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Asylum Information Database

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Country Report

Germany

Informationsverbund
ASYL & MIGRATION

ecre
European Council
on Refugees and Exiles

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

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The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.

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Statistics

Table 1: Applications and granting of protection status at first and second instance in 2014

	Total decisions in 2014, first instance[1]	Refugee status[2]	Subsidiary protection	Humanitarian Protection	Rejections (in-merit and admissibility)[3]	Otherwise closed/ discontinued[4]	**Refugee rate**	**Subs.Pr. rate**	**Hum. Pr. rate**	**Rejection rate**
	A	B	C	D	E	F	B/(B+C+D+E)%	C/(B+C+D+E)%	D/(B+C+D+E)%	E/(B+C+D+E)%
Total numbers	128911	33310	5174	2079	43018	45330	39.85%	6.19%	2.49%	51.47%
Breakdown by countries of origin of the total numbers										
Syria	26703	20507	3246	106	19	2825	85.88%	13.59%	0.44%	0.08%
Serbia	21878	1	17	25	13714	8121	0.01%	0.12%	0.18%	99.69%
Macedonia FYR	8548	2	5	15	5565	2961	0.04%	0.09%	0.27%	99.61%
Afghanistan	7287	2026	355	1022	1569	2315	40.75%	7.14%	20.56%	31.56%
Bosnia and Herzeg.	6594	0	2	15	3992	2585	0.00%	0.05%	0.37%	99.58%
Russia	6453	199	94	129	1341	4690	11.29%	5.33%	7.32%	76.06%
Iraq	4583	3221	99	69	432	762	84.30%	2.59%	1.81%	11.31%
Iran	4109	2037	58	32	759	1223	70.58%	2.01%	1.11%	26.30%
Kosovo	3690	4	1	35	1812	1838	0.22%	0.05%	1.89%	97.84%
Somalia	3482	522	222	125	303	2310	44.54%	18.94%	10.67%	25.85%
Afghanistan	7287	2026	355	1022	1569	2315	40.75%	7.14%	20.56%	31.56%
Syria	26703	20507	3246	106	19	2825	85.88%	13.59%	0.44%	0.08%
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Iran	4109	2037	58	32	759	1223	70.58%	2.01%	1.11%	26.30%
Somalia	3482	522	222	125	303	2310	44.54%	18.94%	10.67%	25.85%

1 Statistics for applications cf. below. Statistics for second and further instances for 2014 have not been published at the time of finalising this report.

2 Total of “asylum” according to the German constitution and “refugee status” according to the 1951 Convention (people granted “asylum” are almost always granted refugee status in addition).

3 In the German statistics, the category of “otherwise closed” contains rejections as “inadmissible” (most often because another state is considered to be responsible for the asylum procedure under the terms of the Dublin regulation), therefore a clear distinction between these two categories is not possible.

4 *ibid.*

Table 1 (cont'd): Applications in 2014

	Total	First applications	Subsequent applications
Total numbers	202834	173072	29762
Breakdown by countries of origin of the total numbers			
Syria	41100	39332	1768
Serbia	27148	17172	9976
Eritrea	13253	13198	55
Afghanistan	9673	9115	558
Albania	8113	7865	248
Kosovo	8923	6908	2015
Bosnia and Herzeg.	8474	5705	2769
Macedonia FYR	8906	5614	3292
Somalia	5685	5528	157
Iraq	9499	5345	4154

Table 2: Gender/age breakdown of the total numbers of applicants in 2014

	Number	Percentage
Total number of applicants (A)*	**202834**	
Men (B)	n/a	
Women (C)	n/a	
Unaccompanied children (D)*	4399	2.17%

*First applicants only

Table 3: Comparison between first instance and appeal decision rates

	First instance		Appeal, Jan-Oct 2014*	
	Number	*Percentage*	*Number*	*Percentage*
Total number of decisions (A)	**128911**		34001	
Positive decisions				
Total (B)	**40563**	31.47%		
Refugee Status (Ba)	**33310**	25.84%	2374	6.98%
Subsidiary protection (Bb)	**5174**	4.01%	268	0.79%
Hum/comp protection (Bc)	**2079**	1.61%	922	2.71%
Negative decision (C)	**43018**	33.37%	7769*	22.85%

* NB: Validity of the available figures is limited due to the fact that 66.7% of court decisions were formal decisions ("other settlements") in 2014, i.e. proceedings were discontinued by either of the parties. Apart from abandonments of appeals by the claimants, this figure also includes "positive decisions", since the proceedings are also discontinued if the authorities inform the court that they intend to grant protection before the court has reached a decision.

Table 4: Applications processed under an accelerated procedure in 2014

	Number	Percentage
Total number of applicants		
Number of applications treated under an accelerated procedure at first instance	0*	

*Acceleration of procedures takes effect only after the first instance (following a rejection as “manifestly unfounded”).

Table 5: Subsequent applications submitted in 2014

	Number of subsequent applications submitted
Total number	29762
Top 5 countries of origin*	
Serbia	9976
Iraq	4154
Macedonia FYR	3292
Bosnia and Herzeg.	2769
Kosovo	2015

Overview of the legal framework

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

Title in English	Original title	Abbreviation	Weblink
Residence Act	*Aufenthaltsgesetz*	AufenthG	German: http://www.gesetze-im-internet.de/aufenthg_2004/index.html English translation: http://www.gesetze-im-internet.de/englisch_aufenthg/index.html
Asylum Procedure Act	*Asylverfahrensgesetz*	AsylVfG	German: http://www.gesetze-im-internet.de/asylvfg_1992/index.html English Translation: http://www.gesetze-im-internet.de/englisch_asylvfg/index.html
Asylum Seekers' Benefits Act	*Asylbewerberleistungs -gesetz*	AsylbLG	German: http://www.gesetze-im-internet.de/asylblg/index.html
Basic Law (German constitution)	*Grundgesetz*	GG	German: http://www.gesetze-im-internet.de/gg/index.html English translation: http://www.gesetze-im-internet.de/englisch_gg/index.html
Act on Procedures in Family Matters and in Matters of Voluntary Jurisdiction (relevant for judicial review of detention)	*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*	FamFG	German: http://www.gesetze-im-internet.de/famfg/ English: http://www.gesetze-im-internet.de/englisch_famfg/index

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention.

Title in English	Original title	Abbreviation	Weblink
Regulation on Residence	*Aufenthaltsverordnung*	AufenthV	http://www.gesetze-im-internet.de/aufenthv/index.html

Overview of the main changes since the previous report update

The report was previously updated in May 2014

- Increase in number of asylum applications: Numbers of asylum applications continued to rise sharply in 2014. Between January and November 2014 the authorities registered 155,247 (first) asylum applications. This represents an increase of 55.4 per cent in comparison with the same period in 2013 (99,989 first asylum applications between January and November 2013).

- The "protection rate" (granting of constitutional asylum, refugee status or another protection status) showed an upward trend in 2014, with 29.8 per cent of asylum decisions of the first instance resulting in the granting of protection between January and November 2014. The corresponding rate in 2013 had been 24.8 per cent.

- On 6th November 2014 a law entered into force to add Serbia, Macedonia, and Bosnia-Herzegovina to the list of safe countries of origin. This means that the asylum authorities are bound by law to assume that generally neither persecution nor inhuman or degrading punishment or treatment exist in these countries. Accordingly, applications of asylum seekers from these countries are summarily considered as manifestly unfounded. A closer examination of the merits of the case only takes place if an applicant provides facts or evidence that he or she might be at risk of persecution in spite of the general situation in the country of origin.

- As part of the same law time restrictions on asylum seekers' access to the labour market were significantly reduced. Asylum seekers are now allowed to work three months after submitting their asylum application (instead of the previous nine months).

- Accelerated procedures were introduced in November 2014 for Syrian nationals and for members of ethnic minorities (Christians and Yazidi) from Iraq. If they agree to take part in the accelerated procedure, applicants from these groups can now be granted refugee status on the basis of a questionnaire. This means that the interview is omitted if the authorities decide to grant refugee status. If further questions arise, a "normal" interview has to be carried out, i.e. applications may not be rejected on the basis of the questionnaire. The aim is to finish the asylum procedure within eleven days for people whose application is likely to be successful.

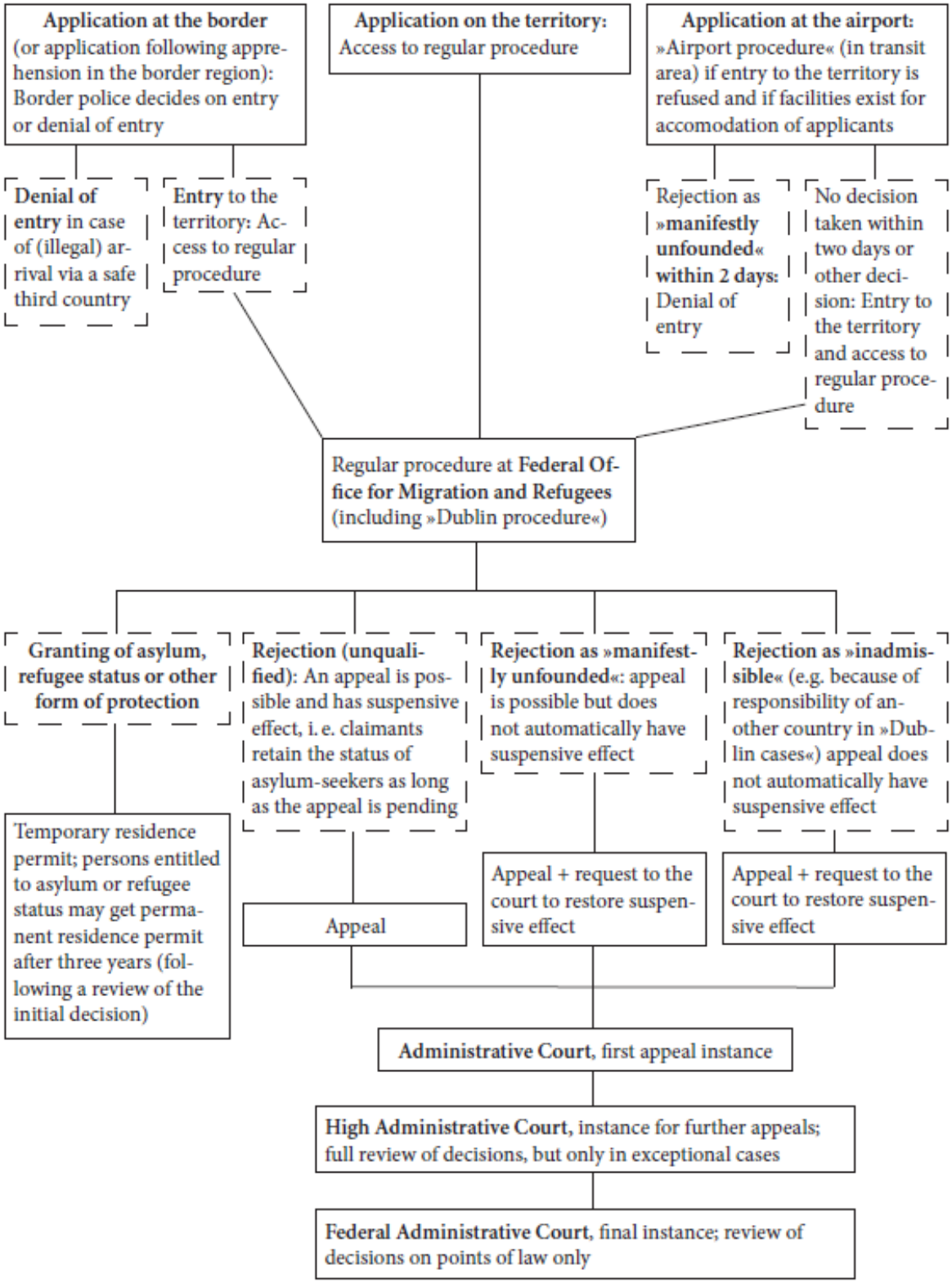
- According to a new law which was published on 31 December 2014 in the official 'Federal Law Gazette', the so-called "residence obligation" has now been largely removed both for asylum seekers and for people with a "tolerated" stay status (i.e. people who are legally not entitled to a residence permit but cannot be deported for the time being). Until the end of 2014, freedom of movement was severely restricted for these groups by the residence obligation which meant that they were not allowed to leave the town or district in which they were registered. They had to apply for permission from the authorities whenever they wanted to travel to another region. From 1 January 2015 onwards, this restriction will only apply for an initial three-month period after which it is removed. The "geographic restriction" can be re-imposed, however, if the person concerned has been convicted of a criminal offence or if deportation is imminent.

- In July 2014 the European Court of Justice ruled that detention for the purpose of removal of illegally staying third-country nationals has to be carried out in specialised detention facilities in all Federal States of Germany (combined case of Bero vs. Regierungspraesidium Kassel and Bouzalmane vs. Kreisverwaltung Kleve, 17 July 2014, C-473-12 and C-514/13: until then policies had differed between Federal States). Accordingly, the practice of carrying out detention

for the purpose of deportation in regular prisons came to an end in the second half of 2014. Most Federal States which did not have specialised facilities before announced that the necessary institutions would be established (deportees were sent to facilities in other Federal States in the meantime).

A. General

1. Flow chart



2. Types of procedures

Indicators:

Which types of procedures exist in your country?

- regular procedure: yes ☒ no ☐
- border procedure: yes ☒ no ☐
- admissibility procedure: yes ☒ no ☐
- accelerated procedure (labelled as such in national law): yes ☐ no ☒
- Accelerated examination ("fast-tracking" certain case caseloads as part of regular procedure): yes ☒ no ☐
- Prioritised examination (application likely to be well-founded or vulnerable applicant as part of regular procedure): yes ☒ no ☐
- Dublin Procedure yes ☒ no ☐

Are any of the procedures that are foreseen in national legislation, not being applied in practice? If so, which one(s)?

3. Authorities intervening in each stage of the procedure (including Dublin)

Stage of the procedure	Competent authority in EN	Competent authority in original language (DE)
Decision on entry/denial of entry at the border	Border police	*Bundespolizei*
Application	Federal Office for Migration and Refugees	*Bundesamt für Migration und Flüchtlinge (BAMF)*
Dublin (responsibility assessment)	Federal Office for Migration and Refugees	*Bundesamt für Migration und Flüchtlinge (BAMF)*
Subsequent application (admissibility)	Federal Office for Migration and Refugees	*Bundesamt für Migration und Flüchtlinge (BAMF)*
Airport procedure	Federal Office for Migration and Refugees	*Bundesamt für Migration und Flüchtlinge (BAMF)*
Appeal	Administrative Court (local)	*Verwaltungsgericht*
Further appeal	High Administrative Court (regional)	*Oberverwaltungsgericht or Verwaltungsgerichtshof*
Final appeal	Federal Administrative Court	*Bundesverwaltungsgericht*

4. Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance)

Name in English	Number of staff (specify the number of people involved in making decisions on claims if available)	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority? Y/N
Federal Office for Migration and Refugees	Total number: more than 2,000 (positions, number of staff is higher because of a high number of part-time positions), around 1020 positions involved in decision-making either as caseworkers (around 400) or administrative assistants (around 620)[5]	Federal Ministry of the Interior	N

[5] Federal Government of Germany. Response to information requested by the parliamentary group of "Die Linke" ("The Left"), 28 January 2015, No.18/3580, p.63.

5. Short overview of the asylum procedure

If migrants report at the border while trying to enter Germany without the necessary documents, entry to the territory has to be denied by the border police on the grounds that the migrant has travelled through a "safe third country". If an immediate removal to the neighbouring country can be executed those migrants are not necessarily given the opportunity to apply for asylum. However, due to a recent change of practice, asylum applications have to be referred to the responsible authorities if asylum seekers are apprehended after having crossed the border.

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

Unless entry is denied at the border or at the airport, a regular procedure takes place. Applications have to be filed at the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*). During the first stage of this procedure asylum seekers are accommodated in initial reception centres for up to three months. These reception centres are usually located on the same premises as the branch office of the Federal Office for Migration and Refugees. The interview usually takes place during the first stage of the procedure, but decision-making often takes longer. If no decision has been issued within three months applicants are usually sent to local accommodation centres where they have to stay for the remaining time of their procedures. The obligation to stay in accommodation centres also applies to the whole length of possible appeal procedures, but there are regional differences with some municipalities also granting access to the regular housing market.

The Federal Office for Migration and Refugees decides whether an asylum seeker is entitled

i to the so-called constitutional asylum (restricted to people persecuted by state actors for political reasons),
i. to refugee status (according to the 1951 Refugee Convention and to the Qualification Directive) and/or
ii. to other forms of protection (called prohibition of deportation/*Abschiebungsverbot*).

The other forms of protection include subsidiary protection as defined in Article 15 of the Qualification Directive, but in addition there is also a national protection status for people at risk of "substantial and concrete danger to life and limb or liberty". In principle this latter status might apply to any such threat, including risks emanating from ill health or from destitution, but case law has narrowed the scope of this provision to instances of "extreme risk", i.e. cases in which an applicant would face "certain death or most serious harm" upon return.

In a considerable number of cases (around 23 % in 2011 and 2012, 36.7% in 2013, 35.2% in 2014) a "formal decision" was taken, which means that the case was closed without an examination of the asylum claim's substance. In many instances such formal decisions are issued because another state was found to be responsible for the asylum application under the criteria of the Dublin Regulation.

An appeal against the rejection of an asylum application has to be submitted to a regular administrative court (*Verwaltungsgericht*). The responsible administrative court is the one with regional competence for the asylum seeker's place of residence. Appeals generally have suspensive effect, unless the application is rejected as "manifestly unfounded" or as "inadmissible" (e.g. in "Dublin cases"). In these cases applicants may ask the court to restore suspensive effect, but they only have one week to submit the necessary request, which must be substantiated.

The decision of the administrative court is usually final in asylum procedures. Further appeals to higher courts are possible only in exceptional circumstances, e.g. if the case is of fundamental importance or if

the administrative court's decision violates basic principles of jurisprudence.

B. Procedures

1. Registration of the Asylum Application

Indicators:

- Are specific time limits laid down in law for asylum seekers to lodge their application?
  ☐ Yes ☒ No
- Are there any reports (NGO reports, media, testimonies, etc) of people refused entry at the border and returned without examination of their protection needs?
  ☐ Yes ☒ No

The law states that asylum seekers shall apply for asylum at the border. However, entry to the territory has to be refused if a migrant reports at the border without the necessary documents for legal entry and if an immediate removal to the neighbouring country (as safe third country) is possible.[6]

However, due to a change of practice which took effect at the end of June 2013, the border police has to refer asylum applications to the Federal Office if they arrest asylum seekers who have already crossed the border. Until June 2013 a directive from the Federal Ministry of the Interior had stipulated that neither the border police nor any other authority had to register asylum applications in such "cases of apprehension" ("Aufgriffsfälle"). This directive was revoked in 2013 in the light of the new "Dublin III" Regulation and of changes in German legislation.[7] Accordingly, asylum seekers by now should not be sent back to neighbouring countries without their applications having been registered. It is not clear, though, whether this new practice is actually applied in all cases: even if migrants have crossed the border, they have not necessarily entered the territory in terms of the law[8] and it is possible that a removal to the neighbouring state (Zurückweisung) is still carried out at this point. In such cases asylum applications may not be accepted and referred to the Federal Office.

Irrespective of special regulations which apply in the border region only, most applications are lodged by asylum seekers who have already entered the territory. Under these circumstances the law obliges asylum seekers to "immediately" report to a branch office of the Federal Office for Migration and Refugees (Federal Office). Alternatively, they can report to a police station or to an office of the foreigner's authorities.[9] There is no strict definition of an "immediate" application and there are no exclusion rules for applications which are filed at a later date. However, a delay in filing the application may be held against the asylum seeker in the course of the asylum procedure, unless reasonable justification for the delay is brought forward.

Only the Federal Office is entitled to register an asylum application. Hence an asylum seeker reporting to the police or to another authority will be referred to the Federal Office. Persons who intend to apply for asylum do not have the legal status of asylum seekers as long as they have not arrived at the responsible branch of the Federal Office and until their applications have been registered. Which reception centre and which branch of the Federal Office is responsible for accommodation and for the initial stage of the asylum procedure is determined by a distribution system (known as "*Königsteiner Schlüssel*"). This distribution system allocates places according to a quota system based on the capacities of the centres, which are in turn dependent on the size and the economic strength of the

6 Section 18 II Asylum Procedures Act and Sections 14 and 15 Residence Act.

7 Federal Government of Germany, Response to an information request by Josef Winkler, member of parliament, No. 8/102 (August 2013), 19th August 2013. Cf. also Dominik Bender and Maria Bethke. "'Dublin III', Eilrechtsschutz und das Comeback der Drittstaatenregelung." ('Dublin III', interim measures protection and the comeback of the safe- third-country-provision), ASYLMAGAZIN 11/2013, pp. 364-365.

8 Section 13 II Residence Act.

9 Section 13 Asylum Procedures Act.

Federal States in which the centres are located. Furthermore, the system takes into account which branch office of the Federal Office deals with the asylum seeker's country of origin.[10]

In practice, difficulties with registration have been reported in connection with the refusal of entry at the borders. Occasionally, it has been reported that asylum seekers were arrested by border police in the immediate vicinity of a branch of the Federal Office before they could apply for asylum.[11] Furthermore, it is possible that asylum applications are not referred to the Federal Office in cases in which entry to the territory is denied (see above).

2. Regular procedure

General (scope, time limits)

Indicators:

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance (in months): ☒ N/A
- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No

As of 31st December 2014, the number of cases for which no final decision (including at first appeal) was taken one year after the asylum application was registered: None (Not available)

The competent authority for the decision-making in asylum procedures is the Federal Office for Migration and Refugees (Federal Office). Until 2004, the processing of asylum applications had been the main task of the Federal Office (then under a different name), but since then its functions and duties have expanded in the field of migration, such as coordination of integration courses or research on general migration issues. The Federal Office also acts as national administration office for European Funds in the areas of refugees, integration and return.

