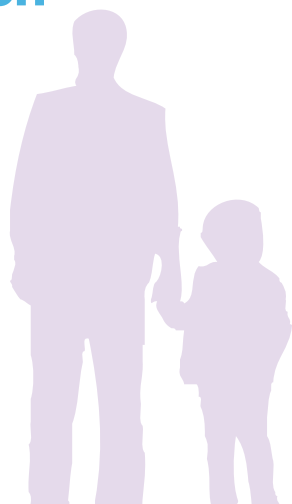


# **DUBLIN II Regulation National Report**

**European network for technical  
cooperation on the application  
of the Dublin II Regulation**



**GERMANY**

December 2012

## Acknowledgements

We would like to express our sincere gratitude to the many refugees who shared their experiences concerning the Dublin-II-Regulation with us and to all colleagues who supported us in compiling this report: Thomas Berthold, Silke Born-Gotta, Klaudia Dolk, Peter Fahlbusch, Janina Giesecking, Judith Gleitze, Stephan Hocks, Henrike Janetzek, Stephen Marquardt, Dirk Morlok, Karl Kopp, Marei Pelzer, Uta Rieger, Uli Sextro, Klaus Walliczek. A special thank goes to Luca Martin and Rebecca Zippelt for the English translation.

Frankfurt am Main,

December 2012,

Dominik Bender and Maria Bethke on behalf of the Refugee Council Hessen.

## Acronyms (Dublin II Regulation, ECtHR, ECRE etc)

**AsylVfG:** Asylum Procedure Act (Asylverfahrensgesetz)

**AufenthG:** Residence Act (Aufenthaltsgesetz)

**Az.:** Decision number/ reference number (Aktenzeichen)

**BAMF:** German Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)

**B-UMF Federal:** Association for Unaccompanied Minor Refugees (Bundesfachverband Unbegleitete minderjährige Flüchtlinge)

**BVerfG:** Federal Constitutional Court (Bundesverfassungsgericht)

**ECtHR:** European Court of Human Rights

**ECHR:** European Convention on Human Rights

**CJEU:** Court of Justice of the European Union

**D II Regulation:** Dublin II Regulation (Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national)

**GG:** German Basic Law (Grundgesetz)

**LG:** Regional Court (Landgericht)

**MS:** Dublin II Member State (all EU Member States and Switzerland, Norway, Iceland and Liechtenstein)

**NGO:** Non-Governmental Organisation

**OVG/VGH:** Higher Administrative Court (Oberverwaltungsgericht / Verwaltungsgerichtshof)

**VG:** Administrative Court (Verwaltungsgericht)

# Contents

<b>1. Introduction</b>	<b>4</b>
1.1 The Dublin II System: Perspectives and Challenges at the European Level	4
1.2. Overview of the Dublin II Regulation in Bulgaria	6
<b>2. The National Legal Framework and Procedures</b>	<b>8</b>
2.1. Legal background	8
2.2. Procedural background	10
<b>3. The application of the Dublin Regulation in Germany</b>	<b>17</b>
<b>3.1 The Right to Information and the Application of Dublin II Regulation Criteria</b>	<b>17</b>
3.1.1 Right to information	17
3.1.2 Problems with the correct application of the criteria	23
3.1.3. Family unity and the definition of family members	30
3.1.4. Heterogeneity of application	33
<b>3.2 The Use of Discretionary Provisions</b>	<b>34</b>
3.2.1. Sovereignty clause and humanitarian clause	34
3.2.2. Reception conditions in the responsible Member States	36
<b>3.3 The Practicalities of Dublin Procedures</b>	<b>44</b>
3.3.1. Timeframes	44
3.3.2. Re-entry ban after the Dublin transfer	48
<b>3.4 Vulnerable Persons in the Dublin Procedure</b>	<b>50</b>
3.4.1. Vulnerable persons /medical cases	50
3.4.2. Unaccompanied minors	54
<b>3.5 Effective Remedy and Legal Advice</b>	<b>60</b>
3.5.1. Effective remedy	60
3.5.2. Legal advice	63
<b>3.6 Detention in the Dublin Procedure</b>	<b>67</b>
<b>3.7 Persons that Have Received Refugee Status or Subsidiary Protection         in Another Dublin State</b>	<b>73</b>
<b>3.8. Situation of Returnees in Germany</b>	<b>77</b>
<b>3.9 Good Practices in Germany</b>	<b>80</b>
<b>4. Conclusion and Recommendations</b>	<b>81</b>
<b>ANNEXES</b>	<b>86</b>
<b>A. Bibliography</b>	<b>86</b>
<b>B. Relevant Statistics</b>	<b>88</b>
<b>C. Relevant National Case Law</b>	<b>98</b>

# 1 *Introduction*

## *1.1 The Dublin II System: Perspectives and Challenges at the European Level*

The Dublin Regulation,<sup>1</sup> as its predecessor the Dublin Convention, was designed to ensure that one Member State is responsible for examining the asylum application of an asylum seeker and to avoid multiple asylum claims and secondary movement. It is confined to fixing uniform grounds for the allocation of Member State responsibility on the basis of a hierarchy of criteria binding on all EU Member States as well as Iceland, Norway, Switzerland and Liechtenstein. On the ten year anniversary of its entry into force this research provides a comparative overview of national practice in selected Member States on the application of this Regulation.

Our research shows that the operation of the Dublin system continues to act to the detriment of refugees, causing families to be separated and leading to an increasing use of detention. The Dublin procedure leads to serious delays in the examination of asylum claims and by doing so, effectively places peoples' lives on hold. The hierarchy of criteria is not always respected whilst Art. 10 is the predominant criterion used in connection with Eurodac. State practice demonstrates that asylum seekers subject to this system may be deprived of their fundamental rights *inter alia* the right to be heard, the right to an effective legal remedy and the very right to asylum itself as access to an asylum procedure is not always guaranteed. Reception conditions and services may also be severely limited for asylum seekers within the Dublin system in a number of Member States. There is an increasing use of bilateral administrative arrangements under Art. 23 and most States resort

---

<sup>1</sup> Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, L 50/1 25.2.2003.

to informal communication channels to resolve disputes in the allocation of responsibility. Evidentiary requirements are very strict in some Member States, which in turn creates difficulties for asylum seekers in substantiating family links or showing time spent outside the territories of the Dublin system. A number of Member States also apply an excessively broad interpretation of absconding thereby extending the time limits for Dublin transfers further increasing delays in the examination of asylum claims. Furthermore the problems inherent in the Dublin system are also exacerbated by varied levels of protection, respect for refugee rights, reception conditions and asylum procedures in Member States creating an 'asylum lottery'.

The national reports provide an insight into the application of this Regulation at the national level whilst the comparative report outlines the main trends and developments at the European level. This research comes at a time when the Grand Chambers of both the European Court of Human Rights and the Court of Justice of the European Union have questioned the compatibility of the Dublin system with asylum seekers fundamental rights. In addition the EU institutions have recently reached a compromise agreement upon a recast Dublin III Regulation that introduces significant reforms including the creation of a mechanism for early warning, preparedness and crisis management. Despite these significant advances, the findings of this research demonstrates the continuous need to carefully evaluate the foundational principles of the Dublin system and its impact both with respect to asylum seekers' fundamental rights and Member States. It is hoped that this research will aid the Commission's review of the Dublin system within the forthcoming launch of a 'fitness check' and for any future dialogue on the assignment of responsibility for the examination of asylum claims.<sup>2</sup>

---

<sup>2</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on enhanced intra-EU solidarity in the field of asylum, An EU agenda for better responsibility-sharing and more mutual trust, COM 2011 (835), 2.11.2011 p.7.

## *1.2 Overview of the Dublin II Regulation in Germany*

In 2003, when the Dublin-II-Regulation entered into force, 1562 asylum seekers were deported from Germany to other Dublin Member States. In the same year, Germany had to admit nearly twice as many people from other Member States. Since 2008, the reverse has happened; there are significantly more Dublin deportations from Germany than to Germany. In 2011, Germany deported 2902 persons while it admitted only 1303 persons.

The German authorities are very much interested in a functioning Dublin system. This also means that it is in their interest that deportations are carried out as “smooth” as possible. This is also why the same provisions, which were created within the framework of the “asylum compromise” concerning deportations on the basis of the so-called third country provision (Drittstaatenregelung), are applied to those falling within the Dublin-II-Regulation. For those who are affected, this implies that an interim measure is legally and factually impossible: The Asylum Procedure Act (AsylVfG), hereafter AsylVfG) envisages that the Dublin decision, which rejects an asylum application as inadmissible and which mandates the deportation to another European Member State, is only delivered to the person concerned shortly before the deportation via the police. As the deportation is usually carried out early in the morning, the Dublin decision is often just handed over to the asylum seeker on the way to the airport or at a point when it is no longer possible to contact a lawyer. Nonetheless, even if the person concerned is able to contact a lawyer, Section 34a para 2 AsylVfG excludes the possibility that an administrative court suspends the deportation.

Though, since 2008 a growing number of administrative courts have granted an interim (measure). However, a number of asylum seekers are still not successful with their appeal at court due to the strict provision of Section 34a para 2 AsylVfG.

So far, four state governments of Germany drew the conclusion from the case law of the CJEU and the ECtHR concerning the Dublin-II-Regulation by proclaiming it unlawful to deliver the Dublin decision only when the police come for the deportation. Since this year, the Aliens Authorities of those four states are mandated to inform the



person affected before the deportation will be carried out. In all the other states of Germany, unannounced deportations are carried out daily.

This report describes the legal bases, the execution of the Dublin procedure and the main problems with regard to the application of the Dublin-II-Regulation in Germany. At large, it discusses the problems which arise due to the fact that the persons concerned are not informed or insufficiently informed about the procedure, the consideration of family ties, the practice of the application of the sovereignty clause of the Federal Office for Migration and Refugees (hereafter: BAMF or Federal Office), in particular with regard to particular vulnerable asylum seekers and unaccompanied minors, the access to effective legal remedies as well as the handling of deadlines and questions of detention in the Dublin procedure. The report ends with recommendations to the legislator and the authorities to better safeguard the rights of asylum seekers in the Dublin procedure. The annex refers to the literature used, statistical data as well as to all quoted case law decisions.

The stance of the BAMF as well as of the Federal government is retrieved from openly available publications (see bibliography in the annex) and remarks of representatives of the BAMF at public events. The majority of the presented cases are cases from the daily work of the authors, some were provided by lawyers as well as from the NGO Pro Asyl. The cases are anonymised, the authors know the names and the file number at the BAMF. The focus of the report is to describe the practice of the authorities. In short, we will upload a summary of over 50 case law decisions at the project website ([www.dublin-project.eu](http://www.dublin-project.eu)).

# 2

## *The National Legal Framework and Procedures*

### *2.1. Legal background*

The D II Regulation was not transposed into national law. Section 27a AsylVfG<sup>3</sup> only creates the possibility of rejecting an asylum application as “inadmissible” “if another country is responsible for processing an asylum application based on European Community law or an international treaty”. The AsylVfG contains specifications concerning the delivery of decisions to the asylum seeker and legal remedies. Since 1993, these rules already apply to asylum applicants who entered the German federal territory from a “safe third country”. These rules were just adapted in a way to be equally applicable for asylum seekers who were rejected on the basis of the D II Regulation. The implementation of the Dublin procedure is regulated by internal administrative orders.<sup>4</sup>

Regarding the authorities’ obligation to inform the asylum seeker, one notices the following: Art. 3 (4) D II Regulation<sup>5</sup> is interpreted as implying an obligation to inform the asylum seeker solely about the existence and the most important principles of the D II Regulation, but not about the initiation and the result of a Dublin procedure which affects him/her personally. One is generally informed in writing about the decision that the asylum application is inadmissible and that the transfer to the responsible member state (MS) has been

---

**3** The AsylVfG is available at [http://www.gesetze-im-internet.de/englisch\\_asylvfg/index.html](http://www.gesetze-im-internet.de/englisch_asylvfg/index.html). Sect. 27a states: “An application for asylum shall be inadmissible if another country is responsible for processing an asylum application based on European Community law or an international treaty.”

**4** These administrative orders are usually not published. The NGO Pro Asyl in 2008 won proceedings to publish a part of the then effective administrative orders, a 2010 German version is available at [http://www.proasyl.de/fileadmin/fm-dam/i\\_Asylnrecht/Dienstanweisungen-Asyl\\_BAMF2010.pdf](http://www.proasyl.de/fileadmin/fm-dam/i_Asylnrecht/Dienstanweisungen-Asyl_BAMF2010.pdf)

**5** It states: “The asylum seeker shall be informed in writing in a language that he or she may reasonably be expected to understand regarding the application of this Regulation, its time limits and its effects.”

ordered, but he/she does not receive this information early enough to have sufficient time for lodging effective legal remedies.<sup>6</sup>

Sections 31 para. (1) (sentences 4-6) and 34a of the Asylum Procedure Act envisage that the decision declaring the asylum application as inadmissible has to be delivered directly to the asylum seeker. Sect. 34 a of the Asylum Procedure Act states that “[n]o prior notification announcing deportation or time limit shall be necessary”. As a result, there is no possibility for a voluntary departure.<sup>7</sup> In practice, the decision is usually delivered on the day of the unannounced Dublin transfer by the police. The lawyer (if there is one) only receives a copy of the decision the day after by mail, when the person concerned has already been transferred. If the person concerned still manages to appeal against the decision in court, his/her appeal does not have suspensive effect. Sect. 34a (2) of the AsylVfG regulates that a transfer in line with the D II Regulation must not be suspended due to interim relief (*Eilrechtsschutz*).<sup>8</sup>

---

**6** If the person concerned has applied for asylum in Germany, he/she receives a decision from the BAMF that is written in the following style: “1. The asylum application is inadmissible. 2. The transfer to ... is ordered.” If he/she has not applied for asylum in Germany, he/she only receives a note saying that based on the Dublin II Regulation, he/she will be transferred to the responsible state.

**7** Sect. art. 31 1, phrase 4-6 state the following: “If the asylum application is rejected only pursuant to Section 26a or Section 27a, the decision together with the deportation order under Section 34a shall be delivered to the foreigner himself. It may also be delivered to him by the authority responsible for deportation or for carrying out deportation. If the foreigner has an authorized representative or if he has named an authorized receiving agent, a copy of the decision shall be forwarded to the representative or agent.” Sect. 34a, art. 1 AsylVfG states: “If the foreigner is to be deported to a safe third country (Section 26 a) or to a country responsible for processing the asylum application (Section 27a), the Federal Office shall order his deportation to this country as soon as it has been ascertained that the deportation can be carried out. (...) No prior deportation warning nor deadline shall be necessary.”

**8** Many courts by now grant interim relief nonetheless, see section 3.5.1.

## 2.2. Procedural Background

### 2.2.1. Which authority initiates the Dublin procedure and communicates with the responsible member state?

The Federal Office for Migration and Refugees (BAMF) is a federal authority within the portfolio of the Ministry of the Interior. It is responsible for carrying out the asylum procedure as well as the Dublin procedure. The headquarter of the BAMF is located in Nuremberg. There are 22 branches with at least one in each of the 16 Federal States of Germany.<sup>9</sup> The branches carry out the asylum procedure where asylum seekers are interviewed about their reasons for seeking asylum and where a decision on the merits of the asylum application is taken. In contrast, the Dublin procedure is carried out centrally in two separate units, one of which is located in the BAMF central unit in Nuremberg and the other one in Dortmund (Federal State of North Rhine-Westphalia).

The bigger one of those two units, unit 431 in Dortmund, is responsible for the Dublin procedure of asylum seekers who have applied for asylum in Germany. Unit 430 in Nuremberg is responsible for persons who were apprehended within the country and who have not applied for asylum in Germany. Additionally, unit 430 takes care of Dublin procedures which are of “particular importance”.

Furthermore, the border police which carries out identity checks in “border areas” and at airports, train stations and within trains, may carry out a Dublin procedure. According to Section 3 of the German Regulation for Asylum Responsibility (*Asylzuständigkeitsbestimmungsverordnung*), the precondition for such procedures is that the person in question was apprehended in a border area and that the police assume that a bordering Member State is responsible for carrying out the asylum procedure.

---

<sup>9</sup> The organisational chart of the BAMF is available at <http://www.bamf.de/SharedDocs/Anlagen/EN/Downloads/Infothek/Sonstige/organiogramm.pdf?blob=publicationFile>

Currently, the BAMF also employs so-called Dublin liaison officers (*Verbindungsbeamte*) in the Netherlands, France, Greece, Great-Britain, Ireland, Poland, Italy and Hungary. In the central unit of the BAMF, there are also liaison personnel from the Netherlands, Belgium and Great-Britain. The liaison officers of the Federal Office working in other Member States are supposed to have an advisory and mediating role, to inform about important developments in the area of asylum, migration and integration, and to exchange information on the countries of origin and case law.<sup>10</sup>

With around 40 employees, the German Dublin units are well-positioned in terms of personnel. Upon a parliamentary inquiry on the application of the D II Regulation and the costs of the Dublin system, the Federal Government stated that it did not compile the total expenditures incurred by Dublin procedures.<sup>11</sup>

### 2.2.2. *Initiation of a Dublin procedure with and without asylum application in Germany*

If a person who does not express his/her wish to seek asylum is apprehended by the police at the German border or within the German territory, or goes to the police/Aliens Authority (*Ausländerbehörde*) and is not in possession of a necessary residence permit, this person will be subject to administrative procedures of identification (taking of pictures and finger prints). The authorities will undertake a Eurodac comparison and will interview the person about his/her travel itinerary. If the person was apprehended by the police in the "border area" (meaning the person has just crossed an EU internal border), the border police try to send the person back to the European state where he/she came from.<sup>12</sup> If this is not possible, the following procedures will be initiated:

---

<sup>10</sup> Cf. [www.bamf.de/EN/DasBAMF/Aufgaben/EuropaZusammenarbeit/Liasonpersonal/liasonpersonal-node.html;jsessionid=5361616C844E94FC4E96EB5827F2775F.1\\_cid251](http://www.bamf.de/EN/DasBAMF/Aufgaben/EuropaZusammenarbeit/Liasonpersonal/liasonpersonal-node.html;jsessionid=5361616C844E94FC4E96EB5827F2775F.1_cid251)

<sup>11</sup> Deutscher Bundestag, Bundestags-Drucksache 17/2655 of 26 July 2010, p. 6, available at <http://dipbt.bundestag.de/dip21/btd/17/026/1702655.pdf>

<sup>12</sup> Regarding the difficulties of applying for asylum in such a situation, cf. Section 3.6.

- The Dublin procedure will be initiated if a Eurodac hit of category 1 is found, implying that the asylum seeker has applied for asylum in another Member State. The person concerned is usually not informed about it (see Section 3.1.1.)
- If a person applies for asylum in Germany, data from fingerprinting is also forwarded to Eurodac. A Dublin procedure will also be initiated if the Eurodac hit, irrespective of the category, provides any indication for the responsibility of another Member State.

In Germany, for the person concerned there is no clear temporal separation between the Dublin procedure and the asylum procedure. They are often carried out simultaneously which causes confusion for asylum seekers. Most asylum seekers are not informed whether Germany's responsibility for the asylum application is under consideration. If another Member State is deemed responsible, the asylum seekers are not informed either. In the majority of cases, the persons concerned are transferred to this Member State without prior notification.

There are diverging practices across different branches of the Federal Office concerning the personal interview. In a number of BAMF branches, the interview about personal details, the escape route and the reasons for fleeing is carried out before or during a Dublin procedure. In other branches of the Federal Office, the personal interview is only carried out when Germany's responsibility is clearly identified. Then if anything, an interview about personal details and the travel journey is carried out. Some asylum seekers are not interviewed at all by the Federal Office until their Dublin transfer. Persons who have not applied for asylum in Germany but who are in the Dublin procedure are, if anything, interviewed about their travel itinerary by the police.

### 2.2.3. *Dublin procedure*

Dublin procedures are often initiated solely on the basis of Eurodac hits or information on the travel itinerary. It is often the case that Dublin procedures are initiated although case officers lack information which is relevant to correctly apply the hierarchy of the Dublin criteria (see Section 3.1.2.)

#### **Case 1 – Dublin procedure after asylum application in Germany**

If a person has applied for asylum in Germany and additionally has requested the Federal Republic of Germany to invoke the sovereignty clause, the responsible case officer in the Dublin unit examines the case and prepares a written comment for or against invoking the sovereignty clause. This comment has to be presented to the head of the department. Only if the head of the department agrees, the sovereignty clause will be invoked. If the sovereignty clause is not invoked, the case officer requests the responsible local Aliens Authority to prepare and implement the Dublin transfer. The Aliens Authority books the flight, orders to arrest the person concerned and takes care of the transport to the airport. It is supported by the Federal police and the police of the Federal States. Aliens Authorities are subordinated to the Ministries of the Interior of the different Federal States and are located at the administrations of the city councils, the municipalities and the district (*Stadt-, Landkreis- und Bezirksverwaltungen*). As a result, Dublin transfers involve a Federal authority and two regional authorities of the Federal States. Because of this mixture of authorities involved, Dublin procedures can be quite divergent between the different Federal States. The governments of the Federal States also lay down rules on Dublin transfers for their Aliens Authorities, for instance, the rule that transfers should be announced to the person concerned before they are carried out or that Aliens Authorities are responsible for examining domestic deportation prohibitions (see Section 3.1.5.)

#### **Case 2 – Dublin procedure without asylum application in Germany**

Responsibility of authorities is regulated differently if a person has not applied for asylum in Germany before his/her transfer. In this case, the Federal Office for Migration and Refugees also initiates a Dublin

procedure after a Eurodac hit. However, under these circumstances it is not the BAMF but the locally responsible Aliens Authority which decides whether the person will be transferred back or not and who will implement the decision. The Federal Office assists only logistically.

