the authorities may not carry out short-term arrests on the basis of this provision. There was no information or case-law available as to whether this ground for detention was implemented since it entered into force in August 2019. In January 2020 media reports seemed to suggest that the new “detention to enforce cooperation” had not been used yet,⁴⁴² 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

⁴³⁹ Section 62b(2) Residence Act.

⁴⁴⁰ Section 62b(3) Residence Act.

⁴⁴¹ Initiative 100 Jahre Abschiebehaft, Berlin-Schönefeld (Brandenburg), available in German at: <https://bit.ly/3aa9Ze4>.

⁴⁴² br.de,Bericht: „Kein Bundesland nutzt “Geordnete-Rückkehr-Gesetz”, 3. January 2020.

procedure, according to the Federal Constitutional Court, being held at the transit zone is not considered as detention in terms of the law.⁴⁴³

In practice, the applicant receives a decision of placement in the facility. For example, persons placed in the detention centre of **Munich Airport** receive a “notification of residence in the airport facility” (*Bescheinigung für den Aufenthalt in der Flughafenunterkunft*) for the purpose of the airport procedure under Section 18a of the Asylum Act. This notification expressly states that this form of residence is not a freedom-restrictive measure. The fiction of non-entry into the territory is maintained, even if the person has been transferred to a hospital or to court. Police officers have to escort the person wherever he or she goes outside the facility for the fiction to be maintained.⁴⁴⁴

⁴⁴³ 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>.

⁴⁴⁴ 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 deportation is not permissible if the purpose of the detention can be achieved by other, less severe but equally sufficient means. The detention shall be limited to the shortest possible duration. Minors and families with minors may be taken into detention awaiting deportation only in exceptional cases and only for as long as it is adequate considering the well-being of the child.”⁴⁴⁵

In spite of this provision, lawyers and NGOs have frequently criticised that detention pending deportation is imposed by the responsible local courts “too often and too easily” and a high number of detention orders were overturned by higher courts upon appeal.⁴⁴⁶ In court decisions, alternatives to detention are rarely discussed.⁴⁴⁷

Furthermore, the “geographical restriction” which normally applies to asylum seekers for a period of 3 months, can be re-imposed if “concrete measures to end the foreigner’s stay are imminent” (see [Freedom of Movement](#)).⁴⁴⁸ 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.⁴⁴⁹ In particular, these sanctions may consist of reporting duties, but also of an obligation to consult a counselling service for returnees.⁴⁵⁰ Passports of foreigners obliged to leave the country can be confiscated.⁴⁵¹ The authorities may also ask foreigners who are obliged to leave the country to deposit a security to cover the costs of a possible deportation.⁴⁵² However, the law does not allow for security deposits which may be used as bail and confiscated in cases of “absconding”.⁴⁵³

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.⁴⁵⁴

⁴⁴⁵ Section 62(1) Residence Act.

⁴⁴⁶ Die Rechtsberaterkonferenz, *50 Forderungen zum Flüchtlings-, Aufenthalts-, Staatsangehörigkeits- und Sozialrecht*, November 2017, available in German at: <http://bit.ly/2HOWd2J>, 32-34. See also preliminary remark of parliamentary group of The Left in Federal Government, Reply to parliamentary question by The Left, 19/5817, 16 November 2018, 2; See also the statistics of the pilot project of the Refugee Council of Lower Saxony at [Judicial Review of the Detention Order](#).

⁴⁴⁷ Stefan Keßler, *Abschiebungshaft*, socialnet.de, 14 January 2019, available in German at: <https://bit.ly/2TiNCji>.

⁴⁴⁸ Section 61(1)(c) Residence Act.

⁴⁴⁹ Section 61(1)(e) Residence Act.

⁴⁵⁰ Section 46(1) General Administrative Regulations relating to the Residence Act.

⁴⁵¹ Section 50(5) Residence Act.

⁴⁵² Section 66(5) Residence Act.

⁴⁵³ Ministry of the Interior of the Federal State of Schleswig-Holstein, *Interministerielle Arbeitsgruppe (IMAG) "Alternative Abschiebungshaft"* (Report of a working group “alternative detention pending deportation”), 25 March 2014, 5.

⁴⁵⁴ 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 (*Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht*, also known as the “Orderly Return Act”/*Geordnete-Rückkehr-Gesetz*). Persons who are issued this document have to fulfil several obligations which are summarised in section 60b of the Residence Act and which include *inter alia*:

- Obligation to cooperate with German authorities and with authorities from the country of origin in measures aimed at obtaining a passport;
- obligation to make a declaration according to which the foreigner is prepared to leave Germany voluntarily, if the issuing of a travel document is dependent on such a declaration;
- obligation to make a declaration according to which the foreigner is prepared to perform military service in the country of origin, if the issuing of a travel document is dependent on such a declaration;
- obligation to pay fees for the issuing of travel documents.

Persons affected by this provision shall only be issued the “tolerated stay for persons with undetermined identity” until they adhere with the obligations referred to above. In general, the main legal consequences of this new kind of tolerated stay are:

- reduced social benefits (benefits according to Section 1a of the Asylum Seekers’ Benefits Act);
- obligation to reside in a place assigned by the authorities (*Wohnsitzauflage* according to Section 61 (1d) of the Residence Act);
- no right to work;
- no possibility to consolidate the stay, i.e. obtain a residence permit.

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.⁴⁵⁵ The latter category may also include Dublin cases, but these are less significant in this context than it is in the context of deportation 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.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

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

According to German law, minors and members of other vulnerable groups must not be detained while they have the status of asylum applicants. However, asylum seekers may lose this status as a result of a Dublin procedure and hence be detained for the purpose of a Dublin transfer (see section on [Grounds for Detention](#)).

⁴⁵⁵ 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,

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

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

In 2019, 3,806 minors (under 18 years) were deported to third countries and 1,489 minors were transferred to another state under the Dublin Regulation.⁴⁵⁶ These measures usually involve that children are taken into custody for a few hours on the day the transfer takes place. Furthermore, 1,337 minors were returned to neighbouring countries after being refused entry on the territory, out of which 222 were registered as unaccompanied minors.⁴⁵⁷ 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. By way of illustration, the regional government of the Federal State of **Hesse** informed the Parliament that detention of minors for the purpose of deportations was “excluded”.⁴⁵⁸

Other available information on the matter refer to the period between 2015 and the first half of 2018. In response to a parliamentary question, most Federal States reported that, during that period, they did not detain children as a matter of principle. According to these statistics, no children were thus detained during this period. 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.⁴⁵⁹ As regards the reported cases of minors being detained in the State of **Lower Saxony**, it turned out to be an error, according to the regional government.⁴⁶⁰ It is important to note, however, that statistics on detention of minors have not been made available by all Federal States in response to the request referred to here.

In practice, however, detention of (possible) minors may occur in cases in which the age of the persons concerned is uncertain or disputed. The Refugee Council of **Lower Saxony** highlighted a case of an unaccompanied minor who had been detained by way of judicial order in the detention facility of **Hannover-Langenhagen** immediately after he had arrived from the Netherlands in February 2020. Detention was ordered by a judge despite the fact that the police had recorded his statement that he was 16 years old. An age assessment which took place in the detention centre later on came to the conclusion that it could not be excluded that the person concerned was younger than 18. As a result, the detention order had apparently been in breach of a directive from the Federal State which stipulates that minors should not be held in detention pending deportation as a matter of principle.⁴⁶¹

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.⁴⁶²

⁴⁵⁶ Federal Government, Reply to parliamentary question by The Left, 19/18201, 19 March 2020, 13-14.

⁴⁵⁷ Federal Government, Reply to parliamentary question by The Left, 19/18201, 19 March 2020, 17.

⁴⁵⁸ 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.

⁴⁵⁹ Federal Government, Reply to parliamentary question by The Left, 19/5817, 16 November 2018, 14-15,

⁴⁶⁰ Neue Osnabrücker Zeitung, „Ministry reports false numbers on detention pending deportation“, 29 November 2018, available in German at: <https://bit.ly/2VDXpx5>.

⁴⁶¹ 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>.

⁴⁶² ze.tt, „Eingesperrt ohne Straftat: So sind die Bedingungen in einem Abschiebegefängnis“, 14 December 2019, available in German at <https://bit.ly/2T0KZ3g>.

A few Federal States have regulations in place for the detention of other vulnerable groups (such as elderly persons, persons with disabilities, nursing mothers, single parents), but most do not have any special provisions for these groups and detain them in practice. The same applies to *de facto* detention at airport detention facilities, which is applied *inter alia* to pregnant women, victims of torture and persons with medical conditions.

4. Duration of detention

Indicators: Duration of Detention

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

The maximum duration of pre-removal detention (*Abschiebungshaft*) is 6 months, subject to a possibility of extension to a total of 18 months if the person hinders removal.⁴⁶³

The maximum time limit for the duration of the custody pending departure (*Ausreisegewahrsam*) is 10 days.⁴⁶⁴

In the detention facility of Darmstadt-Eberstadt (Federal State of **Hesse/Hessen**), 297 persons were detained for an average duration of 24 days between March 2018 and June 2019. The length of detention ranged from 1 to 145 days.⁴⁶⁵ More detailed statistics on duration of detention are only available for 2018: Federal States provided the following data for the first half of 2018 in response to a parliamentary request:⁴⁶⁶

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

⁴⁶³ Section 62(4) Residence Act.

⁴⁶⁴ Section 62b(1) Residence Act, as amended by the Law of 20 July 2017.

⁴⁶⁵ Government of the Federal State of Hesse, response to information request by Die Linke, 20/773, 16 September 2019, available at <https://bit.ly/2VSjyJJ>, 2.

⁴⁶⁶ Federal Government, Response to parliamentary question by The Left, 19/5817, 16 November 2018, 52-58.

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

It has to be noted that figures were not made available by all Federal States and are not necessarily comprehensive (e.g. some states did not submit any statistics on detention between 3 to 6 months). The figures are further not always in line with available data on the number of detainees reported elsewhere in the same parliamentary response.⁴⁶⁷ Nevertheless, they show that detention for a period of less than six weeks seems to be the rule, while cases of detention lasting longer than 6 months seem to be exceptional and were only recorded in the Federal State of **North Rhine-Westphalia** at the time.