The law does not set a time limit for the Federal Office to decide on an application. If no decision has been taken within six months, the Federal Office has to notify asylum seekers upon request about when the decision is likely to be taken.[12]

The average length of asylum procedures at the Federal Office was at five to seven months in recent years.[13] For the years 2012 to 2014 statistics show significant variation in length of procedures, depending on the countries of origin of asylum seekers:[14]

10 For further details see www.bamf.de/EN/Migration/AsylFluechtlinge/Asylverfahren/Verteilung/verteilung-node.html

11 Most recent reports date back to 2010.

12 Section 24 IV Asylum Procedure Act.

13 2010: 6.8 months, 2011: 5.7 months, 2012: 5.5 months.

14 Average length of asylum procedures at authorities' level (Federal Office for Migration and Refugees) 2012 *see* Federal Government of Germany, *Response to information request by the parliamentary group of "The Left" party/"Die Linke"*, 31st January 2013, No. 17/12234, pp. 7-8, *Response to information request by the parliamentary group of "The Left" party/Die Linke*, 5th March 2014, No. 18/705, pp. 12-13 Response to information requested by the parliamentary group of "Die Linke" ("The Left"), 28 January 2015, No.18/3580, p.11

	2012	**2013**	2014
All countries of origin	5.5 months	7.2 months	7.1 months
Specific countries			
Serbia	1.9	2.1	4.0
Afghanistan	9.0	14.1	13.9
Syria	6.5	4.6	4.2
Iraq	5.6	9.5	9.6
Macedonia	2.1	2.4	5.3
Iran	9.4	13.0	14.5
Pakistan	7.5	15.0	15.7
Russian Federation	10.2	5.6	10.0

These differences result mainly from a prioritisation of certain caseloads which took place in the second half of 2012. Following an increase in applications of asylum seekers from Serbia and Macedonia, the Federal Office announced in September 2012 that asylum claims from Serbian and Macedonian citizens would be prioritised with the introduction of an "absolute direct procedure" (*Absolutes Direktverfahren*).[15] This special procedure had no basis in law and all the rules and guarantees of the regular procedures were still in place technically. However, a series of administrative measures were established in order to deal with as many cases as possible within a short timeframe (shifting of personnel to certain caseloads and target-setting for decision-makers). The aim was to conduct the interview on the day that the application was registered, or on the next or second next day after that. The decision was supposed to be made and handed down within one week.[16]

According to the government, "all procedural guarantees and quality criteria" were applied in the "direct procedures".[17] NGOs called this into question and claimed that the acceleration of procedures amounted to "summary procedures", in which an unbiased and thorough examination of asylum claims was not possible. Since the procedures were based on the assumption that asylum seekers from the

15 Federal Office for Migration and Refugees, *Entscheiderbrief (Newsletter for decision-makers),* 9/2012, p. 2.
16 *Ibid*.
17 Federal Ministry of the Interior, 8.849 Asylanträge im November 2012, Press release of 14 December 2012.

countries concerned were “abusing” the asylum system, the government was accused of creating a “self-fulfilling prophecy” and systematically impeding a proper examination of asylum claims.[18]

The average length of asylum procedures of Serbian and Macedonian applicants slightly increased in 2013 (to 2.1 and 2.4 months respectively), so the target to decide upon these cases within one week could not be upheld in 2013. With regard to that year the government stated that applications from the Western Balkans (Albania, Bosnia and Herzegovina, Montenegro, Macedonia, Serbia) and from Syria were prioritized.[19] Nevertheless, the average length of procedures at first instance increased both for the prioritized and for other countries of origin. At the end of 2014, applications from the following countries of origin or groups were prioritized: Syria, Serbia, Macedonia, Bosnia-Herzegovina and religious minorities from Iraq (Christians, Yazidi, Mandaeans).[20]

In November 2014 Serbia, Macedonia, and Bosnia-Herzegovina were added to the list of safe countries of origin. This means that the asylum authorities are bound by law to assume that generally neither persecution nor inhuman or degrading punishment or treatment exist in these countries. Accordingly, applications of asylum seekers from these countries are summarily considered as manifestly unfounded. A closer examination of the merits of the case only takes place if an applicant provides facts or evidence that he or she might be at risk of persecution in spite of the general situation in the country of origin. The government claimed that the new measures would lead to an acceleration of procedures concerning asylum seekers from those countries.[21] However, the fact that a country is labelled as “safe” does not affect the procedural elements of the asylum claim, with procedures from countries designated “safe” entering the same procedure as other applicants. Moreover, most applications from asylum seekers from Serbia and Macedonia had been rejected as “manifestly unfounded” in the past without these countries being part of the list of safe countries. Thus it appears questionable whether the designation of “safe countries of origin” can in itself actually lead to an acceleration of procedures.

The overall number of pending applications at the Federal Office was at 169,166 (persons) on 31 December 2014. This represents an increase of 76.7% in comparison with the end of 2013 (96,743).[22]

The German government provided the following figures for the average time of procedures up to a legally binding decision (findings refer to the first half of 2014):[23]

18 Pro Asyl, *Entwicklung der Asylanträge im November 2012* (*Developments of asylum applications in November 2012*), Press Release of 14 December 2012.

19 Federal Government of Germany. *Response to information request by the parliamentary group of “The Left” party/Die Linke*, 5th March 2014, No. 18/705, p. 37.

20 Federal Government of Germany. Response to information request by the parliamentary group of “The Left” party/”Die Linke”, 28th January 2015, No. 18/3850, p. 63.

21 Federal Ministry of the Interior. “Gesetz zu sicheren Herkunftsstaaten tritt in Kraft” (“Law on safe countries of origin enters into force”), press release of 6 November 2014.

22 Federal Office for Migration and Refugees, Asylgeschäftsstatistik für den Monat Dezember 2014 und das Berichtsjahr 2014 (Statistics on asylum issues for the month of December 2014 and the annual report for 2014), January 2015, p. 2.

23 Federal Government of Germany. Response to information request by the parliamentary group of “The Left” party/”Die Linke”, 28th January 2015, No. 18/3850, p. 12-13.

All countries of origin	11.1 months
Specific Countries	
Afghanistan	21.7
Pakistan	19.9
Iran	18.6
Iraq	15.7
Somalia	13.9
Russian Federation	12.0
Turkey	11.6
Macedonia	7.7
Syria	7.1
Serbia	6.7

Appeal

Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure: ☒Yes ☐ No
  - if yes, is the appeal ☒ judicial ☐ administrative
  - If yes, is it suspensive ☒ Yes[24] ☒ No (automatic against a regular decision, but not automatic against a rejection of a "manifestly unfounded " claim)
- Average processing time for the appeal body to make a decision: 10.5 months (2012)

[24] Whether an appeal has suspensive effect depends on the decision. With a "normal" rejection the appeal is suspensive but in 2014 the majority of rejections were rejections as "manifestly unfounded" (so the appeal is without automatic suspensive effect).

Appeals against rejections of asylum applications have to be lodged at a regular Administrative Court. There are 50 Administrative Courts with responsibilities for asylum matters. The responsible court is the one with regional competence for the asylum seeker's place of residence. Procedures at the administrative court generally fall into three categories, depending on the type of rejection of the application:

- Rejection without further qualification ("simple rejection"): An appeal to the Administrative Court has to be submitted within two weeks (i.e. 14 calendar days). This appeal has suspensive effect. It does not necessarily have to be substantiated at once, since the appellant has one month to submit reasons and evidence. Furthermore, it is common practice that the courts either set another deadline for the submission of evidence at a later stage (e.g. a few weeks before the hearing at the court) or that further evidence is accepted up to the moment of the hearing at the court.

- Rejection as "manifestly unfounded" (*offensichtlich unbegründet*): In this case, the appeal does not have suspensive effect. Therefore both the appeal and a request to the court to restore suspensive effect have to be submitted within one week (7 calendar days). This request has to be substantiated.

- Abandonment of application (*Nichtbetreiben*) or rejection as "inadmissible" (*unbeachtlich* or *unzulässig*). This applies if a case is declared abandoned for failure to pursue the application or if another state has been found to be responsible for the examination of the asylum application (usually under the Dublin Regulation). The appeal does not have (automatic) suspensive effect. Until September 2013 suspensive effect had even been ruled out by law (Section 34 a Asylum Procedure Act), but this provision was changed with the entering into force of a new law on 6 September 2013. As in "manifestly unfounded" cases it is now possible to ask a court to restore suspensive effect in "Dublin cases". However, the application for suspensive effect has to be submitted to the court within one week (seven calendar days) and it has to be substantiated. This short deadline is often difficult to meet for asylum seekers and it might be impossible to make an appointment with laywers or counsellors within this timeframe. Therefore it has been argued that the one-week period does not provide for an effective remedy and might constitute a violation of the German constitution.[25] In any case, suspensive effect is only granted in exceptional circumstances. In recent years this has taken place with regard to possible transfers to Member States of the Dublin II Regulation (especially Greece or, more recently, Italy). However, case law is not consistent as to the degree of possible risks necessary for suspensions of Dublin transfers.[26]

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

According to the asylum authorities, appeal procedures took an average period of 10.5 months in 2012, with most of the procedures considerably deviating from this average: 35.8 per cent took longer than 18 months, while 40.8 per cent were settled in less than six months.[27] This implies that a high number of cases at the courts were terminated with "formal" decisions within a short time-frame (e.g. withdrawal of

[25] Cf. further rerefences in Dominik Bender and Maria Bethke. "'Dublin III', Eilrechtsschutz und das Comeback der Drittstaatenregelung." ('Dublin III', interim measures protection and the comeback of the safe- third-country-provision), ASYLMAGAZIN 11/2013, p. 362.

[26] Dublin Transnational Project. Dublin II Regulation, National Report – Germany, December 2012, pp. 61-63.

[27] No more recent figures were available. Federal Office for Migration and Refugees. Entscheiderbrief (Newsletter for d*ecision-makers*) 3/2014, p. 5.

the appeal). In contrast, procedures apparently tended to take longer than a year if a decision on the merits of the case was taken.

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

The second appeal stage is the High Administrative Court (*Oberverwaltungsgericht* or *Verwaltungsgerichtshof* – the latter term is used in the Federal States of Bavaria (Bayern), Hessen, and Baden-Württemberg. There are 15 High Administrative Courts in Germany, one for each of Germany's 16 Federal States, with the exception of the States of Berlin and Brandenburg which have a joint High Administrative Court since 2005. High Administrative Courts review the decisions rendered by the Administrative Court both on points of law and of facts.

In cases of "fundamental significance" the Administrative Court itself may pave the way for a further appeal (*Berufung*) to the High Administrative Court, but usually it is either the authorities or the applicant who apply to the High Administrative Court to be granted leave for a further appeal. In contrast to the general Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*) the criterion of "serious doubts as to the accuracy of a decision" is not a reason for a further appeal in asylum procedures. It is therefore more difficult to access this second appeal stage in asylum procedures than it is in other areas of administrative law. According to Section 78 of the Asylum Procedure Act (*Asylverfahrensgesetz*) a further appeal against an asylum decision of an Administrative Court is only admissible if

a. the case is of fundamental importance,
a. the Administrative Court's decision deviates from a decision of a higher court,
b. the decision violates basic principles of jurisprudence.

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

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

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

Personal Interview

Indicators:

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

In the regular procedure, the Federal Office for Migration and Refugees conducts an interview with each asylum applicant.[28] Only in exceptional cases the interview may be dispensed with:

1. if the Federal Office intends to recognize the entitlement to asylum;
2. if the applicant claims to have entered the territory from a safe third country (this provision is rarely applied in the regular procedure since it has usually not been established at the time of the interview whether Germany or a safe third country is responsible for the handling of the asylum claim);
3. if an asylum application has been filed for children under six years who were born in Germany "and if the facts of the case have been sufficiently clarified based on the case files of one or both parents;[29]
4. if the applicant fails to appear at the interview without an adequate excuse.[30]

Until 2013, omission of the personal interview also took place in "Dublin cases" if the responsibility of another state for the examination of the asylum application could be established at an early stage in the procedure and the application was rejected as "inadmissible". The different branches of the Federal Office for Migration and Refugees apparently had different ways of handling procedures in such cases: In some branches a "normal" interview took place regardless of the initiation of a "Dublin procedure". In other branches only a shortened interview was carried out, focussing on the travel route of the applicant and on personal details, in other cases asylum seekers were not interviewed at all before the rejection of their application and before the transfer to another state went ahead.[31] With entry into force of the Dublin III Regulation a personal interview should not be dispensed with altogether. However, the aim of the personal interview in the context of the Dublin regulation is to "facilitate the process of determining the member state responsible" (for processing the asylum application) and to "allow the proper understanding of the information" on the Dublin procedure.[32] Therefore, it is still possible that only a short interview takes place which focusses on the applicant's travel itinerary and in which the reasons for the asylum application is not referred to at all. Furthermore, even this "Dublin interview" may be omitted if "the applicant has already provided the information relevant to determine the Member State responsible by other means."[33]

Since November 2014 procedures without an interview take place for Syrian nationals and for members of ethnic minorities (Christians and Yazidi) from Iraq. If they agree to take part in this procedure, applicants from these groups can now be granted refugee status on the basis of a questionnaire. This

28 Section 24 and 25 Asylum Procedure Act.
29 Section 24 I Asylum Procedure Act.
30 Section 25 Asylum Procedure Act.
31 Dublin Transnational Project. Dublin II Regulation, National Report – Germany, December 2012, p. 12 and p. 24.
32 Article 5 I Regulation 604/2013 of 26 June 2013, (Dublin III regulation), OJ L 180/31. Cf. Federal Office for Migration and Refugees. Entscheiderbrief (Newsletter for decision-makers), 9/2013, p. 3.
33 Aricle 5 II Regulation 604/2013 of 26 June 2013 (Dublin III regulation), OJ L 180/31. Cf. Marei Pelzer, "Die Dublin-III-Verordnung" (The Dublin III-regulation) in Informationsverbund Asyl und Migration, ed. *Neuregelungen im EU-Flüchtlingsrecht, Beilage zum Asylmagazin 7-8/2013* (New provisions in EU refugee law, addendum to Asylmagazin no. 7-8/2013), pp. 33-34.

means that the interview is omitted if the authorities decide to grant refugee status. If further questions arise, a "normal" interview has to be carried out and applications must not be rejected on the basis of the questionnaire, according to the information provided by the authorities.

The presence of an interpreter at the interview is required by law.[34] The Federal Office recruits its own interpreters on a freelance basis. According to information submitted by the Federal Office to UNHCR, approximately 400 languages and dialects are covered by the pool of interpreters.[35] The law does not require any specific professional qualifications for interpreters and the Federal Office argues that it is not always possible to employ interpreters with a degree, especially for rare languages.[36]

Problems reported with regard to the translation during the interview include the following:[37]

- Poor language skills of interpreters.
- Interpreters do not speak the same dialect as applicants.
- Interpreters comment on the applicant's statements.
- Interpreters omit important details when summarising the applicants' statements.
- Interview is not conducted in the first language of applicants, but in a language which they are supposed to understand, e.g. because it is the official language of their country of origin. Thus interviews from West-African applicants may be conducted with French translations although the first language is a local language and the applicant's knowledge of the official language is not proficient.

The transcript of the interview consists of a summary of questions and answers (i.e. it is not a verbatim transcript). It is usually taken from a tape recording of the interview and it is only available in German. The interpreter present during the personal interview will also be responsible for translations of the transcript. The applicant has the right to correct mistakes or misunderstandings. By signing the transcript the applicant confirms that they have had the opportunity to present all the important details of the case, that there were no communication problems and that the transcript was read back in the applicant's language. In spite of this, alleged mistakes in the transcript frequently give rise to disputes at later stages of the asylum procedure. For instance, doubts about the credibility of asylum seekers are often based on their statements as they appear in the transcript. However, it is possible that the German wording of the transcript reflects mistakes or misunderstandings which were caused by the translation. For example, the transcript is usually translated (orally) once more at the end of the session by the same interpreter who has been present during the interview as well. On this occasion, it is more than likely that interpreters repeat the mistakes they made during the interview and it is thus impossible for the asylum seeker to identify errors in the German transcript which result from the interpreters' misunderstandings or mistakes. It is very difficult to correct such mistakes afterwards, since the transcript is the only record of the interview. The tape recording of the interview is deleted.

Video recordings of interviews do not take place. However, video conferencing has been used since 2010, in 2011 and 2012 in the following number of cases:[38]

2011	364
2012	174

34 Section 17 Asylum Procedure Act.

35 UNHCR: Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice. Detailed Research on Key Asylum Procedures Directive Provisions. March 2010. p. 117.

36 *Ibid*., p. 120.

37 *Ibid*, pp. 120-125.

38 Katharina Stamm. Video Conferencing during the asylum procedure – why it is inadmissible ("Videokonferenztechnik im Asylverfahren – warum sie unzulässig ist"), *Asylmagazin* 3/2012, p. 70; Federal Government of Germany, ***Response to information request by the parliamentary group of "The Left" party/"Die Linke", 10th February 2012, No. 17/8577, p. 22.***

In 2013 the use of video conferencing for interviews seems to have ceased, with only 5 such interviews being reported for the first quarter of 2013 and none for the second and third quarter of 2013.[39]

The use of video conferencing requires a written declaration of consent from the applicant.[40]

Audio/video recording or video conferencing is not used in appeal procedures.

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the regular procedure in practice? ☐ Yes ☐ not always/with difficulty ☒ No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a negative decision? ☐ Yes ☒ not always/with difficulty ☐ No
- In the first instance procedure, does free legal assistance cover:
  ☐ representation during the personal interview ☐ legal advice ☐ both ☒ Not applicable
- In the appeal against a negative decision, does free legal assistance cover:
  ☐ representation in courts ☐ legal advice ☒ both ☐ Not applicable

Legal assistance is not systematically available to asylum seekers in Germany. Welfare organisations and other NGOs offer free legal advice services which include basic legal advice (sometimes as projects with funding from the European Refugee Fund). In some initial reception centres welfare organisations or refugee councils have regular office hours or asylum seekers can easily access the offices of such organisations close to the centres. However, such advice services are not available in all centres and not all of the time, so very often interviews take place before asylum seekers had a chance to contact an NGO or a lawyer. There is no mechanism which ensures that asylum seekers are getting access to legal advice from an independent institution before the interview. Once asylum seekers have left the initial reception centres and have been transferred to other accommodation, the accessibility of legal advice depends strongly on the place of residence.

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

During court proceedings, asylum seekers can apply for legal aid to pay for a lawyer. The granting of legal aid is dependent on how the court rates the chances of success. This “merits test” is carried out by the same judge who has to decide on the case itself, therefore some lawyers do not always recommend to apply for legal aid, since they are concerned that a negative decision in the legal aid procedure may have a negative impact on the case. Furthermore, decision-making in the legal aid procedure may take considerable time so lawyers regularly have to accept a case before they know whether legal aid is granted or not. Lawyers often argue that fees based on the legal aid system do not always cover their expenses. As a consequence, to specialise on asylum cases only is generally supposed to be difficult for law firms. Most lawyers specialising in this area have additional areas of specialisation while a few also charge higher fees on the basis of individual agreements with their clients.

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39 Federal Government of Germany. *Response to information request by the parliamentary group of “The Left” party/“Die Linke”,* 24th May 2013, No. 17/13636, p. 21, and *Response to information request by the parliamentary group of “The Left” party/“Die Linke”,* 4th December 2013, No. 18/127, p. 2 and p, 21.

40 Federal Government, *Response to information request*, 10 February 2012, p. 22.

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

3. Dublin

Indicators:

- Number of outgoing requests in the previous year: 35,115
- Number of incoming requests in the previous year: 5,091
- Number of outgoing transfers carried out effectively in the previous year: 4,772
- Number of incoming transfers carried out effectively in the previous year: 2,275

Procedure

Indicator:

- If another EU Member State accepts responsibility for the asylum applicant, how long does it take in practice (on average) before the applicant is transferred to the responsible Member State? Not available

The Dublin regulation is not explicitly referred to in German law, but there is a general reference to EU law in Section 27a Asylum Procedure Act: "*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*."
The examination of whether another state is responsible for carrying out the asylum procedure (either based on the Dublin regulation or on the German safe third country rule) is a part of the regular procedure. Thus, in the legal sense, the term "Dublin procedure" does not refer to a separate procedure in the German context, but merely to the shifting of responsibility for an asylum application within the administration (i.e. takeover of responsibility by the "Dublin units" of the Federal Office for Migration and Refugees).

Fingerprints are usually taken from all asylum seekers on the day that the application is registered and they are subjected to EURODAC-queries on a routine basis. EURODAC-queries are the major cause for the initiation of Dublin procedures: The major part of outgoing Dublin requests was based on so-called "EURODAC hits" (68.5 per cent of requests in 2014, 66.7 per cent in 2013, 72.8 per cent in 2012). The number of outgoing requests has risen significantly in recent years: in 2014, there were 35,115 outgoing requests as compared to 35,280 in 2013, 11,469 in 2012, 9,075 in 2011 and 5,390 in 2007. While nowadays outgoing requests by far outnumber the incoming ones, in earlier years the numbers had almost been on an equal footing (e.g. 4.996 outgoing and 5.103 incoming requests in 2006).[41]

Until 2013 the border police also initiated Dublin procedures, if a person apprehended at or close to the border could not immediately be sent back to the neighbouring country but there were indications that the neighbouring state was responsible for the asylum procedure. Agreements on the handling of such cases exist between Germany and Denmark, Switzerland, Austria and the Czech Republic.[42] In 2013,

[41] All figures cited from: Federal Government of Germany. Response to information request by the parliamentary group of "The Left" party/"Die Linke", 28th January 2015, No. 18/3850, p. 22, Federal Office for Migration and Refugees, Bundesamt in Zahlen 2013 – Asyl (Federal Office in numbers 2013 - Asylum), February 2014, pp. 23-30, and Bundesamt in Zahlen 2012 – Asyl, February 2013, pp. 20-24.

[42] Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, p. 71.

the border police initiated 123 takeover requests and carried out 119 transfers.[43] In 2012, there were 175 takeover requests from the border police to other states with 169 transfers being carried out in the process.[44] However, this handling of Dublin procedures by the border police seems to be in contradiction to the policy of the asylum authorities: The Federal Office for Migration and Refugees had informed the Federal States and the border police on 17 July 2013 that Dublin procedures would be carried out by the Federal Office only, with immediate effect.[45] In spite of this, Dublin procedures under the responsibility of the border police were still carried out in the second half of and in 2014 (19 Dublin procedures carried out by the border police).[46]

In the regular procedure, all asylum seekers receive an information sheet on the Dublin regulation. However, it has been noted that translated versions of this sheet are often not available.[47]
With entry into force of the Dublin III-regulation a personal interview in accordance with Article 5 of the new regulation[48] is now obligatory.[49] Furthermore, asylum seekers receive a written notification if the procedure has been referred to the "Dublin units" of the Federal Office for Migration and Refugees. This letter is in German only and, according to the Dublin Transnational Project's national report "completely incomprehensible for the majority" of asylum seekers.[50] Moreover, it has sometimes proved difficult even for lawyers to obtain exact information about on-going procedures, e.g. about the date of an intended transfer.

From the point of view of asylum seekers, there is no clear separation between the Dublin procedure and the "normal" asylum procedure. Until the first half of 2013, many asylum seekers were not even aware of on-going Dublin procedures or about the outcome of these procedures until the transfer took place. "Dublin decisions" were frequently handed out on the day of the transfer. However, in the light of changes in German law (in turn based on the amendments in the recast Dublin Regulation), the German authorities announced on 17 July 2013 that this practice had been stopped:[51] "Dublin decisions" are now handed out in written form to the asylum seeker. These decisions also contain information about possible legal remedies, in particular about the possibility to ask an Administrative Court for emergency legal protection, i.e. to stop the transfer by restoring suspensive effect of appeals. In the letter of 17 July 2013 the authorities further confirmed that transfers can only take place if the deadline for emergency legal protection has expired (i.e. seven calendar days after the decision has been handed out) or if a court has rejected an application for emergency legal protection.

The government's statistics do not contain exact information on the number of cases in which the humanitarian clause or the sovereignty clause has been used.[52] Statistics for 2014 indicate that the German authorities took over responsibility for 2,225 procedures either by invoking the sovereignty clause or due to "factual impediments to the transfer".[53] Since January 2011, the sovereignty clause has been invoked in all cases in which Greece was considered to be responsible for the asylum procedure.

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43 Federal Government of Germany: *Response to information request by the parliamentary group of "The Left" party/"Die Linke",* 5th March 2014, No. 18/705, p. 18.

44 Federal Government of Germany: *Response to information request by the parliamentary group of "The Left" party/"Die Linke",* 31 January 2013, No. 17/12234, p. 11.

45 Letter from the Federal Office for Migration and Refugees from 17th July 2013: "Änderung der Verfahrenspraxis des Bundesamtes im Rahmen des Dublinverfahrens" (Change of practices of the Federal Office with regard to Dublin procedures), 430-93604-01/13-05.

46 Federal Government of Germany. Response to information request by the parliamentary group of "The Left" party/"Die Linke", 28th January 2015, No. 18/3850, p. 36

47 According to the Federal Office for Migration and Refugees, the "Dublin procedure leaflet" was available in 15 languages in 2010; European Agency for Fundamental Rights. *Country Factsheet Germany*, 2010. p. 2.

48 Article 5 I Regulation 604/2013 of 26 June 2013, (Dublin III regulation), OJ L 180/31.

49 Federal Office for Migration and Refugees. Entscheiderbrief (Newsletter for decision-makers), 9/2013, p. 3.

50 Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, p. 19.

51 Informationsverbund Asyl und Migration: "" (Changes in the Dublin procedure), 2 August 2013.

52 Federal Government of Germany: Response to information request by the parliamentary group of "The Left" party/"Die Linke", 31st January 2013, No. 17/12234, p. 10.

53 *Federal Government of Germany. Response to information request by the parliamentary group of "The Left" party/"Die Linke", 28th January 2015, No. 18/3850, p. 29-33.*

Dublin transfers to Greece – which includes the use of the sovereignty clause in each case – are suspended until 12 January 2016. Furthermore, the sovereignty clause has been applied to particular vulnerable persons in cases in which Malta is considered responsible for the asylum procedure. This practice has been applied since the autumn of 2009.

According to the Dublin Transnational Project's report of December 2012, Germany applies the sovereignty clause very restrictively in order to take charge of asylum seekers from other Member States of the Dublin Regulation (with the exception of Greece and Malta), even to a point that numbers are described as "numerically insignificant". The reasons for the use of the sovereignty clause could be practical obstacles to transfers - an impossibility to be transported or a disagreement between the responsible Foreigner's Authority and the Federal Office for Migration and Refugees on possible obstacles, such as issues relating to considerations of the best interest of a child.[54]

Even if humanitarian reasons, which might fall under the definition of Article 15 of the Dublin Regulation, are recognized by the Federal Office for Migration and Refugees, the decision not to carry out a transfer is based on the sovereignty clause of Article 3. This is because the Federal Office seems to hold the opinion that the humanitarian clauses of Article 15 are only relevant for cases in which Member States request others to take charge of an asylum seeker. Accordingly, the government has only published figures on the use of Article 15(2) Dublin II Regulation, the non-separation or unification of asylum seekers in cases in which a person is dependent on the assistance of another, in the context of Dublin requests directed at other countries: 14 outgoing requests based on Article 15(2) of the Dublin Regulation were rejected by other Member States in 2012, while 16 outgoing requests were accepted on the basis of this provision.[55] Statistics for 2014 included figures for the use of the sovereignty clause and for other cases, in which Germany took over the asylum procedure due to "factual impediments to the transfer" (2,225 cases in 2014).[56] However, it is not clear whether the latter category includes cases in which the the humanitarian clause was used.

There are no publicly available statistics on how many "Dublin transfers" are preceded by detention. A common course of action is that detention is ordered against persons who are apprehended at the border while trying to enter Germany illegally. Two courses of action are possible in these cases:

> 1. Removal to the neighbouring country ("Zurückschiebung") can be carried out immediately by the border police, on the basis of the German "safe third country-"provision and according to a readmission agreement with the neighbouring state.
>
> 2. Removal to another (European) state cannot be carried out immediately. In such a case, a Dublin procedure can be initiated. Until June 2013 asylum seekers in this situation were detained "as a rule" and their asylum applications were not accepted before a decision on the Dublin request had been reached. This practice was based on a directive of the German Federal Ministry of the Interior of March 2006. This directive was revoked with effect from 28 June 2013. Accordingly, detention should now only take place exceptionally in these cases and it should be terminated regularly if detained persons apply for asylum. .

Generally speaking, however, the filing of an asylum application does not necessarily lead to termination of detention (independent of whether detention has been ordered for the purpose of removal

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54 Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, p. 34.

55 Federal Government of Germany: *Response to information request by the parliamentary group of "The Left" party/"Die Linke",* 31st January 2013, No. 17/12234, p. 10. The Federal Office's opinion on the use of Art. 15 may not be consistent with recent case law of the European Court of Justice, C-245/11, *K v Austria*, 6 November 2012), cf. Henrike Janetzek, "*Familieneinheit im Dublin-Verfahren – Das Urteil des EuGH vom 6.11.2012 zur Anwendung der humanitären Klausel*" (*Unity of families in the context of the Dublin procedure – the judgement of the ECtHR of 6 November 2012 on the application of the humanitarian protection clause*), Asylmagazin 1-2/2013, pp. 2-9.

56 Federal Government of Germany. Response to information request by the parliamentary group of "The Left" party/"Die Linke", 28th January 2015, No. 18/3850, p. 29-33.

to another country or for another purpose). In particular, detention may be upheld or prolonged if another country has already been requested to take charge of an asylum procedure on the basis of EU legislation.

Transfers under the Dublin regulation are usually carried out as deportations since no deadline is set for a "voluntary departure" to the responsible member state. Even if asylum seekers offer to leave Germany on their own, this is frequently not accepted and an escorted return is carried out instead.[57] Based on a recent change in the Asylum Procedures Act, asylum seekers have now to be notified in advance of a planned transfer (cf. above). Nevertheless, the law still does not refer to the possibility of voluntary departures in the context of Dublin transfers.[58]

If asylum seekers have already accessed the regular procedure, they must not be detained for the duration of the procedure. However, detention may be imposed once an application has finally been rejected as "inadmissible" because another country was found to be responsible for the asylum procedure. In these cases, the legal basis for ordering and prolongation of detention is the same as for other forms of detention pending deportation. This implies that certain preconditions for the lawfulness of detention have to be fulfilled: In particular, any placing into custody under these circumstances should generally be ordered in advance by a judge, since it does not constitute a provisional arrest which may be authorised by a court at a later stage. However, a judge should generally not issue a detention order until the formal request to leave Germany - usually a part of the rejection of the asylum application - has been handed out to the person concerned and if sufficient grounds for detention exist. However, it has been alleged that these preconditions are often ignored by authorities and courts in "Dublin cases".[59]

There have been no reports of "Dublin returnees" facing difficulties in accessing an asylum procedure after having been transferred to Germany. A high number of persons transferred back under the Dublin regulation had their application already rejected in Germany (61% of cases in 2011).[60] In these cases an application is regarded as a subsequent application under the same conditions which apply to subsequent applications by asylum seekers who have not left the country.

Appeal

Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:
  ☒ Yes ☐ No
  - if yes, is the appeal ☒ Judicial ☐ administrative
  - If yes, is it suspensive ☐ Yes ☒ No
- Average processing time for the appeal body to make a decision: N/A

As the Dublin Regulation has not been transposed as such into German law the legal basis for Dublin procedures is found in provisions originally created for "safe third countries". It is possible to lodge an appeal against a Dublin decision at an administrative court. However, Section 34a of the Asylum Procedure Act places severe restrictions on procedural rights and guarantees, although the situation

57 Dublin Transnational Project. Dublin II Regulation, National Report – Germany, December 2012, p. 48.

58 Dominik Bender und Maria Bethke. "'Dublin III', Eilrechtsschutz und das Comeback der Drittstaatenregelung." ('Dublin III', interim measures protection and the comeback of the safe- third-country-provision), ASYLMAGAZIN 11/2013, p. 362.

59 Peter Fahlbusch, "Haft in Verfahren nach der Dublin II-Verordnung" (*Detention during the Dublin procedure*), Asylmagazin 9/2010, p. 290, and Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, p. 69.

60 Dublin Transnational Project, *Dublin II Regulation, National Report – Germany*, December 2012, p. 77. The respective figure for 2012 has not been published.

has improved with an amendment of Section 34a, which came into effect on 6 September 2013:[61]

- The Federal Office for Migration and Refugees shall order the deportation to the safe third country or to the country responsible for the asylum procedure "as soon as it has been ascertained that the deportation can be carried out."

- Suspensive effect of an appeal against a "Dublin decision" is no longer ruled out by law. However, the law still does not provide for an automatic suspensive effect. Instead, it is possible now not only to appeal before an Administrative Court but also to file an application asking the court to restore suspensive effect of the appeal. The time-limit for this application is one week (seven calendar days) following the handing out of the "Dublin decision". Once an application to restore suspensive effect has been filed, the transfer to another Member State cannot take place until the court has decided on the request. The transfer can be executed only if the applicant misses the deadline or if the court rejects the application for suspensive effect.

- In reaction to the new law, the Federal Office for Migration and Refugees has announced that written decisions will now be handed out in all Dublin cases.[62] Previously, the law did not require the authorities to notify asylum seekers in advance, prior to the execution of their transfer to another Member State. This meant that asylum seekers were often informed about the rejection of their application only when it was no longer possible to appeal against the decision, e.g. by contacting a lawyer.

It has to be noted that, in spite of the highly restrictive legal provisions of the former Section 34 a of the Asylum Procedure Act, a large number of "Dublin transfers" were stopped by administrative courts before September 2013 (since 2008). Such decisions were predominantly issued in cases in which Greece was considered responsible for the procedure, but later on with regard to several other countries as well (such as Malta, Italy and Hungary).

From September 2009 onwards, the Constitutional Court itself issued several interim measures against transfers to Greece, thus paving the way for a landmark decision on Section 34a II Asylum Procedure Act. However, the government stopped all Dublin transfers to Greece in January 2011 before the Constitutional Court could decide on the cases. As a result, the Constitutional Court declared the cases closed, without deciding on the merits of the cases.

The change in the Asylum Procedure Act means that, in terms of the procedural conditions, the obstacles for effective legal remedy in "Dublin cases" have been reduced. However, material requirements for a successful appeal are still difficult to fulfil and how these requirements have to be defined in detail remains a highly controversial issue. For example, administrative courts in the Federal States continue to render diverging decisions with regard to the question of whether problems in the Italian asylum system amount to "systemic deficiencies" or not.

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

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61 See Dominik Bender and Maria Bethke: "'Dublin III', Eilrechtsschutz und das Comeback der Drittstaatenregelung" ('Dublin III', interim protection and the comeback of the safe third country-provision), ASYLMAGAZIN 11/2013, pp. 358-367.

62 Letter of the Federal Office for Migration and Refugees to the German Federal States, 17. July 2013 (not published), cf. Informationsverbund Asyl und Migration, "" (Changes in the Dublin procedure), 2 August 2013.

substantiated application at such short notice. Therefore it has been argued that the one-week period, although being an improvement compared to the previous situation, still does not provide for an effective remedy and might constitute a violation of the German constitution.[63]

Personal Interview

Indicators:

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

There is no consistent practice for interviews in Dublin procedures: For the authorities a Dublin procedure means that responsibilities are referred to the "Dublin division" of the Federal Office for Migration and Refugees, which may take place at various stages of the procedure. In practice, the procedures may be carried out successively or simultaneously.[64] If the Dublin and regular procedure are carried out simultaneously, a regular interview is conducted according to the standards of the regular procedure. In this context it has been noted that questions on the travel routes of asylum seekers may take up a considerable part of the interview, which may result in a shifting of focus away from the core issues of the asylum interview.

Until 2013, personal interviews could also be completely omitted in "Dublin cases" if the responsibility of another state for the examination of the asylum application had been established at an early stage in the procedure and the application had been rejected as "inadmissible". With entry into force of the Dublin III-regulation this practice has been stopped. A personal interview in accordance with Article 5 of the new regulation65 is now obligatory.[66]

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at the first instance in the Dublin procedure in practice? ☐ Yes ☐ not always/with difficulty ☒ No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a Dublin decision? ☐ Yes ☒ not always/with difficulty ☐ No

There are no specific regulations for legal assistance in Dublin procedures; therefore the information given in relation to the regular procedure applies equally to the Dublin procedure.

63 Cf. further rerefences in Dominik Bender and Maria Bethke. "'Dublin III', Eilrechtsschutz und das Comeback der Drittstaatenregelung." ('Dublin III', interim measures protection and the comeback of the safe- third- country-provision), ASYLMAGAZIN 11/2013, p. 362.

64 Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, p. 12.

65 Article 5 I Regulation 604/2013 of 26 June 2013, (Dublin III regulation), OJ L 180/31.

66 Federal Office for Migration and Refugees. Entscheiderbrief (Newsletter for decision-makers), 9/2013, p. 3.

Suspension of transfers

Indicator:

- Are Dublin transfers systematically suspended as a matter of policy or as a matter of jurisprudence to one or more countries? ☒ Yes ☐ No

  If yes, to which country/countries? Greece

Transfers to Greece were suspended for one year from January 2011 onwards by way of a directive issued by the Federal Ministry of the Interior. Since the issuance of the directive the suspension has been extended annually; the latest extension will take effect until 12 January 2015. The sovereignty clause is invoked in all cases in which Greece has been found to be responsible for the asylum procedure. This means that asylum seekers are entitled to all rights and subjected to all obligations applicable to asylum seekers in the regular procedure.

Furthermore, the sovereignty clause has been applied to particularly vulnerable persons in cases where Malta was determined as the Member State responsible for examination of an asylum application. This practice has been applied since autumn 2009.

In addition, several hundred court cases resulted in suspension of transfers to other countries by means of issuance of interim measures (most notably to Italy, but also to Hungary, Malta and other countries). At the same time, though, other courts decided in favour of transfers to these countries, which is mainly due to the fact that the definition of requirements for a suspension of transfers remains highly controversial. For example, courts continue to render diverging decisions on the issue of whether problems in the Italian asylum system amount to "systemic deficiencies" or not. In other cases courts have stopped short of discussing these basic questions and have stopped transfers on individual grounds (e.g. lack of adequate medical treatment for a rare disease in the Member State). Therefore, Greece remains the only country to which transfers are generally suspended.

4. Admissibility procedure

General (scope, criteria, time limits)

It has been noted that the wording of German legislation is not in line with Article 25 of the Asylum Procedures Directive:[67] According to section 27a of the German Asylum Procedures Act, applications are rejected as "inadmissible" ("*unzulässig*") if another state is found to be responsible for processing the application based on European Community legislation or based on an international treaty. In practice, this provision is only applied in the context of the Dublin regulation, while the Asylum Procedures Directive does not refer to "responsibility of another state for processing the application" as a possible reason for the inadmissibility of applications.

Apart from the "Dublin procedure", no other procedure is explicitly designated as an admissibility procedure under German law.[68] However, German legislation contains the notion that an application is "to be disregarded" (*unbeachtlich*, sometimes also translated as "unfounded" or "irrelevant"; section 29 of the Asylum Procedures Act) if the return to "another third country" (*sonstiger Drittstaat*) is possible. The notion of "another third country" may refer to any country which is not defined a "safe third country" under German law.[69]

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67 Reinhard Marx. *AsylVfG – Kommentar zum Asylverfahrensgesetz (Asylum Procedures Act – Commentary),* 7th edition, 2009, p. 699.

68 UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice*, 2010, p. 272.

69 "Safe third countries" are all member states of the European Union plus Norway and Switzerland, (Section

The Federal Administrative Court holds that this provision transposes Articles 25 and 26 of the Asylum Procedures Directive[70] although the wording of the German law is quite different from the Asylum Procedures Directive's concept of inadmissibility: To start with, Section 29 of the Asylum Procedures Act only applies where "it is obvious" that an applicant has already been safe from political persecution in "another third country".

Furthermore, the provision contains some important restrictions: For an application "to be disregarded" it has to be possible to return the applicant to the third country or to another country where they are safe from political persecution. If it is not possible to return applicants within three months, the asylum procedure has to be continued in Germany.[71]

The available statistics provide no information as to the number of cases in which recourse has been made to section 29 of the Asylum Procedures Act. The provision has not been addressed by courts in recent years and practitioners report that they are not aware of respective cases. However, if the authorities find that an applicant has been to "another safe country", this may be held against the applicant in the regular procedure and also lead automatically to a rejection of the asylum status as defined in the German constitution.[72] It is still possible, though, that applicants are granted refugee status in such cases. In conclusion, it can be noted that section 29 of the Asylum Procedures Act is of little practical relevance in Germany.

Appeal

Indicators:

- Does the law provide for an appeal against the decision in the admissibility procedure:
  ☒ Yes ☐ No
  - if yes, is the appeal ☒ judicial ☐ administrative
  - If yes, is it suspensive? ☐ Yes ☒ No

The appeal procedure in cases of "inadmissible" applications (i.e. "Dublin cases") has been described in the above section.

The appeal procedure in cases of applications which are found "to be disregarded" ("*unbeachtlich*") is identical to the procedure in "manifestly unfounded" cases: Appeals have to be submitted to the court within one week (seven calendar days) together with a request to the court to restore suspensive effect. The latter request has to be substantiated.

26a Asylum Procedures Act and addendum to Asylum Procedures Act).

70 Federal Administrative Court, decision of 4 September 2012 – 10 C 13.11 – par. 16; asyl.net, M20082.

71 Section 29(2) of the Asylum Procedures Act.

72 Section 27 of the Asylum Procedures Act.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the admissibility procedure? ☒ Yes ☐ No
  - If yes, is the personal interview limited to questions relating to nationality, identity and travel route? ☐ Yes ☒ No
  - If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
- Are interviews ever conducted through video conferencing? ☐ Frequently ☒ Rarely ☐ Never

The examination of whether an application may be considered as "to be disregarded" is part of the regular procedure; therefore the same standards are applied. Since the provision is hardly employed in practice, it is not known whether any special proceedings take place in practice (e.g. the omission of interviews). Procedural directives of the Federal Office for Migration and Refugees (as far as they are publicly available) do not contain any instructions on possible special proceedings in these cases.

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the admissibility procedure in practice? ☐ Yes ☐ not always/with difficulty ☒ No
- Do asylum seekers have access to free legal assistance in the appeal procedure against an admissibility decision? ☐ Yes ☒ not always/with difficulty ☐ No

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

The appeal procedure in cases of applications which are found "to be disregarded" ("unbeachtlich") is identical to the procedure in "manifestly unfounded" cases. It is (theoretically) possible to apply for legal aid for the appeal procedure. However, because of time constraints and because many of these cases are likely to fail the "merits test", it would be highly unusual for legal aid to be granted. Since the number of respective cases is very low, it is not possible to rate the chances of success for legal aid applications in these procedures.

5. Border procedure (border and transit zones)

General (scope, time-limits)

Indicators:

- Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
- Are there any substantiated reports of refoulement at the border (based on NGO reports, media, testimonies, etc)? ☒ Yes ☐ No
- Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☐ No

There is no special procedure at land borders: If asylum seekers are apprehended at the border (defined as a strip of 30 kilometres at land borders and a strip of 50 kilometres at sea borders)[73] without the necessary documents, they are denied entry and the border police may initiate a "removal" to the neighbouring country (*Zurückschiebung*).[74] If an immediate removal to the neighbouring country can be executed those migrants are not necessarily given the opportunity to apply for asylum. However, due to a change of practice which took effect at the end of June 2013, the border police has to refer asylum applications to the Federal Office if they arrest asylum seekers who have already crossed the border. Until June 2013 a directive from the Federal Ministry of the Interior had stipulated that neither the border police nor any other authority had to register asylum-applications in such "cases of apprehension" ("Aufgriffsfälle"). This directive was revoked in 2013 in the light of the new "Dublin III" Regulation and because of changes in German legislation.[75] Accordingly, asylum seekers by now should not be sent back to neighbouring countries without their applications having been registered.[76] In these cases asylum seekers have to be referred to the competent authority, i.e. the Federal Office for Migration and Refugees, and they have access to the regular asylum procedure. It is not clear, though, whether the new practice is actually applied in all cases: Even if migrants have crossed the border, they have not necessarily entered the territory in terms of the law and it is possible that a removal to the neighbouring state (Zurückweisung) is still carried out at this point. In such cases asylum applications may not be accepted and referred to the Federal Office.

Airport procedure: The "procedure in case of entry by air" is legally defined as an "asylum procedure that shall be conducted prior to the decision on entry" to the territory.[77] Accordingly, it can only be carried out if the asylum seekers can be accommodated on the airport premises during the procedure (with the sole exception that an asylum seeker has to be sent to hospital and therefore cannot be accommodated on the airport premises) and if a branch office of the Federal Office for Migration and Refugees (Federal Office) is assigned to the border checkpoint. The necessary facilities exist in the airports of Berlin (Schönefeld), Düsseldorf, Frankfurt/Main, Hamburg and Munich. Significant numbers of procedures only took place at the airports of Frankfurt/Main (initiation of 569 procedures in 2014 and 841 procedures in 2013) and Düsseldorf (initiation of 69 procedures in 2014 and 115 procedures in 2013).[78]

The airport procedure usually applies to applicants who do not have valid documents upon arrival at the airport, but it may also apply to applicants who ask for asylum at the border authorities in the transit area and to those who come from a "safe country of origin".[79]

Potential outcomes of airport procedures are as follows:

a The Federal Office decides within two calendar days that the application is "manifestly

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73 Federal Office for Migration and Refugees. The Organisation of Asylum and Migration Policies in Germany, Research Study I/2008 in the framework of the European Migration Network (EMN), p. 20.

74 Section 57 of the Residence Act.

75 Federal Government of Germany, Response to an information request by Josef Winkler, member of parliament, No. 8/102 (August 2013), 19th August 2013. Cf. also Dominik Bender and Maria Bethke. "'Dublin III', Eilrechtsschutz und das Comeback der Drittstaatenregelung." ('Dublin III', interim measures protection and the comeback of the safe- third-country-provision), ASYLMAGAZIN 11/2013, pp. 364-365.

76 In the past this was regularly the case due to the legal assumption that asylum seekers who had passed through a "safe third country" were generally not entitled to asylum.

77 Section 18a Asylum Procedures Act.

78 Federal Government of Germany. Response to information request by the parliamentary group of "The Left" party/"Die Linke", 28th January 2015, No. 18/3850, p. 52, and Federal Government of Germany, Response to information request by the parliamentary group of "The Left" party/Die Linke, 5th March 2014, No. 18/705, p. 29. Cf. Flüchtlingsrat Brandenburg et al. Gemeinsame Stellungnahme gegen die Inhaftierung von Asylsuchenden auf dem neuen Großflughafen BER Willy Brandt und gegen die Durchführung von Asyl-Schnellverfahren, Januar 2012: The reason why airport procedures are not carried out more often at the other airports is because authorities may decide upon an applicant's arrival that an airport procedure cannot be carried out for practical reasons (e.g. non-availability of decision-makers or of translators). In such cases entry to the territory and to the regular asylum procedure is granted immediately.

79 By definition of the law, all EU member states are "safe countries of origin". In addition, Ghana and Senegal are defined as "safe countries of origin" in an addendum to the Asylum Procedures Act.

unfounded": Entry to the territory is denied. A copy of the decision is sent to the competent administrative court.[80] The applicant may ask the court for an interim measure against deportation within three calendar days.

a. In theory, the Federal Office can decide within the two calendar days that the application is successful or it can reject the application as "unfounded" (unqualified rejection): In these cases, entry to the territory and, if necessary, access to the legal remedies of the regular procedure would have to be granted. However, this option seems to be irrelevant in practice since the Federal Office always grants entry to the territory for the asylum procedure to be carried out in a regular procedure (see c.) if an application is not rejected as manifestly unfounded.
b. The Federal Office declares within the first two calendar days following the application that it will not be able to decide upon the application at short notice: Entry to the territory and access to the regular procedure are granted.
c. The Federal Office has not taken a decision within two calendar days following the application: Entry to the territory (and to the regular procedure) is granted.

In practice, the third option is the most common outcome: in 2014 539 out of 643 and in 2013 899 out of 972 potential airport procedures were halted because the Federal Office notified the border police that no decision would be taken within the time-frame required by law (2013, 899 out of 972; 2012: 720 out of 787). Only in 56 cases a decision was taken within the two-day period, all of which were rejections classified as "manifestly unfounded".[81] This implies that in practice only applications are dealt with in the airport procedure which the authorities have already "earmarked" as "manifestly unfounded".

During the airport procedure the substance of an application has to be examined in full by the Federal Office. However, NGOs have repeatedly criticised the quality of airport procedures as deficient. In 2009 the NGO Pro Asyl (the network of refugee councils) published an analysis of the airport procedure. The study came to the conclusion that the airport procedure was "structurally flawed" and that quality control of decisions was severely lacking.[82] The report highlighted the cases of two Eritrean asylum seekers who were deported following a rejection of their asylum applications as "manifestly unfounded" in an airport procedure at Frankfurt/Main in December 2007, in spite of their claims that they were facing prosecution in Eritrea for deserting the army. They were arrested upon return to Eritrea in May 2008. The Frankfurt Administrative Court obliged the authorities to grant refugee status to both asylum seekers after their deportation. The Eritreans finally managed to return to Germany in 2010.[83]

In April 2013 several NGOs reported that an Indian national, Devender Pal Singh Bhullar, was at risk of imminent execution in India for the alleged involvement in a bomb attack in 2013. After his asylum application had been rejected during an airport procedure in 1994 he was deported to India and arrested by the Indian authorities shortly after his return. When the Indian Supreme Court finally upheld the death penalty in April 2013 he had spent more than 18 years in prison. According to a statement by Amnesty International Devender Pal Singh Bhullar's trial had fallen far short of international standards. Pro Asyl reported that an administrative court in Germany had overruled the decision from the airport procedure two years after the deportation had taken place.[84]

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80 Section 18a II through IV of the Asylum Procedures Act.

81 Federal Government of Germany. Response to information request by the parliamentary group of "The Left" party/"Die Linke", 28th January 2015, No. 18/3850, p. 52, and Federal Office for Migration and Refugees, Das Bundesamt in Zahlen 2013 – Asyl (The Federal Office in numbers 2013 – Asylum matters). February 2014, p. 36.

82 Ines Welge. Hastig, unfair, mangelhaft. Untersuchungen zum Flughafenverfahren gem. § 18a AsylVfG. Edited by Pro Asyl, April 2009, p. viii.

83 Pro Asyl. Nach Abschiebung aus Frankfurt knapp dem Tod entkommen (*After deportation from Frankfurt barrily escaped death*). Press release, 9 September 2010.

84 Amnesty International, India: Government urged to stop all executions as new concerns emerge. Public Statement, 17 April 2013; Pro Asyl. Nach rechtswidriger Abschiebung aus Deutschland: Davinder Pal Singh Bhullar in Lebensgefahr (*After illegal deportation from Germany: Davinder Pal Singh Bhullar's life is in jeopardy*). Press release, 17 April 2013.

Appeal

Indicators:

- Does the law provide for an appeal against a decision taken in a border procedure? ☒ Yes ☐ No
  - if yes, is the appeal ☒ judicial ☐ administrative
  - If yes, is it suspensive? ☐ Yes ☒ No (not automatically)

"Manifestly unfounded" decisions are generally subject to restrictions in legal remedy, but in the airport procedure the law has placed even stricter time-frames on the procedure: Thus, if an application is rejected as "manifestly unfounded" in the airport procedure, a request for an interim measure must be filed with an administrative court within three calendar days. The necessary application to the court can be submitted at the border authorities.[85]

The administrative court shall decide upon the application for an interim measure in a written procedure, i.e. without an oral hearing of the applicant.[86] The denial of entry - including possible measures to enforce a deportation - is suspended as long as the request for an interim measure is pending at an administrative court. If the court does not decide on this request within 14 calendar days, the asylum seeker has to be granted entry to the territory.[87]

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in a border procedure? ☒ Yes ☐ No
  - If yes, is the personal interview limited to questions relating to nationality, identity and travel route? ☐ Yes ☒ No
  - If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
- Are personal interviews ever conducted through video conferencing? ☐ Yes ☒ No

In the airport procedure, the border police may conduct a preliminary interview which includes questions on the travel route and on the reasons for leaving the country of origin. However, the relevant interview is carried out by the Federal Office for Migration and Refugees with the presence of an interpreter. The standards for this interview are identical to those described in the context of the regular procedure. It has been noted that discrepancies between the information gathered by the border police and statements made during the interview in the asylum procedure are sometimes used to cast doubt on the applicant's credibility.[88]

85 Section 18a IV of the Asylum Procedures Act.
86 Section 18a IV of the Asylum Procedures Act.
87 Section 18a VI of the Asylum Procedures Act.
88 UNHCR, Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice, 2010, p. 63.

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the border procedure in practice? ☒ Yes ☐ not always/with difficulty ☐ No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under a border procedure? ☐ Yes ☒ not always/with difficulty ☐ No

The airport procedure is the only procedure in Germany in which asylum seekers are entitled to free legal assistance. This requirement does not have a basis in legislation but results from a decision of the Federal Constitutional Court.[89] According to this decision, assistance can be provided by any available person or institution sufficiently qualified in asylum law. In practice, the association of lawyers of the airport's region coordinates a consultation service with fully qualified lawyers. If an applicant wants to speak to a lawyer, the border police contacts one of the lawyers named by the association of lawyers as soon as a formal denial of entry is issued, which includes the rejection of the asylum application. Consultation with the lawyer is free of charge for the applicant as far as it concerns the possibilities of legal remedy. The lawyer may also assist with the drafting of the request to the administrative court.[90] Any other actions undertaken by the lawyer are not included in the free assistance. In particular, representation before the court is not part of this free legal assistance.

In the appeal procedure following an airport procedure, the preconditions for legal assistance are identical to those of the regular procedure.

6. Accelerated procedures

General (scope, grounds for accelerated procedures, time limits)

At the authorities' level, the only accelerated procedure in Germany with a basis in law is the airport procedure. Apart from that, the Federal Office for Migration and Refugees (Federal Office) prioritises certain caseloads[91] and tries to "accelerate procedures" for certain caseloads through other administrative measures. This is illustrated by the Federal Office's prioritisation of processing applications of asylum seekers from Serbia, Macedonia and other "Western Balkan" states between October and December 2012, reducing the average length of procedures to seven days at the end of 2012. In 2013, applications from Syrian nationals and again those from citizens of the Western Balkan states were prioritised.[92] In 2014, prioritisation was extended to applications from the following countries or groups: Syria, Serbia, Macedonia, Bosnia-Herzegovina and ethnic minorities from Iraq (Christians, Yazidi, Mandaeans).[93]

In addition, accelerated procedures were introduced on the administrative level in November 2014 for cases in which refugee status is likely to be granted. This applies to Syrian nationals and for members

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

90 *Ibid*.

91 For instance, applications submitted by persons in detention or applications considered to be manifestly unfounded; UNHCR. Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice, 2010, p. 232.

92 Federal Government of Germany, *Response to information request by the parliamentary group of "The Left" party/Die Linke*, 5th March 2014, No. 18/705, p. 37.

93 Federal Government of Germany. Response to information request by the parliamentary group of "The Left" party/"Die Linke", 28th January 2015, No. 18/3850, p. 63.

of ethnic minorities (Christians and Yazidi) from Iraq. If they agree to take part in an accelerated procedure, applicants from these groups can now be granted refugee status on the basis of a questionnaire. This means that the interview is omitted if the authorities decide to grant refugee status. If further questions arise, a "normal" interview has to be carried out, i.e. applications may not be rejected on the basis of the questionnaire. The aim is to finish the asylum procedure within eleven days for people whose application is likely to be successful.

Appeal

Indicators:

- Does the law provide for an appeal against a decision taken in an accelerated procedure? Not applicable

Not applicable, since there is no accelerated procedure except in the case of the airport procedure (see section on border procedures).

However, there is an "acceleration" of procedures at appeal stage with regard to "manifestly unfounded" and "inadmissible" asylum claims. This has its legal basis in the Asylum Procedures Act. Appeals against the rejection of an asylum application as "manifestly unfounded" do not have suspensive effect. According to sections 34a and 36 of the Asylum Procedures Act, a request to restore suspensive effect has to be submitted within seven calendar days. The court shall decide upon this request without hearing the applicant (section 36 III Asylum Procedures Act). The court is obliged to decide within one week, after the initial time-limit for lodging an application has passed, i.e. within two weeks after the decision has been handed out to the applicant. The court can extend this time-limit for one week; any further extensions are only admissible in exceptional circumstances, such as an "unusually heavy court caseload".

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in an accelerated procedure? Not applicable

Not applicable, since there is no accelerated procedure according to the law except in the case of the airport procedure (see section on border procedures for further information). The examination of whether an application may be considered as "manifestly unfounded" is part of the regular procedure, therefore the same standards apply (see regular procedure – personal interview).

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in accelerated procedures in practice? ☐ Yes ☐ not always/with difficulty ☒ No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under an accelerated procedure? ☐ Yes ☒ not always/with difficulty ☐ No

In case of a rejection of an asylum application as "manifestly unfounded" or "inadmissible" it is possible to apply for legal aid under the same conditions as described for the regular procedure under "legal assistance". However, because of time constraints and because many of these cases are likely to fail the "merits test", it is unusual for legal aid to be granted in these cases.

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

Indicators:

- Is sufficient information provided to asylum seekers on the procedures in practice?
  ☐ Yes ☒ not always/with difficulty ☐ No
- Is sufficient information provided to asylum seekers on their rights and obligations in practice?
  ☐ Yes ☒ not always/with difficulty ☐ No
- Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ not always/with difficulty ☐ No
- Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ not always/with difficulty ☐ No
- Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice?
  ☐ Yes ☒ not always/with difficulty ☐ No

According to section 24 I of the Asylum Procedure Act, the Federal Office for Migration and Refugees (Federal Office)

"... shall inform the foreigner in a language he can reasonably be supposed to understand about the course of the procedure and about his rights and duties, especially concerning deadlines and the consequences of missing a deadline."

Various other sections of the Asylum Procedure Act also contain obligations for the authorities to inform asylum seekers on certain aspects of the procedure. Accordingly, asylum seekers receive various information sheets upon lodging their application,[94] including the following:

- an information sheet on the rights and duties during the procedure and on the proceedings in general ("*Belehrung nach § 10 AsylVfG und allgemeine Verfahrenshinweise*", available in around 60 languages);[95]
- an instruction on the consequences of a withdrawal or (final) rejection of an application;
- an instruction on the obligation to comply immediately with a referral to the initial reception centre; and
- an instruction on the obligation to comply with a decision to be referred to another reception centre, including the obligation to register with the authorities in case of such a referral.
- a general leaflet on the Dublin procedure or a special leaflet on the Dublin procedure for unaccompanied minors as prescribed by the recast Dublin regulation.[96]

In addition, a personal interview as foreseen in Art. 5 of the Dublin III regulation has to be conducted. This interview shall contribute to a correct understanding of the written information leaflet.[97]

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

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94 Federal Office for Migration and Refugees. *DA-Asyl (Dienstanweisung Asylverfahren) – Belehrungen* (internal directives of the Federal Office for Migration and Refugees, parts of these directive, as at 4 March 2010, were made publicly available by the NGO .

95 European Agency for Fundamental Rights. *Country Factsheet Germany*, 2010. p. 2.

96 Federal Office for Migration and Refugees. *Entscheiderbrief (Newsletter for decision-makers)*, 9/2013, p. 3.

97 *Ibid*.

In addition, asylum seekers are orally informed about "the significance and the proceedings of the interview" and they are instructed about their rights and obligations at the beginning of the interview.[98]

It has been a long-standing criticism of lawyers and NGOs that both the written instructions and the oral briefings provided by the Federal Office are "rather abstract and standardized".[99] In particular, they are not considered suitable to render the significance and content of questions during interviews sufficiently understandable to applicants.

Access to NGOs is highly dependent on the place of residence. In some reception centres welfare organisations or refugee councils have regular office hours or where located close to the centres asylum seekers can easily access the offices of such organisations. However, access to such services is not systematically ensured.

Following an initial period of up to three months in a reception centre, asylum seekers are referred to accommodation centres or apartments in other places of residence. Some of these accommodation centres are located in remote areas without proper access by means of public transport. If the place of residence is located far away from the next town, travel costs to get there may also pose a serious problem in practice. Accordingly, access to NGOs can be severely restricted under such circumstances.

Until the end of December 2014, the so-called "residence obligation" ("Residenzpflicht'") posed a legal obstacle for many asylum seekers who wanted to contact an NGO or lawyer. In general, asylum seekers were only allowed to leave the town or district to which they had been referred if there were "compelling reasons" to leave the area, and they had to apply for official permission in each case. However, the "residence obligation" has been largely removed both for asylum seekers and for people with a "tolerated" stay.[100] The respective law was published in the Official Gazette on 31 December 2014. From 1 January 2015 onwards, this restriction will only apply for an initial three-month period after which it is removed. The "geographic restriction" can be re-imposed, however, if the person concerned has been convicted of a criminal offence or if deportation is imminent.[101]

D. Subsequent applications

Indicators:

- Is a removal order suspended during the examination of a first subsequent application?
  - At first instance ☐ Yes ☐ No ☒ Not systematically
  - At the appeal stage ☐ Yes ☐ No ☒ Not systematically
- Is a removal order suspended during the examination of a second, third, subsequent applications?
  - At first instance ☐ Yes ☐ No ☒ Not systematically
  - At the appeal stage ☐ Yes ☐ No ☒ Not systematically

98 Federal Office for Migration and Refugees. *Das deutsche Asylverfahren – ausführlich erklärt. Zuständigkeiten, Verfahren, Statistiken, Rechtsfolgen (The German asylum procedures – an elaborate explanation. Responsibilities, Procedures, Statistics, Consequences).* December 2012. p. 17.

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

100 A "toleration" (Duldung) is granted to foreigners who are not entitled to a residence permit and are obliged to leave the country, but whose deportation cannot be carried out for technical reasons (e.g. lack of necessary documents) or on humanitarian grounds.

101 Gesetz zur Verbesserung der Rechtsstellung von asylsuchenden und geduldeten Ausländern (Law on improvement of the legal status of asylum seeking and tolerated foreigners), Bundesgesetzblatt (Offical Gazette) I, no. 64, p. 2439; 31. December 2014.

The law defines any asylum claim as a subsequent application (*Folgeantrag*, also translated as "follow-up application") which is submitted after a previous application has been withdrawn or has been finally rejected.[102] In case of a subsequent application the Federal Office for Migration and Refugees (Federal Office) conducts a preliminary examination on the admissibility of the application. The admissibility test is determined by the requirements for resumption of procedures as listed in the Administrative Procedure Act.[103] According to this, a new asylum procedure is only initiated if

1. the material or legal situation basic to the decision has subsequently changed in favour of the applicant, or
2. new evidence is produced which would have resulted in a more favourable decision for the applicant in the earlier procedure, or
3. there are grounds for resumption of proceedings, for example because of serious errors in the earlier procedure.[104]

Further requirements are:

- The applicant was unable, without grave fault on his part, to present the grounds for resumption in earlier proceedings, particular by means of legal remedy.[105]
- The application must be made within three months after the applicant has learned of the grounds for resumption of proceedings.[106]

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

The legal status of applicants pending the decision on the admissibility of their subsequent application is not expressly regulated by law. It is generally assumed, though, that a deportation has to be suspended until the Federal Office has taken a decision on the commencement of a new asylum procedure. Accordingly, the stay of applicants is to be "tolerated" (*geduldet*) until this decision has been rendered.[107] However, a deportation may proceed from the very moment that the Federal Office informs the responsible Foreigner's Authority that a new asylum procedure will not be initiated. If an enforceable deportation order already exists, a new deportation order or other notification is not required to enforce deportation.[108] The applicant may also be detained pending deportation until it is decided that a subsequent asylum procedure is carried out.[109]

The decision on admissibility of a subsequent application can be carried out without hearing the applicant.[110] This means that the Federal Office has full discretion in deciding whether to conduct an interview or not at this stage. Therefore it is often recommended that subsequent applications, which generally have to be submitted in person, should be accompanied with a detailed written motivation.

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102 Section 71 of the Asylum Procedure Act.

103 Section 51 I-III, Administrative Procedure Act (*Verwaltungsverfahrensgesetz*).

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

105 Section 51 II of the Administrative Procedure Act.

106 Section 51 III of the Administrative Procedure Act.

107 Kerstin Müller, AsylVfG § 71, par. 44, in Hofmann/Hoffmann, eds., *HK-AuslR (Handkommentar Ausländerrecht),* 2008, p. 1830.

108 Section 71 V of the Asylum Procedure Act.

109 Section 71 VIII of the Asylum Procedure Act.

110 Section 71 III, third sentence, of the Asylum Procedure Act.

If the Federal Office decides not to carry out a subsequent procedure, this decision can be appealed before an administrative court. In most cases it is also necessary to request an interim measure from the court in order to suspend deportation.

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

In contrast, if the Federal Office decides to carry out a new procedure, this will be in the form of a "regular procedure"[111] and the applicant regains the status of asylum seeker, including access to reception conditions and including the other rights and obligations connected with this status.
Rates of successful subsequent applications were comparably high in 2012 with 25.6 % of applicants being granted constitutional asylum status, refugee status or another form of protection. This was mainly due to the change of situation in Syria, which resulted in 97.6 % of subsequent applications from Syrian nationals being fully or partially successful. In 2013 the rate of successful subsequent applications dropped significantly. This corresponds with a sharp decrease in decisions on subsequent applications from Syrian nationals:

Decisions on subsequent applications for selected countries of origin, 2014[112]

Country of origin	*Decisions taken on subsequent applications*	*Decision not to carry out a subsequent procedure*	*Rejection of application in subsequent procedure*	*Granting of refugee status or other form of protection in subsequent procedure*	*Formal decisions[113]*
Serbia	8,050	8,878 (73.0%)	1,494 (18.6%)	5 (0.1%)	673 (8.4%)
Macedonia	2,938	1,692 (57.6%)	871 (29.6%)	9 (0.3%)	366 (12.5%)
Syria	1,676	305 (18.2%)	9 (0.5%)	1301 (77.6%)	61 (3.6%)
Russian Fed.	1,010	151 (15.0%)	45 (4.5%)	74 (7.3%)	740 (73.3%)
Iraq	741	44 (5.9%)	21 (2.8%)	642 (86.6%)	34 (4.6%)
All Countries	20,721	11,096 (53.5%)	3,468 (16.7%)	3,012 (14.5%)	3,145 (15.2%)

111 Reinhard Marx, § 71, par. 132–133, *AsylVfG – Kommentar zum Asylverfahrensgesetz (Asylum Procedures Act - Commentary),* 7th ed., 2009, p. 1252,

112 Source: Federal Office for Migration and Refugees. Asylgeschäftsstatistik für den Monat Dezember 2013 und das Berichtsjahr 2013 (Statistics on Asylum matters for the month of December 2013 and the annual report for 2013), January 2014, p. 6.

113 "Formal decisions" relate to cases which are closed without an examination of the asylum claim's substance, e.g. because it is found that Germany is not responsible for the procedure or because an asylum seeker withdraws the application (both formally or implicitly, i.e. by "absconding" or by leaving Germany).

Decisions on subsequent applications for selected countries of origin, 2013[114]

Country of origin	*Decisions taken on subsequent applications*	*Decision not to carry out a subsequent procedure*	*Rejection of application in subsequent procedure*	*Granting of refugee status or other form of protection in subsequent procedure*	*Formal decisions[115]*
Serbia	4,679	4,093 (87.5%)	371 (7.9%)	9 (0.2%)	206 (4.4%)
Macedonia	2,420	1,876 (77.5%)	354 (14.7%)	3 (0.1%)	187 (7.7%)
Kosovo	729	540 (74.1%)	60 (8.3%)	11 (1.5%)	118 (16.2%)
Syria	667	133 (19.9%)	15 (2.2%)	511 (76.6%)	8 (1.2%)
Iran	298	105 (35.2%)	17 (5.7%)	173 (58.1%)	3 (1.0%)
All Countries	12,989	9,572 (73.7%)	1,078 (8.3%)	1,313 (10.1%)	1,026 (7.9%)

Decisions on subsequent applications for selected countries of origin, 2012[116]

Country of origin	*Decisions taken on subsequent applications*	*Decision not to carry out a subsequent procedure*	*Rejection of application in subsequent procedure*	*Granting of refugee status or other form of protection in subsequent procedure*	*Formal decisions[117]*
Serbia	4,457	3,626 (81.4%)	516 (11.6%)	9 (0.2%)	306 (6.9%)
Syria	2,294	29 (1.3%)	10 (0.4%)	2,237 (97.6%)	18 (0.8%)
Macedonia	2,176	1,576 (72.4%)	437 (20.1%)	4 (0.2%)	159 (7.3%)
Kosovo	637	531 (83.4%)	37 (5.8%)	21 (3.3%)	48 (7.5%)
Iran	366	131 (35.8%)	28 (7.7%)	200 (54.6%)	7 (1.9%)
All Countries	13.163	7.734 (58.8%)	1,269 (9.6%)	3,362 (25.6%)	798 (6.1%)

114 Source: Federal Office for Migration and Refugees. *Asylgeschäftsstatistik für den Monat Dezember 2013 und das Berichtsjahr 2013 (Statistics on Asylum matters for the month of December 2013 and the annual report for 2013)*, January 2014, p. 6.

115 "Formal decisions" relate to cases which are closed without an examination of the asylum claim's substance, e.g. because it is found that Germany is not responsible for the procedure or because an asylum seeker withdraws the application (both formally or implicitly, i.e. by "absconding" or by leaving Germany).

116 Source: Federal Office for Migration and Refugees. *Asylgeschäftsstatistik für den Monat Dezember 2012 und das Berichtsjahr 2012 (Statistics on Asylum matters for the month of December 2012 and the annual report for 2012)*, January 2013, p. 6.

117 "Formal decisions" relate to cases which are closed without an examination of the asylum claim's substance, e.g. because it is found that Germany is not responsible for the procedure or because an asylum seeker withdraws the application (both formally or implicitly, i.e. by "absconding" or by leaving Germany).

E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

1. Special Procedural guarantees

Indicators:

- Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☒ No
- Are there special procedural arrangements/guarantees for vulnerable people?
  ☒ Yes ☐ No ☐ Yes, but only for some categories

There is no requirement in law or another mechanism in place to systematically identify vulnerable persons in the asylum procedure (with the exception of unaccompanied children). All asylum seekers undergo a medical examination, which usually takes place shortly after the registration of the asylum application in the initial reception centre. However, this examination is focussed on the detection of communicable diseases and it does not include a screening for potential vulnerabilities. Sometimes medical personnel or other staff members working in the reception centres inform the Federal Office for Migration and Refugees (Federal Office) if they recognise symptoms of trauma, but there is no systematic procedure in place ensuring that such information is passed on. Only the federal states of Berlin and Brandenburg have introduced pilot schemes for the identification of vulnerable groups: In Berlin both authorities and NGOs which function as first contact points for asylum seekers receive written information on how vulnerable groups can be identified (*Berliner Modell für die frühzeitige Identifizierung besonders schutzbedürftiger Flüchtlinge*/Berlin pilot scheme for early identification of particularly vulnerable refugees).[118] If staff members stationed at the first contact point have grounds to assume that an asylum seeker could belong to a vulnerable group they should send them to a specialised institution.

The Federal Office's guidelines stipulate that the following cases shall be handled in a particularly sensitive manner and, if necessary, by specially-trained decision-makers:[119]

- unaccompanied children,
- victims of gender-specific prosecution, and
- victims of torture and traumatised asylum seekers.

If it becomes evident during the interview that an asylum seeker belongs to one of these groups, the officer conducting the interview is obliged to consult a “special officer” (*Sonderbeauftragter*). A note has to be added to the file on how the officers are planning to proceed, particularly if the special officer takes over the case as a result of this consultation. According to the Federal Office, there are about 80 such “special officers” (*Sonderbeauftragte*) for unaccompanied children, around 40 for traumatised persons and victims of torture and around 40 for victims of gender-specific persecution. They have been deployed in all of the Federal Office's branch offices.120 Lawyers have reported that the introduction of the “special officers” has led to some improvement in the handling of “sensitive” cases, but there were also examples of cases in which indications of trauma and even explicit references to torture did not lead to “special officers” being consulted.
The lack of a systematic identification procedure for vulnerable persons also pertains to the “prioritized” caseloads (in 2013: Western Balkan states and Syria).

Guarantees for unaccompanied children are identical in prioritized and non-prioritized cases.

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118 A short project description is available .

119 Federal Office for Migration and Refugees. *DA-Asyl (Dienstanweisung Asylverfahren) – Belehrungen,* 2010, p. 139.

120 Federal Office for Migration and Refugees. *Das deutsche Asylverfahren – ausführlich erklärt. Zuständigkeiten, Verfahren, Statistiken, Rechtsfolgen.* December 2012, p. 23

2. Use of medical reports

Indicators:

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
  ☒ Yes ☐ Yes, but not in all cases ☐ No
- Are medical reports taken into account when assessing the credibility of the applicant's statements?
  ☒ Yes ☐ No

Legislation does not explicitly refer to the use of medical reports in asylum procedures. The Federal Office for Migration and Refugees (Federal Office) is generally obliged to clarify the facts of the case and to compile the necessary evidence.[121] As a general rule, an applicant is not expected to provide written evidence, but is only obliged to hand over to the authorities those certificates and documents which is already in his possession and which is necessary "to substantiate his claim or which are relevant for the decisions and measures to be taken under asylum and foreigners law, including the decision and enforcement of possible deportation to another country".[122] This is not only relevant with regard to past persecution, but also with a view to the future since the German asylum procedure includes an examination of "serious concrete risks" to life and limb which an applicant might face upon return.[123] Such a risk may also consist in a potential serious harm on health grounds or in a risk which might result from a lack of appropriate health care in the country of origin.

The guidelines of the Federal Office distinguish between these two categories: While a detailed (oral) submission is generally deemed sufficient to substantiate a claim of past persecution, an applicant can be asked to present medical reports to substantiate a claim of possible "serious concrete risk" upon return.[124]

Hence there is no provision or practice ruling out the possibility that medical reports are submitted by the applicant or on the initiative of authorities. There have been frequent debates, though, on the standards which medical reports have to fulfil in order to be accepted by authorities or courts, particularly in cases of alleged Post Traumatic Stress Disorders. The Federal Administrative Court found in 2007 that a medical expertise attesting a Post-Traumatic Stress Disorder has to adhere to certain minimum standards but does not necessarily have to meet all requirements of an expertise based on the criteria of the International Classification of Diseases (ICD-10). Accordingly, if a medical report complies with minimum standards, it must not simply be disregarded by authorities or courts, but they have to seek further opinions if doubts remain on the validity of the report submitted.[125] In spite of this the quality of medical reports on Post-Traumatic Stress Disorder remains a controversial issue, regardless of whether such reports are submitted by the applicants or whether they have been commissioned by authorities or courts.[126] Furthermore, it is often extremely difficult for asylum seekers to get access to an appropriate therapy because of a lack of specialised therapists or because authorities reject applications to take over the costs for therapy (including costs for interpreters).[127] In such cases, it may also prove highly difficult to find experts to submit a medical opinion.

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121 Section 24 I of the Asylum Procedure Act.

122 Section 15 III of the Asylum Procedure Act.

123 Section 60 VII first sentence of the Residence Act.

124 Federal Office for Migration and Refugees. *DA-Asyl (Dienstanweisung Asylverfahren) – Darlegungslast,* 2010, p. 237.

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

126 Melanie Glocker, Hans Wolfgang Gierlichs, Friedemann Pfäfflin, "*Zur Qualität von Gerichtsgutachten in aufenthaltsrechtlichen Verfahren" (The Quality of Psychiatric Court Reports on Asylum Seekers*). *Recht und Psychiatrie* 2012 (30), p. 67.

127 (*Psycho-social Centre for refugees Dusseldorf*) is a centre providing consultation and therapy to traumatised refugees.

3. Age assessment and legal representation of unaccompanied children

Indicators:

- Does the law provide for an identification mechanism for unaccompanied children?
  ☐ Yes ☒ No
- Does the law provide for the appointment of a representative to all unaccompanied children?
  ☒ Yes ☐ No

In general, unaccompanied children who are not immediately refused entry or returned after having entered Germany illegally, are taken into care of the youth welfare office (*Jugendamt*) in the municipality in which they have had the first contact with authorities or in which they have been apprehended. To be taken into care involves the appointment of a guardian and the placing into accommodation in a suitable institution or other adequate accommodation.

However, the Federal Association for Unaccompanied Refugee Minors has noted that the procedure for taking unaccompanied children into care is not enforced consistently.[128] The Association estimates that as many as 25 per cent of unaccompanied children are not taken into care. One of the main reasons is that the legal situation is inconsistent as far as unaccompanied children aged between 16 and 18 years are concerned: While the Youth Welfare Act (*Jugendhilfegesetz*) stipulates that any person under the age of 18 has to be perceived as a child, the Asylum Procedure Act states that persons from the age of 16 have the capacity "to perform procedural acts" on their own behalf in asylum procedures.[129] As a result, many children aged between 16 and 18 are treated as adults. Moreover, children may be treated as adults because of questionable age assessments.[130]

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

Age assessments can be carried out both by the youth welfare office or - for example in cases of apprehension at the border - by the federal police. In the majority of cases age assessment is based on the physical appearance and on an interview with the child. In some Federal States medical age assessments are carried out which usually consist in an attempt at determining the "bone age". This involves an x-ray (sometimes also an x-ray computed tomography (CT) or a Magnetic Resonance Tomography (MRT)) of bones. In addition, other characteristics may be examined, such as the appearance of the genitals and of pubic hair. The methods used for age assessment have been strongly criticized for failing to meet international standards.[131]

The role of the guardian in the asylum procedure has been described as "unclear".[132] Often, guardians appointed by the youth welfare offices are not in a position to sufficiently support the children in the

128 Bundesfachverband, *Unbegleitete Minderjährige Flüchtlinge (Federal Association for Unaccompanied Refugee Minors). Supplementary Report on the third and fourth periodic reports of Germany to the United Nations pursuant to Art. 44 of the UN Convention of the Rights of the Child*. 2013, p. 10.

129 Section 12 of the Asylum Procedure Act.

130 Bundesfachverband, *Unbegleitete Minderjährige Flüchtlinge (Federal Association for Unaccompanied Refugee Minors*). *Supplementary Report on the third and fourth periodic reports of Germany to the United Nations pursuant to Art. 44 of the UN Convention of the Rights of the Child.* 2013, p. 10 and p. 27.

131 *Ibid*., p. 15-16.

132 *Ibid*., p. 30.

asylum procedure, because of overburdening or because they have no specific knowledge of asylum laws. Only in the Federal State of Hessen/Hesse guardians can ask a court to appoint a legal representative if they are not sufficiently competent to represent the unaccompanied children in the asylum procedure. In other federal states, attempts to establish a similar practice have not been successful.[133]

F. The safe country concepts (if applicable)

Indicators:

- Does national legislation allow for the use of safe country of origin concept in the asylum procedure? ☒ Yes ☐ No
- Does national legislation allow for the use of safe third country concept in the asylum procedure? ☒ Yes ☐ No
- Does national legislation allow for the use of first country of asylum concept in the asylum procedure? ☒ Yes ☐ No
- Is there a list of safe countries of origin? ☒ Yes ☐ No
- Is the safe country of origin concept used in practice? ☒ Yes ☐ No
- Is the safe third country concept used in practice? ☒ Yes ☐ No

Both the safe third country concept and the safe country of origin concept are incorporated in the German constitution (*Grundgesetz*) and further defined in the Asylum Procedures Act.[134]

Safe third country:[135] By definition of the law, all Member States of the European Union are safe third countries. In addition, a list of further safe third countries can be drawn up. In those countries the application of the 1951 Refugee Convention and of the European Convention on Human Rights has to be "ensured". The list is an addendum to the Asylum Procedure Act and has to be adopted by both chambers of the German Parliament. The Federal Government is entitled to remove a country from that list if changes in its legal or political situation "give reason to believe" that the requirements for a safe third country are not met any longer. At present, the list of further safe third countries consists of Norway and Switzerland.

From its wording, the safe third country concept only applies to the German (constitutional) asylum, but the Federal Constitutional Court found in a landmark decision in 1996 that its scope extends to refugee protection and to other forms of protection as well.[136] Accordingly, asylum seekers can be sent back to safe third countries with neither an asylum application, nor an application for international or national protection being considered. Today the safe third country concept has its main impact at land borders:[137] Border police shall refuse entry if a foreigner, who has entered from a safe third country, requests asylum at the border. Furthermore, border police shall immediately initiate removal to a safe third country if an asylum seeker is apprehended at the border without the necessary documents.[138] Asylum applications may not be accepted or referred to the responsible authority by the border police if entry to the territory is denied, unless it turns out that Germany is responsible for processing the asylum procedure based on EU law, e.g. because Germany has issued a visa.

133 *Ibid*., p. 27-28.
134 Article 16a II and III of the Basic Law.
135 Section 26a of the Asylum Procedure Act.
136 Federal Constitutional Court, decision of 14th May 1996 – 2 BvR 1938/93, 2 BvR 2315/93 –, BVerfGE 94, 49 (189).
137 Section 18 of the Asylum Procedure Act.
138 The border area is defined as a strip of 30 kilometres.

Safe country of origin:[139] Member states of the European Union are by definition considered to be safe countries of origin.[140] Furthermore, the constitution defines countries as safe

> *"...in which, on the basis of their laws, enforcement practices and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists*".[141]

The list of safe countries of origin is an addendum to the law and has to be adopted by both chambers of the parliament. If the situation in a safe country of origin changes and it can no longer be considered to be safe within the meaning of the law, the Federal Government may issue a decree to remove this country from the list for a period of six months.

Applications of asylum seekers from safe countries of origin shall be considered as manifestly unfounded, unless the applicant presents facts or evidence which justify the conclusion that they might be persecuted in spite of the general situation in the country of origin. Although this is not required by law, applications from safe countries of origin are prioritised by the Federal Office for Migration and Refugees.[142]

At present, the list of safe countries consists of Ghana, Senegal, Serbia, Macedonia and Bosnia-Herzegovina.[143] Statistics for 2012 show that notwithstanding the safe country of origin concept, some applicants from those countries did receive some form of protection. Actually, protection rates for applicants from Ghana and Senegal were higher than for applicants from many other countries which are not on the list of safe countries of origin: Protection rates were 2.1 per cent in the case of Ghana (5 out of 238 decisions made) and 5.9 per cent for Senegal (2 out of 36 decisions).[144] Since Serbia, Macedonia and Bosnia-Herzegovina have been added to the list recently (in November 2014), it is too early to assess the impact of this measure on protection rates for asylum seekers from these countries. The number of applications from EU countries has almost been insignificant in recent years.[145]

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139 Section 29a of the Asylum Procedure Act.

140 Section 29a II of the Asylum Procedure Act.

141 Article 16a III of the Basic Law.

142 UNHCR. *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice. Detailed Research on Key Asylum Procedures Directive Provisions.* March 2010. p. 339.

143 Serbia, Macedonia and Bosnia-Herzegovina were added to the list on 6 November 2014 with the entering into force of a new law: *Gesetz zur Einstufung weiterer Staaten als sichere Herkunftsstaaten und zur Erleichterung des Arbeitsmarktzugangs für Asylbewerber und geduldete Ausländer (Law on classification of further states as safe countries of origin and on the facilitation of access to the labour market for asylum seekers and tolerated foreigners)*, Bundesgesetzblatt (Official Gazette) I, No. 49, 5 November 2014, p. 1649.

144 Margret Müller, *Asylentscheidungen 2012 (Asylum decisions 2012*). Detailed statistics compiled from figures of the Federal Office for Migration and Refugees. Flüchtlingsrat Coesfeld, 2013.

145 Federal Office for Migration and Refugees. *Das Bundesamt in Zahlen 2012 – Asyl (The Federal Office in numbers 2012)*, 2013, p. 10.

G. Treatment of specific nationalities

Apart from the "safe country of origin" provision, there is no basis in law to treat applications from certain countries of origin differently from other applications. However, the Federal Office for Migration and Refugees prioritizes the processing of applications from specific nationals: In the second half of 2012 an "absolute direct procedure" ("*Absolutes Direktverfahren*") was introduced for asylum seekers from "Western Balkan" states, i.e. Serbia, Macedonia, Montenegro, Albania, Bosnia and Herzegovina. This special procedure did not have a basis in law but consisted of a series of administrative measures such as shifting of personnel to certain caseloads and target-setting for decision-makers. The aim was to conduct the interview on the day that the application was registered or within two days after the application. The decision was supposed to be made and handed out within one week.[146]

The prioritisation of applications from the "Western Balkan" countries led to an increase in the backlog for applications from other countries.[147]

The average length of asylum procedures of Serbian and Macedonian applicants slightly increased in 2013 (to 2.1 and 2.4 months respectively), so the target to decide upon these cases within one week could not be upheld in 2013. With regard to that year the government stated that applications from the Western Balkans (Albania, Bosnia and Herzegovina, Montenegro, Macedonia, Serbia) and from Syria were prioritized.[148] Nevertheless, the average length of procedures at first instance increased both for the prioritized and for other countries of origin.

The average period for deciding on asylum applications from Syrian nationals was at 4.6 months in 2013 and 4.2 months in 2014.[149]

The following numbers of applications from Syrian nationals have been recorded in the official statistics[150]:

	First applications	Subsequent applications
2011	2,634	802
2012	6,201	1,729
2013	11,851	1,012
2014	39,332	1,768

146 Federal Office for Migration and Refugees, *Entscheiderbrief (Newsletter for decision-makers),* 9/2012, p. 2

147 Federal Government of Germany: *Response to information request by the parliamentary group of "The Left" party/"Die Linke",* 31st January 2013, No. 17/12234, p. 25.

148 Federal Government of Germany. *Response to information request by the parliamentary group of "The Left" party/Die Linke*, 5th March 2014, No. 18/705, p. 37.

149 *Ibid*, p. 12, and Federal Government of Germany. Response to information request by the parliamentary group of "The Left" party/"Die Linke", 28th January 2015, No. 18/3850, p. 11.

150 Federal Office for Migration and Refugees, *Asylgeschäftsstatistik* (*official statistics on asylum*), December 2011, December 2012, December 2013 and December 2014/annual report 2014.

In the first instance (at the Federal Office for Migration and Refugees) the following recognition rates were recorded:[151]

	Decisions	(Constitutional) asylum or refugee status[152]	Other form of protection	Protection rate	Rejection	Formal decision[153]
2011 (decisions on first applications only)	816	283	17	36.8%	362	154
2012	7,801	1,987	5,480	95.7%	19	315
2013	9,235	2,907	5,795	94.2%	23	510
2014	26,703	20,597	3,352	89.6%	19	2,825

According to the German government, 1,654 appeal procedures from Syrian asylum seekers were pending before the courts in August 2013. Between January and August 2013 courts took decisions on 1,041 cases of Syrian nationals with the following results:[154]

Decisions (January to August 2013)	Protection (refugee status or other form of protection	Rejection of appeal	Case closed without decision (e.g. withdrawal of appeal)
1,041	342 (32.9 %)	143 (13.7 %)	556 (53.4 %)

Between January and October 2014 courts took decisions on 2,273 cases of Syrian nationals:[155]

Decisions (January to October 2014)	Protection (refugee status or other form of protection	Rejection of appeal	Case closed without decision (e.g. withdrawal of appeal)
2,273	925 (40.6 %)	114 (5 %)	1,234 (54.3 %)

The German Federal States and the Ministry of Interior have formally decided not to carry out deportations to Syria. Therefore most Syrian nationals whose asylum applications have been rejected or who have not applied for asylum are eligible for temporary residence permits. These might be based on regional regulations or on the legal assumption according to which it is impossible in fact and in law for Syrian nationals to leave Germany in the foreseeable future (Section 25 V of the Residence Act).

Accelerated procedures were introduced by the authorities in November 2014 for Syrian nationals and for members of ethnic minorities (Christians and Yazidi) from Iraq. If they agree to take part in the accelerated procedure, applicants from these groups can now be granted refugee status on the basis of

151 *Ibid*.

152 Whether an applicant is granted "asylum" (according to the German Constitution) and/or refugee status (according to the 1951 Convention) is dependent on differences in legal preconditions, but the status of both groups is identical, therefore their numbers can be summed up here.

153 "Formal decision" means that the case was closed without an examination of the merits of the case (e.g. Dublin decisions or withdrawal of application).

154 Federal Government. *Antwort auf die Kleine Anfrage der Fraktion DIE LINKE: Ergänzende Informationen zur Asylstatistik* (Response to information request by DIE LINKE parliamentary group: Supplementary information on asylum statistics), 18/127, 4 December 2013, p. 20

155 Federal Government of Germany. *Response to information request by the parliamentary group of "The Left" party/"Die Linke"*, 28th January 2015, No. 18/3850, p. 54.

a questionnaire. This means that the interview is omitted if the authorities decide to grant refugee status. If further questions arise, a "normal" interview has to be carried out and applications must not be rejected on the basis of the questionnaire.

Persons granted asylum status and/or refugee status initially receive a three-year residence permit. At the end of these three years the Federal Office for Migration and Refugees examines whether there are grounds for a possible withdrawal of the status (e.g. a change of the political situation in the country of origin). If no reasons for a withdrawal are ascertained, the temporary residence permit is converted into a permanent residence permit (*Niederlassungserlaubnis*).

Persons with asylum or refugee status have the same status as German citizens within the social insurance system. They have unrestricted access to the labour market, are entitled to social welfare and to integration assistance, including language courses.

Core family members (spouse or children) of persons with asylum or refugee status are automatically granted the same status if they are already in Germany. In addition, the requirements for family reunification are strongly relaxed if refugees apply for a residence permit for their family members within three months after they have received asylum or refugee status. In this case, core family members may join a refugee living in Germany even if requirements, which would otherwise be necessary for family reunification are not fulfilled (in particular, the requirements of sufficient living space and sufficient financial resources).

For Syrian refugees who have been staying in Germany for more than three months, 15 out of 16 Federal States have issued directives according to which they can apply to be reunited with family members under "relaxed" conditions (e.g. without a certificate for basic German language skills). However, most of these directives foresee that refugees living in Germany have to declare that they take over all the living costs for their relatives and that they pay for the health insurance for all family members. These requirements have proved impossible to fulfil in many cases. Accordingly, only 160 persons were granted leave to move to relatives living in Germany at the end of October 2013.[156]

Persons granted subsidiary protection status or another form of (national) protection receive a temporary residence permit (for at least one year, in most cases issued for two years). Temporary residence permits are usually extended and it is possible to convert a temporary residence permit into a permanent one after five years. Persons granted subsidiary protection or a similar status have to apply for a work permit (which is usually granted), while further restrictions have been removed in July 2013. Therefore they now have an almost unrestricted access to the labour market. They are also entitled to social benefits, although with some restrictions in comparison to German citizens. Family reunification is only possible under strict conditions for persons with subsidiary protection status. In particular, it is necessary to prove that sufficient living space and sufficient financial resources exist to support all family members in Germany. These requirements can only be met by few persons with subsidiary protection status.

[156] Save me Kampagne, *(Federal States' Regulations on family reunification of Syrian refugees)*, 02 December 2013.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators:

- Are asylum seekers entitled to material reception conditions according to national legislation :
  - During the accelerated procedure?
    ☐ Yes ☒ Yes, but limited to reduced material conditions ☐ No
  - During border procedures:
    ☐ Yes ☒ Yes, but limited to reduced material conditions ☐ No
  - During the regular procedure:
    ☐ Yes ☒ Yes, but limited to reduced material conditions ☐ No
  - During the appeal procedure (first appeal and onward appeal):
    ☐ Yes ☒ Yes, but limited to reduced material conditions ☐ No
  - In case of a subsequent application:
    ☐ Yes ☒ Yes, but limited to reduced material conditions ☐ No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? ☒ Yes ☐ No

Asylum seekers are entitled to reception conditions as defined in the Asylum Seekers' Benefits Act (*Asylbewerberleistungsgesetz)* from the moment their application has been registered and as long as they have the status of asylum seekers (*Aufenthaltsgestattung*). This usually includes the whole period of appeal procedures, but asylum seekers may also lose the status following the authorities' decision if the application has been rejected as "manifestly unfounded" or "inadmissible" and no emergency legal protection is granted. In spite of its title, the law applies not only to asylum seekers, but also to people with a "tolerated stay" (*Duldung*) and even to certain groups of people who have been granted a temporary residence permit.

The Asylum Seekers' Benefits Act has been substantially revised in November 2014 and the new provisions will take effect as of 1 March 2015.

In its present form the law states that asylum seekers and the other groups subject to this law are granted benefits which are significantly lower than "standard" social benefits, i.e. social benefits usually granted to German citizens or to foreigners with a secure residence status. The reduced benefits are granted for a maximum period of 48 months, after this period asylum seekers are entitled to social benefits as regulated in the Twelfth Book of the Social Code (*Sozialgesetzbuch*):[157] These standard social benefits consist of the basic social assistance and of possible "supplements in specific circumstances".

At present, asylum seekers are generally not entitled to the "benefits for jobseekers" even after the 48-month period of reduced assistance has expired. This means that they are excluded from funds which are designed to assist with integration into the labour market.

Assistance under the Asylum Seekers' Benefits Act generally consists of "basic benefits" (i.e. a fixed rate supposed to cover the costs for food, accommodation, heating, clothing, personal hygiene and consumer goods for the household, Section 3 of the Asylum Seekers' Benefits Act). Furthermore, the

[157] According to section 2 of the Asylum Seekers' Benefits Act the reduction of benefits may apply for more than 48 months (i.e. without any time-limit) to persons who have "abused the law to affect the duration of their stay". This refers mainly to persons who are legally obliged to leave the country but do not comply with requirements to clarify their identities or to obtain passports. Asylum seekers are generally not concerned by this provision, since their stay cannot be regarded as abusive of the law.

necessary “benefits in case of illness, pregnancy and birth” have to be provided for (Section 4 of the Asylum Seekers' Benefits Act). In addition, “other benefits“ can be granted in individual cases (upon application) if they are necessary to safeguard the means of existence or the state of health (Section 6 of the Asylum Seekers' Benefits Act).
If asylum seekers have income or capital at their disposal, they are legally required to use up these resources before they can receive benefits under the Asylum Seekers' Benefits Act.[158]

The Federal Constitutional Court decided on 18 July 2012 that the Asylum Seekers' Benefits Act was unconstitutional and asked the legislator to “immediately enact new provisions in the area of application of the Asylum Seekers' Benefits Act, which serve to secure a dignified minimum existence”.[159] Until February 2015 a transitional arrangement, as required by the Federal Constitutional Court, remains in force. This means that asylum seekers at present are entitled to benefits similar to “standard” social benefits.

The revisions to the Asylum Seekers' Benefits Act were eventually passed by both chambers of parliament in November 2014 and the new law was published in the Official Gazette on 10 December 2014. Its main provisions will enter into force on 1 March 2015.[160] The main changes are:

- Adjustment of standard rates to a level similar to the rates of the traditional arrangement, i.e. similar to “standard” social benefits (see AIDA report, section on “Forms and levels of material reception conditions” for details).
- Access to standard social benefits is usually granted after 15 months of receiving benefits under the Asylum Seekers' Benefits Act. This means that higher benefits are paid after 15 months and that restrictions which still exist in the Asylum Seekers' Benefits Act, in particular the limited access to health care, do not apply after that period.
- The benefits shall primarily be provided in cash. This is a reversal of the principle of the present Asylum Seeker's Benefits Act, according to which benefits had primarily to be provided as non-cash benefits

As a rule, asylum seekers receive both non-cash and cash financial benefits only in the town or district to which they have been sent. Accordingly, they will not be entitled to benefits in other parts of Germany, unless they get a permission by the authorities to move to another place.

2. Forms and levels of material reception conditions

Indicator:

- Amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2014 (per month, in original currency and in euros): (minimum) 80 € – 137 €, (maximum) 210 € – 354 €

The benefits as regulated in the Asylum Seekers' Benefits Act until 2012 were considerably lower than social allowances granted to German citizens or to foreigners with a secure residence status. For example, a single adult person was entitled to 224.97 €, but 184.07 € out of this allowance was

158 Section 7 of the Asylum Seekers' Benefits Act.
159 Federal Constitutional Court, decision of 18 July 2012 – 1 BvL 10/10, 1 BvL 2/11 - asyl.net, M19839; for details cf. next question.
160 The text of the law and background material (texts of various bills, protocols from the debates and expert opinions) have been compiled by the Berlin refugee council at http://www.fluechtlingsinfo-berlin.de/fr/asylblg/BverfG-AsylbLG-Novelle-2014.html.

designated for basic needs and could be provided in kind. The allowance paid out in cash (and sometimes in vouchers) was 40.90 € (20.45 € for children under 15 years).

The Federal Constitutional Court declared the Asylum Seekers' Benefits Act as unconstitutional in July 2012, particularly on the grounds that the benefits paid out in cash were incompatible with the fundamental right to a minimum existence. The court considered the benefits to be insufficient because they had not been changed since 1993 and they had not been calculated in a comprehensible manner in the first place.[161] A transitional arrangement as required by the Federal Constitutional Court, in force until February 2015, entitles asylum seekers to benefits similar to "standard" social benefits. As a result, the allowance which has to be paid out in cash has been raised considerably:

***Basic allowances for asylum seekers 2013**:*[162]

	Single person	**Spouse**	**Member of household > 18 ys.**	**Member of household 14-17 ys.**	**Member of household 6-13 ys.**	**Member of household < 6 ys**
Allowance for basic needs[163]	217 €	195 €	173 €	193 €	154 €	130 €
Allowance in cash	137 €	123 €	110 €	81 €	88 €	80 €
Total	**354 €**	**318 €**	**283 €**	**274 €**	**242 €**	**210 €**

The revisions to the Asylum Seekers' Benefits Act were eventually passed by both chambers of parliament in November 2014 and the new law was published in the Official Gazette on 10 December 2014. From March 2015 onwards allowances will be similar to the ones provided for under the transitional arrangement:

Allowances for asylum seekers from 1 March 2015 onwards:

	Single adult person	**Adult partners in common household (each)**	**Member of household > 18 ys.**	**Member of household 14-17 ys.**	**Member of household 6-13 ys.**	**Member of household < 6 ys**
In case of stay in accommodation centre	143 €	129 €	113 €	85 €	92 €	84 €
In case of stay outside accommodation centre	216 €	194 €	174 €	198 €	157 €	133 €

According to the law, asylum seekers who are accommodated in reception or accommodation centres generally have to be provided with the necessary means of food, heating, clothing and sanitary products

161 Federal Constitutional Court, decision of 18 July 2012 – 1 BvL 10/10, 1 BvL 2/11 - asyl.net, M19839. Cf. press release of the Federal Constitutional Court.

162 Georg Classen, *(Guideline Asylum Seekers' Benefits Act)*, May 2013.

163 This part of the allowance is reduced or omitted to the extent that basic needs (food, clothes, energy, furniture and other household goods, bedding, towels, toiletries) are provided in kind, particularly in the initial reception centres and in other accommodation centres.

in these centres. Therefore the rates for these groups are considerably lower than they are for asylum seekers living in apartments of their own. For those living outside the accommodation centres, the costs for accommodation (rent), heating and household goods have to be provided on top of the allowances as referred to in the table.

3. Types of accommodation

Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals): N/A
- Type of accommodation most frequently used in a regular procedure :
  ☒ Reception centre ☐ Hotel/hostel ☐ Emergency shelter ☐ private housing ☐ other
- Type of accommodation most frequently used in an accelerated procedure :
  ☒ Reception centre ☐ Hotel/hostel ☐ Emergency shelter ☐ private housing ☐ other
- Number of places in private accommodation: N/A
- Number of reception centres: N/A
- Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☒ Yes ☐ No
- What is, if available, the average length of stay of asylum seekers in the reception centres? N/A
- Are unaccompanied children ever accommodated with adults in practice? ☒ Yes ☐ No

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

1. For a period of up to three months after their asylum applications have been filed, asylum seekers are obliged to stay in an **initial reception centre** (**Aufnahmeeinrichtung**, Section 47 Asylum Procedures Act). The Federal States are required to establish and maintain the reception centres. Accordingly, there is at least one such centre in each of Germany's 16 Federal States (at least 21 altogether[164], the Federal states of Bavaria, Lower Saxony and Northrhine-Westphalia have two to four reception facilities). Branch offices of the Federal Office for Migration and Refugees are located either on the premises of the reception centres or in proximity to the centres.

2. Once the obligation to stay in the initial reception centre ends, asylum seekers should, "as a rule", be accommodated in **"collective accommodation" centres** (Gemeinschaftsunterkünfte, Section 53 Asylum Procedures Act). These accommodation centres are usually located within the same Federal State. Asylum seekers are obliged to stay in the municipality to which they have been allocated for the whole duration of their procedure, i.e. including appeal proceedings. The Federal States are entitled by law to organise the distribution and the accommodation of asylum seekers within their territories.[165] In many cases, states have referred responsibility for accommodation to municipalities. The responsible authorities can decide at their discretion whether the management of the centres is carried out by the local governments themselves or whether this task is transferred to NGOs or to facility management companies.

3. **Decentralised accommodation** (apartments): For many municipalities the establishment and maintenance of collective accommodation has often not proven efficient, in particular against the

164 This is the number of reception centres to which a branch office of the Federal Office of Migration and Refugees has been allocated (as at December 2013). The number of facilities which are used for the purposes of initial reception is higher since some Federal States temporarily have used more than one centre for the initial reception period or they have used centres both as initial reception centres and for the follow-up accommodation.

165 Section 10 of the Asylum Seekers' Benefits Act.

background of decreasing numbers of asylum applications from the mid 1990s onwards, and especially between 2002 and 2007. Accordingly, many collective accommodation centres were closed during that period and municipalities increasingly turned to accommodating asylum seekers in apartments.

For the year 2012, the German Federal Statistical Office records the following numbers for accommodation of "recipients' of benefits under the Asylum Seeker's Benefits Act". It has to be noted that this law applies not only to asylum seekers, but also to people with a "tolerated stay" (*Duldung*) and even to certain groups of people who have been granted a temporary residence permit. Among these groups there are many people who have been staying in Germany for several years and therefore are more likely to live in decentralised accommodation than asylum seekers whose application is still pending.

Accommodation of recipients of Asylum Seekers' Benefits (includes both asylum seekers and people with "tolerated" stay) in 2012 for selected Federal States:[166]

State/Region	*Number of Recipients of Asylum Seekers' Benefits*	*Type of accommodation*		
		Initial Reception Centres (Aufnahmeeinrichtung)	*Collective accommodation (Gemeinschaftsunterkunft)*	*Decentralised accommodation (dezentrale Unterbringung)*
Baden-Wuerttemberg	15,046	805	8,950	5,291
Bavaria	15,939	1,390	9,627	4,922
Berlin	13,621	983	4,482	8,156
Lower Saxony	16,607	740	2,434	13,433
North Rhine-Westphalia	44,849	10,493	15,298	19,058
Germany (total)	**165,244**	**19,485**	**64,643**	**81,116**

Although the Asylum Procedures Act stipulates that asylum seekers "should, as a rule, be housed in collective accommodation" (following the initial reception period, Section 53 Asylum Procedures Act), the figures show that policies vary considerably between the Federal States:[167] In some states, most asylum seekers are indeed living in this type of accommodation. In contrast, there are other Federal States in which the majority of recipients of asylum seekers' benefits are staying in so-called "decentralised accommodation", so usually in apartments of their own[168]. This result is surprising since only the Federal State of Berlin has officially adopted a policy according to which asylum seekers shall generally be accommodated in apartments.[169]

Unaccompanied children should be taken into care of a youth welfare office and the youth welfare office has to seek "adequate accommodation".[170] This is often provided in specialised "clearing houses" or

166 Source: Statistisches Bundesamt, (table Benefits for Asylum Seekers 2012, Recipients for Federal States/for type of accommodation.

167 An analysis of these figures cannot be conclusive since it is complicated by apparent inconsistencies in the statistics. For example, it is unlikely that at a given date more than 10,000 asylum seekers were staying in the initial reception centres of the Federal State of North Rhine-Westphalia. Apparently, other types of state-run accommodation were included in this figure as well.

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

169 For an overview of accommodation policies in the Federal States (as at the beginning of 2011), cf. Die Landesflüchtlingsräte und Pro Asyl (eds.). *AusgeLagert, Zur Unterbringung von Flüchtlingen in Deutschland, ("DeCamped, on accommodation of refugees in Germany")*, Sonderheft der Flüchtlingsräte (Special issue of refugee councils' newsletters), 2011, pp. 54-70.

170 Section 42 I first sentence of the Eighth Book of the Social Code.

other youth welfare facilities, but there are also examples of special accommodation centres, which have only been established for unaccompanied children and which have been strongly criticised for being inadequate to meet the special needs of this group.[171] Furthermore, because of some inconsistencies in legislation, the procedure for taking unaccompanied children into care is not observed thoroughly. According to estimates of the *Bundesfachverband Unbegleitete Minderjährige* (Federal Association for Unaccompanied Refugee Minors), as many as 25 per cent of all unaccompanied children are not taken into care and do not regularly receive benefits and services from the youth welfare office.[172] Unaccompanied children who are not taken into care are thus housed in the "regular" reception or accommodation centres and they receive the same benefits as adults.

There is no legal obligation to provide separated facilities or separate wings for families, single women or other vulnerable groups. In practice, several reception facilities have tried to introduce a policy to house families and single women in separate wings. However, it has often not been possible to consistently carry out this policy, especially in cases of overcrowded facilities.

4. Conditions in reception facilities

i) Situation in initial reception centres

For the first stages of the asylum procedure, the main form of accommodation for asylum seekers is housing in reception centres and in collective accommodation. For a period of up to three months following the filing of the asylum application there is a strict obligation to stay in an initial reception centre. There are 21 of these centres throughout Germany[173] and responsibility for the establishment and maintenance lies with the Federal States. There is no common standard for these centres, but Federal States have laid down standards to varying degrees in regional legislation (State Reception Act/Landesaufnahmegesetz) and in regulations and directives.[174] Where no standards for the accommodation of asylum seekers exist, the Federal States often take recourse to other regulations, such as general "sanitation plans" as they exist for other forms of communal accommodation (e.g. residential homes or homeless shelters).

171 Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (Federal Association for *Unaccompanied Refugee Minors*). "Bayerns Ignoranz bei der Unterbringung unbegleiteter minderjähriger Flüchtlinge provoziert geradezu weitere Eskalationen" („*Bavaria's ignorance in relation to accommodation of underaged and unaccompanied refugees lead to increased escalations*"), press release of 6 March 2013.

172 Bundesfachverband *Unbegleitete Minderjährige Flüchtlinge (Federal Association for Unaccompanied Refugee Minors). Supplementary Report on the third and fourth periodic reports of Germany to the United Nations pursuant to Art. 44 of the UN Convention of the Rights of the Child*. 2013, p. 27.

173 This is the number of reception centres to which a branch office of the Federal Office of Migration and Refugees has been allocated (as at December 2013). The number of facilities which are used for the purposes of initial reception is higher than 21 since some Federal States use more than one centre for the initial reception period or they have used centres both as initial reception centres and as (follow-up) accommodation centres. For instance, the Federal State of North Rhine-Westphalia has established two reception centres in Bielefeld and Dortmund – with branch offices of the Federal Office for Migration and Refugees - plus at least two additional "central accommodation centres". In 2013 the number of these additional centres was temporarily raised to five facilities, due to the rise in numbers of asylum seekers in that year. Cf. Press release of the Ministry of the Interior for the state of North Rhine-Westphalia of 18 January 2013, "Weitere Aufnahmeeinrichtung des Landes für Asylsuchende" ("Another state-run accommodation centre for asylum seekers").

174 A survey carried out by Informationsverbund Asyl und Migration in February 2011 (unpublished) showed that regional legislation (called State Reception Acts or Refugee Reception Acts) existed in 14 out of 16 Federal States. However, most of these laws deal with administrative issues, such as the responsibilities of municipal administrative levels and the financing of centres, but do not define the standards for accommodation. At the time of the survey, at least some common standards were determined by administrative regulations in 12 out of 16 states.

Initial reception centres have at least several hundred places. Many of these centres use former army barracks which have been refurbished.[175] Locations vary significantly: While some of the initial reception centres are situated in or close to big cities (e.g. Berlin, Munich, Brunswick/Braunschweig. Bielefeld, Dortmund, Karlsruhe), others are located in smaller cities (Eisenhüttenstadt, Neumünster, Halberstadt) or in small towns with some distance to the next city (Eisenberg near Jena, Lebach near Saarbrücken). One initial reception centre (Nostorf-Horst in the state of Mecklenburg-Vorpommern) is located in an isolated rural area some 10 km away from the next small town.

As far as regulations on accommodation standards in the initial reception centres exist, these show considerable variety in terms of the required living space and equipment: The "Refugee Reception Act" of Baden-Württemberg stipulates that asylum seekers should have 4.5 m² of living space, other regulations provide for 6 or 7 m² per person.[176] A typical room in an initial reception centre has between two and four beds, there are chairs and a table and each resident has a locker for herself or himself. Size of rooms may vary, but rooms with a single bed are highly exceptional.

With the number of asylum seekers rising significantly since 2012, overcrowding has been reported with regard to several initial reception centres throughout Germany. With numbers of asylum seekers rising in 2014, overcrowding continued to be a serious problem throughout the year both in the initial reception centres and on the regional and local levels. In some centres, mobile units (housing containers) were used for temporary housing. In other reception centres distribution of applicants to other accommodation in the same Federal State was accelerated, the duration of stay for newly arrived asylum seekers was limited to a period of a few days to make room for new arrivals. This in turn led to a higher demand for places in follow-up accommodation and decentralised housing. The rise in numbers of asylum applications thus proved to be a challenge both for the Federal States' centres and for many municipalities since accommodation capacities had been significantly reduced in reaction to a fall in numbers of asylum seekers between 1992 and 2007. Federal States and municipalities responded to the rise in numbers in 2012 and 2013 by increasingly commissioning non-state actors (welfare organisations as well as companies) with accommodation of asylum seekers. In addition, housing containers and individual apartments were increasingly used.[177]

Most initial reception centres also have a policy to accommodate single women and families in separate buildings or separate wings of their buildings, but in situations of overcrowding this policy could not be put into practice in most of the facilities in recent years.

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

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

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175 Some general remarks on the situation in the initial reception centres, unless indicated otherwise, are based on impressions from several initial reception centres which the author of this report visited in 2012 and 2013.

176 Cf. overview of the regulations of seven Federal States in Andreas Müller: *The Organisation of Reception Facilities for Asylum Seekers in Germany.* Focussed Study of the German National Contact Point for the European Migration Network (EMN), Working Paper 55, p. 26.

177 *ibid*., pp. 29-31.

Asylum seekers may leave the premises of the initial reception centres at any time, but in many centres they have to report to security personnel upon leaving and re-entering. In general, they can travel freely within the town and district in which the reception centre is located, but in most Federal States they need a special permission to travel to other parts of the state or to other parts of Germany.

ii) Situation in collective accommodation centres (Gemeinschaftsunterkünfte) and in decentralised housing

Following the initial reception period, asylum seekers are supposed to be sent to another collective accommodation centre (Gemeinschaftsunterkunft) within the same Federal State. However, responsibility for housing at this stage of the procedure often lies with the municipalities and many different forms of accommodation have been established: On the local level, accommodation may still consist of collective housing in former army barracks, in (formerly empty) apartment blocks or in housing containers. At the same time, many municipalities have dissolved collective accommodation centres from the 1990s onwards and are now permitting asylum seekers to rent an apartment on the housing market or in council housing. Policies regarding accommodation are not necessarily consistent within Federal States. For instance, a report of the NGO Pro Asyl of March 2011 referred to the example of the Federal State of Hesse/Hessen. In this state the quota of asylum seekers living in apartments ranged from 21 % in one municipality to 95 % in another.[178]

Because different policies are pursued on regional and local level, it is impossible to make general statements on the standards of living in the follow-up accommodation facilities. In the years before 2011 many collective accommodation centres were closed, often because they did not prove to be cost-effective any longer against the background of lower numbers of asylum seekers.[179] However, in 2012 and 2013, the responsible authorities had to deal with a rising demand for follow-up accommodation because of a significant rise in numbers of asylum seekers. In response, municipalities and Federal States increasingly commissioned non-state actors (welfare organisations as well as companies) with collective accommodation of asylum seekers. In addition, housing containers and individual apartments were increasingly used.[180] Nonetheless, reports of overcrowding of facilities have become commonplace.[181] Overcrowding of accommodation centres and the lack of apartments for asylum seekers continued to be serious problems in 2014.

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

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

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178 Pro Asyl and Interkultureller Rat in Deutschland (eds.), *Menschen wie Menschen behandeln! (Treat humans like humans!).* March 2011, pp. 7-8.

179 Die Landesflüchtlingsräte und Pro Asyl (eds.). *AusgeLagert, Zur Unterbringung von Flüchtlingen in Deutschland, (“DeCamped, on accommodation of refugees in Germany”)*, Sonderheft der Flüchtlingsräte, (Special Issue of refugee councils' newsletters), 2011, p. 20.

180 Ibid., pp. 29-31.

181 Cf. for instance the compilation of news on the sitution in the Federal State of Baden-Wuerttemberg at Flüchtlingsrat Baden-Württemberg, *“Container und andere Module”* (*“Containers and other modules”*), http://fluechtlingsrat-bw.de/informationen-ansicht/container-und-andere-module.html.

critics) are most often criticised by refugee organisations and other NGOs. Some prominent issues are the following:[182]

- Duration of stay: For lack of a consistent policy, the duration of stay in collective accommodation centres is dependent on the place of residence and sometimes it seems to be a matter of pure coincidence whether asylum seekers are allowed to move out of collective accommodation or not. If asylum seekers stay in collective accommodation for the whole duration of their asylum procedures (as it is generally prescribed by law) this often takes several years since the obligation applies to appeal procedures as well. In addition, people whose asylum applications have been rejected, are often obliged to stay in collective accommodation centres as long as their stay is "tolerated". It has been argued that a stay in collective accommodation which lasts several years corresponds with increased health risks, especially an increased risk of mental disorders.
- In facilities in which food is provided, asylum seekers are sometimes not allowed to prepare their own food and/or no cooking facilities exist; especially where food is handed out in the form of prefabricated (packed) meals, quality is often criticised;
- Remote locations of some centres, lack of public transport,
- Fences surrounding premises, particularly of the bigger centres or of centres for which former industrial buildings or former army barracks are used; in some facilities asylum seekers have to report to staff upon leaving and upon return,
- In some centres visitors have to report to staff and there are only limited visiting hours; in some cases, no overnight stays are allowed for visitors (even spouses);
- Limited space and equipment for recreation (including for children),
- No separate and quiet space for children, for example to do their homework for school.

5. Reduction or withdrawal of reception conditions

Indicators:

- Does the legislation provide for the possibility to reduce material reception conditions?
  ☒ Yes ☐ No
- Does the legislation provide for the possibility to withdraw material reception conditions?
  ☐ Yes ☒ No

Material reception conditions can be reduced to the point that only "irredeemably necessary" benefits are granted if persons have entered Germany solely for the purpose of receiving "social benefits" or "if they have been responsible for the failure of removal procedures."[183]

In practice, this provision gives full discretion to the responsible aliens' authorities to reduce benefits, but only for the reasons mentioned here so reductions of benefits cannot be imposed for other reasons. Since "irredeemably necessary" benefits have to be granted in any case, reduction in this manner usually means that cash benefits are reduced or withdrawn, but persons concerned still have to be provided with accommodation, food and other basic necessities. It is possible to appeal a decision on reduction or withdrawal. In the light of the decision of the Federal Constitutional Court of July 2012 on the Asylum Seeker's Benefits Act several courts have decided that any reduction of benefits would be unconstitutional and therefore inadmissible.[184]

182 For an overview of concerns cf. Die Landesflüchtlingsräte und Pro Asyl (eds.). *AusgeLagert, Zur Unterbringung von Flüchtlingen in Deutschland, ("DeCamped, on accommodation of refugees in Germany")*, Sonderheft der Flüchtlingsräte, (Special Issue of refugee councils' newsletters), 2011, pp. 4-7.

183 Section 1a of the Asylum Seekers' Benefits Act.

184 Federal Constitutional Court, decision of 18 July 2012 – 1 BvL 10/10, 1 BvL 2/11 - asyl.net, M19839; A list of court decisions, available.

In any case, this provision generally does not affect asylum seekers as long as their procedure is ongoing (i.e. as long as they have the status of asylum seekers, Aufenthaltsgestattung). Benefits for asylum seekers in this situation cannot be reduced or withdrawn, since the legal preconditions for reductions of benefits only apply to people with a "tolerated stay" or to other people who are legally obliged to leave the country.

As a consequence, benefits of asylum seekers may only be reduced after they have lost the status according to the law. Furthermore, it is under dispute at the moment whether any reductions are admissible at all in the light of the decision of the Federal Constitutional Court of July 2012 (see preceding paragraph). If authorities reduce benefits in spite of this decision, this may still affect former asylum seekers whose application has been rejected as "manifestly unfounded" or "inadmissible" (e.g. in cases of Dublin decisions) and in whose cases no emergency legal protection has been granted. In such cases benefits can be restored to the standard level at a later stage, e.g. if a subsequent application leads to the opening of a new asylum procedure, or if it turns out that a deportation proves impossible for reasons which cannot be held against the foreign national.

In recent years reception conditions have been affected by overcrowding in many facilities, but apart from that no reductions of benefits have taken place because of the high number of new arrivals.

6. Access to reception centres by third parties

Indicator:

- Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
  ☐ Yes ☒ Yes, with limitations ☐ No

UNHCR is entitled by law to visit foreigners, including those in detention and in airport transit zones.[185] Any restriction of access to reception centres for UNHCR would therefore be considered illegal.

There is no general rule for other third parties. Access of other organisations or individuals to reception centres can be restricted by house rules issued by the owner of the premises or by the management of the facilities. For instance, visits can generally be restricted to daytime hours. There have also been (rare) cases where members of NGOs have been banned from entering premises of reception or accommodation centres.

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

7. Addressing special reception needs of vulnerable persons

Indicator:

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

Special needs should be taken into account as part of the admission procedure to the initial reception centres, and social workers or medical personnel in the reception centres can assist with applications

185 Section 9 of the Asylum Procedure Act.

for specific medical treatment. However, there is no systematic assessment procedure for vulnerable persons.

There is no legal obligation to provide separate facilities or separate wings for families, single women or other vulnerable groups. In practice, several reception facilities have tried to introduce a policy to house families and single women in separate wings. However, it has often not been possible to consistently carry out this policy, especially in cases of overcrowded facilities.

Unaccompanied children should be taken into care by a youth welfare office and the youth welfare office has to seek "adequate accommodation".[186] This is often provided in specialised "clearing houses" or other youth welfare facilities, but there are also examples of special accommodation centres which have only been established for unaccompanied children and which have been strongly criticised for being inadequate to meet the special needs of this group.[187] Furthermore, because of some inconsistencies in legislation, the procedure for taking unaccompanied children into care is not observed thoroughly. According to estimates of the Bundesfachverband Unbegleitete Minderjährige (Federal Association for Unaccompanied Refugee Children), as many as 25 per cent of all unaccompanied children are not taken into care and do not regularly receive benefits and services from the youth welfare office.[188] Unaccompanied children who are not taken into care are thus housed in "regular" reception or accommodation centres and they receive the same treatment as adults.

8. Provision of information

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

"Within 15 days of the filing of an asylum application, the reception centre shall inform the foreigner, if possible in writing and in a language which he can reasonably be assumed to understand, of his rights and duties under the Asylum Seekers Benefits Act. With the information referred to in the first sentence, the reception centre shall also inform the foreigner about who is able to provide legal counsel and which organizations can advise him on accommodation and medical care. "[189]

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

9. Freedom of movement

Until the end of the year 2014, freedom of movement of asylum seekers was restricted by the so-called "residence obligation" for asylum seekers (legally: "geographic restriction"). Section 56 of the Asylum Procedure Act stipulated that asylum seekers' residence permits (*Aufenthaltsgestattung*) should be limited to the town or district in which their place of accommodation was located. They had to apply for permission from the authorities whenever they wanted to travel to another region.

186 Section 42 I first sentence of the Eighth Book of the Social Code.

187 Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (Federal Association for *Unaccompanied Refugee Minors*). "Bayerns Ignoranz bei der Unterbringung unbegleiteter minderjähriger Flüchtlinge provoziert geradezu weitere Eskalationen" („*Bavaria's ignorance in relation to accommodation of underaged and unaccompanied refugees lead to increased escalations*"), press release of 6 March 2013.

188 Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (*Federal Association for Unaccompanied Refugee Minors*). *Supplementary Report on the third and fourth periodic reports of Germany to the United Nations pursuant to Art. 44 of the UN Convention of the Rights of the Child.* 2013, p. 27.

189 Section 47 IV of the Asylum Procedure Act.

According to a new law which was published on 31 December 2014 in the Official Gazette, the "residence obligation" has now been largely removed both for asylum seekers and for people with a "tolerated" stay.[190] From 1 January 2015 onwards, this restriction no longer applies after an initial three-month period. The "geographic restriction" can be re-imposed, however, if the person concerned has been convicted of a criminal offence or if deportation is imminent.[191]

As a rule, asylum seekers have no right to choose the place of residence. Instead, the place of residence for asylum seekers is usually determined by the general distribution systems according to which places for asylum seekers are at first allocated to the Federal States for the initial reception period and to the municipalities within the Federal States afterwards. It is possible to apply to the authorities to be allocated to a particular town or district, but such applications are only successful in highly exceptional cases (e.g. if a rare medical condition requires that an asylum seeker has to stay close to a particular hospital).

B. Employment and education

1. Access to the labour market

Indicators:

- Does the legislation allow for access to the labour market for asylum seekers? ☒ Yes ☐ No
- If applicable, what is the time limit after which asylum seekers can access the labour market: 3 months
- Are there restrictions to access employment in practice? ☒ Yes ☐ No

The time limit for access to the labour market has been reduced to three months in November 2014.[192] Before that, since 6 September 2013, asylum seekers were not allowed access to the labour market for a period of nine months.[193] Until–September 2013, the time limit had been one year, but the law was changed to transpose the recast Reception Conditions Directive.

Asylum seekers are not allowed to work on a self-employed basis for the whole duration of their asylum procedure, since the permission to pursue self-employment is dependent on a regular residence title, to which the asylum seeker's residence permit/*Aufenthaltsgestattung* does not belong.[194]

After the waiting period of three months has expired, access to the labour market is granted in principle, but with restrictions:

190 A "toleration" (Duldung) is granted to foreigners who are not entitled to a residence permit and are obliged to leave the country, but whose deportation cannot be carried out for technical reasons (e.g. lack of necessary documents) or on humanitarian grounds.

191 Gesetz zur Verbesserung der Rechtsstellung von asylsuchenden und geduldeten Ausländern (Law on improvement of the legal status of asylum seeking and tolerated foreigners), Bundesgesetzblatt (Offical Gazette) I, no. 64, p. 2439; 31. December 2014.

192 *Gesetz zur Einstufung weiterer Staaten als sichere Herkunftsstaaten und zur Erleichterung des Arbeitsmarktzugangs für Asylbewerber und geduldete Ausländer (Law on classification of further states as safe countries of origin and on the facilitation of access to the labour market for asylum seekers and tolerated foreigners)*, Bundesgesetzblatt (Official Gazette) I, No. 49, 5 November 2014, p. 1649.

193 Section 61 II of the Asylum Procedure Act.

194 Section 21 VI of the Residence Act.

- Asylum seekers have to apply for an employment permit. To this end, they have to prove that there is a “concrete” job offer, i.e. an employer has to declare that the asylum seeker will be employed in case the employment permit is granted, and they have to hand in a detailed job description to the authorities.
- For a period of 12 months following the asylum seekers' access to the labour market, the job centre has to carry out a “priority review”, i.e. an examination of whether there is another job-seeker who is suited for the offered position and who has a better status in terms of employment regulations, in particular German citizens or foreigners with a secure residence permit. Following a change in legislation in November 2014, the priority review is no longer applicable after a stay of 15 months (i.e. three months waiting period for access to the labour market plus 12 months).
- Furthermore, the job centre carries out a “review of labour conditions”, i.e. an examination of whether labour rights are adhered at the workplace and whether wages correspond to regional standards.

2. Access to education

Indicators:

- Does the legislation provide for access to education for asylum seeking children? ☒Yes ☐ No
- Are children able to access education in practice? ☒Yes ☐ No

As a matter of principle, the right and the obligation to attend school extends to all children who reside in Germany, regardless of their status. However, since the education system is within the responsibility of the Federal States, there are some important distinctions in laws and practices.

For example, compulsory education ends at the age of 16 in several Federal States, therefore children in those states do not have the right to enter schools when they are 16 or 17 years old. Furthermore, it has frequently been criticised that parts of the education system are insufficiently prepared to address the specific needs of newly arrived children. While there are “best practice” examples in some regions for the integration of refugee children into the education system, obstacles remain in other places, such as lack of access to language and literacy courses or to regular schools.[195]

Conditions for access to vocational training are identical to the conditions for access to the labour market in general. Therefore access to vocational training is severely restricted for asylum seekers, especially because of the “priority review”, according to which asylum seekers are able to access training only if no applicant with a better residential status has applied for that same spot. In addition, the fact that asylum seeker's residence permits are issued for a six-month-period frequently renders it impossible to enter vocational training at all. Training contracts usually have to be concluded for a duration of two or three years. Hence there is a considerable risk that a vocational training cannot be completed if the asylum application is rejected.

[195] Stefanie Studnitz, “Ausgrenzung statt Ausbildung”, Migration und Soziale Arbeit, 2/2011. Cf. also Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (Federal Association for Unaccompanied Refugee Minors). *Supplementary Report on the third and fourth periodic reports of Germany to the United Nations pursuant to Art. 44 of the UN Convention of the Rights of the Child.* 2013, p. 23.

C. Health care

Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?
  ☒ Yes ☐ No
- In practice, do asylum seekers have adequate access to health care?
  ☐ Yes ☒ Yes, with limitations ☐ No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice? ☒ Yes ☐ Yes, to a limited extent ☐ No

The law restricts health care for asylum seekers to instances "of acute diseases or pain", in which "necessary medical or dental treatment has to be provided including medication, bandages and other benefits necessary for convalescence, recovery, or alleviation of disease or necessary services addressing consequences of illnesses." The law further contains a special provision for pregnant women and for women who have recently given birth. They are entitled to "medical and nursing help and support", including midwife assistance. Furthermore, vaccination and "necessary preventive medical check-ups" shall be provided.[196]

In addition, the law states that further benefits can be granted "if they are indispensable in an individual case to secure health".[197]

The term "necessary treatment" within the meaning of the law has not conclusively been defined but is often taken to mean that only absolutely unavoidable medical care is provided. However, the wording of the law suggests that health care for asylum seekers must not be limited to "emergency care" since the law refers to acute diseases or pain as grounds for necessary treatment. Accordingly, it has been argued that a limitation of treatment to acute diseases is not in accordance with the law, since chronic diseases are equally likely to cause pain. This latter opinion has been upheld by courts in several cases.[198]

A common problem in practice is caused by the necessity to obtain a health insurance voucher (*Krankenschein*). These vouchers or certificates are usually handed out by medical personnel in the initial reception centres, but once asylum seekers have been referred to other forms of accommodation they usually have to apply for them at the social welfare office of their municipality. There have been reports that necessary treatment has been delayed or even denied by staff of social welfare offices, due to incompetence to decide on these matters.[199]

According to section 1a of the Asylum Seekers Benefits Act, reception conditions can be reduced if a foreigner has entered Germany "solely for the purpose of receiving social benefits" or "if they have been responsible for the failure of removal procedures".200 However, the law states that "irredeemably necessary" benefits have to be granted in these cases. Accordingly, at least "essential treatment" has to be provided for in these cases, and it has also been argued that treatment should be be on the same level as it is for other asylum seekers, especially if the need for medical treatment has been the result of an emergency which has not existed at the time of arrival in Germany.[201]

196 Section 4 of the Asylum Seekers' Benefits Act.
197 Section 6 of the Asylum Seekers' Benefits Act.
198 Georg Classen, *Krankenhilfe nach dem Asylbewerberleistungsgesetz (Medical assistance according to the Asylum Seekers'Benefits Act)*. Updated version, May 2012. p. 6-7.
199 *Ibid*., p. 7-8.
200 However, it should be noted that this provision generally only affects asylum seekers whose application has been (finally) rejected. Furthermore, the admissibility of this provision is now under dispute, cf. Chapter Access and forms of reception conditions, above.
201 Georg Classen, Krankenhilfe nach dem Asylbewerberleistungsgesetz (Medical assistance according to the Asylum Seekers' Benefits Act), updated version, May 2012. p. 3.

After 48 months of having received benefits under the Asylum Seekers Benefits Act, asylum seekers are entitled to social benefits as regulated in the Twelfth Book of the Social Code (*Sozialgesetzbuch*).[202] From 1 March 2015 onwards this time limit will be reduced to 15 months. Once people are entitled to the "standard" social benefits, this includes access to health care under the same conditions that apply to German citizens who receive social benefits.

Specialised treatment for traumatised asylum seekers and victims of torture can be provided by some specialised doctors and therapists and in several specialised institutions (Treatment Centres for Victims of Torture/*Behandlungszentren für Folteropfer*).[203] Since the number of places in the treatment centres is limited, access to therapies is not always guaranteed. The treatment centres often have to cover costs for therapies through donations or other funds since therapies are often only partially covered by the authorities, e.g. costs for interpreters are frequently not reimbursed. Large distances between asylum seekers' places of residence and treatment centres may also render an effective therapy impossible in practice.

202 However, the reduction of benefits may apply for more than 48 months (i.e. without any time-limit) to persons who have "abused the law to affect the duration of their stay". Cf. question 1 on reception condition.

203 A list of treatment centres is available.

Detention of Asylum Seekers

A. General

Indicators:

- Total number of asylum seekers detained in the previous year (including those detained in the course of the asylum procedure and those who applied for asylum from detention): N/A
- Number of asylum seekers detained or an estimation at the end of the previous year (specify if it is an estimation): N/A
- Number of detention centres: N/A
- Total capacity: N/A

Responsibility for detention, including detention pending deportation (Abschiebungshaft), lies with the Federal States. Available statistics on detention pending deportation do not contain information on the number of people who have applied for asylum while in detention.[204]

B. Grounds for detention

Indicators:

- In practice, are most asylum seekers detained
  - on the territory: ☐ Yes ☒ No
  - at the border: ☐ Yes ☒ No
- Are asylum seekers detained in practice during the Dublin procedure?
  ☐ Frequently ☒ Rarely ☐ Never
- Are asylum seekers detained during a regular procedure in practice?
  ☐ Frequently ☐ Rarely ☒ Never
- Are unaccompanied asylum-seeking children detained in practice?
  ☐ Frequently ☒ Rarely ☐ Never
- If frequently or rarely, are they only detained in border/transit zones? ☐ Yes ☒ No
- Are asylum-seeking children in families detained in practice? ☐ Frequently ☒ Rarely ☐ Never
- What is the maximum detention period set in the legislation (incl. extensions): 18 months for detention pending deportation, but there are different time limits in individual cases
- In practice, how long in average are asylum seekers detained? Not available

Asylum seekers are generally not detained as long as their application is not finally rejected and they have an asylum seeker's residence permit. In cases of applications, which have been rejected as inadmissible or manifestly unfounded, a deportation order may take effect regardless of legal remedy, unless a court grants an interim measure suspending such a deportation. However, if applicants are detained at this point, they do not have a legal status as asylum seekers, since the asylum seekers' residence permit (*Aufenthaltsgestattung*) ceases to be valid once a deportation order becomes enforceable.[205]

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204 Federal Government. "*Umsetzung der Abschiebungsrichtlinie der Europäischen Union und die Praxis der Abschiebungshaft" (Implementation of the EU guidelines on deportation and the practice of detention pending deportation*), *Response to information request by the parliamentary group of "The Left" party/"Die Linke", 5 September 2012, 17/10579.*

205 Section 67 of the Asylum Procedure Act.

Accordingly, within the meaning of German law, detention is only ordered once an asylum application has been finally rejected (with few exceptions as explained below), However, it has to be noted that in Dublin cases applications are rejected without an examination of the substance of the case and applicants are referred to another European state for the asylum procedure to be carried out there. In a more general sense detention of asylum seekers thus happens frequently in cases of asylum seekers whose application has been rejected on the grounds that another European state is responsible for the procedure. In 2013, 4741 people were transferred following a Dublin procedure, but 1370 of these had not applied for asylum in Germany.[206] Thus, about 3370 asylum seekers were transferred on the grounds of the Dublin regulation. In these cases transfers are usually preceded by detention, but this often is only for a very short period of time (i.e. police custody), since many people are transferred on the same day as they are arrested. Exact statistics on the duration of custody and/or detention are not available.

Furthermore, asylum seekers can be apprehended in the transit zone of the airport for a maximum period of 19 days in the course of the airport procedure. However, it has to be noted that this stay in the transit zone is not considered to constitute detention in terms of the law.[207]

Thus, in terms of law there is only one basis for the detention of asylum seekers whose application is still pending: This relates to asylum applications which are lodged by people who are already in detention, in particular those

- in pre-trial detention,
- in prison (following a conviction for a criminal or other offence), or
- in detention pending deportation (*Abschiebungsgewahrsam*): An asylum application lodged after a foreigner has been detained for the purpose of removal does not always lead to release from detention, but it is possible that detention is legally possible under certain circumstances. However, it has to be noted that detention pending deportation, ordered solely on the grounds of illegal border crossing, is in itself not a sufficient reason to uphold such detention in case that an asylum application has been lodged. In addition, the authorities have to prove that there are further reasons for the perpetuation of detention, such as a risk of absconding or an illegal stay for a duration of one month,

If an asylum application does not lead to release from detention a detained person may be kept in detention for four weeks or until the Federal Office for Migration and Refugees has decided upon the case, and detention may even be upheld beyond that period if another country has been requested to admit or re-admit the foreigner on the basis of European law, i.e. the Dublin regulation, or if the application for asylum has been rejected as “to be disregarded” or as manifestly unfounded.[208]

This form of detention of asylum seekers may particularly be relevant in “Dublin cases” if the border police has detained an applicant, e.g. because of illegal border crossing, and has already initiated a “Dublin procedure”.[209]

The German constitution stipulates that detention may only be ordered by a judge. The responsible authorities may only take a person into custody if there is reason to believe that this person is trying to abscond in order to avoid deportation and if a judge cannot be requested to issue a detention order

206 Federal Government of Germany. *Response to information request by the parliamentary group of “The Left” party/Die Linke*, 5th March 2014, No. 18/705, pp. 17-18.

207 Federal Constitutional Court, decision of 14th May 1996 – 2 BvR 1516/93.

208 Section 14 III of the Asylum Procedure Act.

209 Peter Fahlbusch, “*Haft in Verfahren nach der Dublin II-Verordnung” (Detention in the context of the Dublin procedure*), *Asylmagazin* 9/2010, pp. 289-295; Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, pp. 68.

beforehand. In such cases, the detention order has to be subsequently obtained from a court as soon as possible.
Standards for detention are defined in section 62 (2) of the Residence Act. This provision states that a foreigner shall be placed in detention pending deportation "if

1. the foreigner is enforceably required to leave the Federal territory on account of his or her having entered the territory unlawfully,

1a. a deportation order has been issued pursuant to Section 58a but is not immediately enforceable,

2. the period allowed for departure has expired and the foreigner has changed his or her place of residence without notifying the foreigners authority of an address at which he or she can be reached,
3. he or she has failed to appear at the location stipulated by the foreigners authority on a date fixed for deportation, for reasons for which he or she is responsible
4. he or she has evaded deportation by any other means or
5. a well-founded suspicion exists that he or she intends to evade deportation."

Lawyers and NGOs frequently criticize that detention pending deportation is imposed by the responsible local courts in a manner "too hastily, too often, too long" and a high number of detention orders are overturned by higher courts upon appeal.[210]

C. Detention conditions

Indicators:

- Does the law allow to detain asylum seekers in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☐ Yes ☒ No
  - If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedures? Not applicable
- Do detainees have access to health care in practice? ☒ Yes ☐ No
  - If yes, is it limited to emergency health care? ☐ Yes ☒ No
- Is access to detention centres allowed to
  - Lawyers: ☒ Yes ☐ Yes, but with some limitations ☐ No
  - NGOs: ☐ Yes ☒ Yes, but with some limitations ☐ No
  - UNHCR: ☒ Yes ☐ Yes, but with some limitations ☐ No
  - Family members: ☐ Yes ☒ Yes, but with some limitations ☐ No

There are no special detention centres for asylum seekers and only asylum seekers already in detention may remain detained. Accordingly, conditions are dependent on whether an applicant has been in a prison or in a detention facility for the purpose of removal at the time of his or her application.
Furthermore, the organisation of detention facilities is within the responsibility of the Federal States.

In addition, asylum seekers whose applications have been rejected on the grounds of the Dublin regulation may be detained in pre-deportation facilities before a transfer to another European state takes place. However, the German Federal Supreme Court found on 26 June 2014[211] that there was no

[210] Pro Asyl, "Abschiebungshaft: Zu schnell, zu oft, zu lange" ("detention pending deportation: too hastily, too often, too long"), 13 September 2012; cf also preliminary remarks of the inquiring party to Federal Government of Germany. Response to information request by the parliamentary group of "The Left" party/Die Linke, 7 January 2014, No. 18/249, p. 1.

[211] Federal Supreme Court (Bundesgerichtshof), decision of 26 June 2014 – V ZB 31/14 – ASYLMAGAZIN 9/2014, pp. 315-318.

legal basis for detention within the Dublin procedure if detention was based on an alleged "risk of absconding". The Federal Supreme Court observed that the relevant provision of the German Residence Act (Section 62 III First Sentence, No. 5) was irreconcilable with the Dublin III Regulation. Nevertheless, the court also found that it is still possible to detain "Dublin deportees" on other grounds (in particular: "failure to appear at the location stipulated by the foreigners authority on a date fixed for deportation" and "evasion of deportation by any other means").

Responsibility for detention pending deportation lies with the prison authorities of the Federal States, regardless of whether it is implemented in regular prisons or in special facilities. Therefore members of staff are usually either prison officers or employees of the administrative part of the prison services.

No institution is managed by external companies, but in some cases the authorities cooperate with external companies (private security companies or facility management) to take over certain tasks. The "National Agency for the Prevention of Torture" reports that in one facility (Eisenhüttenstadt in the state of Brandenburg) staff is almost entirely made up of employees of a private security company who did not have any training in the penitentiary system. In contrast, the National Agency also notes that other institutions are "well-staffed" (Berlin) and that in other facilities staff has been chosen with care to meet the requirements of detention pending deportation (Büren, North Rhine-Westphalia; Rendsburg, Schleswig-Holstein).[212]

National law only provides basic rules for detention centres. As a result, conditions differ very much throughout the country.[213] In many cases, however, detention pending deportation is similar to pre-trial detention or to detention following a criminal conviction. Because of this, conditions of detention of foreign nationals under the aliens legislation have been criticised by the European Committee for the Prevention of Torture (CPT) in various reports.[214] As a central issue the CPT noted that only a few Federal States had set up specific detention centres at the time of its most recent visits (2005 and 2010) and therefore detained "immigration detainees" in prisons. According to the CPT reports, most Federal States did not even have any specific regulations for the detention of these detainees:

> "*It is of all the more concern that, in those Länder where immigration detainees are still being held in prisons [...], no specific regulations governing detention pending deportation exist. As a result, immigration detainees continue to be subjected to the same rules and restrictions as sentenced or even remand prisoners.*
> *Such a state of affairs is not acceptable. In the CPT's view, conditions of detention of immigration detainees should reflect the nature of their deprivation of liberty, with limited restrictions in place."*[215]

Since the entering into force of the "return directive"[216] in December 2010, lawyers and NGOs had argued that detention of (rejected) asylum seekers and other immigration detainees was inadmissible under Article 16 of the directive if it took place in prisons. The Federal Supreme Court (Bundesgerichtshof) of Germany referred this question to the European Court of Justice in July 2013.217 Since then, some courts suspended detention orders for immigration detainees if detention

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212 Nationale Stelle zur Verhütung von Folter, Jahresbericht 2013 (Annual Report 2013), April 2014, pp. 23 and 50. The National Agency for the Prevention of Torture is an advisory board of the German government established under the UN Convention Against Torture.

213 Jesuit Refugee Service, Detention in Europe: Germany, www.detention-in-europe.org.

214 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report on the visit to Germany from 25 November to 7 December 2010, CPT/Inf (2012) 6, 22 February 2012, and Report on the visit to Germany from 20 November to 2 December 2005, CPT Inf (2007) 18, 18 April 2007.

215 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report on the visit to Germany from 25 November to 7 December 2010, CPT/Inf (2012) 6, 22 February 2012, p. 21.

216 Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348/98 of 24 December 2008.

217 Bundesgerichtshof, decision of 11 July 2013 - V ZB 144/12 -, asyl.net, M21047.

had to be executed in prisons instead of special detention facilities.[218] In response to several of these court decisions, the Federal State of Bavaria announced in October 2013 that it would end the practice of detention of immigration detainees in prisons.[219]

In July 2014 the Court of Justice of the European Union (CJEU) ruled that detention for the purpose of removal of illegally staying third-country nationals has to be carried out in specialised detention facilities in all Federal States of Germany.[220] Accordingly, the practice of carrying out detention for the purpose of deportation in regular prisons came to an end in the second half of 2014. Most Federal States which did not have specialised facilities before announced that the necessary institutions would be established (deportees were sent to facilities in other Federal States in the meantime). For example, the Federal State of Nordrhein-Westfalen (North Rhine-Westphalia) announced that the prison of Büren, used before as detention facility both for criminal convicts and for deportees, will be turned into a specialised detention facility uniquely for deportees.[221]

The Federal State of Schleswig-Holstein closed down its detention facility for deportees permanently at the end of October 2014, announcing that deportees would be detained in the facilities of other states in the future.[222]

As a result of the court decisions mentioned above (CJEU of 17 July 2014 and Federal Supreme Court of 26 June 2014), the overall number of detainees in "detention pending deportation" seems to have dropped dramatically in in the second half of 2014. The Jesuit Refugee Service Germany reported in November 2014 that the number was at a "historical low", with "fewer than 30" asylum seekers or migrants being detained for the purpose of deportation throughout Germany.[223]

An extensive study on conditions in facilities of "detention pending deportation" (Abschiebungshaft) was published in June 2013 by NGOs Pro Asyl and Diakonie Hessen and Nassau. This report is based on visits to 13 facilities which took place in the second half of 2012.[224] It should be noted that some of the facilities referred to in this study are currently not used for "detention pending deportation" or are to be remodelled in the second half of 2014 or in 2015. Still, the observations apply to several facilities which are still operational. As regards detention conditions, the authors quote from one of the CPT reports mentioned above, according to which "...care should be taken in the design and layout of the premises to avoid as far as possible any impression of a prison environment."[225] According to the study, this requirement is not implemented in the detention facilities which the authors visited:

> "*In all facilities – including the four institutions which were exclusively used for detention pending deportation – the predominant impression is that one is confronted with a prison*

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218 Federal Government of Germany. *Response to information request by the parliamentary group of "The Left" party/Die Linke*, 7 January 2014, No. 18/249, p. 5.

219 Jesuiten-Flüchtlingsdienst Deutschland/Jesuit Refugee Service Germany. *"Abschiebungshaft in Bayern for dem Aus" ("Detention pending deportation to end in Bavaria")*, press release of 17 October 2013.

220 Combined case of *Bero vs. Regierungspraesidium Kassel* and *Bouzalmane vs. Kreisverwaltung Kleve*, 17 July 2014, C-473-12 and C-514/13.

221 Ministry of the Interior of the Federal State of North Rhine-Westphalia, press release of 28 November 2014, http://www.mik.nrw.de/presse-mediathek/aktuelle-meldungen/aktuelles-im-detail/news/abschiebungshaft-in-nrw-land-plant-einrichtung-in-bueren-strafvollzug-am-standort-bueren-wird-ei.html.

222 Flüchtlingsrat (Refugee Council) Schleswig-Holstein, press release of 1 October 2014, http://www.frsh.de/themen/abschiebungshaft/abschiebungshaft-einzelansicht/article/wilhelminisches-zuchthaus-in-rendsburg-wird-geschlossen/.

223 Jesuiten-Flüchtlingsdienst/Jesuit Refugee Service Germany. Info-Brief (Newsletter) November 2014, http://www.jesuiten-fluechtlingsdienst.de/images/pdf/jrs_infobrief_november_2014_digital.pdf.

224 Diakonie in Hessen und Nassau, Pro Asyl, eds. *Schutzlos hinter Gittern. Abschiebungshaft in Deutschland (Without protection behind bars. Detention pending deportation in Germany)*. Authors: Marei Pelzer and Uli Sextro, June 2013.

225 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report on the visit to Germany from 25 November to 7 December 2010, CPT/Inf (2012) 6, 22 February 2012, p. 27.

atmosphere. Appearances in all facilities are as follows: enforcement (of deprivation of liberty) in cells, locked corridors or sections, a predominantly heavy regimentation of movement within the facility, inadequate social support and recreational activities, plus largely missing opportunities of the inmates to organise their daily activities on their own. Within this framework, it is the more critical if people detained for the purpose of deportation are placed in penal institutions, since they are subject to the security regime of a normal prison."[226]

The study draws particular attention to the situation of women, families, children and transgender or transsexual persons in detention pending deportation:[227]

- The low number of detained women may lead to a situation in which women find themselves in a situation close to "solitary confinement". For instance, a Chinese woman, who could not properly communicate with staff without an interpreter, was alone in the women's section of one facility for over three weeks. Only two facilities have sections in which spouses or families can be placed together. In other Federal states spouses and/or families are separated when arrested since women and men are detained in different facilities.

- According to the study, fewer children have been detained recently in comparison to earlier years (61 cases in 2011 as compared to 214 cases in 2008[228]). German law states that children shall only be detained under the conditions of Art. 17 of the "return directive" (Directive 2008/115/EC), i.e. only as a measure of last resort and for the shortest appropriate period of time. In addition, facilities have to take into account "the needs of persons of their age", including access to education (depending on the length of the stay) and to recreational activities appropriate to their age. In the light of this provision courts (including the Federal Supreme Court/Bundesgerichtshof) have repeatedly declared detention of children unlawful.[229]

Furthermore, the study shows that enormous differences exist between facilities with regard to several aspects of detention conditions:[230]

- Bath and toilet facilities: Standards are described as "extremely different" depending on the overall state of the buildings. In one prison showers were reported to be "in a desolate state" and they were only accessible to the prisoners twice a week.
- Food is provided by the prison kitchen or by caterers. With some exceptions detainees are generally not allowed to prepare their own food.
- Restrictions of movement: Doors to the corridors or to a section of the building are open in most facilities for a duration ranging between 4.5 and 24 hours per day. However, it was also reported that in one prison doors to the corridors were never opened but inmates had to contact prison staff in order to be left out of their cells. Access to the yards was granted for only one hour in some facilities and for up to eight hours in others.
- Visiting hours and means of communication: In some facilities visiting hours were extremely restricted (e.g. only one hour per week in one prison), in others visits were allowed at all times

226 Diakonie in Hessen und Nassau, Pro Asyl, eds. *Schutzlos hinter Gittern. Abschiebungshaft in Deutschland (Without protection behind bars. Detention pending deportation in Germany)*. Authors: Marei Pelzer and Uli Sextro, June 2013, p. 15.

227 *Ibid*, pp. 11-13.

228 Figures quoted from a response by the Federal Government of Germany to an information request in parliament. It has to be noted that all numbers concerning detention pending deportation are incomplete since some Federal States did not make available the necessary information; Diakonie in Hessen und Nassau, Pro Asyl, eds. *Schutzlos hinter Gittern. Abschiebungshaft in Deutschland (Without protection behind bars. Detention pending deportation in Germany)*. Authors: Marei Pelzer and Uli Sextro, June 2013, p. 12.

229 Cf. Federal Supreme Court (Bundesgerichtshof), decision of 7 March 2012 - V ZB 41712 - asyl.net, M19452; Regional Court (Landgericht) Passau, decision of 24 July 2012 – 2 T 113/12 – asyl.net, M19979.

230 Diakonie in Hessen und Nassau, Pro Asyl, eds. *Schutzlos hinter Gittern. Abschiebungshaft in Deutschland (Without protection behind bars. Detention pending deportation in Germany)*. Authors: Marei Pelzer and Uli Sextro, June 2013, p. 12, pp. 16-28.

after prior notification. Equally different were the policies regarding use of phones of mobile phones: While some facilities did not allow for the use or mobile phones at all (only the use of public phones is possible in these institutions), the use of mobile phones was permitted without restrictions in other facilities.

- Social support and access for NGOs and lawyers: In two out of the 13 institutions, which were considered for the study, no social support existed for the inmates, in two others social support was allegedly provided by staff of the prison administration. In nine institutions social workers were present to varying degrees. Only in three institutions a regular and professional advice service for inmates was provided by NGOs, in most others, volunteers or prison chaplains could be asked for advice at least to a limited degree. In three institutions no counselling services were available at all.
- Health care: In general, all facilities provide the opportunity to see a doctor if necessary, but in most cases no interpreter is present during consultation with medical staff. In response to an information request in the German parliament,[231] all Federal States reported that a medical screening took place in the course of reception at the facilities and that measures were in place to identify vulnerable persons or other persons with special needs. However, the study comes to the conclusion that these measures are ineffective:

  "Apparently the screening process does not lead to the identification of the groups of person referred to here. In all interviews [with prison staff] we were told that traumatised persons did not play a role in the daily routine of the prisons."[232]

Section 62a of the Residence Act states: "Upon application, staff of relevant support and assistance organisations shall be permitted to visit detainees awaiting deportation if the latter so request. "NGOs Pro Asyl and Diakonisches Werk report that in spite of this provision it proved impossible to visit three facilities (all in the Federal State of Bavaria) since the responsible authorities stated that there was no time to meet the NGOs.[233] In general, other visitors (media or politicians) have to apply for permission to see the facilities as well.

D. Judicial Review of the detention order

Indicator:

- Is there an automatic review of the lawfulness of detention? ☒ Yes ☐ No

Under German law, only a judge is competent for the ordering and the prolongation of detention. The responsible courts are the district courts (*Amtsgericht*) and their decision can be challenged at a regional court (*Landgericht*).

The authorities therefore have to apply to the court for a detention order. The application has to lay out the detailed reasons for the necessity of detention and the complete authorities' file should be presented to the court. The foreigners should be heard by the court and they shall be able to call witnesses. In cases of detention pending deportation, this may be particularly relevant if the detention order is based on an alleged risk of absconding and the foreigners have to prove that they have an address at which they can be reached by the authorities. Before the hearing at the court, the foreigner has to receive a

231 Federal Government of Germany, *Response to an information request by the parliamentary group of The Green Party/Die Grünen,* No. 17/7442, 5 September 2012.

232 Diakonie in Hessen und Nassau, Pro Asyl, eds. *Schutzlos hinter Gittern. Abschiebungshaft in Deutschland (Without protection behind bars. Detention pending deportation in Germany)*. Authors: Marei Pelzer and Uli Sextro, June 2013, p. 26.

233 Diakonie in Hessen und Nassau, Pro Asyl, eds. Schutzlos hinter Gittern. Abschiebungshaft in Deutschland (Without protection behind bars. Detention pending deportation in Germany).

copy of the request for detention (Haftantrag) which the authorities have filed. This copy has to be orally translated if necessary.[234] Case law also states that the foreigner shall have sufficient time to prepare an answer to the content of the authorities' request. This means that it can be sufficient to hand out the request immediately before the hearing if the content is simple and easily understandable. In other cases, if the content is more complicated, it can be necessary that the foreigner is handed out the authorities' request in advance of the hearing.[235] The court has to inform the foreigner on all possible legal remedies against the detention order and this information has to be translated if necessary.
Detention pending deportation must only be ordered or prolonged if there is a possibility for the deportation to be carried out in the near future. The maximum duration of detention therefore has to be expressly stated in the detention order. Once this date has expired, the detained person either has to be released or an automatic judicial review of detention takes place.
If an asylum application is filed after a person has been taken into detention pending deportation, this does not necessarily lead to a release but detention may be upheld for a period of four weeks (cf. above, chapter “Grounds for Detention”). The personal interview may take place in detention during that period, i.e. a caseworker of the Federal Office for Migration and Refugees and an interpreter carry out the interview in the detention facility. There are no special rules for an interview in detention, so rights and obligations are identical to an interview carried out in a branch office of the Federal Office for Migration and Refugees.

In spite of these regulations, the system of ordering detention pending deportation has been severely criticised by lawyers for alleged violations of the standards applicable to detention. In particular, it has been noted that judges frequently issue orders for detention pending deportation even if authorities' applications for detention orders do not lay out sufficient reasons as to why detention is necessary [236] Detention based on insufficient grounds may also affect asylum seekers if they have lodged an application while already in detention.

E. Legal Assistance

Indicators:

- Does the law provide for access to free legal assistance for the review of detention?
  ☐ Yes ☒ No
- Do asylum seekers have effective access to free legal assistance in practice?
  ☐ Yes ☒No

If an asylum applications are is lodged by persons in detention, applicants shall immediately be given an opportunity to contact a lawyer of their choice, unless they have already secured legal counsel.[237] However, this does not mean that legal assistance is paid for out of public funds. Therefore an applicant usually has to cover the costs for legal representation for the purpose of judicial review of detention and representation in the asylum procedure. There is a possibility to apply for legal aid in the context of judicial review of detention, but this is rarely granted since legal aid is dependent on how the court rates the chances of success.

234 Bundesgerichtshof (Federal Supreme Court), decision of 18th April 2013 - V ZB 67/12 – (asyl.net, M20735).
235 Bundesgerichtshof (Federal Supreme Court), decision of 1st July 2011 - V ZB 141/11 – (asyl.net, M18726).
236 Peter Fahlbusch, “*Haft in Verfahren nach der Dublin II-Verordnung” (Detention in the context of the Dublin procedure*), *Asylmagazin* 9/2010, pp. 289-295.
237 Section 14 III of the Asylum Procedure Act.