If persons are apprehended close to the German border or an airport (at most 30 km away from the border or an airport) and they do not apply for asylum, the border police (*Bundespolizei*)<sup>13</sup> may perform the tasks assigned to the Aliens Authority.

#### 2.2.4. *Appeal procedure*

It is possible to appeal against a Dublin decision before the administrative court, as much as it is possible to appeal any other negative decisions in an asylum procedure. The appeal, however, does not have suspensive effect, and interim relief with suspensive effect is automatically declared inadmissible pursuant to Section 34a (2) of the Asylum Procedure Act. Concerns regarding the German Constitution and European law, there are nowadays many administrative courts which grant interim relief even in Dublin procedures (see section 3.5.1.). However, what makes it very difficult to prevent a Dublin transfer in time is the fact that no prior deportation warning or time limit for carrying out the transfer is announced and the fact that Dublin decisions are delivered to the asylum seeker only on the day of the transfer. If lawyers want to prevent a Dublin transfer despite the legal exclusion of interim relief pursuant to section 34 a (2) of the Asylum Procedure Act, they have to request both interim relief and suspensive effect of appeal before the Dublin decision is actually announced or immediately afterwards.

Based on the fact that the Dublin decision is delivered just on the day of the transfer, asylum seekers and/or lawyers who want to appeal the decision have to request interim relief as soon as they hear about transfer plans. In Dublin cases, lawyers frequently apply for an action for injunction (*Unterlassungsklage*) because authorities have not yet issued a decision which they can appeal.

---

<sup>13</sup> It used to be called "Border Protection Police" (*Bundesgrenzschutz*).



Some courts hold that the delivery of the deportation order on the day of the transfer is unlawful and oblige the BAMF to deliver the Dublin decision a few days or one to two weeks before the planned transfer.

If an interim relief was rejected by the administrative court, it is possible to appeal before the German Constitutional Court (*Bundesverfassungsgericht, hereafter BVerfG*).<sup>14</sup> The Constitutional Court may also suspend a transfer through an interim relief order. So far, this has only taken place in procedures involving Greece, constitutional complaints and requests for interim relief with regard to transfers to other Dublin states have been rejected so far.

Courts also take very diverging decisions in the proceedings on the merits of the case. In some cases, solely the Dublin decision is annulled and the Federal Office is obliged to reconsider the responsibility for assessing the asylum application. In other cases, the Federal Office is obliged by the court to invoke the sovereignty clause and to carry out the asylum application.<sup>15</sup> Some courts simultaneously take a decision on the asylum application of the claimant. With regard to Dublin procedures in Germany, there are only very few proceedings on the merits of the case and the procedures take a couple of months or even a couple of years. In this time frame, circumstances often change so that the legal action has become devoid of purpose.

If the court of the first instance decides negatively in the proceeding on the merits of the case, the person concerned may appeal at the Higher Administrative Court (*Oberverwaltungsgericht*). Equally, if a positive decision is taken in the proceeding on the merits of the case - when the Federal Office is thus obliged to invoke the sovereignty clause (or to reconsider its decision) or when the court

---

<sup>14</sup> The German Constitutional Court has this competence because it is "guardian of the German Constitution" and thus the basic rights, and can therefore intervene in every decision of authorities concerning the basic rights.

<sup>15</sup> The VG Frankfurt in July 2009 negotiated the appeal of the Iranian P. against his transfer to Greece. Earlier, it had rejected the suspensive effect of the claim and P. had been transferred to Greece in January 2008. His lawyer and the NGO Pro Asyl kept in touch with him and documented his situation in Greece. For the oral judicial procedures, P. was allowed to return to Germany. The court observed that the context had changed in the meantime and that a transfer would violate the rights of the claimant. Its decision obliged the BAMF to invoke the sovereignty clause. The decision (Az. 7 K 4376/07.F.A ) is available at [http://www.asyl.net/fileadmin/user\\_upload/dokumente/15906.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/15906.pdf).

decided itself about the asylum application – the BAMF may appeal at the Higher Administrative Court as well. As a result, not one of the few court decisions obliging the Federal Office to invoke the sovereignty clause in cases concerning Greece has entered into force.

If a person has not applied for asylum in Germany and wants to prevent the transfer to another Member State, an appeal before the administrative court is also possible. In practice, however, these procedures are rare.

### 2.2.5. *Petition procedure*

In case a person concerned does not agree with the decision taken by the BAMF or the Aliens Authority – a decision which might have been confirmed by a court in the meantime, he/she may submit a petition to the German Federal Parliament (*Bundestag*) or to the Parliament of the responsible Federal State. The Petitions Committee, consisting of members of the Parliament, may recommend the Government to change its decision. In other words, it may recommend obliging the BAMF to invoke the sovereignty clause or to oblige the Aliens Authority to refrain from implementing the transfer. For example, in 2011, the German Bundestag unanimously (!) recommended the Federal Ministry of the Interior not to execute a transfer of a Chechen family to Poland and to invoke the sovereignty clause.<sup>16</sup>

---

<sup>16</sup> Details on this procedure are available at [www.hasbulat-will-leben.de](http://www.hasbulat-will-leben.de). In general, it can be said that there are quite a lot of petitions, but since the BAMF continues the procedure after few weeks, ignoring the ongoing petition procedure, it is rare that a petition reaches the stage of being discussed and decided upon in the Petitions Committee or the German Parliament (*Bundestag*).

# *The application of the Dublin II Regulation in Germany*

# 3

## *3.1. The Right to Information and the Application of Dublin II Regulation Criteria*

### *3.1.1. The right to information*

Art. 3 (4) of the D II Regulation envisages that the asylum seeker shall be informed in writing in a language that he or she may reasonably (be expected to) understand regarding the application of the Regulation, its time limits and its effects.<sup>17</sup> This very vaguely defined provision is interpreted and applied heterogeneously by the different Member States. In order to avoid that the asylum seeker is solely treated as an object of official procedures, the authors argue that he/she should receive the following information:

- a. That there is a procedure determining the responsibility of a Member State based on the Dublin II Regulation and that his/her asylum procedure may probably not be carried out in the state where he/she currently is – or that he/she may be transferred from this state where he/she has not applied for asylum to the state where he/she had applied for asylum beforehand.
- b. Which personal information the authorities have about him/her and on the basis of which information which other state will be contacted or has been contacted. This implies that he/she has the possibility of providing information that is important for determining the responsibility of a particular Member State. In the following, he/she would have to be informed about the different criteria for determining the responsibility of MS as well as about exceptions with regard to specific countries and

---

<sup>17</sup> Art. 18 Sect. 1 of the Eurodac Regulation also envisages to inform the person whose finger prints were taken.

groups of persons.<sup>18</sup> It also requires that he/she is interviewed accordingly. This also necessitates an office agent who is familiar with the criteria of the D II Regulation and the provisions for invoking the sovereignty clause, who informs the person concerned and who carries out the “Dublin interview”.

- c. Moreover, the persons concerned should be informed about which Member State declared its responsibility and that he/she will be transferred to this state and the effective date of the transfer.

In fact, authorities only provide a small part of this information to the asylum seeker and do not collect all the information required in order to correctly apply the D II criteria.

### **Additional information for a.)**

Asylum seekers receive an objectively formulated information sheet about the D II Regulation. According to the authors' experience, there is no oral translation or even explication, and in the BAMF branch in Gießen for example, the asylum seekers often do not receive the sheet in their mother tongue but in German. The sheet does not explain the criteria of competence, but informs only that it is possible that Germany is not responsible in certain cases. The information sheet furthermore includes references (but no explanations) to Art. 7-10 and 13. Article 15 is neither explicitly nor implicitly mentioned. Persons who have not applied for asylum but in whose case a Dublin procedure has been opened are rarely or not informed at all. This applies, amongst others, to unaccompanied minors, thus, to persons who are especially in need of protection.

In 2011, almost one third of cases which were examined by one of the Dublin units on whether another state was responsible concerned persons who had not (yet) applied for asylum in Germany.<sup>19</sup>

---

**18** For example information on the practice of invoking the sovereignty clause in cases concerning Malta or on the possibility to insist on the threat of inhumane treatment in the state of destination as a reason for invoking the sovereignty clause.

**19** See Table 1 in the annex. A total of 15913 cases were examined by one of the Dublin units on whether another state was responsible. In 4223 of these cases, the person concerned had not (yet) applied for asylum in Germany.

Not all persons are instructed about the Eurodac inquiry. The authors interviewed more than 50 unaccompanied minors in the Federal State of Hesse who were fingerprinted in police stations before filing their asylum application. None of them said that they were informed about Eurodac or Dublin II at that point in time, neither orally nor in writing. The respective Ministry of the Interior did not comment on these findings despite several requests.

In the response to a parliamentary inquiry in July 2010, the Federal Government stated that the persons concerned in a Dublin procedure would be “informed at an early stage about a request to take charge and about a possible transfer to the requested Member State”. However, the experience of the authors has shown that the information provided to persons concerned is deficient and a great number of asylum seekers are neither informed about the initiation or the result of their Dublin procedure nor about their planned transfer before this actually takes place.

### **There are two ways how asylum applicants may find out about a possible (!) request of Germany to another Member State:**

1. If a personal interview is conducted, the case officer may inform the asylum seeker that Germany’s responsibility for carrying out the asylum procedure will be examined. However, this information is not provided in all personal interviews, as experience has shown. Furthermore, not everyone concerned is interviewed personally beforehand. Since autumn 2010, the Dublin unit in Dortmund just posts a letter (in German!) stating that the asylum application is handled by unit 431. This letter is completely incomprehensible for the majority of persons concerned. Both measures are not satisfactory pursuant to the information requirements of Art. 3 (4) of the D II Regulation.

Experience of the authors has also shown that persons concerned who are in Germany and who have not applied for asylum, e.g. unaccompanied minors, are not informed about the initiation of a Dublin procedure, neither by the BAMF nor by the Aliens Authority. This happens despite the regulation of some Federal States that unaccompanied minors are able to decide whether they apply for asylum *after* a thorough examination of possible reasons for asylum through the legal guardian or another person (see Sect. 3.4.2).

2. Persons entering the country who are directly rejected by the Federal police at the border or who are immediately detained and transferred back directly after detention, they, at least, receive an order informing them that they are transferred back (*Zurückschiebungsverfügung*) to another country. Even though, the country where they are transferred to is not always mentioned, they are, at least, able to seek legal remedies against this order – if access to a lawyer is technically possible – or they are, at least, more or less aware of the next steps.

### **Additional information for b.)**

Usually, persons concerned are not informed on which information the Dublin procedure is based. There is no possibility for them to ensure that all the information they have provided is taken into consideration by the German authorities in the Dublin procedure. One of the possible reasons for the fact that not all information provided is taken into consideration by the case officers is the problem that the officers are not aware of all the records of interrogations and interviews existing about an asylum seeker. Records of the border police are often not kept in the file of the BAMF. Moreover, some records of personal interviews are only transcribed months later.<sup>20</sup> In order to enable an asylum seeker to report all the relevant information to the Dublin unit, he/she should be informed about the Dublin procedure, including the hierarchy of criteria, and should be interviewed accordingly. As a result of how the procedure is currently conducted in Germany, both, the right to information and the right to an interview are not guaranteed or are structurally impossible (about how hearings are conducted and its consequences for the correct identification of responsibility, cf. Sect. 3.1.).

### **Additional information for c.)**

The German Asylum Procedure Act envisages that Dublin decisions are handed over to the person concerned by the police just on the

---

<sup>20</sup> The Dublin unit in Nuremberg is not able to retrieve information from interview protocols as a result of the fact that persons whose procedure is carried out in Nuremberg are not interviewed at the Federal Office as they have not applied for asylum.

day of the transfer, cf. Sect. 3.1.1. Despite the recent judgments of the ECtHR and the CJEU, the Federal Government has not deviated from this practice. At the same time, the Aliens Authorities as regional authorities of the Federal States within Germany are generally in power to deliver the decisions at an earlier stage or to inform the persons concerned in some other way.

On 19 April 2012, the government of Schleswig-Holstein instructed the local Aliens Authorities to deliver the negative Dublin decisions before the day of transfer. A time frame between the communication of the decision and the transfer was not defined, but it was laid down that the decision should be delivered immediately once the BAMF Dublin unit has sent the decision to the Aliens Authority. It argued that more and more courts granted interim relief (*Eilrechtsschutz*) against Dublin transfers, a procedure, however, which is not possible if the decisions are just delivered on the day of the transfer. A couple of months later, the governments of the Federal States of Rhineland-Palatinate (3 July), Brandenburg (12 July) and North Rhine-Westphalia (26 July) enacted similar regulations that went yet further in demanding specifically that there has to be at least one week time between the delivery of the decision and the planned date of transfer.<sup>21</sup> When the National Legal Report on Germany was finalized in December 2012, these four Federal States were the only ones to have drawn conclusions from national and European legislation on interim relief. Already earlier, there were occasional regulations on the level of the Federal States or districts that ordered prior information about a transfer for certain states of destination (Greece and Italy) or certain groups (e.g. families with children).<sup>22</sup>

In some regions, some persons concerned are informed in an informal way about their transfer, irrespective of the country of destiny of the transfer or a potential particular vulnerability. Nonetheless, if a person affected is informed or not is a matter of chance and not predictable.

---

<sup>21</sup> The order of Rhineland-Palatinate is available in German at [http://wp.asyl-rlp.org/wp-content/uploads/2011/05/12-07-03\\_DublinIIVO.pdf](http://wp.asyl-rlp.org/wp-content/uploads/2011/05/12-07-03_DublinIIVO.pdf)

<sup>22</sup> An order from February 2010 from Schleswig-Holstein concerning transfers to Greece is available in German at [http://www.frsh.de/fileadmin/pdf/behoerden/Erlass\\_01-02-2010\\_Rueckfuehrungen-Griechenland.PDF](http://www.frsh.de/fileadmin/pdf/behoerden/Erlass_01-02-2010_Rueckfuehrungen-Griechenland.PDF). In 2011, an Aliens Authority in Hesse started to inform the applicants in writing on transfers to Italy one week prior to the scheduled transfer, however without actually delivering the decision. This practice was abolished after a couple of months, and they went back to transfers without advance notice.

According to the Federal Government (18 April 2011), unaccompanied minors and their guardians are informed about the decision which rejects the asylum application as inadmissible, or, if no asylum application has been lodged in Germany, they are informed about the planned transfer.<sup>23</sup> However, the authors are aware of various cases where the decision was not delivered to the person concerned and where the BAMF did not take necessary steps in order to rectify the consequences of its inaction. Even minors do not have to be informed about the exact day of transfer.

*In December 2010, 17-year-old Khalib flees to Germany. The Youth Welfare Office takes care of him and brings him to a children's home. The Family court (Familiengericht) orders a legal guardian and a lawyer for him. Khalib tells both authorities that he applied for asylum in the Netherlands earlier, but that could not to stay there for significant reasons. The lawyer contacts the Dublin unit. The case officer assures him in writing that he would be informed, at least, one week before a transfer is carried out and that the legal guardian would be informed as well. Nonetheless, Khalib is arrested in July 2011 in the middle of the night in the children's home without prior notice. He is tied to a radiator for several hours at the police station and the next morning, they transfer him by airplane to the Netherlands. Neither the BAMF nor the Aliens Authority is willing to stop the transfer even though it was executed without prior notice and contrary to the written assurance.*

Although the Federal Office for Migration and Refugees is obliged to grant asylum seekers or their attorneys access to their files, in practice, this may last a couple of weeks, sometimes even months, until requests for accessing files have been answered. In addition, some files are not even complete, missing details concerning Eurodac hit” or notifications for the responsible Member State informing it that the person concerned had disappeared and that the time limit for the transfer had to be prolonged. Not even involving a lawyer who regularly requests to access files prevents the unannounced transfer of an asylum seeker.

---

**23** Bundestag, Bundestags-Drucksache 17/5579 of 18 April 2011, p.6, available at <http://dipbt.bundestag.de/dip21/btd/17/055/1705579.pdf>. This is only a practice that is being carried out according to the Federal Government. There is still no national legal obligation to deliver Dublin decisions prior to the day of transfer.



The NGO Pro Asyl documented the following case in December 2011:

*The Eritrean Kidane T. flees from Italy to Germany in December 2010. His lawyer applies at the Frankfurt Administrative Court for an interim relief procedure against the possible transfer to Italy. The BAMF reacts quickly stating that a transfer to Italy cannot be carried out because Italy refuses to admit Kidane T. On these grounds, the court rejects the interim relief because as there are no plans for a transfer. From this point on, the lawyer is suddenly unable to receive access to his file as the BAMF ignores various requests. This does not mean that nothing is happening: In the meantime, the BAMF again requests Italy to take Kidane T. back, and Italy finally accepts. Without prior notice to either Kidane T. or his lawyer, the respective procedures are initiated. As there is no information on a transfer to Italy, legal actions cannot be taken in advance. Measures of legal protection are thus voluntarily prevented. In the early morning of December 6, Kidane T is taken from his accommodation in Oberursel in the Federal state of Hesse and taken directly to the airport.<sup>24</sup>*

In the past, representatives of the Dublin unit repeatedly highlighted that asylum seekers know that they have to anticipate a transfer to another state. Besides the fact that it cannot be generally assumed that every asylum seeker has the knowledge of the Dublin responsibility rules, such a global assertion does not exempt the authorities from their information duties pursuant to Art. 3 (4) D II Regulation.

### **3.1.2. Problems with the correct application of the criteria**

#### **a) Problem that the facts are neither compiled correctly nor exhaustively:**

Neither the Residence Act nor the Asylum Procedure Act regulates how people have to be interrogated in the Dublin procedure. Nowhere is there a “Dublin interview” explicitly envisaged, which

---

<sup>24</sup> The case is available in German at [http://www.proasyl.de/fileadmin/fm-dam/NEWS/2011/Kidane\\_Ts\\_Odysee\\_durch\\_Europa.pdf](http://www.proasyl.de/fileadmin/fm-dam/NEWS/2011/Kidane_Ts_Odysee_durch_Europa.pdf)

is why only the information collected during the interviews in the asylum procedure can be used in the Dublin procedure. However, internal orders of the BAMF provide that an interview can be omitted under certain circumstances.<sup>25</sup>

In order to correctly apply the criteria of the D II Regulation, the Federal Office should collect detailed information about the person concerned. Besides a Eurodac search, it would be necessary to interview the person and this should include questions which are relevant in order to identify whether the humanitarian clause or the sovereignty clause should be invoked. In addition, the person should be made aware of how his/her answers are related to the determination of responsibility. However, such information or such an interview is not envisaged in Germany.

In the beginning, information on the travel itinerary is compiled mainly via Eurodac and in many cases through an interrogation on the travel itinerary. If this research has provided some details indicating that another Member State is responsible for this person and if the person has not applied for asylum, no further data in relation to the application of the D II Regulation is collected and the Dublin procedure is carried out without the person knowing.

If a person has applied for asylum, an interview should take place, also questioning the asylum seeker whether there are family members, where they live and what their status is. These are the regulations of the BAMF for asylum interrogations. However, in practice, not all the facts that are relevant for the application of the D II Regulation are collected. Moreover, it is not guaranteed that the information gathered in the interview is taken into consideration for the determination of responsibility. This is also related to the fact that if there is a Eurodac hit, Dublin procedures are often initiated just a few days after entry into German territory. Nonetheless, several months may pass until

---

<sup>25</sup> Cf. p.96 of the administrative orders published by Pro Asyl. It is available at [http://www.proasyl.de/fileadmin/fm-dam/i\\_Asylrecht/Dienstanweisungen-Asyl\\_BAMF2010.pdf](http://www.proasyl.de/fileadmin/fm-dam/i_Asylrecht/Dienstanweisungen-Asyl_BAMF2010.pdf). Especially regarding the interviews in Dublin procedures, the implementation of the administrative order varies quite widely depending on the different branches of the Federal Office. The only thing that is standardized is that the interviews are conducted with an interpreter, that the statements are put down in a record, that an oral translation of the record is offered and that the record is sent in writing to the person concerned at the latest a couple of weeks later. Parts of the interview are nowadays conducted via videoconference, meaning that the interviewer and/or the interpreter are not in the same room as the interviewee.

the personal interview takes place and until the record is written and put into the file. Unfortunately, there is no statistical data on how many persons are transferred in accordance with the D II Regulation without ever having had a personal interview. In fact, this practice is customary and, as mentioned, even envisaged as a possibility in the internal orders of the Federal Office.

Equally problematic is the situation of married couples who could be reunified within the framework of the Dublin system. It is not unusual that a person whose spouse, for instance, is already in Scandinavia and who is apprehended by German police cannot leave Germany because his/her asylum procedure is carried out in Germany. The persons concerned could possibly refer to Art. 7, 8 or 15 of the D II Regulation. Nonetheless, a Dublin procedure in their favour can only be initiated if the responsible branch of the Federal Office forwards the file to the Dublin unit. This presumes that the case officer has, at least, a rough idea of the criteria of the D II Regulation, which is however often not the case. The authors are aware of a number of cases in which information was not transmitted, even though the person explicitly asked for it. Additionally, the long duration of the asylum procedure has a negative effect. In many cases, as it takes months until an asylum seeker is interviewed, the deadline for a request for take charge has already expired. If an interview is finally carried out months later and provides indications for the responsibility of another state, the asylum seeker cannot be transferred to this Member State any longer as the deadline has expired. Problematic is the fact that the Federal Office for Migration and Refugees does not sufficiently inform the persons concerned in this procedure. For instance, if a female applicant states in an interview that she wants to be reunified with her husband in another Member State where he is recognized as a refugee, she will not be informed on whether or when a request for take charge was sent to the Member State. Also *vice versa*, if a Member State requests Germany to take charge of a relative, the Federal Office does not inform the person concerned, neither about this request nor about its answer to the requesting Member State. As a result, the Federal Office rejects requests for take charge due to lacking DNA profiles which could prove kinship – without informing the relative that such a profile should be submitted.<sup>26</sup>

---

<sup>26</sup> DNA tests are not always asked for, but can be requested. However, without the support of an information centre or a lawyer., it is almost impossible for the persons concerned to pass through the procedure successfully due to a lack of information.