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 deportation 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,⁴⁶⁸ most Federal States which did not have specialised facilities before have announced that the necessary institutions would be established; deportees were sent to facilities in other Federal States in the meantime.

Until August 2019, the use of specialised detention facilities for pre-removal detention was also prescribed by law. However, the relevant provision of Section 62a (1) of the Residence Act was amended as part of the so-called "Orderly Return Act".⁴⁶⁹ Since then, the first sentence of this provision reads:

Persons in detention pending deportation have to be accommodated separately from prisoners [*Strafgefangene*, i.e. persons detained in the penal system].

This means that detention pending deportation can also be carried out in regular prisons. This provision is in effect until June 2022, since the "Orderly Return Act" foresees that from 1 July 2022 the wording of the provision will again be: "As a rule, detention pending deportation is to be carried out in specialised detention facilities."⁴⁷⁰

In the Explanatory Memorandum to the Orderly Return Act, the government states that the new provision shall enable the Federal States to create up to 500 additional places for the purpose of detention pending deportation. The stated reason is an alleged acute shortage of such places in the light of a high number of third-country-nationals who are obliged to leave the country. In light of this situation, the government

⁴⁶⁷ Information on number of detainees in the first half of 2018 deviates, for example, for the Federal States of Bavaria, Lower Saxony and Rhineland-Palatinate.

⁴⁶⁸ CJEU, Joined Cases C-473/13 and C-514/13 *Bero v Regierungspraesidium Kassel & Bouzalmane v Kreisverwaltung Kleve*, Judgment of 17 July 2014.

⁴⁶⁹ 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*.

⁴⁷⁰ Article 6 of the "Second Act for an improved enforcement of the obligation to leave the country".

also claims that the new provision is in line with European legislation, namely Article 18(1) of the Return Directive which allows for a derogation from the standards for conditions of detention in emergency situations.⁴⁷¹

Critics and serious doubts have been raised as to whether Germany is currently facing such an emergency situation. Even if a rising number of persons in detention pending deportation 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.⁴⁷²

In any case, the new provision does not seem to have had any immediate effect. According to a media report published in January 2020, no Federal State has made use of the possibility to carry out detention pending deportation in regular prisons until the end of 2019. Moreover, most Federal States have made it clear that they did not intend to make use of the provision in the future. Some Federal States had pointed out that regular prisons do not have the capacity to accommodate other detainees. Only two Federal States (**Mecklenburg-Western Pomerania** and **Saxony-Anhalt**) were “discussing” whether or not to apply the provision while other States have raised doubts as regards its compliance with European law.⁴⁷³

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 deportation will be separated from the other buildings by a wall and it will be separately accessible from the outside. Completion of the new facility is scheduled for the end of 2022 at the earliest.⁴⁷⁴

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. **Darmstadt-Eberstadt** in Hesse.

At the end of 2019, facilities for detention pending deportation existed in nine Federal States:

| Pre-removal detention facilities in Germany: 2019 | | |
|---------------------------------------------------|-----------------------------|------------------|
| Federal State | Location | Maximum capacity |
| Baden-Württemberg | Pforzheim | 51 |
| Bavaria | Eichstätt | 96 |
| | Erding | 35 |
| | Munich Airport (“Hangar 3”) | 30 |
| Bremen | Bremen | 13 |
| Hamburg | Hamburg Airport | 20 |
| Hesse | Darmstadt-Eberstadt | 20 |
| | Frankfurt Airport | |
| Lower Saxony | Hannover (Langenhagen) | 68 |
| North Rhine-Westphalia | Büren | 175 |
| Rhineland-Palatinate | Ingelheim am Rhein | 32 |
| Saxony | Dresden | 58 |

⁴⁷¹ 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.

⁴⁷² 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).

⁴⁷³ Spiegel Online, ‘Seehofers Abschiebe-Maßnahme verpufft’, 3 January 2020, available in German at: <https://bit.ly/2LlOf54>.

⁴⁷⁴ Passauer Neue Presse, ‘JVA Passau wird mit Neubau eigenständig’, 3 August 2018, available in German at: <https://bit.ly/3cG3bH6>.

| | | |
|--------------|-----------|------------|
| Total | 12 | 598 |
|--------------|-----------|------------|

Source: Stefan Keßler, Abschiebungshaft, socialnet.de, 14 January 2019, available in German at: <https://bit.ly/2TiNCji> and Federal Government, response to parliamentary request by FDP, 19/11676, 16 July 2019, available in German at: <https://bit.ly/2xSS26T>, 16.

The detention facility at Eisenhüttenstadt in the Federal State of **Brandenburg** was temporarily closed in March 2017 following a report by regulatory authorities which found various structural defects affecting fire safety and other security measures. The facility had not been reopened at the end of 2019. The Federal State of **Saxony-Anhalt** has announced that a former prison in Dessau-Roßlau will be converted into a detention facility, but it is considered unlikely that this facility will be opened before the end of 2020.⁴⁷⁵ Further pre-removal detention facilities are under construction in **Bavaria** in the towns of Hof (extension of prison, opening scheduled for 2021)⁴⁷⁶ and Passau (new facility functioning both as a prison and a pre-removal detention facility, opening scheduled for 2022).⁴⁷⁷ Another facility is expected to open in **Schleswig-Holstein** (Glückstadt) in 2020.⁴⁷⁸ This detention facility is to be commonly used by the Federal States of Schleswig-Holstein, Hamburg and Mecklenburg-Western Pomerania. The Federal States of **Thuringia** and **Berlin** do not intend to build facilities of their own and only make use of detention facilities in other Federal States.⁴⁷⁹

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.

As regards custody pending deportation under Section 62b of the Residence Act (*Ausreisegewahrsam*), the pre-removal detention facilities in **Dresden**, **Hamburg** and **Hannover-Langenhagen** are used for that purpose.⁴⁸⁰ In July 2019 the Federal State of **Brandenburg** opened a short-term detention facility (only for the purpose of the *Ausreisegewahrsam* under Section 62b, and reportedly limited to a maximum stay of 48 hours) at the airport of Berlin-Schönefeld, which is located on the territory of Brandenburg.⁴⁸¹ According to the Berlin Refugee Council the Federal State of **Berlin** may also use the facility at Schönefeld airport for short-term detention.⁴⁸²

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.⁴⁸³

⁴⁷⁵ mdr.de, ‘Eröffnungstermin für Dessauer Abschiebegefängnis unklar’, 18 June 2019, available in German at: <https://bit.ly/2VszTV9>.

⁴⁷⁶ jvb-bayern.de, ‘Abschiebungshaft - Erweiterung der Justizvollzugsanstalt Hof’, 10 December 2019, available in German at: <https://bit.ly/2XzxavH>.

⁴⁷⁷ Passauer Neue Presse, ‘JVA Passau wird mit Neubau eigenständig’, 3 August 2018, available at: <https://bit.ly/3a7b06l>.

⁴⁷⁸ ndr.de, Abschiebehaft in Glückstadt ist beschlossene Sache, 21 June 2019, available in German at: <https://bit.ly/2RC8XRG>.

⁴⁷⁹ welt.de, ‘Die Kapazität genügt nicht dem tatsächlichen Bedarf’, 7 October 2019, available in German at <https://bit.ly/2Z2nPNQ>.

⁴⁸⁰ Stefan Keßler, *Abschiebungshaft*, socialnet.de, 14 January 2019, available in German at: <https://bit.ly/2TiNCji>.

⁴⁸¹ Initiative 100 Jahre Abschiebehaft, Berlin-Schönefeld (Brandenburg), available in German at: <https://bit.ly/3aa9Ze4>.

⁴⁸² Flüchtlingsrat Berlin, 100 Jahre Abschiebehaft – 100 Jahre Haft ohne Straftat, 8 May 2019, available in German at: <https://bit.ly/2RScKuz>.

⁴⁸³ ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

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

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

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---------------------------------------------------------|-----------------------------------------|----------------------------------------|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it limited to emergency health care? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

National law only provides basic rules for detention centres. As a result, conditions differ very much throughout the country.⁴⁸⁴ The Federal States are responsible for the organisation of these detention facilities.

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

As facilities vary greatly in terms of size and equipment, it is not possible to describe the overall conditions in the detention centres. The paragraphs below describe the situation of a few institutions only and do not claim to provide a comprehensive overview of the detention conditions in Germany. 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 deportation), a website run by activists campaigning for the general abolishment of detention pending deportation:

Darmstadt-Eberstadt, Hesse: The facility was opened at the beginning of 2018. Right before the facility started operating, the State Parliament passed a law which sets out some basic principles for the facility.⁴⁸⁵ These include the following: (a) Detainees are allowed to move freely within the facility during the day and they shall have access to open-air spaces. Restrictions of movement shall be possible only to uphold security and order in the facility; (b) The facility shall make all possible efforts to provide rooms and opportunities for spare time activities and also for work (which should be remunerated).

The Regional Government of the State of Hesse gave the following details in response to a parliamentary information request in September 2019:⁴⁸⁶

- Detainees are allowed at least two hours of yard exercise (one hour in the morning and one in the afternoon).
- Other activities include: Games and reading, manufacturing prayer mats, common prayer, cooking and common meals; most detainees only participate in the common prayer and in the

⁴⁸⁴ Jesuit Refugee Service, *Detention in Europe: Germany*, available at: www.detention-in-europe.org.

⁴⁸⁵ Official Gazette for the Federal State of Hesse, Gesetz über den Vollzug ausländerrechtlicher Freiheitsentziehungsmaßnahmen (VaFG), 18 December 2017, available at: <https://bit.ly/2Cael74>.

⁴⁸⁶ 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>, 4-6.

subsequent communal meals; apart from common cooking activities, detainees are not allowed to prepare their own meals;

- Work opportunities are limited to simple jobs such as cleaning of common rooms, distribution of fresh clothes;
- Detainees are provided pocket money amounting to €20 per week, every two weeks they can order products such as (additional) food and beverage, hygiene products and magazines; within the facility cigarettes and tobacco can be bought; other products, in particular pre-paid phone cards are only available upon application;
- Meals without pork and vegetarian meals are provided; tea and coffee can be made at any time;
- One social worker is available for every 20 persons; communication with the social services and with medical staff usually takes place with the help of translation devices or staff members who serve as interpreters; interpreters from outside the facility can be drawn upon if necessary.

In June 2018, local activists accused the staff of the facility of brutality against detainees. They claimed that “ill-treatment, restraining of detainees and incommunicado detention” were “commonplace” at the facility. Authorities rejected these allegations and claimed that isolated incidents had been generalised and exaggerated by local activists. According to a police spokeswoman, physical violence had only been used in one case when a baton and pepper spray were employed to restrain a detainee.⁴⁸⁷

In a newspaper report of January 2020, local activists are quoted in the report as referring 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.⁴⁸⁸

Büren, North Rhine-Westphalia: In January 2018, the facility of Büren was visited by the National Agency for the Prevention of Torture, an independent body monitoring places of detention in order to prevent violations of the UN Convention Against Torture. The National Agency published a report on 30 October 2018 in which it severely criticised the detention conditions in Büren.⁴⁸⁹ Following issues were raised:

- “Restrictive basic approach”: The staff reported that a number of criminals and “persons posing a risk” (i.e. terrorist suspects) were amongst the detainees and they stated they did not have sufficient information on the possible risks that detainees might pose. According to the National Agency this has resulted in an extension of restrictive measures affecting all detainees. For instance, as opposed to the previous years, detainees were generally locked in their cells not only at night but also from 7 a.m. to 2 p.m. When they were allowed to leave their cells, the areas of the facility in which they were allowed to move freely were restricted. The National Agency noted that “a remarkable high number” of “special security measures” were in place at the Büren facility in comparison to the pre-removal detention facilities of other Federal States. The report concludes that the detention regime that is applied in Büren has become similar to the regime that is applied in a regular penal prison.
- At the time of the visit, several detainees, including two persons considered to be “persons posing a risk” (i.e. terrorist suspects), were kept in solitary confinement cells which are designed as regular prison cells. The National Agency highlighted that the current existing regulations for solitary confinement in the regular prison system cannot be applied to pre-removal detention facilities. Accordingly, the report concluded that the solitary confinement of the Büren facility did not have a legal basis in the Federal State’s legislation.

⁴⁸⁷ Wiesbadener Tagblatt, ‘Critics of the detention centre in Darmstadt-Eberstadt – the police rejects allegations’, available in German at <https://bit.ly/2ITG4hW>.

⁴⁸⁸ 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>.

⁴⁸⁹ Nationale Stelle zur Verhütung von Folter. Unterbringungseinrichtung für Ausreisepflichtige Büren, Besuch vom 24./25. Januar 2018, available in German at <https://bit.ly/2CQ6Bbl>.

- The National Agency also expressed concerns regarding the special security measures that are applied, as they are not based on a thorough individual assessment and do not offer sufficient safeguards to comply with the principles of necessity and proportionality.
- Other points raised in the National Agency's report related to the lack of privacy, the lack of psychological care and the lack of documentation of a case in which a detainee has been physically restrained.

The government of the Federal State of North Rhine-Westphalia had been given the opportunity to comment on the report's findings before its publication.⁴⁹⁰ In that context, the government announced that some measures were taken to raise awareness of the facility's staff, but it rejected the report's allegations according to which special security measures had no legal basis or were disproportionate.

In December 2018, the regional parliament of North Rhine-Westphalia adopted a series of amendments to the Federal State's law on the enforcement of detention pending deportation.⁴⁹¹ 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.⁴⁹² 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.⁴⁹³

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:⁴⁹⁴

- 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

⁴⁹⁰ Ministerium für Kinder, Familie, Flüchtlinge und Integration des Landes Nordrhein-Westfalen, Statement of 28 September 2018, available in German at: <https://bit.ly/2EUuxgn>.

⁴⁹¹ Gesetz- und Verordnungsblatt des Landes Nordrhein-Westfalen (GV. NRW.), Ausgabe 2018, 18 December 2018, No. 32, 770, available in German at: <https://bit.ly/2H2pmLu>.

⁴⁹² Flüchtlingsrat Nordrhein-Westfalen, Stellungnahme: Referentenentwurf Gesetz zur Änderung des Abschiebungshaftvollzugsgesetzes Nordrhein-Westfalen, 9 August 2018, available in German at <https://bit.ly/2XxduGq>.

⁴⁹³ Hilfe für Menschen in Abschiebehaft Büren, *Stellungnahme zur Anhörung zum Abschiebungshaftvollzugsgesetz*, 7 November 2018, available in German at: <https://bit.ly/2UmjGiG>.

⁴⁹⁴ ze.tt, *Eingesperrt ohne Straftat: So sind die Bedingungen in einem Abschiebegefängnis*, 14 December 2019, available in German at: <https://bit.ly/2T0KZ3g>.

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).

Pforzheim, Baden-Württemberg: A Protestant priest reported in May 2019 that the facility did not have a room to hold religious ceremonies.⁴⁹⁵ According to the Refugee Council of Baden-Württemberg, the regional government had stated that there had been no demand for religious services at the facility. The Refugee Council described this statement as false, referring to several incidents in the past where detainees had asked to hold a religious service, but the priest was only allowed to visit one person at a time. The Refugee Council also criticised that medical care had not always been guaranteed. For example, a priest had organised an urgent appointment at an ophthalmologist for a detainee, but the person concerned had not been allowed to leave the facility for this appointment.⁴⁹⁶

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.⁴⁹⁷

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); [...].⁴⁹⁸

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

⁴⁹⁵ bnn.de, 'AG Abschiebehaft Pforzheim klagt über Umgang mit Betroffenen', 10 May 2019, available in German at: <https://bit.ly/3fMY5uY>.

⁴⁹⁶ 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>.

⁴⁹⁷ ECRE, *The AnkER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

⁴⁹⁸ 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.

phone cards for that purpose, they did not have access to the internet. Persons who behaved violently or who had either attempted or threatened to commit suicide can be referred to security cells at the Eichstätt facility. The facility's director stated that persons were not referred to these cells for disciplinary reasons, but only if they pose a risk to themselves or to others. The CPT criticised that conditions in the security cells were "akin to solitary confinement", since people were locked up for 24 hours a day without access to outdoor exercise and they often were not allowed to make phone calls or receive visits.⁴⁹⁹

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

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

In the middle of the facility, there is a common area with metal benches and tables, ping pong and baby soccer tables, a chess board, and a common room (container) with a small TV and a table without chairs and no decorations. A number of books are also available. The common area is open from 09:00 to 21:00. There are no other leisure activities available and people cannot purchase anything during their stay in the Hangar 3, given that detention is usually short. Small necessities, e.g. cigarettes, are provided to them upon request.⁵⁰⁰

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

- | | | | |
|-------------------|-----------------------------------------|---------------------------------------------|-----------------------------|
| ❖ Lawyers: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |

1. Access to pre-removal detention centres

Section 62a of the Residence Act states: "Upon application, staff of relevant support and assistance organisations shall be permitted to visit detainees awaiting deportation if the latter so request." Access of NGOs to detention centres varies in practice.

The Refugee Council of Baden-Württemberg has compiled the following information on counselling services in some facilities:⁵⁰¹

⁴⁹⁹ Ibid. 28 and 31.

⁵⁰⁰ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

⁵⁰¹ Flüchtlingsrat Baden-Württemberg, *Misstände in der Abschiebehaf werden geleugnet, Stellungnahme des Flüchtlingsrats Baden-Württemberg zur Berichterstattung über die Abschiebehaf Pforzheim*, 17 May 2019, available in German at: <https://bit.ly/3dVHgF>.

- **Ingelheim, Rhineland-Palatinate:** An ecumenical counselling center has its own office in the facility with regular opening hours;
- **Hannover-Langenhagen, Lower Saxony:** The Refugee Council of Lower Saxony offers advice regularly in a conference room in the facility.
- **Eichstätt, Bavaria and Erding, Bavaria:** The Jesuit Refugee Service is offering consultation services regularly either in common rooms or in the rooms of the social services in the facility.

In contrast, the facility at Pforzheim, Baden-Württemberg, did not provide priests and other persons offering advice with a separate room. Therefore, visits had to take place in small visitor's rooms ("visitor cells"). The regional government claimed that there was no separate room for "capacity reasons" and that this was common practice in detention centres. This statement was refuted by the Refugee Council based on the information provided above.

Büren, North Rhine-Westphalia: The support group "Hilfe für Menschen in Abschiebehaft Büren" reported in January 2018 that the general access to the detention centre, as well as the access to certain particular detainees, was "massively impeded" by the authorities.⁵⁰² The group reiterated its criticism in a statement to a parliamentary committee in November 2018.⁵⁰³

Darmstadt-Eberstadt, Hesse: According to the law which sets out basic principles for the facility,⁵⁰⁴ individuals are not allowed to use mobile phones with a camera function but should be allowed to make phone calls, receive and send letters, read books and papers, watch TV and listen to radio. However, they have to pay for these services themselves if costs arise. Visitors are allowed during visiting hours, while lawyers and consular representatives may visit at all times.

Eichstätt, Bavaria: Amnesty International volunteers and the Jesuit Refugee Service visit the detention centre. Detainees are informed when the NGOs are present in the facility through announcements through the intercom. Moreover, every person is given a mobile phone without camera upon arrival, and has an allowance of 30 minutes per day for calls with numbers notified to the management of the centre. Calls with lawyers are exempted from the 30-minute rule.⁵⁰⁵

Munich Airport Hangar 3, Bavaria: The Munich Refugee Council has asked for permission to access the facilities on a weekly basis, but permission has not been granted yet. If detainees do not have a lawyer and want one, they can contact a lawyer by phone. There are 3 phones available for the detainees, which they can use for free for 30 minutes per day. However, no lists of lawyers who can be contacted seem to be available to the detainees. Lawyers can access the facility but have to announce their arrival in advance.⁵⁰⁶

2. Access to airport detention facilities

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

⁵⁰² Hilfe für Menschen in Abschiebehaft Büren, 'Schwere Menschenrechtsverletzungen in der Abschiebehaft Büren', 24 January 2018, available in German at: <https://bit.ly/2pYgn3k>.

⁵⁰³ Hilfe für Menschen in Abschiebehaft Büren, 'Stellungnahme zur Anhörung zum Abschiebungshaftvollzugsgesetz', 7 November 2018, available in German at: <https://bit.ly/2UmjGiG>.