*Mrs. Omar flees Somalia together with her husband, but on their way to Europe they are separated. He manages to get to Norway and swiftly obtains refugee status. She tries to follow him, however is arrested in Germany by the police and taken to a refugee camp. She states that her husband has received refugee status in Norway, that she is pregnant and wants to go to Norway as fast as possible. The interviewer hands the file to the Dublin unit, but no action is taken there for months. The case officer declares on request that the written declaration of agreement (Einverständniserklärung) is lacking. Mrs. Omar signs it immediately, but once again, several months pass without anything happening. Long after the expiration of the time limit pursuant to Art. 17 (1), the Dublin unit sends a request to take charge to Norway. In the meantime, Mrs. O. is about to give birth. When she hears that Norway has rejected to take charge, she travels on her own initiative to her husband, hoping that she and the biological child of her husband will not be separated from him.*

Information concerning the criteria of Art. 15 is often not collected in personal interviews and Art. 15 is not mentioned in the (only) written instruction on the Dublin procedure. In interviews, it is neither asked whether the person needs the help of another family member or may be of help for someone else, nor, in case of unaccompanied minors, whether there is someone who is willing to take care of the minor in Europe. Usually, case officers ask in a personal interview whether there are relatives, but the personal relationship to those persons is not considered and it is not mentioned that the provision of particular information may have an impact on the determination of responsibility.

## **b) Problem that even though facts are known, criteria are not applied in the correct hierarchy**

If relevant information was collected, a correct determination of responsibility requires correct recognition of information provided and, if necessary, transmission of this information to the state to which the request was sent. As mentioned before, the authors know a number of cases in which the Federal Office ignored the existence of a close family member pursuant to Art. 7 or 8 and instead applied Art. 10(1) or Art. 13.<sup>27</sup> The authors also know of

---

<sup>27</sup> An additional problem may be the fact that the marriage certificate is not

cases in which the Federal Office told the requested state that the person concerned had not declared having left the Dublin area even though he/she had clearly transmitted this information during his/her hearing or by other means to the BAMF.

In a number of cases, the incorrect application of the hierarchy of Dublin criteria could be caused by the fact that records of interviews are only added to the file with a delay of weeks or months and that the case officer in the Dublin unit is not aware of the information provided by the asylum seeker in the personal interview. However, at least, in the following case known by the authors it can be proved that the case officer passed wrong information to Hungary even though he knew the protocol:

*Mr. Khadar flees across Greece, Macedonia and Serbia to Hungary. He is arrested at the border and transferred to Serbia after a few days. From there, he is transferred to Macedonia and finally to Greece. In a second attempt, he manages to reach Germany. On his way across Europe, he is only fingerprinted in Greece. During his interview at the BAMF, he states that he was not able to apply for asylum in Hungary but that he was transferred to Macedonia instead. Nonetheless, the Dublin unit requests Hungary to take Mr. Khadar back, predicates an asylum application in Hungary and conceals – despite obvious knowledge of the file – that Mr. Khadar indicated in the interview that Hungary had deported him.*

The fact that, at least, some of the case officers in the branches are not familiar with the Dublin II Regulation has further consequences. Since September 2010, the obligatory checklist of questions for case officers contains a question asking whether there are obstacles hindering a transfer to the allegedly responsible Dublin Member State. The authors know a number of cases in which this question was either not asked or where the case officer refused to write down the complete answers into the record. In other cases, the asylum seeker was interviewed in the branches of the Federal Office while the Dublin procedure was already completed and Germany was responsible for the asylum seeker because, for instance, the deadline had expired. Nonetheless, the case officer forwarded the file of the asylum seeker to the responsible Dublin unit to consider

---

recognized and as a result, married couples without children have difficulties in referring to Art. 7 or 8. This is, however, not a particular German phenomenon.

the initiation of a Dublin procedure as there were indications for the responsibility of another Dublin state in the interview. Although Germany was already responsible for processing the asylum claim, the case officer initiated an additional Dublin procedure, probably because he was not aware of relevant notes in the file or because he did not interpret them correctly. This is particularly problematic because according to the Federal Office and a number of administrative courts, the asylum seeker has no subjective right to carry out the asylum procedure in the “right Member State” as he/she cannot request the application of the DII Regulation for a specific Member State. It is possible that the already requested Member State erroneously declares itself responsible in a second request even though it did declare its responsibility in the first procedure. As a result, the asylum seeker may be transferred by the BAMF to this Member State without being hindered by a court. Even if the “worst case” does not occur, the transmission of the file to the Dublin unit may cause a delay of months in the asylum procedure, as during this period no decision on the merits of the asylum application can be taken.

A number of German administrative courts confirmed the view that there is no subjective right to carry out the asylum procedure in the “right Member State”. By confirming the view of the BAMF, the courts implicitly declared the flawed application of responsibility criteria of the BAMF as negligible. As a result, the Federal Office is theoretically able to declare any Member State as responsible and to “make” them responsible. “Making a Dublin state responsible” occurs when German authorities request a Dublin state to take responsibility of someone’s asylum claim and when the requested Member State does not reply, thus becoming responsible because of its failure to report back and the expiration of the deadline to reply.

*Mr. Tesfay leaves Eritrea in 2003 and flees through Italy to Germany. He is fingerprinted in Italy, but his asylum procedure is carried out in Germany. The Federal Office for Migration and Refugees rejects the application of Mr. Tesfay. Nonetheless, he is not transferred and lives in Germany for a couple of years. In 2009, Mr. Tesfay lodges a follow-up application. As the BAMF’s conduct concerning the acceptance of asylum applications has changed in the meantime, chances that he is able to stay are high. However, because of the 2003 Eurodac hit, which for technical reasons is only detected now, the Federal Office initiates*

*a Dublin procedure and requests Italy to take charge. The case officer conceals that Germany had already executed a first asylum procedure. Italy does not respond and becomes responsible due to the expiration of the deadline. Mr. Tesfay appeals at the administrative court, but it is judged that Italy is now responsible for the case. The judge states that irrespective of the fact that according to D II Regulation, Germany is responsible, Italy's responsibility arises from its failure to respond to the request to take charge. By not responding, Italy considers itself responsible. Furthermore, according to the judgment, Mr. Tesfay has no right to execute his follow-up asylum application in the state actually responsible – Germany – and must accept his transfer to Italy.*

**c) Problem that the „N.S.“ decision of the CJEU is interpreted as implying that states bordering Greece are deemed to be responsible as a kind of “reserve responsibility”**

A current controversy is sparked off by the question of how para. 107 of the N.S. decision of the CJEU (21 December 2012) is to be understood:

“Subject to the right itself to examine the application referred to in Article 3(2) of Regulation No 343/2003, the finding that it is impossible to transfer an applicant to another Member State, where that State is identified as the Member State responsible in accordance with the criteria set out in Chapter III of that Regulation, entails that the Member State which should carry out that transfer must continue to examine the criteria set out in that chapter in order to establish whether one of the following criteria enables another Member State to be identified as responsible for the examination of the asylum application.”<sup>28</sup>

The Federal Office for Migration and Refugees writes the following in its newsletter for decision-makers (*Entscheiderbrief* which informs about current legal and procedural questions on asylum for case-workers): *„Nachdem die meisten EU-Staaten die Überstellungen nach Griechenland im Jahr 2011 ausgesetzt hatten, war es nicht klar, ob für die betroffenen Personen die Zuständigkeit eines weiteren*

---

<sup>28</sup> Retrieved on 26 June 2012 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R0343:EN:NOT>

*Staates geprüft werden darf. Die Zulässigkeit dieser Prüfung bestätigt der EuGH und schafft damit mehr Rechtssicherheit.“*

“As a majority of EU Member States have suspended transfers to Greece since 2011, it was not clear whether the responsibility of other states could be examined. The ECtHR now provided legal certainty, confirming the admissibility of such examinations.”<sup>29</sup>

This very vaguely sounding conclusion of the BAMF was defined more clearly by BAMF representatives at public meetings, laying down that in line with the Dublin procedure, Germany, for example, would be entitled to transfer an asylum seeker to Italy if he entered Germany via Greece and Italy. According to representatives of the Federal Office, Italy would be equally responsible for invoking the sovereignty clause in favour of all asylum seekers who entered Italy via Greece than Germany, and Italy’s obligation to invoke the sovereignty clause would precede Germany’s obligation to do so. The Federal Office thus constructs a type of chain responsibility or subsidiary responsibility even though this is not regulated in the D II Regulation: If a person cannot be transferred to Greece, the proceedings are as if a person entered the EU through Italy.

### *3.1.3. Family unity and the definition of Family Members*

In the German version of the D II Regulation, Art. 15 is translated ambiguously by stipulating that family reunification on the basis of humanitarian grounds must only encompass members of the nuclear family. Although the BAMF has removed the ambiguity in its internal instructions which resemble the English version of the D II Regulation, Art. 15 is rarely applied. In 2011, Germany accepted 2169 requests from other Member States. Only 25 of those were on the basis of Art. 15 of the D II Regulation.<sup>30</sup> Only in 12 cases, other Member States accepted Germany’s request to take charge on the basis of Art. 15.

---

<sup>29</sup> Translated from „Entscheiderbrief 2/2012“, p. 2, available at <http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Entscheiderbrief/2012/entscheiderbrief-02-2012.html>.

<sup>30</sup> Cf. Table 8a n the annex.



A reason for the small number of asylum seekers accepted by the Federal Office on the basis of Art. 15 could be the low number of requests that are sent to Germany by other Member States on the basis of Art. 15. Therefore, it is more revealing to look at the cases in which it is requested to invoke the sovereignty clause for family reasons pursuant to Art. 3(2). In this context, the Federal Office holds a very restrictive position. The authors know about procedures where the transfer of unaccompanied minors was planned even though they had siblings, uncles or aunts in Germany who had applied for or had already been granted guardianship.

*15-year old Wahid flees Afghanistan for Europe. His destination is Germany where his brother lives – he has been granted subsidiary protection. In Hungary, Wahid is arrested by the police and registered as asylum applicant against his will. After two weeks, he leaves the children's home and makes his way to Germany. His brother is very happy to see Wahid again. He makes a request to become guardian for Wahid and looks for a bigger apartment to be able to take care of him. However, the Federal Office refuses to apply the sovereignty clause and tries to transfer Wahid to Hungary. The relation between the two brothers is not considered worth to be protected.*

Similarly, the Federal Office wanted to order the transfer of parents whose biological children lived in Germany.<sup>31</sup>

*Mr. Geddi flees Somalia for Europe. In Italy he applies for asylum but is put on the street after a few months. When he cannot bear the life in poverty and being without a home any longer, he continues his way to Germany. It takes several months until Germany asks Italy to take him back. In the meantime, Mr. Geddi marries in Germany. He lives with his wife and they expect a child. Nonetheless, the Federal Office tries to transfer Mr. Geddi to Italy and keeps insisting even when the child is already born. A court decision suspends his transfer temporarily and only 13 months later the Federal Office is willing to invoke the sovereignty clause in order not to separate the young family.*

The Federal Office justified its very restrictive position by referring to an allegedly “wrong residence permit” of the child (which is not captured by Art. 7 or 8, like cases of children who are being granted subsidiary protection) or with a restrictive interpretation and

---

**31** In the project’s database (available at [www.dublin-project.eu](http://www.dublin-project.eu)) several court decisions can be found in which the transfer of parents is prohibited.

application of Art. 2 (i) of the D II Regulation. The BAMF assumes that a person who is a guardian in line with Art. 2 (i) should have been assigned as guardian already in the country of origin. According to them, the fact that two brothers lived in a shared household in the country of origin and that one is the legal guardian for the other in Germany does not suffice. As a result, if a minor has siblings in Germany but another Member State is deemed responsible for the minor pursuant to Art. 6(2) of the D II Regulation, the BAMF usually promotes a transfer, arguing that there was a sibling relationship in the country of origin, but not a guardianship. In these cases, the BAMF refers to the possibility of launching a visa procedure for family reunification in order to reunite siblings again.

In October 2011, the ECtHR dealt with a particularly dramatic case of family separation (no. 64208/11).

*A Syrian couple and their five children between the ages of two up to eleven years old enter Germany via Italy. In Germany, the family is separated and the father is assigned to another Federal State than his wife and his children. On the basis of a Eurodac hit, the Federal Office initiates a Dublin procedure and tries to transfer the parents and the children jointly after having received Italy's acceptance of responsibility. The parents appeal this decision at the respective local administrative courts. The court responsible for the mother and the children suspends the transfer in an interim relief procedure and justifies it with the imminent infringement of their rights as a result of the deficiencies in the Italian asylum and reception system. However, the father is not successful in his court procedure. Although the Federal Office is aware of the fact that a transfer of the father would cause a separation of the family, a flight is scheduled and the father only prevents the transfer by absconding. Even after the court that is responsible for the mother suspends the transfer in the proceeding on the merits of the case, obliging the Federal Office to invoke the sovereignty clause, the Federal Office still continues promoting the transfer of the father. The court responsible for the father rejects another interim relief application as does the constitutional court. It is argued that the family does not have to be separated as the mother could also leave Germany and move to Italy with their children. Only an application for interim relief at the ECtHR stops the separation of the family.<sup>32</sup>*

---

**32** Decision of the ECtHR of 19 October 2011 (Az. 64208/11; cf. the Statement of Facts, available at [www.asyl.net/fileadmin/user\\_upload/redaktion/Dokumente/19126.pdf](http://www.asyl.net/fileadmin/user_upload/redaktion/Dokumente/19126.pdf) (in German)).

### 3.1.4. *Heterogeneity of application within the country*

The Dublin procedure is carried out by one Federal Office in two central Dublin units; thereby differential procedural treatment in the different Federal States or regions should be avoided. In practice, however, there are great discrepancies. This is, for instance, caused by the fact that the Dublin procedure itself is controlled by the central units, but e.g. the personal interviews are carried out in the locally responsible branches of the BAMF which are spread throughout Germany. How personal interviews are conducted and the duration of the procedures are by no means homogeneous in the different branches, sometimes not even within one branch. Further regional differences are caused by the fact that transfers are planned and carried out by the local or regional Aliens Authorities because the Federal Office itself does not have any enforcement agencies. The Aliens Authorities are controlled by the Ministry of the Interior of the different Federal States. This explains why, for instance, in so far four Federal States the Dublin decisions have to be delivered, at least, one week in advance of the transfer. In all other Federal States (apart from some regional exceptions), the notification of the transfer is issued on the day of the transfer.

The Federal States are also responsible for taking an unaccompanied minor into care. Even though, a Federal law, namely, the German Social Insurance Code VIII (*Sozialgesetzbuch VIII*) regulates that all unaccompanied minor refugees have to be “taken into care” (*in Obhut nehmen*), it is interpreted and applied very differently in the different Federal States – ranging from accommodation in a youth welfare facility with intensive pedagogical and legal support to accommodation in collective housing facilities together with adults. It goes without saying that a minor who lives in a youth facility and who is looked after by supervisors and a lawyer has completely different possibilities concerning the organisation of his/her Dublin procedure in comparison to a minor of the same age who lives mostly unassisted in an accommodation facility for adults.

## 3.2. The Use of Discretionary Provisions

### 3.2.1. Sovereignty clause and humanitarian clause

In 2011, the Federal Office for Migration and Refugees issued 9075 Dublin requests to other Member States; 6526 were accepted and 2902 transfers were carried out. In how many cases the Federal Office invoked the sovereignty clause is not recorded statistically, numbers exist only for Malta and Greece. Germany requested Malta 146 times, Malta accepted 126 times, 35 transfers were implemented, and 42 times the Federal Office invoked the sovereignty clause. With regard to Greece (which is apart from the following figure not recorded in this statistic because since January 2011, no requests have been sent to Greece), it was counted that Germany invoked the sovereignty clause 4630 times.<sup>33</sup>

Since January 2011, the sovereignty clause has been invoked in all cases where Greece is deemed responsible (see below). Concerning Malta, this practice has been applied since autumn 2009 with regard to particular vulnerable persons (see section 3.4.1.).<sup>34</sup> If any other Member State is involved, Germany invokes the sovereignty clause very restrictively.

The cases in which Germany has made use of its right to invoke the sovereignty clause are numerically insignificant – except for Greece and Malta. In the majority of cases, Germany becomes responsible because transfers are prevented due to factual obstacles, such as incapacity to travel or because the Aliens Authority considers aspects which object to a transfer (unlike the BAMF). One example are considerations about the best interest of the child, see Sect. 3.4.2 on unaccompanied minor refugees.

---

<sup>33</sup> Written information from the BAMF to the NGO Pro Asyl in March 2012.

<sup>34</sup> In addition, the Federal Government of Germany declared that within the framework of a relocation program, it would accommodate a specific number of persons who were granted subsidiary protection in Malta. In 2010, this affected 100 persons, in 2011 153. They received a residence permit for Germany and their status concerning social rights is comparable to the status of beneficiaries of subsidiary protection in Germany.

If a court obliges the Federal Office to invoke the sovereignty clause, the Federal Office usually appeals this decision. As a result, until January 2011 no decision obliging Germany to invoke the sovereignty clause with regard to Greece has entered into force.

Irrespective of the Member State, Dublin decisions regularly contain a wording saying that *“außergewöhnliche humanitäre Gründe, die der Abschiebung entgegenstehen, sind nicht ersichtlich”* (“there is nothing to suggest that there are extraordinary humanitarian grounds which hinder a transfer”). This formulation suggests that this aspect will be considered for each individual case and that there might be the chance of Germany invoking the sovereignty clause. This assumption, however, has not been observed in practice. Thereby, one has to be aware of the fact that Dublin decisions are drafted in the Dublin unit and not in the branches, whereby the latter, at least, once had personal contact with the person concerned. This begs the question of how the BAMF could conclude that there are exceptional humanitarian grounds if they have never had contact with the person concerned. During the personal interviews (if they take place at all) case officers are supposed to interview the asylum seeker also on whether there are arguments which go against a transfer to another Member State. However, as many cases have shown, this question is not asked or the persons concerned are not given the opportunity to provide extensive information. Equally, questions concerning the family or health situation or traumatization which could justify invoking the sovereignty clause, are apparently not part of the interview. Not in all cases is the record of an interview available for the case officers in the Dublin unit. In take back procedures which are carried out without an application for asylum in Germany, there is no interview carried out in Germany anyway. Furthermore, as asylum seekers are not or only insufficiently informed about the initiation of the Dublin procedure, the majority of persons concerned have no opportunity to present grounds which speak for invoking the sovereignty clause.

In Germany, the sovereignty clause is also invoked against the will of persons concerned. This happens on grounds of “procedural efficiency”, for instance, in cases where a deportation to the country of origin (following a negative decision on the merits of the asylum application) seems to be more feasible than a transfer to another Dublin state. In 2010, the Federal Government declared that with regard to the amended D II Regulation, it would advocate against the proposal of making the sovereignty clause invocation dependent on

the acceptance of persons concerned, “*da dies den Mitgliedstaaten den weitesten Entscheidungsspielraum einräumt*” (“as it allows Member States the greatest scope for discretionary decision-making.”)<sup>35</sup> It is not statistically recorded how many times the sovereignty clause is invoked against the will of the person concerned.

### 3.2.2. *Reception conditions in the responsible Member State*

By looking at how the Federal Office for Migration and Refugees perceives the reception conditions in other Dublin states, one can differentiate between two scenarios:

#### **Scenario 1**

In cases when the person concerned is an asylum seeker whose asylum procedure has not begun or has not been completed yet in the responsible Member State, the Federal Office does not deny that obligatory minimum standards have to be guaranteed such as standards derived from obligations of the EU Reception Conditions Directive. However, the BAMF assumes that in all Dublin states – nowadays with the exception of Greece – the reception conditions are in line with EU regulations and directives. This is justified by reference to the so-called principle of conclusive presumption or by referring to the mutual trust between the Member States (cf. section 3.5.1.). The Federal Office does practically not allow any doubts about this assumption. Hence, the Federal Government cannot identify systemic deficiencies which lead to inhuman and degrading treatment in the sense of Art. 4 of the European Union Charter of Fundamental Rights and Art. 3 of the ECHR respectively, neither in Italy nor in other states such as Hungary.

#### **Scenario 2**

In cases when a person concerned is already entitled to subsidiary protection in the responsible Member State and where his/her

---

<sup>35</sup> Translated from Deutscher Bundestag, Bundestags-Drucksache 17/2554 of 09 July 2010, p. 3, available at <http://dipbt.bundestag.de/dip21/btd/17/026/1702655.pdf>.

asylum application has been closed with a negative decision for the applicant in all aspects, the Federal Office for Migration and Refugees is of the opinion that questions of social protection are not important because they were not regulated by the European asylum acquis. For beneficiaries of subsidiary protection, the Federal Office argues that mere equal treatment between beneficiaries of subsidiary protection status and nationals as laid down by the Qualification Directive and as laid down by the Geneva Refugee Convention for recognized refugees would be sufficient. It further argues that if a state does not guarantee a minimum subsistence level to its citizens, a beneficiary of subsidiary protection could not oppose a transfer by referring to, for instance, an imminent danger of impoverishment. According to the Federal Office, questions concerning the sovereignty clause should not be intermingled with the debate about social standards within the EU.