⁵⁰⁴ Official Gazette for the Federal State of Hesse, Gesetz über den Vollzug ausländerrechtlicher Freiheitsentziehungsmaßnahmen (VaFG), 18 December 2017, available at: <https://bit.ly/2Cael74>.

⁵⁰⁵ ECRE, *The AnKER centres Implications for asylum procedures, reception and return*, April 2019, available at: <https://bit.ly/2W7dICZ>.

⁵⁰⁶ *Ibid.*

At the “airport facility” (*Flughafenunterkunft*) of **Munich Airport**, the Church Service (*Kirchliche Dienste*) has access but no permanent presence on the premises; staff of the service travel thereto from the airport terminal when necessary.⁵⁰⁷

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

- | | | |
|-----------------------------------------------------------------|-----------------------------------------|-----------------------------|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed? | 4 weeks | |

Under German law, only a judge is competent for the order and the prolongation of detention. The responsible courts are the District Courts (*Amtsgericht*) and their decision can be challenged at a Regional Court (*Landgericht*), in another instance at High Regional Courts (*Oberlandesgericht*) and under certain conditions before the Federal Supreme Court (*Bundesgerichtshof*) as final instance.

The authorities therefore have to apply to the court for a detention order. The application has to lay out the detailed reasons for the necessity of detention and the complete authorities' file should be presented to the court. The foreigners should be heard by the court and they shall be able to call witnesses. In cases of detention pending deportation, this may be particularly relevant if the detention order is based on an alleged risk of absconding and the foreigners have to prove that they have an address at which they can be reached by the authorities. Before the hearing at the court, the foreigner has to receive a copy of the request for detention (*Haftantrag*) which the authorities have filed. This copy has to be orally translated if necessary.⁵⁰⁸ 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.⁵⁰⁹ The court has to inform the foreigner on all possible legal remedies against the detention order and this information has to be translated if necessary.

Detention pending deportation can only be ordered or prolonged if there is a possibility for the deportation to be carried out in the near future. The maximum duration of detention therefore has to be expressly stated in the detention order. Once this date has expired, the detained person either has to be released or an automatic judicial review of detention takes place.

In spite of the safeguards outlined above, the system of ordering detention pending deportation has been severely criticised by lawyers for alleged violations of the standards applicable to detention. In particular, it has been noted that judges frequently issue orders for detention pending deportation even if authorities' applications for detention orders do not lay out sufficient reasons as to why detention is necessary.⁵¹⁰ The Convention of Legal Advisors (*Rechtsberaterkonferenz*), a group of lawyers cooperating with German welfare organisations on asylum matters, notes that currently detention pending deportation is again ordered “too often and too easily”. According to them, this development began with a political ‘climate

⁵⁰⁷ ECRE, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/2QgOmAH>.

⁵⁰⁸ Federal Supreme Court, Decision V ZB 67/12, 18 April 2013.

⁵⁰⁹ Federal Supreme Court, Decision V ZB 141/11, 1 July 2011.

⁵¹⁰ This is a recurrent concern. See Peter Fahlbusch, *Haft in Verfahren nach der Dublin II-Verordnung*, *Asylmagazin* 9/2010, 289-295.

change' in 2016 and public debate based on "misleading, partly wrong information" on the number of persons who were obliged to leave the country.⁵¹¹

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.⁵¹² Common mistakes included:

- Court decisions are based on outdated laws;
- The application for a detention order is not handed out to the person concerned and is not translated;
- An interpreter has to be present at the court hearing and he/she must have sufficient language skills both in the language of the person concerned and in German. This is not always taken care of in practice.

Because these standards were often ignored, an estimated 50% of complaints to higher courts were successful and the detention orders issued by the local courts were found to be unlawful, according to the activist.

Other sources seem to confirm that local courts often do not sufficiently examine whether the detention order is necessary and proportionate and it has been further reported that basic procedural standards were sometimes violated.⁵¹³ The Federal Supreme Court has therefore frequently ruled such detention orders as unlawful. Recent decisions of the Federal Supreme Court in which a detention order was ruled unlawful include cases where:

- A lawyer was not given the opportunity to attend a hearing;⁵¹⁴
- 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.⁵¹⁵
- The authorities were not able to justify the necessity and the proportionality of a 21 days pre-removal detention period;⁵¹⁶
- The court had wrongfully assumed that a delay in presenting identity documents was in itself constituting a "risk of absconding".⁵¹⁷

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.⁵¹⁸

The lawyer Peter Fahlbusch (from Hannover) has published statistics on the cases that were represented by his law firm. According to these numbers, half of the detention orders that had been issued by local courts had been overturned in further proceedings from 2011 to April 2020. According to information submitted by Peter Fahlbusch, the firm represented 1,982 clients who were in detention pending deportation during this period. In 982 of these cases (49.5%), higher courts found detention orders to be

⁵¹¹ Die Rechtsberaterkonferenz, *50 Forderungen zum Flüchtlings-, Aufenthalts-, Staatsangehörigkeits- und Sozialrecht*, November 2017, available in German at: <http://bit.ly/2HOWd2J>, 32-34.

⁵¹² ze.tt, *Eingesperrt ohne Straftat: So sind die Bedingungen in einem Abschiebegefängnis*, 14 December 2019, available at <https://bit.ly/2T0KZ3g>.

⁵¹³ Stefan Keßler, *Abschiebungshaft*, socialnet.de, 14 January 2019, available in German at: <https://bit.ly/2TiNCji>.

⁵¹⁴ 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>.

⁵¹⁵ Federal Supreme Court, Decision V ZB 62/18 - 24 January 2019, asyl.net: M27471, available in German at: <https://bit.ly/2YXslrw>.

⁵¹⁶ Federal Supreme Court, Decision V ZB 54/18, 22 November 2018, available in German at: <https://bit.ly/2IWq4vP>.

⁵¹⁷ Federal Supreme Court, Decision V ZB 151/17, 13 September 2018, available in German at: <https://bit.ly/2SL9wqg>.

⁵¹⁸ A collection of the most important court decisions in that regard can be found in German at: <https://bit.ly/2HieAjb>.

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.⁵¹⁹

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.⁵²⁰ In relation to the overall numbers of persons who had been in detention pending deportation 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.⁵²¹

The Constitutional Court ruled in May 2018 that barriers to a lawyer's access to the **Eichstätt** facility were not in line with the constitution. In this case, the management of the facility had advised her that the next available opportunity to contact her client was on the day of deportation.⁵²²

In general, persons in detention pending deportation have the right to contact legal representatives, family members, the competent consular representation and relevant aid and support organisations.⁵²³

However, an applicant usually has to cover the costs for legal representation for the purpose of judicial review of detention and representation in the asylum procedure. There is a possibility to apply for legal aid in the context of judicial review of detention, but this is rarely granted since legal aid is dependent on how the court rates the chances of success.

E. Differential treatment of specific nationalities in detention

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

⁵¹⁹ Peter Fahlbusch, Attorney, Information provided on 9 May 2020.

⁵²⁰ Flüchtlingsrat Niedersachsen, 'Rechtswidrige Abschiebungshaft in Niedersachsen: Kein Ende in Sicht', Press release of 13 November 2019, available in German at: <https://bit.ly/2Lo4E9b>.

⁵²¹ Section 14(3) Asylum Act.

⁵²² Federal Constitutional Court, Decision 2 BvQ 45/18, 22 May 2018.

⁵²³ Section 62a II of the Residence Act.

A. Status and residence

1. Residence permit

Indicators: Residence Permit

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

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

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

Responsibility for issuing the residence permits lies with the local authorities of the place of residence of the beneficiary of protection.

Renewal of residence permits is generally subject to the same regulations as apply to issuance.⁵²⁴ Therefore, residence permits have to be renewed as long as the reasons which have led to the first issuance persist. The refugee status, the subsidiary protection, and the status or the so-called “prohibition of deportation” (*Abschiebungsverbot*) which 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.⁵²⁵

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.⁵²⁶

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

- Passport or identity card from the country of origin. Asylum seekers (for as long as the asylum procedure is ongoing) and people with **refugee status** are not obliged to submit these documents if this would involve getting in contact with the authorities from their countries of origin. Instead, they have to submit the asylum seeker’s permission to stay (*Aufenthaltsgestattung*) or the residence permit respectively. However, these documents do not necessarily serve as evidence for “proof of identity”;
- Birth certificates of parents in original document and an officially certified translation;

⁵²⁴ Section 8(1) Residence Act.

⁵²⁵ Sections 73a to 73c Residence Act.

⁵²⁶ Humboldt Law Clinic Grund- und Menschenrechte, *Geboren, registriert – und dann? Probleme bei der Geburtenregistrierung von Flüchtlingskindern in Deutschland und deren Folgen*. Working Paper no. 16/2018, available in German at: <http://bit.ly/2pw1DIn>, 10-11.

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

If one of these documents cannot be submitted, the civil registry office may accept a declaration “in lieu of an oath”, but no general rules exist for this procedure, so acceptance of such a declaration is dependent on the individual circumstances and on the practice of the local civil registry office. An overview of the procedure in English has been published by the German Institute for Human Rights.⁵²⁷

Problems occur in particular if the parents do not have a passport or birth certificate from the country of origin and if the authorities find that the identity of the parents has not been sufficiently clarified by other means. In these cases, many civil registry offices regularly refuse to issue birth certificates. However, they may issue other documents instead. A recent study by the Humboldt Law Clinic found that offices have various strategies to deal with these cases of “unclarified identity”:⁵²⁸

- ❖ Most civil registry offices issue a confirmation that birth has been registered (“extract from the Birth Registry” / *Auszug aus dem Geburtenregister*) which is an official document that has the same legal effect as a birth certificate.
- ❖ Other civil registry offices issue substitute documents such as an “attestation” that the office has been notified of the birth. The legal effect of these substitute documents is unclear;
- ❖ There have also been reports that a few civil registry offices do not issue any documents in cases of “unclarified identity” of the parents, although this may include cases in which the parents refuse to accept an alternative document and legal measures for the issuance of a ‘proper’ birth certificate are pending.⁵²⁹ 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.⁵³⁰

Refusal by German authorities to issue birth certificates to new born children has frequently been criticised as a violation of the Convention on the Rights of the Child. In order to safeguard access to the health system and to social benefits for newborn children, the German Institute for Human Rights has repeatedly asked authorities to issue birth certificates or, alternatively, “extracts from the Birth Registry” as a “minimum obligation”.⁵³¹

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.

⁵²⁷ Deutsches Institut für Menschenrechte ‘How to register your newborn - Information for refugees’, 2nd ed., 20 July 2017, available at: <http://bit.ly/2c5Esku>.

⁵²⁸ 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.

⁵²⁹ *Ibid*, 18.

⁵³⁰ 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>.

⁵³¹ 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.

Failure to obtain a birth certificate from the civil registry office regularly results in difficulties with access to rights and services. In a study on difficulties with the registration of new born children, authors from the Humboldt Law Clinic refer to the following problems which have been reported in the course of their research: problems with health insurance and/or access to hospitals or medical practitioners; (temporary) denial of child allowances; problems with payment of parental allowances; problem with registration of new born children at local residents' registration offices.⁵³² 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.⁵³³

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.⁵³⁴

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:⁵³⁵

- 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.

⁵³² 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.

⁵³³ 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>.

⁵³⁴ 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>.

⁵³⁵ An overview of the new law has been published by Terre des Femmes, 'Die wichtigsten Änderungen im Rahmen des Gesetzes zur Bekämpfung von Kinderehen', December 2017, available in German at: <http://bit.ly/2DLyGgG>.

3. Long-term residence

Indicators: Long-Term Residence

1. Number of permanent residence permits issued to beneficiaries in 2019: 14,208

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 2016.⁵³⁶

- After three years, persons with refugee status can be granted a *Niederlassungserlaubnis* if they have become “outstandingly integrated” into society.⁵³⁷ The most important preconditions are that they have to speak German on an advanced level (level C1 of the Common European Framework of Reference for Languages, CEFR), have to be able to cover the “overwhelming part” of the cost of living and have to prove that they have sufficient living space for themselves and their families;⁵³⁸
- After five years of stay in Germany (into which period the duration of the asylum procedure is included), persons with refugee status can be granted a *Niederlassungserlaubnis* under certain conditions. Most importantly, they have to be able to cover for the “better part” of the cost of living, have to speak basic German (level A2 of the CEFR) and have to prove that they have sufficient living space for themselves and their families.

Under these provisions of the Residence Act, 14,028 persons were granted a *Niederlassungserlaubnis* in 2019. This represents a sharp increase in comparison to 2018 (1,807 persons).⁵³⁹

In both cases, the *Niederlassungserlaubnis* can only be granted if the BAMF has not initiated a procedure to revoke or withdraw the status. In general, the *Niederlassungserlaubnis* shall be granted as long as the local authorities do *not* receive a notification from the BAMF about the initiation of a revocation procedure. This approach had been introduced in 2015 in order to simplify procedures, since before that date the local authorities as well as the refugees always had to wait for a formal notification from the BAMF, regardless of whether the BAMF actually carried out a so-called “revocation test” or not. However, the initial precondition of a mandatory notification from the BAMF has been re-established in 2019 for all cases in which persons have been granted protection status in 2015, 2016 and 2017, as a consequence of an extension of the time-limits of the so-called “routine revocation procedures” for these cases (see below: [Cessation and review of protection status](#)). Therefore, persons who were granted refugee protection between 2015 and 2017 and apply for a *Niederlassungserlaubnis* either after three or after five years of stay, now need a formal notification from the BAMF confirming that no revocation or withdrawal procedure is going to be initiated.⁵⁴⁰

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.⁵⁴¹ However, they have to meet all the legal requirements for the

⁵³⁶ Section 26(3) Residence Act.

⁵³⁷ 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.

⁵³⁸ Section 26(3) Residence Act

⁵³⁹ Federal Government, *Responses to parliamentary questions by The Left*, 19/19333, 25 March 2020, 37, and 19/8258, 12 March 2019, 47.

⁵⁴⁰ Amendment to Section 26(3) Residence Act, entered into force on 21 August 2019.

⁵⁴¹ Section 26(4) Residence Act.

Niederlassungserlaubnis,⁵⁴² 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 9,918 permanent residence permits were issued in 2019 based on this general provision (2018: 5,731), but the statistics do not indicate how many were issued specifically to persons with a protection or a humanitarian status.⁵⁴³

4. Naturalisation

| Indicators: Naturalisation | |
|-----------------------------------------------------------|---------------|
| 1. What is the waiting period for obtaining citizenship? | 8 years |
| 2. Number of citizenship grants to beneficiaries in 2019: | 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:⁵⁴⁴

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

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

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

In 2019, 128,905 persons received German citizenship, but available statistics do not differentiate between residence and/or protection statuses.⁵⁴⁵ The countries of origin of persons granted citizenship suggest that only a comparably small number of them were beneficiaries of international protection (e.g. 3,860 former Syrian nationals, 4,645 former Iraqi nationals, 3,805 former Iranian nationals, 2,675 former Afghan nationals).

⁵⁴² Section 9 Residence Act.

⁵⁴³ Federal Government, Reply to parliamentary question by The Left, 19/633, 5 February 2018, 50.

⁵⁴⁴ Section 10 German Nationality Act (*Staatsangehörigkeitsgesetz*). An overview on the naturalisation procedure is available in English on the BAMF website: <http://bit.ly/2ms1va9>.

⁵⁴⁵ Federal Statistical Office, „Bevölkerung und Erwerbstätigkeit: Einbürgerungen 2019“, Fachserie 1. Reihe 2.1 - 2019, 3 June 2019, available in German at: <https://bit.ly/2WmylNY>.

5. Cessation and review of protection status

Indicators: Cessation

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

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

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

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

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

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

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

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

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

a) Routine revision of status: Section 73(2a) Asylum Act

Before a formal revocation procedure is initiated, the BAMF carries out a "revocation test", i.e. it examines summarily whether preconditions for a revocation might apply. A revocation under this provision can be based either on a change of conditions on which status determination was based, or on other evidence, namely if it has turned out that status determination was based on incorrect information or on withholding of essential facts. The BAMF can summarily decide not to initiate revocation procedures for certain groups of refugees (see [Long-Term Residence](#)).

According to Section 73(2a) Asylum Act the routine revocation test has to take place three years “at the latest” after the status determination has become final. However, a new provision was added in 2019 which extends the period for revocation tests to all cases in which status determination has been finally concluded in the years 2015, 2016 and 2017.⁵⁴⁶ For these cases, the time limit has now been set at a period between four and five years. For instance, the BAMF has been set a deadline at the end of 2019 to carry out revocation tests for all status decisions which have become legally valid before the end of 2015. According to the explanatory memorandum to the new law, the extension of the time-limit has been introduced to enable the BAMF to deal with the high number of refugee recognitions of the years 2015-2017.⁵⁴⁷

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

This provision is generally applicable if the conditions on which the recognition of status was based have ceased to exist *and* the refugee “can no longer refuse to claim the protection of the country of which he is a citizen, or if he, as a stateless person, is able to return to the country where he had his usual residence”.⁵⁴⁸ Accordingly, revocation of the status cannot be based only on a change of circumstances in the country of origin, but it also has to be ascertained whether the refugee can be reasonably expected to return to the country of origin. This is not the case if, for example, a refugee has “compelling reasons, based on earlier persecution” to refuse to return.⁵⁴⁹ Case law has established that trauma or mental disorders which result from persecution constitute compelling reasons within the meaning of this provision.⁵⁵⁰

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

If the BAMF intends to revoke or withdraw refugee status, the refugee is informed in advance and in writing that revocation or withdrawal is intended.

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

- 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.⁵⁵¹

⁵⁴⁶ Section 73(7) Asylum Act

⁵⁴⁷ Explanatory memorandum to draft bill, 19/10047, 10 May 2019, available in German at <https://bit.ly/39iOnvK>, 48.

⁵⁴⁸ Section 73(1) Asylum Act.

⁵⁴⁹ Section 73(1) Asylum Act.

⁵⁵⁰ Federal Administrative Court, Decision 1 C 21/04 of 1 November 2015, asyl.net, M7834. See also Kirsten Eichler, *Leitfaden zum Flüchtlingsrecht* (Guideline to refugee law), 2nd edition (2016), 105.

⁵⁵¹ Michael Kalkmann, ‘Das Gesetz zur Einführung der Mitwirkungspflicht in Widerrufungsverfahren’, *Asylmagazin* 1-2/2019, 6.

The law expressly states that these measures have to be necessary and should be carried out only if the concerned person can be reasonably expected to undergo these measures. This is an important limitation as it is common understanding that refugees and other beneficiaries of protection cannot be expected to approach the authorities of their country of origin, i.e. that they cannot obtain passports or other identification documents at embassies of their home country. Furthermore, the obligation to undergo new identification measures, especially the taking of fingerprints and photos, is only considered necessary (and therefore reasonable) if these measures have not already been carried out on an earlier occasion.⁵⁵²

Therefore, the hearing at the BAMF is the most important part of the revocation examination procedures and since attendance is now obligatory, persons with protection status are being summoned to these hearings on a regular basis. The invitation letters to these hearings generally refer to the “obligation to cooperate in an examination of whether grounds for a withdrawal or revocation exist”. In practice, the major part of the hearings is dedicated to questions concerning the identity of the persons concerned, because for most refugees there are no reasons to assume that a revocation of status could be based on the cessation clause (i.e. a change of circumstances in the countries of origin). It has been noted that these “retroactive identity checks” in some cases seem to take on the character of “security interviews” with questions being asked that “have nothing to do with revocation or withdrawal” but aim, for instance, at the refugee’s integration in Germany or his/her exercise of religion.⁵⁵³ The German NGO PRO ASYL has therefore criticised the examination procedures for creating uncertainty in thousands of cases, in spite of the “extremely small” number of cases in which protection status is revoked or withdrawn in the end.⁵⁵⁴

If the BAMF decides to revoke or withdraw the status, the refugee has two weeks’ time to appeal the decision at an Administrative Court. The appeal has suspensive effect, so the refugee retains the status until the court has decided upon the appeal. If refugees choose to be represented by lawyers in this procedure, they would usually have to pay the fees themselves. It is possible to apply for legal aid, which is granted under the normal conditions, i.e. the court decides upon legal aid after a summary assessment of the appeal’s chances.