In the following, discussions concerning transfers to Greece, Italy, Hungary and Malta are presented:

### **Greece**

In November 2007, in light of reports of the German NGO *Pro Asyl* concerning the situation of asylum seekers in Greece, the Federal Government declared the following in front of the Federal parliament:

*“Die Bundesregierung beabsichtigt nicht, Überstellungen von Asylbewerbern nach Griechenland ... auszusetzen. Die Bundesregierung geht davon aus, dass aus Deutschland überstellte Asylbewerber in Griechenland entsprechend den Regelungen des europäischen Asylrechts und des internationalen Rechts behandelt werden; gegenteilige Erkenntnisse liegen nicht vor.“*

[“The Federal Government does not intend to suspend transfers of asylum seekers to Greece (...). The Federal Government assumes that asylum seekers who are transferred from Germany to Greece are treated in accordance with provisions of the European asylum law or international law; there is no evidence suggesting the contrary.”]<sup>36</sup>

---

**36** Deutscher Bundestag, Bundestags-Drucksache 16/7216 of 16 November 2007, p. 14, retrieved and translated from: <http://dipbt.bundestag.de/dip21/btd/16/072/1607216.pdf>.

Until January 2011, the government upheld this position, even though since April 2008, more and more administrative courts had suspended transfers to Greece in interim reliefs. In January 2009, the government solely admitted that *„...in Einzelfällen Schwierigkeiten etwa bei der Bereitstellung ausreichender Kapazitäten geben kann, die im Einzelfall gegenüber den betroffenen Asylbewerbern zu persönlichen Härten und erheblichen Schwierigkeiten führen können.“* (“...in individual cases, there could be difficulties such as with regard to the provision of sufficient reception capacities which in a specific individual situation of concerned asylum seekers could lead to personal hardship and significant difficulties.”)<sup>37</sup> In the end, however, it reaffirmed that the responsibility for determining violations of Directives would be in the hands of the EU Commission and the ECtHR. The only concession made was the suspension of transfers of particular vulnerable persons to Greece starting in summer 2008 (see Section 3.4.1.).

From September 2009 onwards, the constitutional court has stopped all transfers to Greece against which a constitutional complaint with an interim relief application was pending. The Federal Government, however, did not attach great importance to it, except for individual cases. In October 2010, there was an oral proceeding of one of the pending constitutional complaints which concerned a transfer to Greece. Throughout the proceeding, the constitutional court made clear that it had great concerns regarding the constitutional compatibility of transfers to Greece. Even before the court was able to reach a final decision, the Federal Government declared that until January 2012, it would suspend any transfer to Greece, depriving the court from the basis of the proceeding and thereby, probably, avoiding a defeat in this matter. The suspension has been extended until January 2013 by invoking the sovereignty clause in all cases concerning Greece.

## Italy

Around the same time when the Federal Government radically changed its attitude towards transfers to Greece, more and more

---

<sup>37</sup> Deutscher Bundestag, Bundestags-Drucksache 16/11543 of 05 January 2009, p. 6, retrieved and translated from: <http://dip21.bundestag.de/dip21/btd/16/115/1611543.pdf>.



administrative courts had started to suspend transfers to Italy in interim relief procedures. Between January and December 2011, courts granted interim relief in 113 cases concerning transfers to Italy; in 111 cases, the application of interim relief was rejected. Until now, the BAMF has appealed all of the few judgments which obliged it to invoke the sovereignty clause. So far, the constitutional court has not suspended any transfer to Italy, not even in the drastic case of family separation which was presented in Section 3.1.3.

It can be assumed that the restrictive position of the Federal Government is a result of its fear of a “domino effect”. Greece ought to be the sole exception in an otherwise fully functioning Dublin system. The Federal Government repeatedly declared in front of the Federal parliament that in “special cases” it would invoke the sovereignty clause. Nonetheless, there have been a number of persons seeking protection who were undoubtedly of particularly high vulnerability and who had already been exposed to impoverishment in Italy, and still the Federal Office denied to invoke the sovereignty clause. It begs the question what a “special case” should look like so that the Federal Office decides to invoke the sovereignty clause (see Section 3.4.1. concerning particularly vulnerable persons).

*Mrs. Abraha who flees Eritrea and arrives by boat in Italy in 2005. Her four children are with her, the youngest daughter is mentally handicapped. The family is placed in a refugee camp and receives a residence permit for humanitarian reasons. However, after one and a half years she is informed that the amount of time that can be passed in a state-financed accommodation facility has passed and that she has to start looking after herself. Mrs. Abraha tries to find a job, but she is not successful. She desperately fights for her and her children to survive. They sleep in parks and on the street, suffer hunger and go begging. No doctor ever examines the handicapped child; there is no kindergarten or school for her. The older children learn the basics of reading and writing in a church. They ask how they shall go to school if they sleep in the rain, must escape from drunkards wanting to attack them, do not have breakfast and have neither clean clothes nor school books. The family is looking for shelter in Switzerland, but is transferred back to the streets in Italy. After being homeless for five years, they finally flee to Germany and describe their need to the BAMF. Letters from doctors and teachers testify how much the children need a safe environment, medical care and education. The Federal Office rejects the application of the sovereignty clause.*

The position of the Federal Government and the Federal Office concerning the living conditions in Italy can be summarized as follows:<sup>38</sup>

Access to the asylum system is guaranteed in Italy, the supply of food during the procedure is in line with the EU Reception Conditions Directive, there are sufficient accommodation places. One could not criticize the asylum procedure. Beneficiaries of protection have the same access to social assistance and benefits as Italian citizens, such as free access to health care. Many asylum seekers and refugees prefer living in occupied buildings and in huts or tents on open spaces than in accommodation centres of the state. In no case is the situation in Italy comparable to the situation in Greece, and the situation is not as dramatic as described in the report of the *Schweizerische Flüchtlingshilfe* and of *Pro Asyl*, which is also confirmed by the fact that UNHCR has not given any recommendation concerning the suspension of transfers to Italy.

However, since November 2010 more and more administrative courts have suspended transfers to Italy. On 16 March 2011, the Gießen Administrative Court, for example, suspended a transfer to Italy due to “serious concerns about whether the practical implementation of asylum procedures in Italy are conform with the core standards of EU law; furthermore, in many parts of Italy, the minimal requirements for taking in refugees in the EU are not met.”<sup>39</sup> The higher administrative court held that violations of the EU Directive on the protection of refugees by Italy and the risk of inhuman and degrading treatment of the asylum applicant to be that likely, so it denied a transfer to Italy in an interim relief procedure.<sup>40</sup> Due to systemic deficiencies in the Italian asylum system and the “concrete risk that the applicant will be treated inhumanly and degrading in case he is transferred to Italy”, the Frankfurt Administrative Court in June 2012 not only suspended

---

**38** Cf. Deutscher Bundestag, Bundestags-Drucksache 17/5579 of 18 April 2011, available at <http://dipbt.bundestag.de/dip21/btd/17/055/1705579.pdf>, as well as „Entscheiderbrief des Bundesamtes 7/2011“, p. 1ff., available at [http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Entscheiderbrief/2011/entscheiderbrief-07-2011.pdf?\\_\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Entscheiderbrief/2011/entscheiderbrief-07-2011.pdf?__blob=publicationFile).

**39** VG Gießen, decision of 16 March 2011, Az. 1 L 198/11.GI.A, available at [http://www.asyl.net/fileadmin/user\\_upload/dokumente/18358.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/18358.pdf)

**40** OVG North Rhine-Westphalia, decision of 1 March 2012, Az. 1 B 234/12.A.

transfers temporarily, but obliged the Federal Office to invoke the sovereignty clause in an interim relief procedure.<sup>41</sup>

Other courts such as the Kassel Administrative Court only agree on the state's duty to invoke the sovereignty clause in the case of particularly vulnerable persons such as a single mother with a baby child of 11 months: "Compared to other asylum applicants who only have to fight for their own survival, she is clearly at a disadvantage. The child needs constant care which implies that the asylum seeker has no time to go to the relevant authorities and offices, stand in line for food distribution etc. The judge considers that according to the current state of affairs, Italy cannot ensure sufficient protection and provision for single mothers."<sup>42</sup>

The Magdeburg Administrative Court clearly expressed Germany's possibly politically motivated reluctance of invoking the sovereignty clause towards Italy: "The court is aware that through its decision to prohibit transfers to Italy, a further EU Member State drops out as a receiving country for asylum applicants. This leads to increased pressure on the remaining EU countries, a situation that is undoubtedly not favourable. Meanwhile, (there is no legal rule saying that what must not exist does not exist) specific problems have to be named and a political solution has to be found."<sup>43</sup>

According to the BAMF, there were 174 decisions of German administrative courts between January 2011 and May 2012 that suspended transfers to Italy or obliged the Federal Office to invoke the sovereignty clause. However, in approximately the same amount of cases, the transfers were declared valid.

## Hungary

In response to the numerous, and in the meantime well-outlined criticism of UNHCR regarding the Hungarian asylum and

---

<sup>41</sup> VG Frankfurt decision of 11 June 2012, Az. 1 L 1994/12.F.A., available at [http://www.asyl.net/fileadmin/user\\_upload/dokumente/19767.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/19767.pdf).

The VG Karlsruhe also denied a transfer to Italy in March 2012 due to systemic lacks in Italy's asylum and reception system. VG Karlsruhe, decision of 6 March 2012, Az. A 3 K 3069/11, available at [http://www.asyl.net/fileadmin/user\\_upload/dokumente/19572.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/19572.pdf).

<sup>42</sup> VG Kassel, decision of 10 October 2012, Az. 1 L 1210/12.KS.A.

<sup>43</sup> VG Magdeburg, decision of 26 July 2011, Az. 9 A 346/10 MD, available at [http://www.asyl.net/fileadmin/user\\_upload/dokumente/19125.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/19125.pdf)

reception system, the Federal Government has reacted in the same way as it has with regard to Italy: It denies the existence of systemic deficiencies and it highlights that, if necessary, only the circumstances of a concrete individual case could stop a transfer, as would be the case for any other Dublin state.<sup>44</sup>

With regard to Hungary, there are substantially less decisions by administrative courts. This is mainly due to the considerably lower number of Dublin procedures in Hungary compared to Italy. But concerning Hungary, some courts speak as well of “systemic deficiencies”. The Stuttgart Administrative Court prohibited a transfer to Hungary in April 2012 because if transferred there, the applicant would be exposed to the risk of inhuman or degrading treatment as defined by Art. 4 of the EU Charter of Fundamental Rights.<sup>45</sup>

## Malta

With regard to Malta, the Federal Government decided to follow a strategy which is beneficial for some but not for all persons concerned. In recognition of the excessive demands of the small island and the extremely difficult living conditions for persons seeking protection, it pursues a strategy varying between, on the one hand, strict enforcement of transfers (such as with regard to Italy and Hungary) and, on the other hand, complete abandonment of transfers (such as in the case of Greece): On the one hand, persons who are not identified as particularly vulnerable are transferred to Malta, most of the time just at the end of the time limit for implementing the transfer. On the other hand, persons who are identified as particularly vulnerable are not transferred to Malta. In those cases, Germany invokes the sovereignty clause. At the same time, within the framework of the relocation programme, Germany admits refugees from Malta to Germany (in 2010 around 100 persons were admitted and in 2011 a few more). Even though

---

<sup>44</sup> Bundestags-Drucksachen 17/8836 of 2 March 2012 and 17/9297 of 26 April 2012, available at <http://dipbt.bundestag.de/dip21/btd/17/088/1708836.pdf> and <http://dipbt.bundestag.de/dip21/btd/17/092/1709297.pdf>.

<sup>45</sup> VG Stuttgart, decision of 2 April 2012, Az.A 11 K 1039/12, available at [http://www.asyl.net/fileadmin/user\\_upload/dokumente/19615.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/19615.pdf). The NGO bordermonitoring.eu provides current reports on the situation in Hungary as well as an overview of jurisdiction, available at <http://bordermonitoring.eu/category/ungarn/>.

these aspects are positive, one should not forget the strong vehemence with which Germany continues to pursue transfers to Malta<sup>46</sup> and that refugees who are admitted to Germany are subject to very restrictive provisions concerning family reunification, which, in the end, deprive them of important protection rights for refugees.

Administrative courts also speak of systemic deficiencies in regard to Malta. The Magdeburg Administrative Court concluded in May 2012: "In Malta, Dublin returnees face systemic deficiencies of the asylum system, which implies that in line with the decision of the Court of Justice of the European Union (CJEU) of 21 December 2011, the persons concerned seriously risk being exposed to degrading treatment as described in Art. 4 of the EU Charter on Fundamental Rights."<sup>47</sup> The Regensburg Administrative Court had little earlier obliged the Federal Office to apply the sovereignty clause, amongst others arguing that "a decision for retransfer to Malta in the course of the Dublin II procedure that has not dealt extensively with reports by international NGOs and statements of an EC institution has not exercised its discretion properly and is therefore contrary to law."<sup>48</sup>

---

<sup>46</sup> Concerning Germany's position towards Malta, Germany's response (5 September 2011) to a parliamentary question can be read in detail at [http://www.proasyl.de/fileadmin/proasyl/fm\\_redakteure/Newsletter\\_Anhaenge/175/Antwort\\_Schriftliche\\_FragenMalta-Fluechtlingsaufnahme.pdf](http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/Newsletter_Anhaenge/175/Antwort_Schriftliche_FragenMalta-Fluechtlingsaufnahme.pdf).

<sup>47</sup> VG Magdeburg, decision of 26 July 2011 Az. 9 A 346/10 MD, available at [http://www.asyl.net/fileadmin/user\\_upload/dokumente/19125.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/19125.pdf).

<sup>48</sup> VG Regensburg, decision of 7 March 2012, Az. RO 7 K 11.30393, available at [http://www.asyl.net/fileadmin/user\\_upload/dokumente/19448.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/19448.pdf).

## 3.3. The Practicalities of Dublin Procedures

### 3.3.1. Time frames

#### a.) Long duration in cases involving take back procedures

Frequently, one can observe that Dublin procedures take many months. The case officers in the Dublin unit explain that this is due to heavy workload. As requests for take back that are sent out to the Member States are not time-bound, those procedures are not considered as priority matters and are therefore often examined months after the asylum application was submitted.<sup>49</sup> There are cases in which it took over a year until a request to the potentially responsible Member State was sent out. In April 2011, the Hamburg Administrative Court suspended a transfer to Hungary and justified this suspension by referring to the overlong duration of the procedure: "If within eight months after the interview, the Federal Office for Migration and Refugees has not taken measures with regard to take charge or take back procedures, it sufficiently demonstrates a clear intention of carrying out the asylum procedure itself, that is of invoking the sovereignty clause."<sup>50 51</sup>

#### b.) No consequences for violations of the time limits imposed by the Regulation

Another phenomenon which can be observed once in a while is that normally time-bound take charge requests are sent out more than three months after the asylum application and then – even though it is not proven that the applicant had applied for asylum in the requested Member State – are declared as a take back procedure

<sup>49</sup> There is no data collected on the duration of the Dublin procedure or the length of the stay of the persons concerned in Germany. Cf. Drucksache 17/2554 of the German Federal Parliament (Deutscher Bundestag) of 9 July 2010, p.4, available at <http://dipbt.bundestag.de/dip21/btd/17/026/1702655.pdf>

<sup>50</sup> VG Hamburg, decision of 11 April 2011, Az. 19 AE 173/11, p.7, available at [www.asyl.net/fileadmin/user\\_upload/dokumente/18463.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/18463.pdf).

<sup>51</sup> Decision of 11 April 2011, Az. 19 AE 173/11, available at [http://www.asyl.net/fileadmin/user\\_upload/dokumente/18463.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/18463.pdf).

by the Dublin unit. Two weeks later, German authorities declare that responsibility has been transferred to the requested state.

In addition, in re-examination procedures the time limits of Art. 5(2) of the Dublin II Implementing-Regulation are not always met. In light of the above-mentioned phenomena, it is to assume that a number of Dublin transfers are wrongly implemented and that Germany would have been responsible based on the time limits laid down by the Regulation.

In cases where a transfer cannot be carried out within the time limit, the German Dublin unit usually quickly declares itself ready to examine the asylum application in the national procedure. But specific cases also demonstrate that transfers took place after expiration of the deadline for a transfer. In the Federal State of Hesse, in July 2012 the police even tried to arrest an unaccompanied minor in a children's home after the deadline for the transfer expired.<sup>52</sup>

### **c.) Notion of absconding**

Pursuant to Art. 19 (4) or Art. 20 (2) of the Dublin II Regulation, the time limit may be extended up to a maximum of 18 months if the asylum seeker absconds. The wording "may" and "maximum" indicates that the BAMF has some discretionary powers in this area. However, the question of "whether" or "how long" the deadline is extended is always answered in the same way: the time limit is always prolonged to the maximum of 18 months if it is assumed that the person "absconded" (*Flüchtig-Sein*). The Braunschweig Administrative Court criticized this interpretation and held that Art. 20 (2) clearly entails discretionary powers concerning the question of whether the time limit is to be extended and if so, for how long. It further argued that a mere notification of the requested Member State that the transfer was suspended because the applicant had

---

<sup>52</sup> The police did not meet the minor, and as a result, the minor did not dare to return to the children's home. He was declared being searched for and the Aliens Authority made a request for detention pending transfer. At the time of the final editing of the present report, it was not sure yet whether he could stay in Germany - despite the fact that according to the files, the time limit for transfer had undoubtedly passed.

absconded is not sufficient in order to extend the time limit to 18 months.<sup>53</sup>

Problematic is also the definition or determination of when someone “absconded”. The Federal Office for Migration and Refugees usually receives information from the police or the Aliens Authority that the person who is supposed to be transferred was not found. The Aliens Authority in turn relies on own information or on information provided by the police or the operator of refugee accommodation centres. In big accommodation centres where it is hardly possible to search every room, current practice shows that the mere fact that the person was not in his/her own, but in a different room suffices for assuming that the person absconded. Thereby, one has to be aware of the fact that asylum seekers are usually not informed about transfer plans. While asylum seekers are limited in their freedom of movement because they have to remain in the area of the regional district or of the territory of one of the Federal States, there is, however, no obligation for asylum seekers to remain in their room for 24 hours. In practice, many German notifications to other Member States which claim that a person absconded lack any foundation. The authors know of a number of cases in which the person concerned was just staying in the neighbouring building while the police searched for him or in which the administration of an accommodation centre for refugees informed the Aliens Authority that the person was not in his/her room for some days, on the basis of which it was assumed that the person absconded.

*Mr. Tewelde shall be transferred to Italy in November 2010. Due to bad weather, the flight is cancelled on short notice. Mr. Tewelde thus returns to his accommodation, a first reception centre accommodating several hundred persons. Little later, the Aliens Authority declares him*

---

**53** VG Braunschweig, decision of 9 August 2011, Az. 2 B 196/11, p.3, available at [www.asyl.net/fileadmin/user\\_upload/dokumente/18899.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/18899.pdf). It says: *„The Federal Office at each time had informed Sweden before the expiration of the regular time limit for transfer of six months that the preceding transfer could not have been executed due to the applicant’s abscondence. An extension of the deadline for transfer, according to the wording calls for an explicit decision of the authority responsible on the question whether the deadline should be extended at all as well as on the length of the extension within the maximum of 18 months. The note to Sweden on the cancelation of the transfer due to the applicant’s abscondence does not contain an execution of discretion on the question of the deadline extension nor on its length and should therefore not suffice.”*



*absconded and the Federal Office for Migration and Refugees extends the time limit for transferral to 18 months. The justification is that the police could not find Mr. Tewelde during the two further dates of transferral. However, these dates had not been communicated to Mr. Tewelde so that he could not know when the police would look for him. Nonetheless, he was in the reception centre every day, and the written proof is the daily attendance check during meal distribution.*

A current controversially discussed question is whether someone is supposed to have “absconded” when he/she avails himself/herself of the protection of the so-called “open church asylum”.<sup>54</sup> If a church community admits an asylum seeker who runs the risk of being transferred into their localities and reports it to the Aliens Authority, this is called “open church asylum”.<sup>55</sup> The particularity of church asylum is the fact that the police usually does not enter into church buildings to remove an asylum seeker by force. Entering church buildings is not prohibited by law, but usually they abstain from doing so out of respect for church premises. In October 2010, during a conference in Berlin a representative of the Dublin unit in Dortmund clearly stated that an open church asylum did not justify the allegation that someone “absconded”, and therefore it did not justify the extension of the time limit for a transfer. However, in the meantime, the ecumenical work group for church asylum (BAG Asyl in der Kirche)<sup>56</sup> is aware of several cases in which the Federal Office extended the time limit for transfer to 18 months due to the open church asylum. This happened despite the fact that the church asylum had been communicated to the authority immediately and they were thus informed about the applicant’s whereabouts at all times.

---

<sup>54</sup> On the notion of „church asylum“, see [www.kirchenasyl.de/1\\_start/English/who%20are%20we.html](http://www.kirchenasyl.de/1_start/English/who%20are%20we.html)

<sup>55</sup> In cases of „hidden church asylum“ where a parish offers shelter to a person without informing the authorities, thus „hiding“ him or her, the conditions for „abscondence“ would undisputedly be met.

<sup>56</sup> Cf. [www.kirchenasyl.de](http://www.kirchenasyl.de)

### 3.3.2. *No „voluntary departure“ pursuant to the Dublin II Regulation, re-entry ban after transfer*

In case an asylum application is rejected as unfounded or manifestly unfounded in the national asylum procedure, the person concerned will be given a time limit to leave the country on a voluntary basis and is only threatened with a possible transfer. If a person has received a Dublin decision (meaning a rejection as inadmissible), there is no time limit for a voluntary departure envisaged and the authorities do not notify the person concerned about the planned transfer in advance; instead the transfer is ordered directly and can be carried out imminently (section 34a of the *AsylVfG*). Such a provision can only be found in one other German legal document, namely the German Residence Act, with regard to the deportation of “preachers of hatred” and terrorists (Art. 58a *AufenthG*). In contrast to persons falling under the D II Regulation, the latter have the possibility to apply for interim relief (*Eilrechtsschutz*) (see exemption of interim relief in the Dublin procedure, Section 3.5.1.).