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

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

Since 2017, the BAMF has initiated hundreds of thousands of “revocation examination procedures” or “revocation tests” (*Widerrufsprüfverfahren*), i.e. preliminary examinations on whether a formal revocation is to be carried out or not. 215,618 of these revocation tests were pending at the end of 2019.⁵⁵⁵ The BAMF estimates that a further 480,000 such procedures will be carried out until 2021.⁵⁵⁶

This represents a dramatic increase in comparison to the years prior to 2017, when only a few thousand “revocation examination procedures” were initiated each year. The increase since 2017 was triggered by

⁵⁵² Kirsten Eichler, GGUA Flüchtlingshilfe: ‘Einführung von Mitwirkungspflichten im Widerrufs- und Rücknahmeverfahren’, 12 December 2018, available in German at at: <https://bit.ly/3auqFxR>.

⁵⁵³ 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>.

⁵⁵⁴ Ibid.

⁵⁵⁵ Federal Government, Reply to parliamentary question by The Left, 18/11262, 22 February 2017, 11; 19/633, 5 February 2018, 9; 19/19333, 25 March 2020, 8.

⁵⁵⁶ BAMF, ‘Widerrufsprüfungen für 2019 fristgerecht erledigt – Widerrufsquote bei 3,3 Prozent’, press release of 14 January 2020, available in German at: <https://bit.ly/30ejDJH>.

a case which has become known as the “Franco A. scandal” in 2017. In April 2017, two German soldiers and a German student were arrested for the alleged preparation of a terrorist attack. Following the arrest, it turned out that one of them, named as 28-year-old soldier Franco A., had managed to be granted subsidiary protection status after he had assumed a fake identity of a Syrian citizen. Media reported that the group had planned to carry out terrorist attacks on prominent German politicians. According to public prosecutors, Franco A. had assumed the fake identity in order to shift responsibility for the planned attacks on refugees.⁵⁵⁷ The trial against Franco A. has yet to start, following years of legal disputes over the question of whether he would eventually be charged with “preparation of a serious crime posing a risk to the state”.⁵⁵⁸

The BAMF was criticised in the course of this affair for the handling of the asylum application of Franco A. who had managed to pose as a Syrian asylum seeker although he did not speak Arabic and apparently answered some of the questions in his interview in German. In response to this affair, the BAMF conducted a survey of 2,000 decisions and found that 480 of these decisions were “not plausible”, according to media reports. For this reason, the Ministry of Interior instructed the BAMF to carry out an examination of 80,000 to 100,000 asylum decisions, in particular those concerning male asylum seekers aged between 18 and 40. These re-examinations are carried out as “revocation examination procedures”, thereby explaining the high number of such procedures initiated in 2017.⁵⁵⁹

In 2018, re-examinations of asylum cases also took place following the so-called “BAMF scandal”. In April 2018, it was reported that six staff members of the Bremen branch office of the BAMF, including the head of the office, were under investigation for corruption. The branch office had allegedly taken over up to 1,200 asylum cases for which it was not responsible and protection statuses had been illegally granted. However, the results of the internal investigation carried out by the BAMF later demonstrated that the “scandal” had been largely overestimated. Although it was confirmed that the branch office had been entitled to take over cases from other regions, internal auditors had to retract a substantial part of the allegations they had made at the beginning of the investigation. In August 2018, results from the internal investigation were made public and showed that only 195 out of 18,300 audited decisions were considered to be seriously flawed.⁵⁶⁰ Nevertheless, the “BAMF scandal” has largely triggered the increase of “revocation examination procedures”.

In 2017, 77,106 procedures were initiated and this number increased sharply to 192,664 procedures in 2018 and to 205,285 in 2019.⁵⁶¹ The BAMF decided over 170,406 revocation examination procedures in 2019. These were twice as many decisions as in 2018 (85,502) and an enormous increase in comparison to earlier years (only 2,527 such decisions were registered in 2017). In the vast majority of these cases, the BAMF found no reason to revoke or withdraw the protection statuses (96.7% in 2019, 98.8% in 2018). However, due to the high number of procedures, the total number of revocation or withdrawal decisions is still significant:

| Outcome of revocation examination procedures in 2019 | |
|------------------------------------------------------|-----------------|
| Revocation or withdrawal of protection status | 4,428 (2.6 %) |
| Revocation/withdrawal of prohibition of deportation | 1,182 (0.7%) |
| No revocation or withdrawal | 164,796 (96.7%) |

⁵⁵⁷ Deutsche Welle, ‘German soldier charged with plotting to kill politicians while posing as refugee’, 12 December 2017, available at: <http://bit.ly/2FVuyRy>.

⁵⁵⁸ Spiegel Online, Bundesanwaltschaft beharrt auf Terrorverdacht im Fall Franco A., 20 June 2018, available in German at: <https://bit.ly/2K5fJ1d>.

⁵⁵⁹ Der Spiegel, ‘Bamf soll Zehntausende Asylbescheide prüfen’, 31 May 2017, available in German at: <http://bit.ly/2rENYm6>; See also Deutsche Welle, “”, 17 May 2017, available at: <http://bit.ly/2GV08w1>.

⁵⁶⁰ Deutsche Welle, Bremen migration office scandal much smaller than first thought, available at <https://bit.ly/2WNXlvk>.

⁵⁶¹ 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.

| | |
|--------------|----------------|
| Total | 170,406 |
|--------------|----------------|

Source: BAMF, Aktuelle Zahlen, December 2019, available in German at <https://bit.ly/3dNKyIQ>, 14.

At the end of 2018, the decisions on revocation of status was as follows:

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

Source: BAMF.

A detailed breakdown of decisions on revocation of status per nationality in 2019 was not available. However, available figures indicate a total of 170,406 in 2019, distributed as follows:⁵⁶²

| Decisions on revocation of status per nationality: 2019 | | | | | |
|----------------------------------------------------------------|---------------------------|----------------------------------|--------------------------------|-----------------|----------------|
| * | Refugee status revocation | Subsidiary protection revocation | National protection revocation | No revocation | Total |
| Total | 3,489 (2 %) | 939 (0.6%) | 1,182 (0.7%) | 164,796 (96.7%) | 170,406 |

Source: BAMF, Aktuelle Zahlen, December 2019, available in German at <https://bit.ly/3dNKyIQ>, 14.

At the end of 2019, 215,618 revocation examination procedures were pending at the BAMF.⁵⁶³

In 2019, 2,146 revocation decisions were challenged in court and 422 court decisions were registered. Only 29 appeals against revocation or withdrawal decisions by the BAMF were successful (9.6%). This rate is lower than it was in 2018 (12.6% successful appeals).

In 153 cases (36.3%), the BAMF decision to withdraw or revoke a protection status was upheld by the courts, and 240 (56.9%) 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.⁵⁶⁴

⁵⁶² BAMF, *Aktuelle Zahlen*, December 2019, available at <https://bit.ly/3dNKyIQ>, 14.

⁵⁶³ BAMF, *Aktuelle Zahlen*, December 2019, available at <https://bit.ly/3dNKyIQ>, 14.

⁵⁶⁴ Federal Government, Responses to parliamentary questions by The Left, 19/18498, 2 April 2020, 46, and 19/8701, 25 March 2019, 47.

6. Withdrawal of protection status

Indicators: Withdrawal

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

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

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

The procedure for withdrawal of protection status is identical to the revocation procedure, and usually the examination of the various grounds is carried out as a combined “revocation and withdrawal procedure”. Therefore, the information given above on procedures and on statistics for the revocation procedures also applies to withdrawal of protection (see section on [Cessation: Revocation](#)).

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

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

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

Persons with **refugee status** enjoy a privileged position compared to other foreign nationals in terms of family reunification, since they do not necessarily have to cover the cost of living for themselves and their families and they do not have to prove that they possess sufficient living space. In order to claim this privilege, refugees have to notify the authorities within 3 months after the refugee status has become

incontestable (final) that they wish to be reunited with a close family member.⁵⁶⁵ The application has to be handed in at the embassy of the country where the family members are staying. In addition, the local authorities at the place of residence of the refugee living in Germany should be notified that an application for a visa for the purpose of family reunification has been filed at the embassy.

Persons eligible for family reunification under this provision are:

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

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

If family members of refugees apply for family reunification later than 3 months after status determination has become final, “normal rules” for family reunification apply. In particular, refugees living in Germany have to prove that they can cover the cost of living for themselves and their families and that they have sufficient living space.⁵⁶⁶ For family reunification of spouses, a further requirement is that both spouses have to be at least 18 years of age.⁵⁶⁷

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.⁵⁶⁸

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.⁵⁶⁹ This means that the privileged conditions that apply to family reunification for refugees do not apply to beneficiaries of subsidiary protection and have been replaced with a “humanitarian clause” which places family reunification at the discretion of the authorities.

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

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

In addition, welfare of the child and “integration aspects” (e.g. language skills, ability to provide for means of living) may be taken into account.⁵⁷⁰

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

⁵⁶⁵ Section 29(2)(1) Residence Act.

⁵⁶⁶ Sections 27(3) and 29 Residence Act.

⁵⁶⁷ Section 30(1)(1) Residence Act.

⁵⁶⁸ Section 30(1)(3) Residence Act.

⁵⁶⁹ Section 36a Residence Act; Section 104(13) Residence Act.

⁵⁷⁰ Detailed information on the legal requirements and the procedure can be found at: <https://familie.asyl.net>.

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.⁵⁷¹ In practice, this selection does not take place since procedures at the local authorities are lengthy, resulting in less than 1,000 applications per month. As a result, the Federal Administrative Office usually authorises all cases submitted by the local authorities and informs the embassies or consulates that visas may be issued. In the first 18 months (from August 2018 to January 2020) only 14,404 visas were granted to family members of beneficiaries of subsidiary protection, which equals to 80 % of the total of 18,000 visas that the law would have foreseen for this period.⁵⁷² Around 22,000 requests for appointments at the embassies were pending at the end of 2019. 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.⁵⁷³ Nevertheless, the figures show that many family members of beneficiaries of subsidiary protection are facing a waiting period of another year or more, even if the monthly quota of 1,000 visa would be reached in full from now on.