Even those asylum seekers who would agree to travel or return to the responsible Member State on their own or who would prefer a voluntary departure over a forced transfer, have no possibility to do so on their own. During a public meeting in October 2009, the head of the Dublin unit in Dortmund declared that the BAMF categorically opposed the possibility of voluntary departures as the danger of attempts to abscond – and the following applicability of Germany’s responsibility after 18 months – would be too big. He further said that by giving the persons concerned the possibility to voluntarily leave Germany, one would implicitly announce that if they did not voluntarily leave Germany, they would be transferred by force. This would be an incentive to abscond, which the BAMF wanted to prevent in any case.

A deportation or Dublin transfer pursuant to section 11 of the Residence Act (*AufenthG*) usually results in an unlimited re-entry ban. This is problematic for e.g. persons who are transferred on the basis of the D II Regulation and who want to re-enter Germany at a later point in time for the purpose of marrying or on other grounds, therefore applying for a visa.

The re-entry ban can be limited retroactively upon request. Besides the fact that this option is only possible after a certain period of time, the costs for the deportation regularly have to be paid back to the Aliens Authority before re-entering Germany, including the costs for the flight, the police, as well as, if applicable, the non-negligible costs for detention.

In some cases, deportees are not only confronted with requests for pay-backs upon (attempted) returns. Pro Asyl reports a particularly absurd case in February 2012:

*In October 2010, Mrs K., a stateless Kurd from Syria, tries to travel to Denmark with her three children because her husband is granted asylum there. On her way to Kopenhagen via Germany, she is taken into custody at the Frankfurt airport by the border police who initiated a Dublin procedure even though Mrs. K. has documents which proved the asylum recognition of her husband. She is not allowed to continue the travel by her own.*

*In the end, the Frankfurt Local Court orders detention upon request of the border police. For 37 days, mother and children are kept in a single room of the transit accommodation. On 7 December 2010, the family is finally transferred to Copenhagen where they now live as recognized refugees.*

*All is well that ends well? Not really, because at the end of February 2012, Mrs. K's lawyer receives a bill with all the costs for the procedure in Frankfurt: Mrs. K. is supposed to pay 16.347,76 Euro for the entire and completely absurd procedure, payable within 30 days. - a procedure that is considered formally lawful by all courts appealed. The certainly not luxurious room of the airport accommodation in the transit area alone is calculated to cost 13.071,91 Euro. For 339 Euro per day, one could have accommodated the family in an upper-class hotel.<sup>57</sup>*

---

<sup>57</sup> The entire text of the Pro Asyl press statement in German is available at [http://www.proasyl.de/de/presse/detail/news/noch\\_kein\\_fuss\\_in\\_deutschland\\_schon\\_in\\_der\\_schuldenfalle/](http://www.proasyl.de/de/presse/detail/news/noch_kein_fuss_in_deutschland_schon_in_der_schuldenfalle/)

## 3.4. Vulnerable Persons in the Dublin Procedure

### 3.4.1. Vulnerable persons/medical cases

On 18 January 2011, the Ministry of the Interior declared to suspend transfers to Greece for one year. In the meantime, this has been prolonged up to January 2013.

In summer 2008, it declared that it would not transfer particularly vulnerable asylum seekers to Greece.<sup>58</sup> Since autumn 2009, there has been a similar practice with regard to Malta. There is no binding definition of who belongs to the group of particularly vulnerable persons. It is indisputable that unaccompanied minors and pregnant women belong to this group. Concerning families, there is no homogeneous application of this criterion. For instance, the BAMF transferred families with 11-year-old children to Greece and at the same time invoked the sovereignty clause in other cases because the children were considered too young. According to the BAMF, in 2011 the transfer of one minor to Malta took place. However, no information was provided on whether he or she was unaccompanied or not. Single women are nowhere explicitly mentioned. Nonetheless, in some cases Germany invoked the sovereignty clause when it concerned single women who ought to be transferred to Greece although the applicants had not referred to their individual particular vulnerability.

It is difficult to assess when an illness, handicap or care dependency is "severe" enough for triggering the sovereignty clause. In particular, this is very difficult to assess with regard to traumatized persons, although in Art. 17 (1) of the EU Reception Conditions Directive, victims of torture and violence are clearly defined as particularly vulnerable persons.

In light of the current practice, one could argue that particular vulnerability is only applicable in cases concerning transfers to Malta. In all other cases, the BAMF assumes that all Dublin states

---

<sup>58</sup> Letter of 9 June 2008 from the German Federal Office of the Interior to the Office of the Interior of Schleswig-Holstein, available at [http://www.emhosting.de/kunden/fluechtlingsratnrw.de/system/upload/download\\_1498.pdf](http://www.emhosting.de/kunden/fluechtlingsratnrw.de/system/upload/download_1498.pdf)

are capable of treating any kind of diseases or illnesses. The same applies to the care of other particularly vulnerable persons. The authors are aware of cases in which the BAMF did not invoke the sovereignty clause despite medically testified traumatization with suicidal tendencies, a life-threatening kidney disease of a child, a pulmonary tuberculosis requiring treatment, or a severe kidney disease of a woman with a high-risk pregnancy. While the BAMF did not invoke the sovereignty clause and tried to transfer those persons to Italy, Hungary and Poland, some of these transfers were prevented but others not. Particularly serious is also the fact that the BAMF repeatedly fails to inform the state of destination about the illness of the asylum seeker. Concrete figures on the number of cases in which the BAMF failed to provide this crucial information cannot be provided. Also, persons who were transferred occasionally reported that they were not allowed to take medicine with them and that there was no medical treatment available in the Member State they were transferred to.

*As a young woman, Mrs. Hussen must watch her family being murdered before she is raped repeatedly by the murderers. Heavily traumatized, she escapes across Italy to Germany. A psychiatrist diagnoses paranoid schizophrenia, most likely a result of her horrible experience in Somalia. Mrs. Hussen is repeatedly sent to the closed ward of the psychiatric clinic. She receives a legal custodian, a type of guardian for adults, because the local court declares that she is not capable of organizing her life on her own. During the hearings of the BAMF, she reports that she had to sleep on the street in Italy and feared assaults. She pleads for staying in Germany. Nonetheless, the BAMF wants to transfer her to Italy. The Dublin decision states that "extraordinary humanitarian reasons that would lead the Federal Republic of Germany to invoke the sovereignty clause were not displayed and are not apparent. In particular, the traumatic stress reactions or paranoid schizophrenia that the applicant had brought to bear – the existence of these illnesses assumed true – cannot be regarded as such an exceptional humanitarian reason." Her custodian states that she only hears about the transfer plans by coincidence. One day before the scheduled transfer, a court suspends it temporarily. Mrs. Hussen receives the BAMF decision that her application is rejected only two days later.*

In particular cases, doctors accompany transfers. In a number of cases it is noted in the file of the asylum seeker that the transfer

was accompanied by a doctor, but the persons concerned credibly affirmed that they were neither examined by a doctor nor informed that the accompanying person was a doctor.

The chances for invoking the sovereignty clause on the basis of particular vulnerability are also limited because of the following problem: The practice of invoking the sovereignty clause for vulnerable persons is not bound to any regulated procedure with which particular vulnerability could be assessed. As a result, they are rarely successful. Contrary to Art. 17 of the EU Reception Conditions Directive, there is no procedure for identifying particularly vulnerable persons in Germany. Unaccompanied minors are identified as particularly vulnerable persons but this does not necessarily mean that their vulnerability is taken into consideration in their Dublin procedure (cf. 3.4.2). During the Dublin procedure, the BAMF never assesses by itself whether an asylum seeker is traumatized, if he/she needs special care due to a severe illness or handicap, whether a woman is pregnant, even if it is a high-risk-pregnancy. As the persons concerned are hardly informed about the initiation of the Dublin procedure, as the capacities of legal advice centres for asylum seekers are not sufficient, and as applicants are obliged to bring forward arguments of their vulnerability themselves, particularly vulnerable persons lack possibilities of adequately reporting their situation to the Dublin unit.

Illnesses and other medical reasons are not always declared as a justification for invoking the sovereignty clause by the persons concerned, but sometimes only as an argument for not executing a transfer at a certain point in time. An asylum seeker may be of the opinion that his illness can be treated in the state responsible as well as it can be treated in Germany. He is thus not able to call for the sovereignty clause. Nonetheless, he might see himself incapable of going to this state or endure a transfer because of an acute sickness. If there is “only” a temporary incapacity of travelling, they speak about a domestic deportation obstacle– the transfer cannot be executed because of adverse circumstances that are not connected to the future situation of the person concerned in the country of destination, but rather to his/her current situation in Germany.

In the case of transfers to the country of origin, the regulations envisage that the BAMF examines the circumstances that might oppose a transfer within the country of destination, and the Aliens Authority examines the domestic circumstances that might prohibit a transfer.<sup>59</sup> In the case of Dublin transfers, the question of responsibility for the examination of domestic deportation obstacles is not resolved. The BAMF and the Aliens Authority hold differing positions and the administrative courts do not agree either on who is responsible for the examination of domestic obstacles in the case of Dublin procedures. In practice, this lack of legal certainty leads to a situation where no authority feels responsible.

*Mrs. Ahmed suffers from a severe kidney illness. The doctor treating her vehemently protests against her transfer to Italy. When she gets pregnant, her state of health deteriorates. The case officer in the Dublin unit notes in her file in August 2011 that they refrain from transferring her because of her incapacity to travel. The time limit expires before the birth of the child, meaning that a transfer is not possible and that the asylum application is decided upon in a national procedure. The case officer communicates this decision to the Aliens Authority and Mrs. Ahmed's lawyer. Nonetheless, Mrs. Ahmed is arrested by the police in September 2011 at night and she is told that she will be transferred to Italy. In the end, the transfer has to be cancelled due to health problems. In retrospect, it turns out that a case officer in the Aliens Authority booked the flight and informed the BAMF beforehand. However the case officer at the BAMF did not feel obliged to respect his own decision to refrain from a transfer – a decision that was also communicated to Mrs. Ahmed.*

---

**59** If an asylum applicant who suffers from a severe illness fears that his/her state of health would drastically worsen in the country of origin because the necessary medicine is not available, he/she must claim this circumstance before the Federal Office. However, if after a negative asylum procedure a person can only claim that he/she is unable to travel for some weeks due to a surgery, for example, the Aliens Authority is responsible for the examination on if and how long the planned transfer will be delayed.

### 3.4.2. *Unaccompanied minors*

In 2011, 380 minors were transferred to other Dublin states, primarily to Poland, Sweden and Italy; see table 9 in the annex. The BAMF did not answer how many of those were unaccompanied, as it said that it would not collect such figures.

#### **a.) Legal capacity - Capability of performing procedural acts from the age of 16**

The German Residence Act and the Asylum Procedure Act declare that with reaching the age of 16, persons are “capable of performing procedural acts”. As a result, the Aliens Authorities and the BAMF treat them as adults.<sup>60</sup> In administrative regulations and internal instructions, this regulation – almost unique in Europe – is in parts avoided, and parts of the protection for minors are applied until reaching the age of 18. Within the framework of their competences, especially with regard to social protection, some Federal States try to achieve equal treatment for all minor refugees who are below the age of 18. Nonetheless, in matters concerning the laws on asylum and residence, 16- and 17-year-old unaccompanied minors are treated as adults. This implies that minors have to decide for themselves whether they want to apply for asylum and if so, they have to manage the whole asylum procedure by themselves, ranging from preparations for the interview, to lodging an appeal against a possibly negative decision, and to justifying their appeal in the court procedure. Even the highly complex Dublin procedure they have to manage themselves. They may request support by a lawyer, but usually have to pay for the costs themselves (about support by the state, see section 3.5.2.).<sup>61</sup> Among others, in order to safeguard regulations in Section 12 of the Asylum Procedure Act and Section 80 of the Residence Act<sup>62</sup>, Germany accepted the UN Convention on the Rights of the Child only with reservations which basically stipulated that rights of children did not apply to

---

<sup>60</sup> § 12 Sect. 1 AsylVfG and § 80 Sect. 1 AufenthG.

<sup>61</sup> On request of the legal guardian, some family courts also place a lawyer paid for by the state at the disposal of the 16- to 17-year-olds. However, only a minority of unaccompanied minors in Germany benefits from this measure.

<sup>62</sup> The English version of the AufenthG is available at [http://www.gesetze-im-internet.de/englisch\\_aufenthg/index.html](http://www.gesetze-im-internet.de/englisch_aufenthg/index.html).



foreign children.<sup>63</sup> Although Germany withdrew its reservations in July 2010, the legal capacity for procedural acts for minor asylum seekers from the age of 16 onwards is not under discussion by the Federal Government. It declared that it did not see any necessity of changing the Asylum Procedure Act or the Residence Act.

### **b.) Respect for the principle of the best interest of the child**

The most important principle of the UN Convention on the Rights of the Child highlights that for all decisions concerning children below the age of 18, the best interest of the child should be the primary consideration for all actions. However, this principle has rarely been applied in German legislation so far. Upon remarks that the BAMF as well as the Aliens Authority are obliged to consider the best interest of the child as the primary consideration in all actions, the staff responds by arguing that such provisions did not exist in German law and if at all, another authority would be responsible for implementing it.

As a result, there are many transfers according to Art. 6 (2) D II Regulations – namely transfers of unaccompanied minor refugees to the state where they had first applied for asylum – without one of the authorities in charge having examined whether or not this is in line with the well-being of the child.

The authors who have provided advice and legal representation in more than 200 cases of unaccompanied minors in Dublin procedures know only of three cases in which staff of the BAMF explicitly referred to the best interest of the child as a reason for preventing a transfer in the Dublin procedure. More often, the Aliens Authorities abstain from implementing a transfer either because the best interest of the child is endangered in the country

---

**63** Cf. the explication of the Federal Government on the occasion of the ratification certificate for the UN Convention on the Rights of the Child of 6 March 1992: *„Nothing in the Convention may be interpreted as implying that unlawful entry by an alien into the territory of the Federal Republic of Germany or his unlawful stay there is permitted; nor may any provision be interpreted to mean that it restricts the right of the Federal Republic of Germany to pass laws and regulations concerning the entry of aliens and the conditions of their stay or to make a distinction between nationals and aliens.”* | Available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en#EndDec)

of destination or because there are family ties in Germany which are not considered by the BAMF, or because it seems like a drastic and disproportionate measure to deport a minor from a youth welfare facility.

### c.) Different age registrations in Europe

Throughout a Dublin procedure, it is not uncommon that an asylum seeker who is clearly identified as an unaccompanied minor in Germany is registered as an adult in another Dublin state.<sup>64</sup> The question comes up on how it is possible that the age registration of another Dublin state influences the age registration in Germany when the minor is not able to prove the age that is registered in another Dublin state by means of documents.

In an internal administrative order, the BAMF laid down that the registered age of another Member State must not be adopted; notwithstanding, assessments of why there is divergence could be undertaken. According to this administrative order, the German age registration precedes the age registration of another Member State. In the end, the BAMF declares itself to be bound to the age that was registered by the authorities in the Federal State in which the minor lives.<sup>65</sup> This can be problematic because age is very differently assessed in the different Federal States. Insofar as the accommodation of minors' remains in the hands of the Federal States, the applied method of age assessment is dependent on the regulations of each Federal State. In Hesse, only social workers and pedagogues are allowed to decide about the age of an asylum seeker by visual inspection during an interview. In other Federal States, even the Aliens Authorities or the border police are involved

---

<sup>64</sup> On this difficulty, cf. the two contributions in German: D. Bender/M. Bethke, Sag mir, wie alt du bist! In: HinterlandMagazin No. 14, available at <http://hinterland-magazin.de/pdf/14-50.pdf>; D. Bender/ M. Bethke, Das Kindeswohl im Dublinverfahren. In: Asylmagazin 3-42011. Part 1 available at [http://www.asyl.net/fileadmin/user\\_upload/beitraege\\_asylmagazin/Beitraege\\_AM\\_2011/AM2011-3-68-Bender\\_Bethke.pdf](http://www.asyl.net/fileadmin/user_upload/beitraege_asylmagazin/Beitraege_AM_2011/AM2011-3-68-Bender_Bethke.pdf), part 2 available at [http://www.asyl.net/fileadmin/user\\_upload/beitraege\\_asylmagazin/Beitraege\\_AM\\_2011/AM2011-4-112\\_Bender-Bethke.pdf](http://www.asyl.net/fileadmin/user_upload/beitraege_asylmagazin/Beitraege_AM_2011/AM2011-4-112_Bender-Bethke.pdf).

<sup>65</sup> The Federal Association for Unaccompanied Minor Refugees (Bundesfachverband Unbegleitete Minderjährige Flüchtlinge) has published the service orders on its webpage (in German) [http://www.b-umf.de/images/da\\_unbegleitete-minderjaehrige-2010.pdf](http://www.b-umf.de/images/da_unbegleitete-minderjaehrige-2010.pdf)

in the age assessment and sometimes medical age assessments are undertaken, such as via X-rays. Even though, the authorities could maintain the age they assessed, in some cases they adopt the registered age of other Member States, irrespective of the age-assessing method. The authors know a case in which the BAMF tried to transfer a minor by using the age registered in the Netherlands, thereby acting against their own internal administrative orders.

If a minor is registered as underage in Germany and in another Member State as an adult, it remains questionable whether he/she could have possibly lodged an effective asylum application in the other Member State and whether Art. 6 (2) of the D II Regulation could be applied. There are some administrative courts confirming the argumentation that Art. 6 (2) of the D II Regulation is not applicable in such cases and that Germany would be responsible as the country where the first (effective) asylum application was lodged.<sup>66</sup>

“Transfers into majority” are also highly problematic. It implies that a person who is registered as a minor in Germany is transferred to a Member State where he/she is considered an adult, whereby German authorities have either tried to convince the other Member State of the minority of the asylum applicant but without effect or have not tried to convince the other Member State at all. In this case, a minor who is transferred into “majority” loses any rights associated with his/her minority in the moment he/she arrives in the state of destination because he/she is considered an adult there. The guardian that was assigned by the family court in Germany is also in a tricky situation because there is no handing over of duties to the other Member State. This implies that he/she is not really “released” of his/her obligations of taking care of the minor assigned to him/her by the family court, but at the same time cannot really fulfil the duties without great difficulty due to the distance and the lacking power to become active in the other Member State. The responsibility of the German official guardian has thus not ceased just because the minor is outside of German territory, but he/she is not really able to perform the duties.

---

<sup>66</sup> VG Frankfurt, decision of 15 October 2010, Az. 9 L 3171/10.F.A, available at [http://www.asyl.net/fileadmin/user\\_upload/dokumente/17722.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/17722.pdf), as well as VG Frankfurt, decision of 2 August 2010, Az. 8 L 1827/10.F.A(V), available at [http://www.asyl.net/fileadmin/user\\_upload/dokumente/17354.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/17354.pdf).

“Transfers into majority” could be put to an end with a new legislative regulation which was adopted in November 2011 within the framework of the transposition of the EU Returns Directive. A new paragraph was added to the Residence Act, stipulating in Section 58 (1)(a) that:

“Before removing an unaccompanied minor, the authority shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.”

This new version is derived from Art. 10 of the Returns Directive. This Directive is not directly applicable to Dublin transfers, but the German legislator has clearly formulated the paragraph in a way that makes it applicable to all deportations/transfers in all states of destination. Also, it would be difficult to understand why there should be lower standards of protection for children applicable to inner-European transfers than for deportations to the country of origin.<sup>67</sup> Still, the BAMF is of the opinion that these regulations would not be applicable to Dublin transfers. This causes the absurd situation in which a minor would be protected from deportations into child-endangering situations in the country of origin, but not from transfers to Dublin states where the situation is possibly even worse.

#### **d.) Procedure at the border police**

From the perspective of a child’s best interest, the situation of minor refugees who are apprehended by the border police at the German border is highly problematic. One example for this problematic situation is derived from a 2010 report published by UNHCR and the Federal Association for Unaccompanied Minor Refugees (*Bundesfachverband Unbegleitete minderjährige Flüchtlinge*) which reports the following about the German-Austrian border in the regional district Rosenheim (Bavaria):<sup>68</sup> If a person apprehended

---

<sup>67</sup> The Higher Administrative Court of Hesse (Hessischer Verwaltungsgerichtshof) for example formulated it this way in his decision of 14 November 2012, Az. 3 D 1815/12, available at [http://www.asyl.net/fileadmin/user\\_upload/dokumente/20198.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/20198.pdf).

<sup>68</sup> B-UMF and UNHCR: Evaluierung der Situation von unbegleiteten minderjährigen Flüchtlingen in Stadt und Landkreis Rosenheim (Evaluation of

in the border area shows that he/she is of minor age, initially an inquiry concerning the identity, age and travel itinerary is done by the border police. If the police doubts the reported age, they order an age assessment via x-rays whose result is not subject to legal review as it is binding and cannot be appealed. If the police is of the opinion that the minor is younger than 16, the minor is handed over to the Youth Welfare Office which accommodates him/her in a youth welfare facility. If the police is of the opinion that the minor is between 16 and 17, it initiates a criminal proceeding because of illegal entry and examines whether it is possible to transfer the person back to Austria. If this is not directly possible, the minor is taken into detention pending deportation. If a transfer cannot be carried out, the minor is taken into an initial reception centre for adult asylum seekers in Munich.

There are two problematic issues in these cases: On the one hand, the age assessment done by the police is controversial, for instance, the x-raying of the wrist. On the other hand, it is highly problematic that there is a possibility of transferring minors back, or to imprison or accommodate them in an initial reception centre for adult asylum seekers instead of accommodating them in a youth welfare facility.

In the first half of 2012, 217 unaccompanied minors were picked up by the Federal Police on German borders, many on the French-German boarder (90) and at airports (50). 24 of them were rejected or re-transferred, mainly to the Netherlands (10 cases) and France (7), 185 were brought to the Youth Welfare Office.<sup>69</sup>

---

the Situation of unaccompanied minor refugees in the city and administrative district of Rosenheim). Available at [http://www.b-umf.de/images/evaluation\\_rosenheim\\_2011.pdf](http://www.b-umf.de/images/evaluation_rosenheim_2011.pdf). The practice may differ in other Federal States. On the website of the B-UMF, various evaluation reports of the Federal States can be found that all demonstrate how the authorities - depending on the Federal State, sometimes even differing between cities- treat unaccompanied minor refugees inconsistently.

<sup>69</sup> Reply of the Federal Government to a parliamentary inquiry, available at <http://dip21.bundestag.de/dip21/btd/17/104/1710454.pdf>, p.21f.

## 3.5. Effective Remedy and Legal Advice

### 3.5.1. Effective judicial remedies

If the BAMF rejects an asylum application as unfounded, it requests the person concerned to leave the country voluntarily, issues a time limit for leaving Germany and if necessary, issues a notification announcing the transfer. If the BAMF rejects an asylum application as inadmissible (and refers the person concerned to another Member State), it issues a Dublin decision to the applicant – a so-called “deportation order” (*Abschiebungsanordnung*) – which does not envisage a time limit for voluntary departure.

The legislator goes even further than merely excluding the possibility of a voluntary departure within a particular time limit: Section 34a (2) of the Asylum Procedure Act stipulates that deportation orders pursuant to the D II Regulation must not be suspended on the basis of an interim relief application at the court. In this way, Section 34a (2) of the Asylum Procedure Act lays down rules for something which is not known in any other legal field of public law: the appeal has no suspensive effect and the court is not permitted to grant interim relief against an imminent enforcement of an administrative decision. In other words, according to German legislation, it is legally prohibited for a judge of the administrative court to take a decision on the merits of the application for interim relief.

The same provision exists since 1993 for procedures in which an asylum application is rejected because of entry from a so-called “safe third country”. Due to the exclusion of legal remedies, the German constitutional court already had to deal with constitutional questions caused by this provision. In 1996, the constitutional court declared that the exclusion of interim relief for deportations to safe third countries was compatible with the constitution as long as certain exceptions which were more deeply discussed in the judgment were taken into consideration.<sup>70</sup> According to this

<sup>70</sup> German Constitutional Court, decision of 14 May 1996, Az. 2 BvR BvR 1938/93, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=type&docid=3ae6b73514&skip=0&type=CASELAW&coi=DEU&searchin=title&display=200&sort=date>.

judgment, it is permissible to grant interim relief if the asylum seeker credibly shows one of the following points:

- Concrete imminent risk of death penalty in the third country;
- The third country's inability to prevent that the person affected becomes a victim of crime;
- Sudden change of the situation in the third country without the German Federal Government having eliminated the state from the list of safe third countries (cf. Section 26 a (3) of the Asylum Procedure Act):
- The third country is itself the persecuting state in the specific case;
- Concrete danger that the third country deports the asylum seeker without examining his/her request for protection, meaning that the asylum seeker could be subjected to a series of deportations.

These exceptional cases were justified by arguing that before declaring states to "safe third countries" (cf. Art. 16a (2) Basic Law)<sup>71</sup>, the legislator was making sure that the fundamental principles of the European Convention on Human Rights (ECHR) and the Geneva Convention relating to the Status of Refugees were adhered to in those states. However, it argued that this so-called principle of normative ascertainment (*normative Vergewisserung*) would be naturally limited. As a result, the court pointed out that the outlined exceptions would concretize such limitations. In these cases, interim relief would be exceptionally permissible. However, section. 34a (2) AsylVfG that exempts interim relief in cases of transfers to "safe third countries" and by now also in cases of Dublin transfers was not abolished.

In light of increasingly dramatic reports on the reception and procedural conditions for asylum seekers in Greece, a discussion within the case law of administrative courts in Germany has developed since 2008 if it should not be allowed to lodge interim reliefs against transfers when being confronted with the

---

<sup>71</sup> The German Basic Law is available in English at [http://www.gesetze-im-internet.de/englisch\\_gg/index.html](http://www.gesetze-im-internet.de/englisch_gg/index.html).

hopelessness of lodging an asylum application at relevant Greek authorities. It was insofar not disputed that in cases of section 34 a (2) of the Asylum Procedure Act which concerned a transfer on the basis of the D II Regulation, (at least) the same exceptions as the constitutional court had laid down for the provision on safe-third-countries should be guaranteed. Nonetheless, it was equally indisputable that none of the five exceptional cases laid down by the constitutional court in 1996 applied to what asylum seekers were or are confronted to in Greece.

In April 2008, a number of courts of lower instance – for the first time the Gießen Administrative Court <sup>72</sup> - drew the consequence and argued that the checklist of the five exceptional cases should be extended to a sixth, unnamed group, which would capture the situation in Greece, and that interim relief ought to be admissible and ought to be granted. Since 8 September 2009, the case law was confirmed by the constitutional court as it suspended for the first time the transfer of an Iraqi asylum seeker to Greece by way of interim relief measures. It was not the only interim measure of this kind, there have been at least twelve further interim measures of the constitutional court. However, although an oral proceeding took place, so far the constitutional court has not taken a decision on whether it confirms the view of incorporating a sixth group to the five exceptional cases. This was the result of the decision of the Ministry of Interior, which in the meantime deprived the complainants in all pending cases from their cause of action by declaring not to transfer any asylum seeker to Greece until the beginning of 2012. This suspension of transfers was extended to 12 January 2013 and in December 2012 for yet another year.

On 9 April 2010, the Federal Government declared in front of the Federal parliament that in discussions concerning the amendment of the D II Regulation, it would seek to advocate the maintenance of the exclusion of interim relief in the amended version.<sup>73</sup> Even after the *M.S.S.* decision of the ECtHR and the *N.S.* decision of the CJEU, the BAMF and the Federal Government maintain the

---

**72** VG Gießen, decision of 25 April 2008, Az. 2 L 201/08.GI.A, available at [http://www.asyl.net/fileadmin/user\\_upload/dokumente/13157.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/13157.pdf).

**73** Bundestags-Drucksache 17/1340 of 9 April 2010, p.18, available at <http://dipbt.bundestag.de/dip21/btd/17/013/1701340.pdf>.



exclusion of interim relief in Dublin transfers.<sup>74</sup> The Dublin unit of the BAMF stressed after the *N.S.* decision of the CJEU that section 34a (2) of the AsylVfG is still not up for discussion: “*Die Meinung, die neue EuGH-Rechtsprechung zwingt Deutschland, § 34a AsylVfG zu streichen, trägt somit nicht.*” (“The opinion that the new CJEU jurisdiction compels Germany to eliminate section 34a AsylVfG does not hold true.”)<sup>75</sup>

### 3.5.2. Access to legal advice for asylum seekers in Germany

To get effective legal protection against a Dublin transfer is extremely difficult in Germany. It is therefore all the more serious that there is no legal counselling for asylum seekers in Germany that is financed by the state. In fact, there is the so-called “Legal Advice Aid Act” (*Beratungshilfegesetz*) which Germany presents as the instrument with which advice-seeking asylum applicants are supposedly guaranteed free access to lawyers. In practice, this instrument is completely ineffective for two reasons:

1. The local courts are responsible for deciding upon someone’s right to receiving advice assistance. Normally, though, it is rejected because it is argued that what is at stake are factual and not legal questions. These would not require a lawyer;
2. The lump sum of 84 € net which is paid to the lawyer by the Legal Advice Aid Act is so small that the majority of lawyers reject such mandates or invest only little time into the legal advice.

In practice, Germany lacks an effective state-paid legal advice, a shortcoming that is compensated only to a minor extent by access to counselling centres of welfare organisations. Those can be found

---

<sup>74</sup> Cf. for example Bundestags-Drucksache 17/4827 of 21 February 2011, available at <http://dip21.bundestag.de/dip21/btd/17/048/1704827.pdf> and Bundestags-Drucksache 17/5579 of 18 April 2011, p.5, available at <http://dipbt.bundestag.de/dip21/btd/17/055/1705579.pdf>.

<sup>75</sup> Cf. the statement of Unit 430 in the Einzelentscheiderbrief 2-2012, retrieved and translated from [http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Entscheiderbrief/2012/entscheiderbrief-02-2012.pdf?\\_\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Entscheiderbrief/2012/entscheiderbrief-02-2012.pdf?__blob=publicationFile), p.2.

in nearly all initial reception centres and in many different regions, but their capacities are extremely limited. In addition, legal advice in the narrow sense as advice provided by lawyers or by consultants who are being advised by lawyers is not offered everywhere.

Ultimately, a person in need of legal assistance by a lawyer in Germany has to pay for it privately. In particular, the very important counselling and legal representation *before* the delivery of the Dublin decision (which is usually the day of the transfer) is not financed by the state at all. Although in some regions there are welfare organisations that provide subsidies to the expenses, their financial resources are limited and are not accessible for all asylum seekers.

Similarly difficult as financing legal representation for procedures at administrative authorities is the financing of court procedures. The basic principle is that Germany has to pay for the costs of the lawyer in case a person concerned succeeds before court. In case of a defeat before court, the person itself has to carry the costs for the lawyer. There is an instrument which is supposed to enable lawyers not only to accept cases of asylum seekers who are usually without any means but whose cases look promising, which means that costs would be borne by the state. This instrument is called “assistance for procedural costs” (*Prozesskostenhilfe*) and is supposed to safeguard the financing of costs of lawyers for cases which are not successful in the end, but which are neither hopeless from the beginning. In practice, however, there are only few cases in which assistance for procedural costs has come into effect. A majority of courts refuse any possibility for receiving assistance for procedural costs by arguing that if an appeal is rejected, the whole case cannot have been promising in the beginning either.

In conclusion, one can observe that in administrative procedures, legal representation and assistance is only achievable when financed by own means. In the administrative court procedure, Germany covers the costs if the judgment is in favour for the applicant, in all other cases the applicant has to bear the costs himself/herself.

The situation is a bit different for unaccompanied minors. Under certain circumstances, they may be assigned a legal representative (*Ergänzungspfleger*), that is to say a lawyer paid by the state who

represents the minor in the asylum procedure. The first precondition is that minors must have a guardian (*Vormund*) in Germany. The guardian is appointed by the family court, usually requested by the Youth Welfare Office. Some family courts refuse to appoint a legal guardian if the minor's parents are still alive and if the minor has telephone contact with them, even if only sporadically. As a result, these minors are left almost entirely up to themselves and are, at most, taken care of by the social service of the Youth Welfare Office.

*16-year-old Karim from Algeria reaches Germany in March 2012. His father is dead, he has not been in touch with his mother for quite some time, he lived on the street in Algeria. Once in Germany, there is still no contact between Karim and his mother. The Youth Welfare Office immediately applies for a legal guardian. In July 2012, the family court dismisses the application, saying that means of modern communication and travel possibilities would allow parental care also from a distance.*

*15-year-old Alou from Mali has a similar experience. He tells the Youth Welfare Office in March 2012 that his mother is dead and the relation to his violent father shattered – the fear of his father had been the reason for his escape. In Alou's case, the family court dismisses the application for a legal guardian as well. The court informs the Youth Welfare Office in July 2012 – the civil war in Mali has been raging for months already – that at the most, it can be envisaged to revoke the father's right to child custody. In September 2012, it definitely dismisses the application for a legal guardian.*

*Karim and Alou are now completely on their own when it comes to organizing things. Only the fact that they live in Hesse and are therefore placed in youth welfare facilities – contrary to unaccompanied minors in other Federal States – guarantees a certain support through dedicated social workers and pedagogues. In fact, the family court leaves all matters that are usually decided by a legal guardian for them to decide on their own. This includes the choice of school to go to, of medical care, of place and type of residence, and of course also the question whether or not to apply for asylum. Possible alternatives to the asylum procedure, how to prepare an interview at the BAMF, whether to take action against a decision of the BAMF – all these issues are left to the two adolescents' own judgment.*

Apart from applying for a legal guardian, the second precondition for unaccompanied minors for having a legal representative is that the family court finds that legal representation is necessary and that the knowledge of the guardian in asylum law is not sufficient. Despite the UN Convention on the Rights of the Child, the German asylum and residence law treats 16- to 17-year-old asylum seekers as adults. Therefore, many family courts do not feel the need of appointing a lawyer for these minors because according to German law, 16- to 17-year-olds ought to be ready to administer their asylum procedure on their own. (An exception is for example the family court in Frankfurt a.M. which, by referring to the UN Convention on the Rights of the Child, defines any person under the age of 18 as a child and therefore also appoints legal representatives for 16- to 17-year-old unaccompanied minors.) Still, many family courts argue that the guardian would be able to either provide qualified legal assistance by him-/herself or would have to finance it – although the German Youth Welfare Offices do not provide training to guardians and do not have financial resources for it.

In sum, only a small percentage of unaccompanied minors in Germany are additionally supported by a legal representative. In addition, the financing of privately assigned lawyers is very difficult. Guardians are not obliged to qualify themselves in asylum law and in the fewest cases they are able to get access to free legal assistance.

## 3.6. Detention

### a.) Basics on the law of detention

Sections 62 and 62a of the Residence Act (*AufenthG*) are the most important legal norms for detention pending deportation or Dublin transfer, entailing the preconditions for detention (firstly: enforceable requirement to leave the territory, secondly: existence of warrants for detention in accordance with Section 62 (3) of the Residence Act, thirdly: proportionality of detention) as well as the maximum duration of detention (18 months). The procedure for imposing detention pending deportation is regulated in Section 415 ff. by the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*). In 2009, a change of legislation ended fragmentations within the case law on detention. Since then, the Federal Court of Justice (*Bundesgerichtshof, BGH*) in Karlsruhe decides nationally about legal questions in the area of detention pending deportation.

### b.) Typical procedure of a Dublin detention

There are no statistical figures of how many persons are detained before a Dublin transfer takes place. Current estimations of NGOs which offer counselling in detention centres assume that around half of the detainees pending deportation are “Dubliners”. In order to understand Dublin detention in Germany, it is important to know two principles:

- Persons who have applied for asylum in Germany must not be taken into detention pending deportation during the asylum procedure.
- If a foreigner is apprehended by the police, for instance, because of illegal border crossing, and if the local court orders detention pending deportation before a written asylum application is sent to the responsible authority (BAMF), then the asylum application does not hinder the maintenance or the extension of detention according to section 14 (3) AsylVfG.

In light of the above-mentioned principles, the proceeding within the Dublin procedure which leads to detention usually happens in the following way: the person concerned is instantly taken into custody when entering Germany illegally. Based on the travel itinerary and the evaluation of finger prints, there are indications that another Member State is deemed responsible for taking back the asylum seeker on the basis of the D II Regulation. The responsible authority sends out an application for detention at the local court. If the local court orders detention, the person concerned has the opportunity to lodge a complaint against the detention at the local court, the Regional Court (*Landgericht*) and in the end, at the Federal Court of Justice. The person concerned may also file a written asylum application to the BAMF but this does not change the admissibility of detention.

NGOs and lawyers in Germany heavily criticize that there seems to be a form of “competition” between the police, trying to successfully apply for detention at the local court, and the asylum seeker, who tries to lodge an effective asylum application as fast as possible.<sup>76</sup>

There are further possible situations of detention in Dublin cases which, however, occur rarely:

- The foreigner was successful in lodging an effective asylum application (as a result, he cannot be taken into custody for the duration of the asylum procedure). However, his/her asylum application has been rejected in the meantime because of another Member State’s alleged responsibility. From the moment when the person concerned was effectively notified of the decision rejecting the asylum application (a decision justifying an obligation to leave the country) and when the preconditions for issuing detention (ground, proportionality) are fulfilled, detention may be imposed. In Dublin procedures, the reason for ordering detention is often the assumption that the person would abscond. In this situation, authorities are faced with the legal problem that a judge has to order detention *before* the person concerned will be arrested by the police – apart from

---

<sup>76</sup> Peter Fahlbusch: Haft in Verfahren nach der Dublin-II-Verordnung (detention in procedures following the Dublin II Regulation). *Asylmagazin* 9-2010, p.289-295. Available at [http://www.asyl.net/fileadmin/user\\_upload/beitraege\\_asylmagazin/Beitraege\\_AM\\_2010/AM-2010-09-289-fahlbusch.pdf](http://www.asyl.net/fileadmin/user_upload/beitraege_asylmagazin/Beitraege_AM_2010/AM-2010-09-289-fahlbusch.pdf)

some exceptions. As a result of the fact that the Dublin decision and thereby the notification of the obligation to leave Germany is usually delivered by the police on the day of the transfer, asylum seekers in the Dublin procedure are technically not obliged to leave the country until that time. If the police requests detention at the local court before the Dublin decision has actually been communicated to the person concerned, the arrest warrant lacks the necessary obligation to leave the country. In these cases, detention prior to the issuing of a Dublin decision to transfer is actually unlawful, but still a frequent action.

- Detention is usually ordered in cases when a person who was already transferred from Germany to another Member State comes back to Germany (cases of “Dublin returnees” are increasing), although a re-entry ban was imposed.
- Detention pending deportation in order to ensure a transfer may be requested if a person was transferred from another Member State to Germany and had already received a negative decision on his/her asylum application in Germany and is therefore obliged to leave Germany.

### **c.) Asylum applications that are not considered**

A decree of the Federal Ministry of the Interior (3 March 2006) shows that it is not tried to avoid detention but that it is politically intended instead:

*“In Fällen, in denen Drittstaatsangehörige an der Grenze bzw. nach unerlaubter Einreise im Grenzraum ( ) aufgegriffen werden und ein Aufnahme- oder Wiederaufnahmeverfahren gegenüber einem anderen Teilnehmerstaat eingeleitet wird, ist ein von diesem Ausländer gestellter Asylantrag, der ggf. aus der Haft heraus vom Antragsteller oder seinem Bevollmächtigten an das Bundesamt übermittelt wird, nicht in Behandlung zu nehmen. Dem Ausländer ist mitzuteilen, dass das Asylgesuch an die Bundespolizei zu richten ist ( ). Ziel ist es eine Abschiebehaft zu erlangen, um den Ausländer dann direkt aus der Haft heraus in den zuständigen Staat im Rahmen des Dublinverfahrens zu überstellen.“*

“In cases in which third-country nationals are apprehended at the border or after illegally entering the border area ( ) and where take charge or take back procedures vis-à-vis another Member State will be initiated, the asylum application of a foreigner, submitted to the BAMF possibly from detention by the applicant or an authorized representative, is not to be considered. The foreigner is to be informed that his/her application for asylum is to be addressed to the border police (...). The aim is ... to achieve detention pending deportation in order to transfer the foreigner directly from detention to the responsible Member State within the Dublin procedure.”

This violates Art. 6(5) of the EU Asylum Procedure Directive which ought to guarantee that the asylum seeking person is informed by the authorities to which he/she turns to about the modalities and the responsible body where he/she will be advised about lodging an asylum application, or that the authorities forward the asylum application to the responsible authority. On the contrary, asylum seekers are given wrong information (because the responsible body is not the border police but the BAMF), and the forwarding of the asylum application that is lodged at the border police as well as the examination of the application at the BAMF are refused. However, if there is no asylum application in Germany, an application for invoking the sovereignty clause is not possible.<sup>77</sup>

Especially in the following situation, this regulation raises many questions: A person has entered Germany via one or more Member States, but has not applied for asylum in these countries. In order to initiate a Dublin procedure, he/she must be registered as an asylum seeker in Germany, otherwise, the D II Regulation cannot be applied. However, as the paragraph above has explained, according to this order, asylum applications are refused to be taken into consideration. Nonetheless, in communication with other Member States, the person is declared to be an asylum applicant in order to justify the other state's responsibility for the asylum procedure, although his/her asylum application is not even taken into consideration by German authorities.

---

<sup>77</sup> This was criticized by the Munich Administrative Court in a decision of 22 November 2012 (Az. M 23 E 12.30743) and the court obliged the BAMF to examine the asylum application and make a decision pursuant to § 31 AsylVfG.



#### **d.) Dublin procedure under the auspices of the border police**

There can be specificities in the Dublin procedure for persons who are apprehended in the border area. According to Art. 23 (1) of the D II Regulation and Section 3 of the German Regulation for Asylum Responsibility (*Asylzuständigkeitsbestimmungsverordnung*), the border police may carry out Dublin procedures instead of the Dublin unit of the BAMF if there are indications that a Member State bordering Germany is responsible. Agreements regarding these procedures currently exist between Germany and Denmark, the Czech Republic, Austria, and Switzerland.

These should only be applied in “clear” cases where the responsibility of a bordering state seems to be obvious. It remains doubtful whether the border police is able to carry out a correct Dublin procedure which implies correct application of the responsibility criteria in the right hierarchy and a comprehensive examination of the asylum application, because the border police only communicates with four states and has no specialized department for Dublin procedures. It is also questionable whether family or humanitarian aspects are sufficiently considered.

In the first half of 2012, the Federal police sent 79 requests to other states and carried out 76 transfers.<sup>78</sup>

#### **e) Access to legal advice**

Irrespective of the situation which leads to detention pending deportation, there is a huge problem that many detainees pending deportation – “Dubliners” as well as people who are being deported to their country of origin – have no access to legal advice (hence, they have limited access to legal remedies). Detainees are allowed to contact a lawyer, but especially persons in the Dublin procedure who have arrived in Germany only recently are unlikely to be successful in contacting a lawyer due to insufficient financial resources and language barriers. Only few detention centres provide independent counselling, not to mention free legal advice.