The long waiting periods have particularly problematic effects on family reunification procedures of unaccompanied minors. In several decisions the Administrative Court of Berlin,⁵⁷⁴ 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.⁵⁷⁵ The delay in procedures, in particular on the part of local authorities, might put reunification of young persons with their parents at risk.⁵⁷⁶ In order to safeguard the right to family reunification, the Administrative Court of Berlin has repeatedly asked authorities to prioritise procedures of unaccompanied minors who were approaching their 18th birthday.⁵⁷⁷

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"). Courts decided upon 18,433 such cases in 2019. 3,145 upgrade-appeals were successful in 2019, with Administrative Courts granting asylum or refugee status. In 11,370 cases upgrade-appeals were rejected by Administrative Courts or procedures were abandoned for other reasons (settlement out of court and/or withdrawal of appeal; see [Differential Treatment of Specific Nationalities in the Procedure](#)). 20,549 cases of such appeals were pending at the end of 2019.⁵⁷⁸

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 2019 and 2020 such programmes were in place in the Federal States of **Berlin** (until end of 2020), **Brandenburg**

⁵⁷¹ A description of the procedure in English has been published by Initiative "Familienleben für alle", available at <https://bit.ly/2V6QzBg>.

⁵⁷² PRO ASYL, '18 Monate Gnadenkontingent beim Familiennachzug: Nicht einmal der Minimalkonsens wird erfüllt', 28 February 2020, available in German at: <https://bit.ly/2R8jGTR>.

⁵⁷³ Federal Government, *Reply to oral question by The Left*, Plenary protocol 19/139, 17412, 14 January 2020, available in German at <https://bit.ly/3dV6njK>.

⁵⁷⁴ 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.

⁵⁷⁵ Administrative Court of Berlin, Decision 38 K 27.18 V, 29 March 2019, available at <https://bit.ly/2VGrPQW>.

⁵⁷⁶ 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>.

⁵⁷⁷ Administrative Court of Berlin, Decision 38 L 502.19 V, 16 January 2020, available in German at: <https://bit.ly/34NRMC0>; 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>.

⁵⁷⁸ Federal Government, *Reply to parliamentary question by The Left*, 19/18498, 2 April 2020, 50-51.

(until 2024), **Hamburg** (until end of November 2020), **Schleswig-Holstein** (until end of June 2020) and **Thuringia** (until end of December 2020). The programme in the Federal State of **Berlin** is the only one which is also available to family members of Iraqi refugees.⁵⁷⁹

No exact figures are available on the number of visas granted to family members of refugees for family reunification purposes. According to a media report, about 26,000 visa were granted in 2019 to family members from the seven most important countries of origin of refugees.⁵⁸⁰ However, this figure includes both cases of family reunification with refugees and with persons who have a residence permit in Germany for other reasons. Therefore, this number represents only a vague indicator for the actual number of visa issued to family members of refugees.

The German embassy in Kabul was closed after being severely damaged in an attack on 31 March 2017. The embassy had not been reopened for visitors as of the end of 2019, so it was still not possible to apply for visas for family reunification purposes. Applications for visa for family reunification purposes have to be submitted to one of the German embassies in New Delhi (India) or Islamabad (Pakistan).⁵⁸¹

2. Status and rights of family members

If family members are already in Germany and have applied for asylum at the same time as the person granted protection, they are usually granted the protection status at the same time, often as part of the same decision, within the concept of “family asylum”. These provisions apply to refugees and beneficiaries of subsidiary protection accordingly.⁵⁸²

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.⁵⁸³ 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.⁵⁸⁴

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](#)).

⁵⁷⁹ An overview of regional programmes can be found at: <http://resettlement.de/aktuelle-aufnahmen/>.

⁵⁸⁰ Migazin.de, ‚Kontingent für Familiennachzug für 2019 nicht ausgeschöpft‘, 14 January 2020, available in German at: <https://bit.ly/3j9iQCE>.

⁵⁸¹ Informationsverbund Asyl und Migration, ‘Bearbeitung von Visaanträgen afghanischer Staatsangehöriger’, available in German at: <http://bit.ly/2GfN3zh>.

⁵⁸² Section 26(5) Asylum Act.

⁵⁸³ Section 27(4) Residence Act.

⁵⁸⁴ Section 31 Residence Act.

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.⁵⁸⁵

Further to the obligation to reside in a Federal State, authorities can impose further restrictions and oblige beneficiaries to take up a place of residence in a specific municipality within the Federal State. This obligation is now applied in seven Federal States: **Bavaria, Baden-Württemberg, North Rhine-Westphalia, Hesse, Saarland, Saxony** and **Saxony-Anhalt**, with some regional distinctions. For instance, in the Federal State of **Saxony**, the obligation to live in a particular place is limited to a one-year period, as opposed to the possible three year-period applied in other states.⁵⁸⁶ Furthermore, the Federal States of **Lower Saxony** and **Rhineland-Palatinate** introduced “negative” regulations according to which refugees can be asked *not* to move to certain municipalities. This regulation is effective for three towns in **Lower Saxony** (Salzgitter, Delmenhorst and Wilhemshaven) and one in **Rhineland-Palatinate** (Pirmasens) which are faced with structural economic difficulties and already house a comparably high number of migrants and refugees. The “city states” (Berlin, Hamburg, Bremen) and several smaller Federal States (**Brandenburg, Mecklenburg-Vorpommern, Schleswig-Holstein, Thuringia**) have not introduced any further restrictions beyond the obligation to take up residence in the respective Federal State.⁵⁸⁷

The obligation to live in a certain Federal State or in a certain municipality remains in force for a maximum period of three years, but it can be lifted for certain reasons e.g. for family-related reasons or for education and employment purposes.

The regulation of Section 12a of the Residence Act only applies to beneficiaries of protection who have been granted a residence permit based on protection status since 1 January 2016. The residence rule shall not apply if a beneficiary of protection (or one of his or her family members) can take up a job in another place, if this job provides for a sufficient income to cover the cost of living. It also has to be lifted, if a beneficiary of protection takes up vocational training or university education in another place. Furthermore, the rule shall not apply if family members (spouses, registered partners or minor children) live in another place.⁵⁸⁸

According to the official explanatory memorandum, the residence rule is supposed to promote sustainable integration by preventing segregation of communities.⁵⁸⁹ However, it has been questioned whether the way in which the provision has been put into effect is suitable for achieving the intended aim.⁵⁹⁰ 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.⁵⁹¹

⁵⁸⁵ 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.

⁵⁸⁶ Welt.de, ‚Dort wohnen, wo der Staat es will‘, 1 March 2019, available in German at <https://bit.ly/2XiTGZH>.

⁵⁸⁷ 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>.

⁵⁸⁸ Section 12a(5) Residence Act.

⁵⁸⁹ Explanatory memorandum, Bundestag Document no. 18/8614, 42-43.

⁵⁹⁰ Clara Schlothauer and Sebastian Röder, *Integrative (?) Zwangsmaßnahme (!), Die neue Wohnsitzregelung nach § 12a AufenthG*, Asylmagazin 11/2016, 364-373.

⁵⁹¹ Nona Renner, *Die Wohnsitzauflage als Mittel deutscher Integrationspolitik? Das Beispiel Sachsen*, MIDEM-Policy Paper 01/18, Dresden, available at: <http://bit.ly/2HSpzGM>.

A brief analysis of the impact of the residence rule was published in January 2020.⁵⁹² This paper is based on the “IAB-BAMF-SOEP survey”, a representative study on the living conditions of refugees which has been carried out on an annual basis since 2016. In this analysis, the situation of refugees who are subject to the residence rule is compared to other refugees, in particular those that were granted refugee status at an earlier date, before the introduction of the regulation. The duration of stay in Germany as well as other regional and individual factors were taken into account in order to avoid possible distortions. The main findings of this analysis are:

- Refugees who are subject to the residence rule are less likely to be employed;
- Refugees who are subject to the residence rule are less likely to live in private accommodation (as opposed to collective accommodation);
- It could not be ascertained whether the residence rule had a positive or negative impact on refugees’ German language skills or on their (successful) participation in integration courses.

In a ruling of 4 September 2018, the High Administrative Court of North Rhine-Westphalia decided that the Federal State’s regulation on the residence obligation for refugees was illegal. According to the court, the wording of the directive was too restrictive as it stated that refugees “should, as a rule” be obliged to reside in the town or district to which they had been accommodated during the asylum procedure.⁵⁹³ 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“.⁵⁹⁴ 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 2019.⁵⁹⁵ 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”.⁵⁹⁶ 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.⁵⁹⁷

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 standards⁵⁹⁸ and therefore has to include a storage medium with the facial image, fingerprints etc.⁵⁹⁹

⁵⁹² 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>.

⁵⁹³ High Administrative Court North Rhine-Westphalia, Decision 18 A 256/18, 4 September 2018.

⁵⁹⁴ Claudius Voigt, ‘Zum Urteil des OVG Nordrhein-Westfalen: Rechtswidrige pauschale Wohnsitzzuweisung’, *Asylmagazin* 12/2018, 454-458.

⁵⁹⁵ Act to remove the time-limit of the integration Act (*Gesetz zur Entfristung des Integrationsgesetzes*), Official Gazette I, No. 25, 11 July 2019, 914.

⁵⁹⁶ Section 12a(1)(3) Residence Act.

⁵⁹⁷ Explanatory memorandum to draft bill, 25 March 2019, 19/8692, 9.

⁵⁹⁸ 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.

⁵⁹⁹ Section 4(4) Residence Regulation (*Aufenthaltsverordnung*).

The duration of the travel document for refugees is “up to three years”. Alternatively, it can be issued as a preliminary travel document, i.e. without an electronic storage medium, for “up to one year”.⁶⁰⁰ A prolongation of the document is not possible, so refugees have to apply for a new document once the old one has expired.

Beneficiaries of **subsidiary protection** can be issued with a “travel document for aliens” (“*Reiseausweis für Ausländer*”) if they do not possess a passport or a substitute document and if they cannot be reasonably expected to obtain a passport or a substitute document from the authorities of their country of origin.⁶⁰¹ 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,⁶⁰² 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.⁶⁰³ This applies to beneficiaries of subsidiary protection as well. However, if it is possible to obtain a passport from an embassy in Germany, beneficiaries of subsidiary protection are generally required to do so. If they argue that this is impossible for them, they have to apply for a “travel document for aliens” on individual grounds and have to demonstrate that they cannot be reasonably expected to get a passport on individual grounds.

The duration of the “travel document for aliens” is usually equivalent to the validity of the residence permit that a foreign citizen has in Germany.⁶⁰⁴ 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 ⁶⁰⁵ |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2019: | Not available |

Neither refugees nor beneficiaries of subsidiary protection are obliged to stay in reception centres or other forms of collective accommodation centres. However, in many places, particularly in the big cities, it often proves very difficult for beneficiaries to find apartments after they have been granted protection status. Therefore, it has been reported that many beneficiaries stay in collective accommodation centres for long periods. This can pose a problem for municipalities since it is not clear on which legal basis they are staying in those centres and which institution has to cover the costs.⁶⁰⁶

⁶⁰⁰ Section 4(1) Residence Regulation.

⁶⁰¹ Section 5(1) Residence Regulation.

⁶⁰² Verfahrenshinweise der Ausländerbehörde Berlin (Guidelines for the Aliens Office Berlin), 12 September 2016, available at: <http://bit.ly/2m1sjCe>, 492.

⁶⁰³ Federal Ministry of Interior, *Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz* (General Administrative Guidelines for the Residence Act), 26 Oct. 2009, no. 3.3.1.3.

⁶⁰⁴ Section 8 Residence Regulation.

⁶⁰⁵ 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.

⁶⁰⁶ 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>.

No recent statistics or studies on the housing situation of refugees are available. An analysis, based on a survey conducted in the second half of 2016, showed that 52% of persons who had come to Germany as asylum seekers between 2013 and the end of January 2016 were living in “individual accommodation” (i.e. not in collective accommodation centres).⁶⁰⁷ However, this study (like other reports on this subject) does not clearly distinguish between the status of persons who had taken part in the survey, so it is not clear how many persons with refugee or subsidiary protection status were among the group of persons still housed in collective accommodation centres.

Some figures are available for the Federal State of Bavaria, but only for the situation in 2018: In **Bavaria**, 27.7% of persons living in accommodation centres in January 2018 were considered to be “false occupants” (*Fehlbeleger*), which is the bureaucratic term for persons who are allowed to leave the centres, but have not found an apartment yet. This refers to 8,330 beneficiaries of international protection (out of a total of 30,075 persons living in accommodation centres throughout Bavaria on 31 January 2018) who, in theory, were not obliged to live in this type of accommodation.⁶⁰⁸

A study by the Federal Institute for Research on Building, Urban Affairs and Spatial Development published in October 2017 deals *inter alia* with the housing situation of beneficiaries of international protection in 10 municipalities throughout Germany. The main findings of this study include the following:⁶⁰⁹

“Integration into the housing market does not equal integration into society:

In municipalities in which the placement of refugees in the regular housing market succeeds, there is often a lack of prospects for suitable jobs and training positions. In addition, it is difficult for refugees to overcome distances to integration courses, doctors, shopping facilities and friends, as they are dependent on public transport, which has shortcomings in rural regions. These factors complicate the sustainable integration of refugees into society...

A tense housing market situation impedes the integration of refugees on the housing market:

In large cities and university cities with tense housing markets, many refugees live in emergency and collective accommodation with no quality of living for long periods of time. The integration into the housing market is only successful to a certain extent and the construction of new social housing is progressing slowly. In many cities, the fluctuation reserves of the housing market are exhausted and the bottlenecks in part lead to a “black market” for finding accommodation in certain areas...

Placement in flats is not generally better than housing in collective accommodation:

The decentralised accommodation of refugees in flats contributes particularly to the integration into the housing market if the refugees can take over the rental agreements. In practice, it is not always an improvement over placement in collective accommodation. In some places the flats are occupied by many people who have not chosen to share rooms, bathroom and kitchen. The living standard is sometimes lower than in small hostels and privacy is severely limited.”

If refugees or beneficiaries of subsidiary protection cannot provide for the costs, the rent for a room or an apartment is covered by the local social welfare office or the local job centre, but only up to an “adequate” level. What is considered “adequate” depends on the local housing market, so beneficiaries of protection have to inquire with the local authorities to what amount rent will be reimbursed.

⁶⁰⁷ BAMF, *Die Wohnsituation Geflüchteter. BAMF-Kurzanalyse 2/2018*, available in German at <https://bit.ly/2JXqCip>.

⁶⁰⁸ Bavarian Ministry for Labor, Social Affairs, Family and Integration, *Faktenblatt Asyl*, Januar 2018, available at: <https://bit.ly/2G3J5ZQ>.

⁶⁰⁹ 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>.

If beneficiaries of protection have an income, but are still living in collective accommodation, authorities regularly impose fees as a contribution to the operational costs of the centres. It has been reported that some municipalities charge excessive fees which may clearly exceed the costs for an apartment in the area. In one case (the town of Hemmingen in **Niedersachsen/Lower Saxony**), authorities may charge fees up to a maximum of €930 for a place, according to the local statutes. These seemingly excessive costs result from a calculation which includes all operational expenses for the centres, such as costs for social services as well as security and maintenance. In practice, the fees may lead to a situation in which refugees have to pass on their complete income to the local authorities in exchange for a place in a shared room.⁶¹⁰

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”.⁶¹¹ 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.⁶¹² They are entitled to all supportive measures offered by the labour agency. This includes qualification offers and training programmes, but also costs which may result from the need to have professional qualifications recognised.

Recognition of professional qualifications has been often described as a major practical obstacle for access to the labour market. This does not only affect refugees but other immigrants as well. The German government therefore has set up an information portal offering advice on the necessary procedures (“**Recognition in Germany**”).

Available official statistics on unemployment only distinguish between nationalities, but not between residence statuses of persons concerned. Therefore, it is not possible to determine how many beneficiaries of international protection have successfully integrated into the labour market.

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

⁶¹⁰ Frankfurter Rundschau, ‘Wohngebühren für Flüchtlinge: Monatlich bis zu 930 Euro’, 12 August 2019, available at: <https://bit.ly/2JXqCip>.

⁶¹¹ Section 12a(2) Residence Act.

⁶¹² Section 25(2) Residence Act.

have come to Germany as asylum seekers between 2013 and 2016.⁶¹³ The main conclusions of the study include the following:

- About 50% of the persons surveyed has found employment within five years after the arrival, which implies that integration into the labour market is taking place faster in comparison to earlier years.
- 60% of the persons surveyed were either in employment or were attending an educational institution or were taking part in qualification or integration measures in the second half of 2018. The major part of the remaining 40% were actively seeking a job or were on maternity/parental leave.
- Of persons surveyed who were in employment, 44% had jobs categorised as “unskilled labour” while 52% had jobs which required a certain qualification. 5% were in employment characterised as “specialised” or “highly specialised” occupations. Because of the comparably high number of unskilled occupations, the income of persons surveyed was considerably lower than the average income of persons who were born in Germany (between 54 and 74%, depending on the age group).

It has to be noted that this study does not distinguish between the residence status of the persons surveyed. Therefore, it is not clear how many of the persons surveyed have been granted protection status. Nevertheless, the analysis provides at least an indication for the situation of persons with protection status, since a high percentage of persons who have arrived as asylum seekers between 2013 and 2016 have been granted protection.

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.

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:⁶¹⁴

- 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.

F. Social welfare

Both refugees and beneficiaries of subsidiary protection are entitled to social benefits, in particular unemployment benefits, on the same level as German nationals.

Beneficiaries of international protection are entitled to benefits, starting from the first day of the month after the recognition of their status has become legally valid i.e. usually with the arrival of the decision by the BAMF. Problems with access to social benefits may occur during the period when persons have

⁶¹³ 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>.

⁶¹⁴ *Ibid.*

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.⁶¹⁵

For persons who are registered as unemployed, the responsible authority is the job centre or Employment Agency. This institution is responsible for the disbursement of unemployment benefits as well as for the provision of other benefits and measures for integration into the labour market; job training measures, support with job applications, specific language courses etc. For persons who are not registered as unemployed (e.g. because they have reached the age of retirement or are unable to work on health grounds), the responsible authority is the Social Welfare Office.

Since August 2016, beneficiaries of protection are generally obliged to take up their place of residence within the Federal State in which their asylum procedures have been conducted for a maximum period of three years (see [Freedom of Movement](#)). In several Federal States beneficiaries of protection are also obliged to reside in a specific municipality, also for a maximum period of three years. This obligation can be lifted for certain reasons e.g. for family-related reasons or for education and employment purposes. As long as the obligation is valid, social benefits are generally only provided in the respective Federal State or in the respective municipality.

G. Health care

Persons with refugee status and beneficiaries of subsidiary protection have the same status as German citizens within the social insurance system. This includes membership in the statutory health insurance, if they have a job other than minimal employment (i.e. a low-paid part time job). If they are unemployed, the job centre or the social welfare office provides them with a health insurance card which entitles them to the same medical care as statutory health insurance.

⁶¹⁵ Georg Classen, *Ratgeber für Geflüchtete in Berlin*, 2nd ed., November 2017, available in German at: <https://bit.ly/2DOV0X5>, 156-157.

ANNEX – Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

| Directive | Deadline for transposition | Date of transposition | Official title of corresponding act | Web Link |
|----------------------------------------------------------------------|-------------------------------------|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| Directive 2011/95/EU Recast Qualification Directive | 21 December 2013 | 1 December 2013 | Act for the Transposition of the Directive 2011/95/EU | http://bit.ly/1eVWZfC (DE) |
| Directive 2013/32/EU Recast Asylum Procedures Directive | 20 July 2015 | 20 October 2015 6 August 2016 | Asylum Procedures Acceleration Act Integration Act (provisions on inadmissibility only) | http://bit.ly/1PVCs9T (DE) |
| Directive 2013/33/EU Recast Reception Conditions Directive | 20 July 2015 | 5 November 2014 20 October 2015 | Act on classification of further states as safe countries of origin and on the facilitation of access to the labour market for asylum seekers and tolerated foreigners Asylum Procedures Acceleration Act | http://bit.ly/1RtIQIb (DE) http://bit.ly/1PVCs9T (DE) |
| Regulation (EU) No 604/2013 Dublin III Regulation | Directly applicable 20 July 2013 | 1 August 2015 | Act on the redefinition of the right to stay and on the termination of stay | http://bit.ly/1lbaPmO (DE) |

Note that the Asylum Procedures Directive and the Reception Conditions Directive have only partially been transposed by the corresponding acts referred to here.