---

<sup>78</sup> BT-Drucksache 17/10454, available at <http://dip21.bundestag.de/dip21/btd/17/104/1710454.pdf>

Experience of lawyers and NGOs has shown that roughly one third of detainees who managed to appeal against their detention had to be released on the basis of a court decision.<sup>79</sup>

## **f.) Conditions of detention**

The enforcement of detention and the concrete conditions of detention in the different detention centres are regulated by the different Federal States. As a result, conditions can vary quite significantly. The NGO *Pro Asyl* published a detailed overview about the different regulations in the different detention centres.<sup>80</sup> The publication reveals that contrary to European law provisions, detainees pending deportation are still in some cases detained together with prison inmates, and even when there are separated facilities, the conditions of detention are quite similar to those of other detainees:

Detainees pending deportation often only have two hours of recreational time, they are hardly allowed to receive guests, they have very limited access to telephones, and sometimes they have to wear the same clothes as prison inmates. In a number of court decisions, these conditions are currently criticized and detention declared as unlawful.<sup>81</sup>

---

**79** Peter Fahlbusch: Haft in Verfahren nach der Dublin-II-Verordnung (detention in procedures following the Dublin II Regulation). *Asylmagazin* 9-2010, p.289-295. Available at [http://www.asyl.net/fileadmin/user\\_upload/beitraege\\_asylmagazin/Beitraege\\_AM\\_2010/AM-2010-09-289-fahlbusch.pdf](http://www.asyl.net/fileadmin/user_upload/beitraege_asylmagazin/Beitraege_AM_2010/AM-2010-09-289-fahlbusch.pdf).

**80** It is available at [www.proasyl.de/index.php?id=abschiebungshaft](http://www.proasyl.de/index.php?id=abschiebungshaft).

**81** The regional court Traunstein, for example, observed that the Dublin transfer detention of an Algerian asylum applicant was against the law because he was detained in the youth ward of a prison in Munich together with pretrial and normal detainees [decision of 21 August 2012, Az. 4 T 3104/12].

### *3.7. Persons who had been granted refugee status or subsidiary protection in another member state before*

Recognized refugees do not fall within the D II Regulation. In cases in which a requested state declares that the person concerned is granted refugee status, the Dublin unit stops the Dublin procedure and forwards the file to the responsible branch of the BAMF in order to take a decision on the asylum application. There, however, the case is not examined on the merits of the case. Instead, the BAMF passes a decision in accordance with section 26a of the Asylum Procedure Act which stipulates that the asylum application will be rejected because the person entered Germany via a safe third country.<sup>82</sup> Apart from Island and Liechtenstein, all Dublin states are treated as safe third countries. Similarly to Dublin decisions, pursuant to section 31(1) (4-6) and section 34 (1) of the Asylum Procedure Act, those decisions do not have to entail a time limit for a voluntary departure nor have to be issued to the person concerned before the day of the transfer. In the same way, interim relief is excluded (cf. section 34 (2) Asylum Procedure Act).

The safe-third-country concept which is echoed in Section 26a of the Asylum Procedure Act was already introduced in 1993. It was part of the so-called "asylum compromise", the agreement of the Federal Parliament to limit the basic right to seek asylum (Art. 16a Basic Law). In the 90s, the third-country concept could not really be applied because the travel itinerary could not be proven and because the state of entry did not accept taking back the asylum seeker. With Eurodac and the D II Regulation, instruments were created with which it is possible to verify via which travel itinerary the asylum seeker entered the country and to oblige the Member State in providing information on the status of the refugee in that country. As a result, the D II Regulation which is not applicable for recognized refugees has helped the application of the third-country concept in Germany.

By now, in several hundred decisions of German administrative courts, Dublin transfers were suspended because the persons

---

<sup>82</sup> Readmission by another state is carried out on the basis of bilateral readmission agreements, if applicable also on the basis of the Schengen Convention. The deportation is carried out by the local responsible local Aliens Authority in cooperation with the border police.

concerned were at risk of impoverishment in, for instance, Greece, Italy or Malta. Nonetheless, although recognized refugees often live under the same miserable conditions as the rejected asylum seekers or beneficiaries of subsidiary protection (who are both subject to the D II Regulation), the authors know only of very few court decisions which suspended the transfer of a recognized refugee on the above mentioned grounds. As a result, refugees who fled because of grave violations of law from one European country where they are recognized as refugees to Germany, their prospects of defending themselves from a transfer back to this country are worse than those who are recognized as beneficiaries of subsidiary protection or whose asylum application is completely rejected in this country. In the light of refugee protection, this is very unsatisfactory.

Until now, the D II Regulation has been applied to persons who are granted subsidiary protection in another Member State and then came to Germany. Although there are indications that it is considered to remove this group of persons from the scope of the D II Regulation as mentioned in an internal instruction in 2011 and in discussions concerning the European Asylum Curriculum, so far, they fall within the group of “rejected asylum seekers” in accordance with Art. 16 (1) (e) D II Regulation.

Until the end of 2011, the BAMF had carried out first asylum procedures for all asylum seekers for whom Germany became responsible as a result of the sovereignty clause or the expiry of the time limit for the transfer.<sup>83</sup> This has changed in the meantime. An internal instruction of the BAMF envisages that in those cases, Section 71a of the Asylum Procedure Act will be applied now, a provision which has hardly been applied before. The provision basically stipulates that an asylum seeker whose asylum application is rejected in another Dublin state will only obtain a so-called secondary asylum procedure in Germany if those preconditions are met that usually have to be fulfilled for a follow-up-application for asylum. Among those is the condition that new reasons or new evidence which were not put forward in the first asylum procedure

---

**83** Unless they have had an asylum procedure in Germany before. In these cases, the BAMF does not carry out the first asylum procedure but examines whether the conditions for a follow-up-application for asylum procedure are fulfilled (Section 71 Asylum Procedure Act [*AsylVfG*]).

are shown, evidence of which the asylum seeker has been aware of since a maximum of three months.<sup>84</sup>

In order to examine which reasons for asylum were put forward in the first asylum procedure, the file of the asylum seeker from the other Member State would be needed. In many cases, it must be close to impossible to receive the file from the other state, so the BAMF shifts the burden of proof on the asylum seeker: he/she has to prove that he/she presents new reasons or evidence. If he/she is not able to provide the relevant documents, the BAMF assumes that the preconditions for a secondary asylum procedure are not fulfilled.

In a follow-up-application – in cases where a first asylum application in Germany was rejected – the BAMF would, at least, examine whether the preconditions for granting subsidiary protection (based on European law or the second-ranking national law) are fulfilled. The BAMF, however, rejects to undertake this examination for secondary asylum applicants whose first asylum application was not decided in Germany if it assumes that they would have received subsidiary protection in another Dublin state. The BAMF regularly fails to provide evidence that this protection had actually already been granted in another state.

*Mr. Shire flees Somalia to Europe and first arrives in Malta. As all asylum seekers there, he is arrested. When he is released, he realizes that even living free in Malta is unbearable and continues his journey to Germany. The BAMF asks Malta to take Mr. Shire back, but since he has a medical opinion of a psychosocial care centre proving that he suffers from a severe posttraumatic stress disorder, Germany invokes the sovereignty clause. Mr. Shire hopes to finally be safe, but the BAMF informs his lawyer that despite the sovereignty clause, there will not be an asylum procedure. In the letter, the BAMF admits not knowing whether he was granted protection status in Malta, but from a statistical point of view, this was very likely, they argue. For this reason, the BAMF assumes that Malta granted him subsidiary protection and it is therefore not necessary to examine his application*

---

<sup>84</sup> The procedure of a secondary asylum application resembles the procedure of a follow-up-application. A follow-up-application is given when the first asylum application was rejected in the same state. A second asylum application is given when the first asylum application was rejected (or with subsidiary protection) in another Dublin state.

*for protection in Germany. Without an asylum procedure, the severely traumatized refugee cannot receive a residence permit.*

The reasoning of the BAMF as to why persons with (presumed) subsidiary protection in another European state cannot be granted this protection in Germany is the following: Germany could only grant subsidiary protection to those persons who were not granted subsidiary protection elsewhere in Europe. If a person was granted subsidiary protection in, for instance, Malta or Italy, the BAMF argues that both recognized refugees as well as beneficiaries of subsidiary protection are able to avail themselves of the protection granted in this other Member State.

The question arises how the BAMF deals with persons who were (supposedly) granted subsidiary protection in another Member State but who cannot be transferred back to this state pursuant to the D II Regulation. Germany would be responsible for examining their asylum application. However, in practice, they are not be granted any protection status and instead are advised to return to the other Dublin state and to avail themselves of the subsidiary protection they were granted. According to an internal instruction, this should also be applied if the other Dublin state refuses to take the applicant back.

The cases where Germany invoked the sovereignty clause against the state which had (presumably) granted protection earlier are especially absurd: As in the case of Mr. Shire, for humanitarian reasons Germany renounces a transfer to Malta because of the well-known disastrous situation there. Germany therefore becomes responsible for the asylum procedure but the execution of the procedure and the examination the asylum application is rejected by referring to Malta's responsibility.

The authors are not aware of any case in which a person in this situation was transferred back. However, in theory, there is the possibility that another Member State agrees to take the person back even though Germany is responsible for his/her asylum procedure pursuant to the D II Regulation. According to what has been derived from the correspondence with lawyers, in these cases the BAMF wants to pursue a transfer to the other Member State just as it is done in the case of recognized refugees: without any possibility for a voluntary departure, without prior announcement of the transfer and without the possibility of applying for interim relief.

### 3.8. Situation of returnees in Germany

The situation of those persons who were transferred to Germany is hardly discussed in political and legal argumentations concerning asylum.

Statistical figures for 2011 show that there were 2995 requests for taking back or taking charge to Germany. Germany accepted 2169 requests and a transfer to Germany was carried out in 1303 cases. In particular, persons with Iraqi (125), Afghani (120) and Kosovar (103) citizenship were transferred to Germany. 58 persons from Kosovo were transferred from Belgium to Germany, 46 Vietnamese persons from Great-Britain to Germany. It is also observable that 52 persons were transferred from Greece. It can be assumed that these are persons whose family members live in Germany and who were accepted on grounds of Art.7, 8 or 15 of the D II Regulation.<sup>85</sup>

In 1332 cases, meaning in 61% of accepted transfers, they were carried out on the basis of Art. 16(1) (e) of the D II Regulation. It concerned persons who carried out an asylum procedure in Germany and whose application was decided negatively.

Upon arrival in Germany, they have the possibility of lodging a follow-up-application for asylum. Precondition is that new facts or or new evidence can be provided (cf. Section 71 of the Asylum Procedure Act). It has to be put forward to the BAMF within three months after the asylum seeker became aware of it and it may not have been put forward in the first asylum application procedure. If grounds for subsidiary protection are put forward, the BAMF has to examine them irrespective of the time limit of three months. This particularly applies to cases of serious illness which cannot be medically treated in the country of origin, of posttraumatic stress disorder, of an imminent risk of genital mutilation or where there are fundamental political changes such as in Syria at the moment.

Germany grants all asylum seekers accommodation and a minimum level of social benefits and health care provision. This also applies to rejected asylum seekers until the day of their transfer. Accommodation is assigned by the authorities. In Germany, Dublin

---

<sup>85</sup> Cf. table 4 in the annex.

returnees usually have to return to the accommodation or to the regional district where they had been accommodated before. It is often criticized that persons concerned are not able to choose in which region of Germany they want to live. The residence duty is to ensure that persons concerned are quickly reachable for the authorities as well as to equally distribute persons in need of social assistance within the German territory.

If a person who has never been there in Germany before is transferred there, the border police at the airport or any other police will send the person to the closest initial reception centre for asylum seekers.

If a person who is actually already obliged to leave the country is transferred to Germany, it may happen that he/she is arrested immediately upon return and the responsible authority may request detention. The authors' experience shows that this happens rarely, but it is possible from a legal point of view. Under these circumstances, a follow-up application for asylum does not run counter to detention.

BAMF statistics identify in 2011 385 cases (a percentage of 18 % of Germany's acceptance of other member states' requests) in which the persons concerned had left Germany before the asylum procedure was completed.<sup>86</sup> In these cases, there is a risk that the asylum procedure will be dismissed in the time period between the acceptance of Germany to take responsibility and the transfer to Germany (from a legal point of view, this is regarded as a withdrawal of the asylum application), or that the asylum application will be rejected because the asylum seeker did not fulfil his/her obligations to co-operate. However, these obligations are hard to fulfil if e.g. the applicant is in another country. The following case shows that the communication between the German Dublin unit and the external branch of the BAMF which processes the asylum application does not always work:

*An Afghani citizen applies for asylum in Germany but then goes to Sweden. Sweden requests Germany to take him back and Germany*

---

**86** Written information of the BAMF to the NGO Pro Asyl. 385 approvals of Germany were made pursuant to Art. 16 Sect. 1c D II Regulation, meaning in these cases the persons concerned went to another Member State after they had applied for asylum in Germany.



*accepts. Although he is still in Sweden, the BAMF sets a date for a personal interview. He is neither informed nor is he able to attend the interview as he is still in Sweden. He is transferred to Germany a month later. Nonetheless, the BAMF rejects his asylum application as manifestly unfounded by arguing that he did not justify his absence at the interview. He appeals against the asylum rejection of the BAMF and the administrative court orders suspensive effect of appeal because the applicant has not abstained from the interview without reason.<sup>87</sup>*

Persons who are being transferred to Germany or their lawyers and advisors should therefore try to clarify the status of the procedure with the responsible local branch of the BAMF before the actual transfer to Germany takes place, and to notify the BAMF why the asylum seeker may not be able to attend the personal interview and may not be able to fulfil other duties within the asylum procedure before the execution of the transfer.

---

<sup>87</sup> Stade Administrative Court, 6 B 688/11, 6 June 2011, available at [http://www.asyl.net/fileadmin/user\\_upload/dokumente/18841.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/18841.pdf).

### *3.9. Identification of Good Practices*

The very small number of positive practices of the otherwise highly restrictive application of the Dublin procedure in Germany were already mentioned throughout the text. Therefore, the following keywords only serve as a short repetition:

- Transfers to Greece have been suspended until January 2014.
- Particularly vulnerable persons (but only those) are not transferred to Malta.
- In some regions of Germany, unaccompanied minors will be assigned by court a lawyer who is financed by the state.
- To some extent, transfers were not implemented due to the best interest of the child, e.g. because the legal guardian objected to the transfer or because the accommodation in the country of destination was not sure to conform to the principles for the well-being of the child.
- Despite the restrictive provisions laid down by the legislator pursuant to Section 31 (1) (4-6), 34a (1)(1) and (2) of the Asylum Procedure Act, so far, four Federal States and some further executive authorities issue a Dublin decision a few days before the planned transfer in order to inform the person concerned, enabling him/her to consider taking legal steps.
- Despite the restrictive provisions laid down by the legislator pursuant to Section 34a (1) (3) of the Asylum Procedure Act, some authorities permit voluntary departures in individual cases.
- Despite the restrictive provisions of Section 34 a (2) of the Asylum Procedure Act concerning Dublin transfers, more and more administrative courts examine interim relief applications instead of simply rejecting them as inadmissible.

# Conclusion and Recommendations

# 4

## > Determination of the responsible state:

- The applicants must be given the opportunity to put forward all the reasons why they wish to have their claim examined in a particular Member State, be it Germany or elsewhere.
- A “Dublin interview” should always be carried out before the initiation of a Dublin procedure, also in cases where the asylum seeker has not applied for asylum in Germany. In this interview, all those questions relevant for an informed should be asked and explained.
- The BAMF should examine and ask the asylum applicant questions that are relevant in order to examine whether there humanitarian grounds for invoking the sovereignty clause, such as in case of diseases and illnesses, family relationships, handicaps, experiences and reception conditions in the other Member States.

## > Right to information and legal remedies:

- It should be guaranteed that all persons for whom a Eurodac search is undertaken and for whom if applicable Dublin procedures may be initiated, are adequately informed in a timely manner and in the way that is prescribed in the D II Regulation. This is especially important if it is not the BAMF that undertakes the personal identity checks (e.g. the police).
- The applicant should be informed on how family relations have to be proved, be it through documents or an examination of the DNA
- The responsibility criteria of the D II Regulation and the time limits should be applied correctly and the person concerned should be informed which criteria and which time limits are applicable in his/her proceeding.
- The requested state should receive all information which the BAMF has and which are relevant for the determination of responsibility.

- Lawyers and other representatives should be granted access to the files in a timely manner. Requests to take back an asylum applicant should be made promptly, extensively long procedures have to be avoided
- In advance of a transfer, particular vulnerability, illnesses etc. should be communicated to the receiving Member State as early as possible and authorities should assure themselves of the fact that adequate reception of this person is also guaranteed in the other Member State.
- Dublin II decisions should be delivered properly to the asylum seeker as well as to the lawyer and a time limit for voluntary departure and for lodging legal remedies should be outlined.
- Section 34a (1)(3) and Section 31(1)(4) of the Asylum Procedure Act which enable the delivery of the decision on the day of the transfer and which exclude any possibility for applying for interim relief should be abolished. Asylum applicants whose application was rejected as manifestly unfounded usually receive a copy of their file from the BAMF. This should also be provided to applicants in the Dublin procedure.
- Section 34a (2) of the Asylum Procedure Act which legally excludes interim relief should also be abolished in order to enable effective legal remedies.
- The legislator should take into consideration that EU law guarantees a subjective right for carrying out the asylum procedure in the responsible Member State.
- Current uncertainties concerning the responsibility for examining so-called domestic obstacles to deportation within Germany should be eliminated nationwide. It is recommended that the local Aliens Authorities who are in contact with the persons concerned and who are experienced with this form of domestic obstacles to deportation continue to be the authority that examines these obstacles.

### > Detention

- Detention pending deportation in Dublin cases should be avoided. The decree of the Federal Ministry of the Interior from 2006 which generally calls for detention of persons in the border area should be revoked.

In particular, the border police should give a foreigner who is apprehended by the police and who is temporarily arrested the chance of lodging an effective asylum application at the BAMF instead of attempting to impose detention pending deportation at the local court.

- In all detention centres there should be an offer of independent legal counselling, and detainees without any financial means should have state-financed access to a lawyer for both detention appeals and asylum appeals – analogue to the provision of a duty solicitor in criminal proceedings – to be able to appeal the decision for detention as well as the Dublin decision.

### > Extension of the time limit for persons who “absconded”

- Due attention should be paid to the wording of the D II Regulation concerning a possible extension of the time limit, which stipulates that it should be avoided to automatically extend the deadline for the transfer to 18 months based on the mere suspicion of “absconding”, such as when the person concerned is not immediately found in his/her accommodation. Extensions of the time limit should be decisions of discretionary power and not automatic decisions.
- There is a need of clearly defining when someone absconded and when this is not the case, and of who decides on it.

### > Unaccompanied minor refugees and other particularly vulnerable persons

- Art. 17 of the EU Reception Conditions Directive should be implemented and a procedure for identifying groups of particularly vulnerable persons should be introduced. This is vital for clarifying decisions pursuant to Art.3 (2) and Art. 15 of the D II Regulation.
- Section 80 of the Residence Act and Section 12 of the Asylum Procedure Act which stipulate that 16- to 17-year-old minors are to be treated as adults in the asylum procedure should be abolished.
- All unaccompanied minor refugees below the age of 18 should be assigned a guardian and a lawyer as early as possible. A Dublin procedure should not be initiated before these persons are assigned, and those persons should be informed about any procedural step (request for take back, transfer of responsibility, transfer plan) without having to request this information.

- It should be pointed out to both the BAMF and the Aliens Authorities that they have to fulfil the obligations derived from the UN Convention on the Rights of the Child and to primarily consider the best interest of the child.
- No minor should be transferred against his/her will. No one should be transferred from youth welfare facilities or hospitals.
- The legislator should clarify that Section 58 (1a) of the Residence Act should be applied to Dublin transfers of unaccompanied minor refugees, stipulating that such transfers must only be carried out if it is guaranteed that the minor is handed over to a family member, guardian or to an adequate reception facility in the country of destination.
- Asylum applications of unaccompanied minors in other Dublin states should be regarded as ineffective if there was no guardian or legal representative assigned. In this case, Germany should take over the responsibility for examining the asylum application.

#### Application of the sovereignty clause

- The Federal Government and the BAMF regularly announce that they have been invoking the sovereignty clause in well-reasoned single cases. However, not even with regard to countries such as Hungary or Italy a significant number of cases in which the sovereignty clause has been invoked are known. As a result, a clear and transparent statement is required, clarifying when the biography and the vulnerability characteristics of a person are serious enough that German authorities regard the conditions for invoking the sovereignty clause as fulfilled.
- A procedural guarantee is needed to ensure that in every Dublin procedure, the authorities examine each person's individual grounds which could provide reasons for invoking the sovereignty clause.
- The German authorities have to fulfil their information and monitoring obligations concerning asylum procedure conditions and reception conditions in other Dublin states. Within the framework of an institutionalized process – for example, with the help of the local German liaison officers – reports about compliance with the European asylum acquis in the other Member States should

be published. It is very unsatisfactory to observe that, so far, the Federal Government and the BAMF have concentrated on criticizing NGO reports which highlight the precarious conditions in Italy, Malta or Hungary for instance.

- A more generous practice of invoking the sovereignty clause should be applied with regard to countries where a number of substantiated NGO reports as well as descriptions of persons concerned have proved numerous and lasting violations of law (“systemic deficiencies”). To begin with, for example, one could start by not transferring particularly vulnerable persons to Hungary or Italy, such as it is done with regard to Malta. At the same time, other Dublin states should be pressured to comply with their humanitarian obligations, e.g. via the European Commission or through direct consultations. This pressure should, however, not be exerted by transferring persons concerned to the relevant state at all costs. The persons concerned should not be exploited for reminding a Member State about his/her obligations of the asylum acquis.
- The practice of invoking the sovereignty clause against the will of the person concerned, which is used to enable quick rejection of the asylum application as (manifestly) unfounded and the deportation to the country of origin, should be abolished.

## Relocation

- The welcoming strategy of accepting a particular number of beneficiaries of protection from Malta should be extended to other countries. In particular with regard to Greece, there is the unfavorable situation that more and more asylum seekers are stuck in Greece, although, it is clear that if they ever get to Germany, they would not be transferred back to Greece. It is recommended to develop proper strategies with which these persons concerned could come to Germany, thereby avoiding their life-threatening escape within Europe.

## A. Bibliography

### BAMF

- Entscheiderbrief 2/2012, available at [http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Entscheiderbrief/2012/entscheiderbrief-02-2012.pdf?\\_\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Entscheiderbrief/2012/entscheiderbrief-02-2012.pdf?__blob=publicationFile)
- Entscheiderbrief 7/2011, available at [http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Entscheiderbrief/2011/entscheiderbrief-07-2011.pdf?\\_\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Entscheiderbrief/2011/entscheiderbrief-07-2011.pdf?__blob=publicationFile)

### Bender, Dominik and Bethke, Maria

- Sag mir, wie alt du bist!* In: HinterlandMagazin No. 14, available at <http://hinterland-magazin.de/pdf/14-50.pdf>
- Das Kindeswohl im Dublinverfahren.* In: Asylmagazin 3-42011. Part 1 available at [http://www.asyl.net/fileadmin/user\\_upload/beitraege\\_asylmagazin/Beitraege\\_AM\\_2011/AM2011-3-68-BenderBethke.pdf](http://www.asyl.net/fileadmin/user_upload/beitraege_asylmagazin/Beitraege_AM_2011/AM2011-3-68-BenderBethke.pdf), part 2 available at [http://www.asyl.net/fileadmin/user\\_upload/beitraege\\_asylmagazin/Beitraege\\_AM\\_2011/AM2011-4-112\\_BenderBethke.pdf](http://www.asyl.net/fileadmin/user_upload/beitraege_asylmagazin/Beitraege_AM_2011/AM2011-4-112_BenderBethke.pdf)

### Deutscher Bundestag

- Bundestags-Drucksache 17/10454 of 10 August 2012, available at <http://dip21.bundestag.de/dip21/btd/17/104/1710454.pdf>
- Bundestags-Drucksache 17/9297 of 26 April 2012, available at <http://dipbt.bundestag.de/dip21/btd/17/092/1709297.pdf>
- Bundestags-Drucksachen 17/8836 of 2 March 2012, available at <http://dipbt.bundestag.de/dip21/btd/17/088/1708836.pdf>



**B-UMF  
and UNHCR**

*Evaluierung der Situation von unbegleiteten minderjährigen Flüchtlingen in Stadt und Landkreis Rosenheim* (Evaluation of the Situation of unaccompanied minor refugees in the city and administrative district of Rosenheim). Available at [http://www.b-umf.de/images/evaluation\\_rosenheim\\_2011.pdf](http://www.b-umf.de/images/evaluation_rosenheim_2011.pdf)

**Deutscher  
Bundestag**

- Bundestags-Drucksache 17/5579 of 18 April 2011, available at <http://dipbt.bundestag.de/dip21/btd/17/055/1705579.pdf>
- Bundestags-Drucksache 17/4827 of 21 February 2011, available at <http://dip21.bundestag.de/dip21/btd/17/048/1704827.pdf>
- Bundestags-Drucksache 17/2655 of 26 July 2010, available at <http://dipbt.bundestag.de/dip21/btd/17/026/1702655.pdf>
- Bundestags-Drucksache 17/2554 of 09 July 2010, p. 3, available at <http://dipbt.bundestag.de/dip21/btd/17/026/1702655.pdf>
- Bundestags-Drucksache 17/1340 of 9 April 2010, p.18, available at <http://dipbt.bundestag.de/dip21/btd/17/013/1701340.pdf>
- Bundestags-Drucksache 16/11543 of 05 January 2009, p. 6, retrieved and translated from: <http://dip21.bundestag.de/dip21/btd/16/115/1611543.pdf>
- Bundestags-Drucksache 16/7216 of 16 November 2007, p. 14, retrieved and translated from: <http://dipbt.bundestag.de/dip21/btd/16/072/1607216.pdf>

**Fahlbusch,  
Peter**

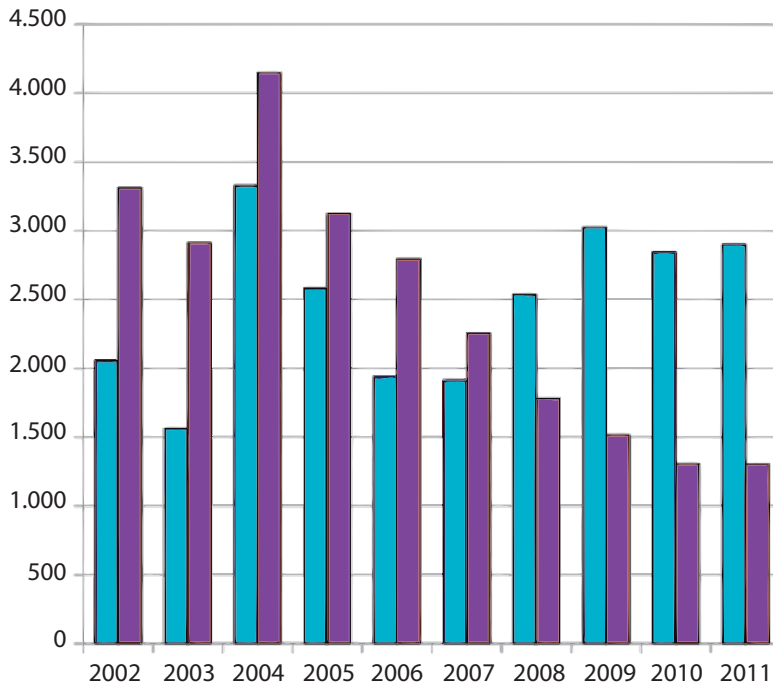
*Haft in Verfahren nach der Dublin-II-Verordnung* (detention in procedures following the Dublin II Regulation). *Asylmagazin* 9-2010, p.289-295. Available at [http://www.asyl.net/fileadmin/user\\_upload/beitraege\\_asylmagazin/Beitraege\\_AM\\_2010/AM-2010-09-289-fahlbusch.pdf](http://www.asyl.net/fileadmin/user_upload/beitraege_asylmagazin/Beitraege_AM_2010/AM-2010-09-289-fahlbusch.pdf)

**European  
Commission**

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on enhanced intra-EU solidarity in the field of asylum, *An EU agenda for better responsibility-sharing and more mutual trust*, COM 2011 (835), available at [http://ec.europa.eu/home-affairs/news/intro/docs/201112/1\\_EN\\_ACT\\_part1\\_v6.pdf](http://ec.europa.eu/home-affairs/news/intro/docs/201112/1_EN_ACT_part1_v6.pdf)

## B. Relevant Statistics

Figure 1: Dublin transfers to and from Germany 2003-2011



	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Transfers to Germany	2.058	1.562	3.328	2.583	1.940	1.913	2.536	3.027	2.847	2.902
Transfers from Germany	3.312	2.913	4.150	3.127	2.795	2.255	1.782	1.517	1.306	1.303

Source: Pro Asyl.

**Table 1: Examination of responsibility of another MS – 2011**

In connection with an application for asylum in Germany	10690
Without application for asylum in Germany	4223

Source: BAMF Division 222.

**Table 2: Requests for taking charge/back and transfers from Germany to other MS – first half 2012**

To	Requests to the MS	Persons transferred to the MS
Italy	1159	391
Poland	542	148
Sweden	478	160
France	417	164
Belgium	371	120
Switzerland	350	108
Austria	273	76
Norway	190	k.A.
Netherlands	177	71
Spain	159	57
Malta	45	8
Greece	0	0
Hungary	k.A.	25
Cyprus	k.A.	0
Bulgaria	k.A.	4

Source: Federal Government's response to a minor interpellation, Bundestags-Drucksache Nr. 17/10454, 10 August 2012, available at <http://dip21.bundestag.de/dip21/btd/17/104/1710454.pdf>.

**Table 3: Requests for taking charge/back, approvals, transfers from Germany to other MS – 2011**

To	Requests to the MS	approvals of the MS	Persons transferred from Germany to the MS	Persons transferred under 18 years of age*)	Application of Art. 3 (2)
Austria	483	237	165	18	**)
Belgium	440	311	162	42	**)
Bulgaria	44	33	7	0	**)
Switzerland	534	293	174	13	**)
Cyprus	24	16	4	1	**)
Czech Republic	90	51	25	1	**)
Denmark	132	85	61	8	**)
Estonia	4	5	1	0	**)
Spain	268	176	76	2	**)
Finland	64	27	20	2	**)
France	750	543	278	37	**)
Greece	99	300	0	0	4630***)
Hungary	374	220	98	21	**)
Ireland	10	8	6	0	**)
Italy	2279	1811	635	43	**)
Lithuania	83	69	34	0	**)
Luxemburg	24	9	5	0	**)
Latvia	25	22	18	9	**)
Malta	146	126	35	1	42
Netherlands	336	217	144	11	**)
Norway	447	333	224	15	**)
Poland	1012	960	357	91	**)
Portugal	20	17	2	0	**)
Romania	122	82	47	2	**)
Sweden	1083	481	270	58	**)
Slovenia	25	26	13	2	**)
Slovakia	61	28	19	1	**)
UK	96	40	22	2	**)
<b>Total</b>	<b>9075</b>	<b>6526</b>	<b>2902</b>	<b>380</b>	<b>**)</b>

Source: BAMF Division 222 and the Federal Government 's response to a minor interpellation, Bundestags-Drucksache Nr. 17/8834 from 2.3.2012, available at <http://dipbt.bundestag.de/dip21/btd/17/088/1708834.pdf>

*\*) the persons under 18 years of age include unaccompanied minors as well as children accompanied by their parents. The BAMF does not collect figures of unaccompanied minors.*

*\*\*) not included in the statistics*

*\*\*\*) Since January 2011, unlike all other Member States, if Greece is deemed responsible, it is not necessary that a take charge request must precede the application of the sovereignty clause.*

**Table 4: Requests for taking charge/back, approvals, transfers from other MS to Germany – 2011**

From	Requests from the MS	Rejections	Approvals	Persons transferred from the MS to Germany
Austria	160	47	107	77
Belgium	450	138	313	199
Bulgaria	19	12	6	5
Switzerland	420	94	322	174
Czech Republic	18	9	9	8
Denmark	82	22	61	47
Estonia	2	0	2	1
Spain	3	0	3	1
Finland	56	17	38	32
France	476	165	307	109
Greece	107	32	69	52
Hungary	13	8	4	4
Ireland	9	2	8	6
Iceland	2	0	2	1
Italy	58	31	26	7
Lithuania	1	0	1	0
Luxemburg	37	1	28	21
Netherlands	232	19	209	139
Norway	177	26	161	132
Poland	33	8	24	20
Portugal	8	2	6	3
Romania	9	8	3	2
Sweden	403	100	285	138
Slovenia	8	5	3	2
Slovakia	10	8	2	0
UK	202	29	170	123
<b>Total</b>	<b>2995</b>	<b>783</b>	<b>2169</b>	<b>1303</b>

Source: BAMF Division 222.

**Table 5: Requests for taking charge/back from Germany to other MS, breakdown of EURODAC hits – 2011**

To	Total	Based on Eurodac-hits	Percentage based on Eurodac-hits
Austria	483	413	85,5%
Belgium	440	317	72,0%
Bulgaria	44	34	77,3
Switzerland	534	474	88,8
Cyprus	24	17	70,8
Czech Republic	90	47	52,2
Denmark	132	107	81,1
Estonia	4	1	25,0
Spain	268	133	49,6
Finland	64	49	76,6
France	750	482	64,3
Greece	99	43	43,4
Hungary	374	247	66,0
Ireland	10	8	80,0
Italy	2279	1752	76,9
Lithuania	83	62	74,4
Luxemburg	24	21	87,5
Latvia	25	14	56,0
Malta	146	126	86,3
Netherlands	336	270	80,4
Norway	447	402	89,0
Poland	1012	543	53,7
Portugal	20	11	55,0
Romania	122	103	84,4
Sweden	1083	743	68,6
Slovenia	25	24	96,0
Slovakia	61	54	88,5
UK	96	81	84,4
<b>Total</b>	<b>9075</b>	<b>6578</b>	<b>72,5</b>

Source: BAMF Division 222.

**Table 6: Transfers from Germany to other MS – Nationality of asylum seekers – 2011 and first half 2012**

Nationality of the asylum seekers	Year 2011 transfers of nationals of this country - total	Year 2011 mainly to which MS	First half of 2012 transfers of nationals of this country - total
Afghanistan	346	115 to Italy	186
Russland	275	199 to Poland	130
Iraq	222	53 to Sweden	95
Somalia	205	96 to Italy	k.A.
Georgien	213	108 to Poland	88
Tunesien	124	84 to Italy	87
Kosovo	121	33 to Belgium	69
Iran	118	28 to Italy	k.A.
Serbia	117	59 to Sweden	111
Algeria	103	17 to Italy	60
Syria	k.A.	k.A.	59

Source: Bundestags-Drucksache Nr. 17/10454, 10 August 2012, available at <http://dip21.bundestag.de/dip21/btd/17/104/1710454.pdf>.

**Table 7: Transfers from other MS to Germany – Nationality of asylum seekers – 2011**

Nationality of the asylum seekers	Transfers of nationals of this country - total	Mainly from which MS
Afghanistan	120	40 from Greece
Iraq	125	23 from Sweden
Kosovo	103	58 from Belgium
Vietnam	82	46 from UK
Algeria	58	12 from Switzerland

Source: Bundestags-Drucksache Nr. 17/10454, 10 August 2012, available at <http://dip21.bundestag.de/dip21/btd/17/104/1710454.pdf>.



**Table 8a: Number of requests for taking charge/back from other MS accepted by Germany, based on art. 15 – 2009-2012**

2009	6
2010	9
2011	25

**Table 8b: Number of requests for taking charge/back from Germany accepted by other MS, based on art. 15 – 2009-2012**

2009	28
2010	6
2011	12
first half of 2012	3

- Source for 2009-2011: BAMF Division 222

- Source for 2012: Bundestags-Drucksache Nr. 17/10454, 10 August 2012, available at <http://dip21.bundestag.de/dip21/btd/17/104/1710454.pdf>.

**Table 9: Transfers of minors – 2011 and first half 2012**

To	Year 2011	First half of 2012
Austria	18	10
Belgium	42	35
Bulgaria	0	*)
Switzerland	13	13
Cyprus	1	*)
Czech Republic	1	*)
Denmark	8	*)
Estonia	0	*)
Spain	2	6
Finland	2	*)
France	37	49
Greece	0	*)
Hungary	21	*)
Ireland	0	*)
Italy	43	13
Lithuania	0	*)
Luxemburg	0	6
Latvia	9	*)
Malta	1	*)
Netherlands	11	9
Norway	15	*)
Poland	91	34
Portugal	0	*)
Romania	2	*)
Sweden	58	40
Slovenia	2	*)
Slovakia	1	*)
UK	2	6
<b>Total</b>	<b>380</b>	<b>*)</b>

- Source for 2011: BAMF Division 222

- Source for 2012: Bundestags-Drucksache Nr. 17/10454, 10 August 2012, available at <http://dip21.bundestag.de/dip21/btd/17/104/1710454.pdf>.

\*)The numbers for 2012 are taken from the Federal Government's response to a minor interpellation, the complete 2012 statistics will be available in 2013.

The numbers of persons under 18 years of age include unaccompanied and accompanied minors.

**Table 10: Transfers of minors, breakdown by the most important countries of origin – 2011 and first half 2012**

Nationality	Transferred persons under 18 years of age from this country or origin year 2011	Transferred persons under 18 years of age from this country or origin first half of 2012
Serbia	51	48
Russische Föderation	84	42
Afghanistan	65	29
Kosovo	35	28
Macedonia	18	22
Bosnien und Herzegowina	unter „Sonstige“	10
Georgien	19	9
Syria	unter „Sonstige“	6
Algeria	unter „Sonstige“	5
Montenegro	unter „Sonstige“	5
Somalia	9	*)
Iraq	17	*)
Iran	10	*)
Ungeklärt	7	*)
Sonstige	65	*)
<b>Total</b>	<b>380</b>	<b>*)</b>

- Source for 2011: BAMF Division 222

- Source for 2012: Bundestags-Drucksache Nr. 17/10454, 10 August 2012, available at <http://dip21.bundestag.de/dip21/btd/17/104/1710454.pdf>.

\*) The numbers for 2012 are taken from the Federal Government's response to a minor interpellation, the complete 2012 statistics will be available in 2013.

The numbers of persons under 18 years of age include unaccompanied and accompanied minors.

## C. Relevant National Case Law

- VG München, decision of 22 November 2012, Az. M 23 E 12.30743
- VGH Hessen, decision of 14 November 2012, Az. 3 D 1815/12, available at: [http://www.asyl.net/fileadmin/user\\_upload/dokumente/20198.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/20198.pdf)
- VG Kassel, decision of 10 October 2012, Az. 1 L 1210/12.KS.A
- LG Traunstein, decision of 21 August 2012, Az. 4 T 3104/12
- VG Frankfurt, decision of 11 June 2012, Az. 1 L 1994/12.F.A., available at: [http://www.asyl.net/fileadmin/user\\_upload/dokumente/19767.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/19767.pdf)
- VG Stuttgart, decision of 2 April 2012, Az.A 11 K 1039/12, available at: [http://www.asyl.net/fileadmin/user\\_upload/dokumente/19615.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/19615.pdf)
- VG Regensburg, judgment of 7 March 2012, Az. RO 7 K 11.30393, available at: [http://www.asyl.net/fileadmin/user\\_upload/dokumente/19448.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/19448.pdf)
- VG Karlsruhe, judgment of 6 March 2012, Az. A 3 K 3069/11, available at: [http://www.asyl.net/fileadmin/user\\_upload/dokumente/19572.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/19572.pdf)
- OVG North Rhine-Westphalia, decision of 1 March 2012, Az. 1 B 234/12.A
- VG Braunschweig, decision of 9 August 2011, Az. 2 B 196/11, p.3, available at: [http://www.asyl.net/fileadmin/user\\_upload/dokumente/18899.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/18899.pdf)
- VG Magdeburg, judgment of 26 July 2011, Az. 9 A 346/10 MD, available at: [http://www.asyl.net/fileadmin/user\\_upload/dokumente/19125.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/19125.pdf)
- VG Stade, decision of 6 June 2011, Az. 6 B 688/11, available at: [http://www.asyl.net/fileadmin/user\\_upload/dokumente/18841.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/18841.pdf)

- VG Hamburg, decision of 11 April 2011, Az. 19 AE 173/11, available at: [http://www.asyl.net/fileadmin/user\\_upload/dokumente/18463.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/18463.pdf)
- VG Gießen, decision of 16 March 2011, Az. 1 L 198/11.GI.A, available at: [http://www.asyl.net/fileadmin/user\\_upload/dokumente/18358.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/18358.pdf)
- VG Frankfurt, decision of 15 October 2010, Az. 9 L 3171/10.F.A, available at: [http://www.asyl.net/fileadmin/user\\_upload/dokumente/17722.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/17722.pdf)
- VG Frankfurt, decision of 2 August 2010, Az. 8 L 1827/10.F.A(V), available at: [http://www.asyl.net/fileadmin/user\\_upload/dokumente/17354.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/17354.pdf)
- VG Frankfurt, judgment of 8 July 2009, Az. 7 K 4376/07.F.A, available at: [http://www.asyl.net/fileadmin/user\\_upload/dokumente/15906.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/15906.pdf)
- VG Gießen, decision of 25 April 2008, Az. 2 L 201/08.GI.A, available at: [http://www.asyl.net/fileadmin/user\\_upload/dokumente/13157.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/13157.pdf)
- BVerfG, judgment of 14 May 1996, Az. 2 BvR BvR 1938/93, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=type&docid=3ae6b73514&skip=0&type=CASELAW&coi=DEU&searchin=title&display=200&sort=date>





# European network for technical cooperation on the application of the Dublin II Regulation

By creating a European-wide network of NGOs assisting and counselling asylum seekers subject to a Dublin procedure, the aim of the network is to promote knowledge and the exchange of experience between stakeholders at national and European level. This strengthens the ability of these organisations to provide accurate and appropriate information to asylum seekers subject to a Dublin procedure.

This goal is achieved through research activities intended to improve knowledge of national legislation, practice and jurisprudence related to the technical application of the Dublin II Regulation. The project also aims to identify and promote best practice and the most effective case law on difficult issues related to the application of the Dublin II Regulation including family unity, vulnerable persons, detention.

During the course of the project, national reports were produced as well as a European comparative report. This European comparative report provides a comparative overview of the application of the Dublin II Regulation based on the findings of the national reports. In addition, in order to further enhance the knowledge, we created information brochures on different Member States, an asylum seekers' monitoring tool and a training module, aimed at legal practitioners and civil society organisations. They are available on the project website.

The Dublin II Regulation aims to promptly identify the Member State responsible for the examination of an asylum application. The core of the Regulation is the stipulation that *the Member State responsible for examining the asylum claim of an asylum seeker is the one where the asylum seeker first entered.*

[www.dublin-project.eu](http://www.dublin-project.eu)

## European Partner Organisations:

