



# aida

Asylum Information  
Database

Asylum Information Database

# National Country Report

# *Germany*



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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 and includes the development of a dedicated website which will be launched in the second half of 2013. 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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## TABLE OF CONTENTS

<b>Statistics</b> .....	<b>5</b>
<b>Overview of the legal framework</b> .....	<b>7</b>
<b>Asylum Procedure</b> .....	<b>8</b>
<b>A. General</b> .....	<b>8</b>
1. Organigram .....	8
2. Types of procedures.....	9
3. Authorities intervening in each stage of the procedure (including Dublin) .....	9
4. Number of staff and nature of the first instance authority .....	10
5. Short overview of the asylum procedure.....	10
<b>B. Procedures</b> .....	<b>12</b>
1. Registration of the Asylum Application.....	12
2. Regular procedure.....	13
<i>General (scope, time limits)</i> .....	13
<i>Appeal</i> .....	15
<i>Personal Interview</i> .....	17
<i>Legal assistance</i> .....	19
3. Dublin .....	20
<i>Procedure</i> .....	20
<i>Appeal</i> .....	23
<i>Personal Interview</i> .....	24
<i>Legal assistance</i> .....	25
<i>Suspension of transfers</i> .....	25
4. Admissibility procedures .....	26
<i>General (scope, criteria, time limits)</i> .....	26
<i>Appeal</i> .....	27
<i>Personal Interview</i> .....	27
<i>Legal assistance</i> .....	27
5. Border procedure (border and transit zones) .....	28
<i>General (scope, time-limits)</i> .....	28
<i>Appeal</i> .....	30
<i>Personal Interview</i> .....	30
<i>Legal assistance</i> .....	31
6. Accelerated procedures.....	31
<i>General (scope, grounds for accelerated procedures, time limits)</i> .....	31

<i>Legal assistance</i> .....	32
C. Information for asylum seekers and access to NGOs and UNHCR .....	33
D. Subsequent applications .....	35
E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture) .....	37
1. Special Procedural guarantees .....	37
2. Use of medical reports .....	38
3. Age assessment and legal representation of unaccompanied children .....	39
F. The safe country concepts (if applicable) .....	40
G. Treatment of specific nationalities .....	42
<b>Reception Conditions</b> .....	<b>43</b>
A. Access and forms of reception conditions .....	43
1. Criteria and restrictions to access reception conditions .....	43
2. Forms and levels of material reception conditions .....	44
3. Types of accommodation .....	45
4. Reduction or withdrawal of reception conditions .....	46
5. Access to reception centres by third parties .....	46
6. Addressing special reception needs of vulnerable persons .....	47
7. Provision of information .....	47
8. Freedom of movement .....	47
B. Employment and education .....	48
1. Access to the labour market .....	48
2. Access to education .....	49
C. Health care .....	50
<b>Detention of Asylum Seekers</b> .....	<b>52</b>
A. General .....	52
B. Grounds for detention .....	52
C. Detention conditions .....	54
D. Judicial Review of the detention order .....	54
E. Legal assistance .....	55

## Statistics

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

	Total decisions in 2012, first instance <sup>1</sup>	Refugee status <sup>2</sup>	Subsidiary protection <sup>3</sup>	Humanitarian Protection	Rejections (in-merit and admissibility) <sup>4</sup>	Otherwise closed / discontinued	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)%
<b>Total numbers</b>	61826	8764	8376	0	30700	13986	18%	18%	0%	64%
<b>Breakdown by countries of origin of the total numbers</b>										
Serbia		3	20	0	9111	4673	0%	0%	0%	100%
Afghanistan		789	1014	0	2274	547	19%	25%	0%	56%
Syria		1987	5480	0	19	315	27%	73%	0%	0%
Iraq		2657	123	0	1437	409	63%	3%	0%	34%
FRY Macedonia		1	9	0	4535	2094	0%	0%	0%	100%
Iran		1589	69	0	1050	353	59%	3%	0%	39%
Pakistan		284	16	0	1163	195	19%	1%	0%	79%
Russian Fed.		133	38	0	543	494	19%	5%	0%	76%
Bosnia and H.		0	24	0	1796	311	0%	1%	0%	99%
Kosovo		2	52	0	1769	945	0%	3%	0%	97%
<b>Others<sup>5</sup></b>										
Somalia		278	230	0	38	308	51%	42%	0%	7%

<sup>1</sup> Statistics for applications cf. below. Statistics for second and further instances are only available for the period of January to November 2012, so it is not possible to add up these numbers without distortions.

<sup>2</sup> 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).

<sup>3</sup> German law does not distinguish between subsidiary and humanitarian protection, but defines various forms of protection as "prohibition of deportation".

<sup>4</sup> In the German statistics, the category of "otherwise closed" contains rejections as "inadmissible" (often because of responsibility of another state under the Dublin regulation), therefore a clear distinction between these two categories is not possible.

<sup>5</sup> Other main countries of origin of asylum seekers in the EU.

**Table 2: Gender/age breakdown of the total numbers of applicants in 2012**

	Number	Percentage
<b>Total number of applicants</b>	<b>64539</b>	
<b>Men</b>	39869	61.8
<b>Women</b>	24670	38.2
<b>Unaccompanied children</b>	2096	3.2

**Table 3: Comparison between first instance and appeal decision rates in 2012 (Jan-Nov)**

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	<b>61826</b>		20795	
<b>Positive decisions</b>				
<b>Total</b>	<b>17140</b>	<b>27.72%</b>	2744	13.20%
<i>Refugee Status</i>	<b>8764</b>	14.18%	n/a	n/a
<i>Subsidiary protection</i>	<b>8376</b>	13.55%	n/a	n/a
<i>Hum/comp protection</i>				n/a
<b>Negative decision</b>	<b>30700</b>	<b>49.66%</b>	7508	36.10%

**Table 4: Applications processed under an accelerated procedure in 2012**

	Number	Percentage
<b>Total number of applicants</b>		
<b>Number of applications treated under an accelerated procedure at first instance</b>	0 <sup>6</sup>	-

**Table 5: Subsequent applications submitted in 2012**

	Number of subsequent applications submitted
<b>Total number</b>	13112
<b>Top 5 countries of origin</b>	
Serbia	4335
Macedonia, FYR	2343
Syria	1729
Kosovo	629
Iran	380

<sup>6</sup> Acceleration of procedures takes effect only after the first instance (following a rejection as “manifestly unfounded”).

## 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	<i>Aufenthaltsgesetz</i>	AufenthG	German: <a href="http://www.gesetze-im-internet.de/aufenthg_2004/index.html">http://www.gesetze-im-internet.de/aufenthg_2004/index.html</a>  English translation: <a href="http://www.gesetze-im-internet.de/englisch_aufenthg/index.html">http://www.gesetze-im-internet.de/englisch_aufenthg/index.html</a>
Asylum Procedure Act	<i>Asylverfahrensgesetz</i>	AsylVfG	German: <a href="http://www.gesetze-im-internet.de/asylvfg_1992/index.html">http://www.gesetze-im-internet.de/asylvfg_1992/index.html</a>  English Translation: <a href="http://www.gesetze-im-internet.de/englisch_asylvfg/index.html">http://www.gesetze-im-internet.de/englisch_asylvfg/index.html</a>
Asylum Seekers' Benefits Act	<i>Asylbewerberleistungsgesetz</i>	AsylbLG	German: <a href="http://www.gesetze-im-internet.de/asylblg/index.html">http://www.gesetze-im-internet.de/asylblg/index.html</a>
Basic Law (German constitution)	<i>Grundgesetz</i>	GG	German: <a href="http://www.gesetze-im-internet.de/gg/index.html">http://www.gesetze-im-internet.de/gg/index.html</a>  English translation: <a href="http://www.gesetze-im-internet.de/englisch_gg/index.html">http://www.gesetze-im-internet.de/englisch_gg/index.html</a>
Act on Procedures in Family Matters and in Matters of Voluntary Jurisdiction (relevant for judicial review of detention)	<i>Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit</i>	FamFG	<a href="http://www.gesetze-im-internet.de/famfg/">www.gesetze-im-internet.de/famfg/</a>

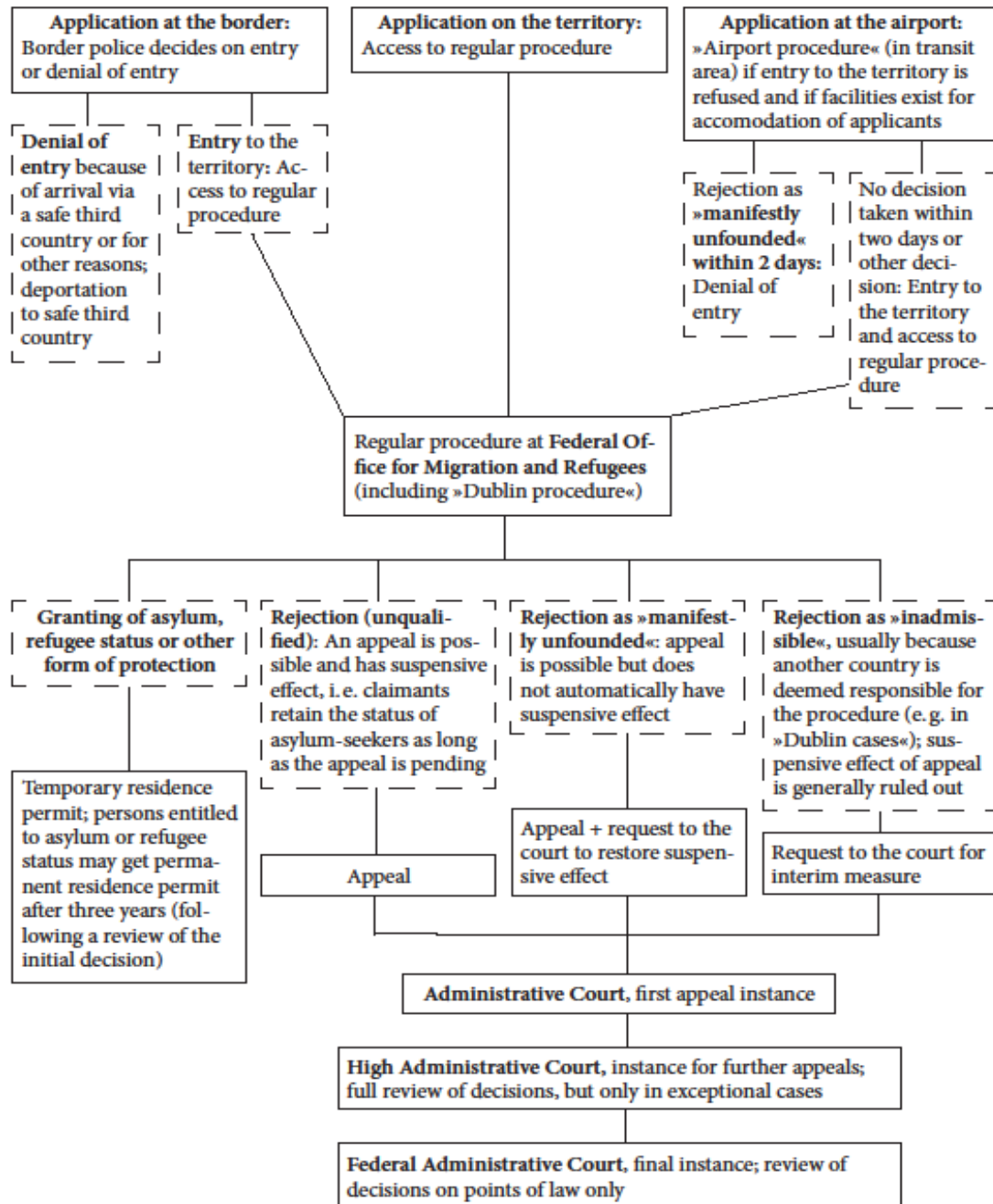
### **Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention.**

Title in English	Original title	Abbreviation	Weblink
Regulation on Residence	<i>Aufenthaltsverordnung</i>	AufenthV	<a href="http://www.gesetze-im-internet.de/aufenthv/index.html">http://www.gesetze-im-internet.de/aufenthv/index.html</a>

# Asylum Procedure

## A. General

### 1. Organigram





## 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:            yes                     no
- Dublin Procedure                    yes                     no
- others:                                    -

Are any of the procedures that are foreseen in national legislation, not being applied in practice? If so, which one(s)?      None

## 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)
Application at the border	Border police	<i>Bundespolizei</i>
Application on the territory/regular procedure	Federal Office for Migration and Refugees	<i>Bundesamt für Migration und Flüchtlinge (BAMF)</i>
Dublin (responsibility assessment)	Federal Office for Migration and Refugees	<i>Bundesamt für Migration und Flüchtlinge (BAMF)</i>
Subsequent application (admissibility)	Federal Office for Migration and Refugees	<i>Bundesamt für Migration und Flüchtlinge (BAMF)</i>
Airport procedure	Federal Office for Migration and Refugees	<i>Bundesamt für Migration und Flüchtlinge (BAMF)</i>
Appeal	Administrative Court (local)	<i>Verwaltungsgericht</i>
Further appeal	High Administrative Court (regional)	<i>Oberverwaltungsgericht or Verwaltungsgerichtshof</i>
Final appeal	Federal Administrative Court	<i>Bundesverwaltungsgericht</i>

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
<i>Federal Office for Migration and Refugees</i>	N/A	Federal Ministry of the Interior	N

5. Short overview of the asylum procedure

If asylum-seekers are arrested at the border while trying to enter Germany without the necessary documents, their applications are usually not accepted and they are immediately returned to the neighbouring country. Therefore most applications are lodged by asylum-seekers who have already entered the territory.

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 Art. 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) 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 II 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”. 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.

If an asylum application is “formally” rejected, e.g. as “inadmissible” because of the Dublin II regulation, suspensive effect of an appeal is generally ruled out by law and therefore may only be restored by an administrative court in highly exceptional circumstances.

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

The law states that asylum-seekers shall apply for asylum at the border. However, entry to the territory is regularly refused at the border if an asylum-seeker does not have the necessary documents for legal entry. Therefore 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.<sup>7</sup> 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. A person who intends to apply for asylum does not have the legal status of an asylum-seeker as long as they have not arrived at the responsible branch of the Federal Office and until the application has 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 of the 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.<sup>8</sup>

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.<sup>9</sup> If the border police decides to refuse entry, they often detain asylum-seekers in order to deport them to the neighbouring “safe third country”. In such cases, an application filed in detention is usually neither considered, nor referred to the Federal Office.<sup>10</sup>

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<sup>7</sup> Section 13 Asylum Procedure Act.

<sup>8</sup> For further [details](#).

<sup>9</sup> Most recent reports date back to 2010.

<sup>10</sup> Pro Asyl, *Flüchtlinge im Labyrinth* ('Refugees in the labyrinth'), 2012, pp.16-17.

## 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 31<sup>st</sup> December 2012, the number of cases for which no final decision (including at first appeal) was taken one year after the asylum application was registered N/A

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.<sup>11</sup>

The average length of asylum procedures at the Federal Office was at five to seven months in recent years.<sup>12</sup> For the year 2012 statistics show significant variation in length of procedures, depending on the countries of origin of asylum-seekers.<sup>13</sup>

All countries of origin	5,5 months
<i>Specific countries</i>	
Serbia	1,9
Afghanistan	9,0
Syria	6,5
Iraq	5,6
Macedonia	2,1
Iran	9,4
Pakistan	7,5
Russian Federation	10,2
Bosnia and Herzegovina	1,9
Kosovo	4,7

<sup>11</sup> Section 24 IV Asylum Procedure Act.

<sup>12</sup> 2010: 6.8 months, 2011: 5.7 months, 2012: 5.5 months.

<sup>13</sup> 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.

These differences result mainly from a prioritization of certain caseloads 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 an “absolute direct procedure” (*Absolutes Direktverfahren*) would be put in place for asylum-seekers from these countries.<sup>14</sup> This special procedure has no basis in law but consists of a series of administrative measures (shifting of personnel to certain caseloads and target-setting for decision-makers). The aim is to conduct the interview on the day that the application is registered, or on the next or second next day after that. The decision is supposed to be made and handed down within one week.<sup>15</sup>

Between October and mid-December, the Federal Office dealt almost exclusively with applications of asylum-seekers from Serbia, Macedonia and other “Western Balkan”-states (Montenegro, Albania, and Bosnia and Herzegovina):

“Since 2<sup>nd</sup> October 2012 75 per cent of decision-makers were employed to process asylum applications from Serbia and Macedonia, and almost 100 per cent were employed to process applications from the “Western Balkan” states since 24th October 2012.”<sup>16</sup>

Thus the average length for decision-making in asylum cases from Serbian and Macedonian citizens was reduced to seven days at the end of 2012,<sup>17</sup> with the vast majority of applications being rejected within a short time-frame: 11.287 decisions were issued on applications from Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia in the months of November and December 2012. Only in 26 of these cases refugee status or another form of protection was granted, while 8208 applications were rejected and 3033 cases were closed for “other” reasons (i.e. without an examination of the substance of the claim; this category includes cases in which the application has been withdrawn, or cases in which another state has been found to be responsible for the asylum procedure under the Dublin II regulation).

According to the government, “all procedural guarantees and quality criteria” were applied in the “direct procedures”.<sup>18</sup> 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 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.<sup>19</sup>

At the same time the average length of procedures increased for asylum applicants from other countries: At the end of 2012, three quarters of applications from Afghan asylum-seekers had not been decided upon after three months,<sup>20</sup> and a similar proportion was recorded for Iranian asylum-seekers.<sup>21</sup>

The overall number of pending applications at the Federal Office was at 49.811 (persons) on 31 December 2012, with 45.462 first and 4,349 subsequent applications. This was an increase of 47.5 per cent in comparison to the end of 2011 (33.773).<sup>22</sup>

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<sup>14</sup> Federal Office for Migration and Refugees, *Entscheiderbrief (News for decision-makers)*, 9/2012, p. 2.

<sup>15</sup> *Ibid.*

<sup>16</sup> Federal Government, *Response to information request*, 31 January 2013, p. 24.

<sup>17</sup> *Ibid.*

<sup>18</sup> Federal Ministry of the Interior, 8.849 Asylanträge im November 2012, Press release of 14 December 2012.

<sup>19</sup> Pro Asyl, *Entwicklung der Asylanträge im November 2012 (Developments of asylum applications in November 2012)*, Press Release of 14 December 2012.

<sup>20</sup> 6,366 out of 8,450 pending applications on 31 December 2012.

<sup>21</sup> Federal Government, *Response to information request*, 31 January 2013, pp. 25-26; and 71 per cent, 3,373 out of 4,722 pending applications.

The average time for appeal procedures was specified by the government at 11.4 months in 2012.<sup>23</sup> No figures were available for 2012 on the average time for the whole procedure, i.e. from application to legally binding decision. Available figures for the average time of procedures up to the legally binding decision are from 2011:<sup>24</sup>

All countries of origin	11,8 months
<i>Specific countries</i>	
Afghanistan	10,6
Iraq	12,2
Iran	13,0
Kosovo	10,6
Macedonia	5,4
Russian Federation	20,7
Serbia	5,6
Somalia	8,7
Syria	16,8
Turkey	19,4

### Appeal

#### Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure:
  - Yes       No
    - o if yes, is the appeal       judicial       administrative
    - o If yes, is it suspensive       Yes       No
- Average delay for the appeal body to make a decision:      N/A

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:

<sup>22</sup> Federal Office for Migration and Refugees, *Asylgeschäftsstatistik für den Monat Dezember 2012 und das Berichtsjahr 2012 (Statistics on asylum issues for the month of December 2012 and the annual report for 2012)*, January 2013, p. 7.

<sup>23</sup> Based on numbers for January through November 2012, Federal Government, Response to information request, 31 January 2013, p. 20.

<sup>24</sup> Average length of asylum procedures up to a legally binding decision (including appeal procedures), first half of 2011 see 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. 7.

- 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 II regulation). In these cases suspensive effect of appeals is generally ruled out by law.<sup>25</sup> It is possible to appeal these decisions, but the court can only grant suspensive effect of the appeal in very 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.<sup>26</sup>

In “Dublin cases” appeals are often rendered impossible since asylum seekers are regularly not informed about the initiation of a procedure under the Dublin II regulation. Furthermore, in many cases the rejection of an asylum application as “inadmissible” and the accompanying deportation order are handed down on the day of the Dublin transfer, i.e. on the way to the airport. In such cases it might be factually impossible to contact a lawyer, or initiate an appeal in other ways.<sup>27</sup> ,

The Administrative Court investigates the facts of the case. This includes a personal hearing of the asylum-seeker (in most cases) and the gathering of relevant evidence at the court's 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).

The average time for appeal procedures was specified by the government at 11.4 months in 2012.<sup>28</sup>

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

<sup>25</sup> Sections 34a and 75 Asylum Procedure Act.

<sup>26</sup> Dublin Transnational Project. Dublin II Regulation, National Report – Germany, December 2012, pp. 61-63.

<sup>27</sup> *Ibid*, p. 6; The situation is inconsistent now, as some Federal States still hand out “Dublin decisions” in this manner, while others took precautions that asylum seekers are generally informed in advance about a possible Dublin transfer.

<sup>28</sup> Based on numbers for January through November 2012, Federal Government, Response to information request, 31 January 2013, p. 20.



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 on points of fact.

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,
- b. the Administrative Court’s decision deviates from a decision of a higher court,
- c. the decision violates basic principles of jurisprudence.

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

Judgements 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 systematically conducted 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?  Yes  No

In the regular procedure, the Federal Office for Migration and Refugees conducts an interview with each asylum applicant.<sup>29</sup> 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 was born in Germany “and if the facts of the case have been sufficiently clarified based on the case files of one or both parents;<sup>30</sup>
4. if the applicant fails to appear at the interview without an adequate excuse.<sup>31</sup>

In practice, omission of the personal interview also takes place in “Dublin cases” if the responsibility of another state for the examination of the asylum application can be established at an early stage in the procedure and the application is rejected as “inadmissible”. The different branches of the Federal Office for Migration and Refugees apparently have different ways of handling procedures in such cases: In some branches a “normal” interview takes place regardless of the initiation of a “Dublin procedure”. In other branches only a shortened interview is carried out, focussing on the travel route of the applicant and on personal details, in other cases asylum-seekers are not interviewed at all before the rejection of their application and before the transfer to another state goes ahead.<sup>32</sup>

The presence of an interpreter at the interview is required by law.<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup>

Problems reported with regard to the translation during the interview include the following:<sup>36</sup>

- 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.

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<sup>29</sup> Section 24 and 25 Asylum Procedure Act.

<sup>30</sup> Section 24 I Asylum Procedure Act.

<sup>31</sup> Section 25 Asylum Procedure Act.

<sup>32</sup> Dublin Transnational Project. Dublin II Regulation, National Report – Germany, December 2012, p. 12 and p. 24.

<sup>33</sup> Section 17 Asylum Procedure Act.

<sup>34</sup> UNHCR: Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice. Detailed Research on Key Asylum Procedures Directive Provisions. March 2010. p. 117.

<sup>35</sup> *Ibid.*, p. 120.

<sup>36</sup> *Ibid.*, pp. 120-125.



available in all centres, 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. Furthermore, lawyers often argue that fees based on the legal aid system do not always cover their expenses. As a consequence, a law firm and specialise on asylum cases only is generally supposed to be difficult. Most lawyers specialising in this area have additional areas of specialisation while some also charge higher fees on the basis of individual agreements with their clients.

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

### 3. Dublin

#### *Indicators:*

- Number of outgoing requests in the previous year: 11,469  
Number of incoming requests in the previous year: 3,632
- Number of outgoing transfers carried out effectively in the previous year: 3,037
- Number of incoming transfers carried out effectively in the previous year: 1,495

#### *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? N/A

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” (72.8 per cent of requests in 2012). The number of outgoing requests has risen significantly in recent years, in 2012 there were 11.469 outgoing requests as compared to 9.075 in 2011 and to 5.390 in 2007. While nowadays outgoing requests outnumber the incoming ones by three to one, in earlier years the numbers had almost been on an equal footing (e.g. 4.996 outgoing and 5.103 incoming requests in 2006).<sup>39</sup>

The border police also may initiate Dublin procedures, if a person apprehended at or close to the border cannot immediately be sent back to the neighbouring country but there are indications that the neighbouring state is responsible for the asylum procedure. Agreements on the handling of such cases exist between Germany and Denmark, Switzerland, Austria and the Czech Republic.<sup>40</sup> In 2012, the border police initiated 175 takeover requests to other states and carried out 169 transfers.<sup>41</sup>

In the regular procedure, all asylum-seekers receive an information sheet on the Dublin II regulation. However, it has been noted that translated versions of this sheet are often not available and no oral translation or further explanation is given.<sup>42</sup> In the interview asylum-seekers are often (but not always) orally instructed about the Dublin procedure; however, the Dublin procedure may be carried out without the interview having taken place. 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.<sup>43</sup> 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. As a result, many asylum-seekers are not aware of on-going Dublin procedures or about the outcome of these procedures until the transfer actually take place. It still happens that “Dublin decisions” and the attending deportation orders are handed out on the day of the Dublin transfer, although practices are inconsistent at the moment: In at least five of Germany's sixteen Federal States the responsible authorities have issued regulations according to which asylum-seekers generally have to be informed in advance about a possible Dublin transfer.<sup>44</sup> According to reports, other Federal States seem to have informal arrangements between the responsible Ministries and the

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<sup>39</sup> All figures cited from: Federal Office for Migration and Refugees, *Bundesamt in Zahlen 2012 – Asyl*, February 2013, p. 20-24.

<sup>40</sup> Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, p. 71.

<sup>41</sup> 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.

<sup>42</sup> 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.

<sup>43</sup> Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, p. 19.

<sup>44</sup> The national report for the Dublin Transnational Project lists the Federal States of Schleswig-Holstein, Brandenburg, Rheinland-Pfalz and Nordrhein-Westfalen; Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, p. 6. In addition, the state of Berlin also has a regulation on Dublin transfers.

Foreigner's Authorities which provide for Dublin transfers being announced in advance, but it is not clear whether this is observed consistently in those States.

The government's statistics do not contain information on the number of cases in which the humanitarian clause or the sovereignty clause has been used.<sup>45</sup> Since January 2011, the sovereignty clause has been invoked in all cases in which Greece was considered to be responsible for the asylum procedure. In December 2012 the Federal Ministry of the Interior announced that the suspension of Dublin transfers to Greece – which includes the use of the sovereignty clause in each case – was to be prolonged until 12 January 2014. 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 on the best interest of a minor.<sup>46</sup>

Even if humanitarian reasons, which might fall under the definition of Art. 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 Art. 3. This is because the Federal Office seems to hold the opinion that the humanitarian clauses of Art. 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 Art. 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 Art. 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.<sup>47</sup>

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. In such cases, the filing of an asylum application does not necessarily lead to termination of detention. 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.<sup>48</sup>

If asylum seekers have already accessed the regular procedure, they must not be detained for the duration of the procedure. However, detention may be imposed once an application has been rejected

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<sup>45</sup> Federal Government of Germany: *Response to information request by the parliamentary group of “The Left” party/“Die Linke”*, 31<sup>st</sup> January 2013, No. 17/12234, p. 10.

<sup>46</sup> Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, p. 34.

<sup>47</sup> Federal Government of Germany: *Response to information request by the parliamentary group of “The Left” party/“Die Linke”*, 31<sup>st</sup> 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.

<sup>48</sup> Art. 14 III Asylum Procedure Act.

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”.<sup>49</sup>

There have been no reports of “Dublin returnees” facing difficulties in accessing an asylum procedure. A high number of persons transferred back under the Dublin regulation had their application already rejected in Germany (61% of cases in 2011).<sup>50</sup> 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:
 

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
o if yes, is the appeal	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> administrative
o If yes, is it suspensive	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
- Average delay for the appeal body to make a decision: N/A

As the Dublin II regulation was not transposed 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:

- 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.”
- The authorities are not obliged to issue a notification or set a deadline prior to the deportation order. In practice this means that in many cases the rejection of the asylum application and the deportation order are handed down on the way to the airport or at a point when it is no longer possible to contact a lawyer. This practice has now been abandoned in some Federal States as a reaction to case law by the Court of Justice of the European Union and the European Court of Human Rights.<sup>51</sup>

<sup>49</sup> 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.

<sup>50</sup> Dublin Transnational Project, *Dublin II Regulation, National Report – Germany*, December 2012, p. 77. The respective figure for 2012 has not been published.

<sup>51</sup> Cf. preceding question.

- The appeal does not have suspensive effect and a deportation to a safe third country or to a country responsible for the asylum procedure must not be suspended by an interim measure ordered by an administrative court.<sup>52</sup>

The latter provision is based on the assumption that an asylum-seeker would generally not be at risk of human rights violations in countries in which the 1951 Refugee Convention and the European Human Rights Convention are applied.<sup>53</sup> Accordingly, suspensive effect of appeals could only be granted in highly exceptional cases, which had originally been defined by the German Constitutional Court in a ruling on the (national) “safe third country” provision. The exceptions referred to by the Constitutional Court included a complete denial of an asylum procedure in the third country or a risk of persecution by the third country, but did not extend to poor living conditions of asylum-seekers or lack of procedural guarantees in third countries.<sup>54</sup>

In spite of this, a large number of “Dublin transfers” were stopped by administrative courts since 2008 - at the time, predominantly in cases in which Greece was considered responsible for the procedure, but later on with regard to several other countries as well. 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 of the 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.

In light of the European Court of Human Rights’ and the Court of Justice for the European Union’s case law, it has also been argued that German legislation is incompatible with European law insofar as an effective remedy against “Dublin-decisions” is ruled out by the above-named provision.<sup>55</sup> In contrast, the German authorities have repeatedly declared that the possibility to suspend deportations under exceptional circumstances - and contrary to the wording of the law - is sufficient to guarantee the necessary protection to asylum-seekers.

Therefore, it remains controversial whether Dublin transfers can be suspended by administrative courts and to which extent an assessment of reception conditions and procedural guarantees in other member states has to take place.

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in the Dublin procedure?  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

<sup>52</sup> Section 34a II of the Asylum Procedure Act.

<sup>53</sup> Art. 16a II Grundgesetz/German constitution.

<sup>54</sup> German Constitutional Court, decision of 14 May 1996 - 2 BvR 1938/93. For details cf. Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, p. 61-62.

<sup>55</sup> Marei Pelzer: “Das EuGH-Urteil vom 21.12.2011 zur ‘Dublin-II-Verordnung’: Keine Überstellungen bei Grundrechtsverletzungen aufgrund systemischer Mängel” (*The ECtHR judgement of 21 December 2011 on the Dublin II Regulation: No transfers in case of human rights violations based on systematic deficiencies*), *Asylmagazin* 4/2012, S. 102-108.



Migration and Refugees, which may take place at various stages of the procedure. In practice, the procedures may be carried out successively or simultaneously, depending on the practices of the different branch offices of the Federal Office for Migration and Refugees.<sup>56</sup> 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.

If a “Dublin procedure” takes place before the “normal” procedure and it has been established that another country is responsible for the procedure, a personal interview may be omitted. In these cases, only a shortened interview may be carried out, which is only about basic personal details and the travel routes (not about the reasons for the asylum application). If the travel route has been identified with the help of EURODAC, asylum-seekers are sometimes not interviewed until their transfer to another country. Accordingly, there is no procedural safeguard ensuring that possible reasons for the use of the sovereignty clause or the humanitarian clause are identified in those procedures.

### 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 apply equally to the Dublin procedure.

### 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
  - o 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 2014. The sovereignty clause is invoked in all cases, in which Greece has been found to be responsible for the asylum procedure, which 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.

<sup>56</sup> Dublin Transnational Project. *Dublin II Regulation, National Report – Germany*, December 2012, p. 12.

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; therefore preventing a general suspension of transfers to any other country than Greece.

#### 4. Admissibility procedures

##### *General (scope, criteria, time limits)*

It has been noted that the wording of German legislation is not in line with Art. 25 of the Asylum Procedures Directive:<sup>57</sup> According to section 27a of the 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 criterion for the inadmissibility of applications.

Apart from the “Dublin procedure”, no other procedure is explicitly designated as an admissibility procedure under German law.<sup>58</sup> 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.<sup>59</sup>

The Federal Administrative Court holds that this provision transposes Arts. 25 and 26 of the Asylum Procedures Directive<sup>60</sup> 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 the applicant within three months, the asylum procedure has to be continued in Germany.<sup>61</sup>

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 constitutions.<sup>62</sup> It is still possible though that applicants are granted refugee

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<sup>57</sup> Reinhard Marx. *AsylVfG – Kommentar zum Asylverfahrensgesetz (Asylum Procedures Act – Commentary)*, 7<sup>th</sup> edition, 2009, p. 699.

<sup>58</sup> UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice*, 2010, p. 272.

<sup>59</sup> “Safe third countries” are all member states of the European Union plus Norway and Switzerland, (Section 26a Asylum Procedures Act and addendum to Asylum Procedures Act).

<sup>60</sup> Federal Administrative Court, decision of 4 September 2012 – 10 C 13.11 – par. 16; [asyl.net](http://asyl.net), M20082.

<sup>61</sup> Section 29(2) of the Asylum Procedures Act.

<sup>62</sup> Section 27 of the Asylum Procedures Act.

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
  - o if yes, is the appeal  judicial  administrative
  - o 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.

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in the admissibility procedure?  Yes  No
- If so, are interpreters available in practice, for interviews?  Yes  No
- Are personal interviews ever conducted through video conferencing?  Yes  No

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

Standards are identical to those described in Section 2 in cases of “manifestly unfounded” applications.

## 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)<sup>63</sup> without the necessary documents, they are denied entry and the border police initiates a “removal” to the neighbouring country (*Zurückschiebung*).<sup>64</sup> In general, asylum applications are not accepted in these cases because of the legal assumption that asylum-seekers who have passed through a “safe third country” are not entitled to asylum. Only if a “removal” to the neighbouring country proves not to be possible, entry to the German territory has to be granted and an asylum application has to be accepted. 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.

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.<sup>65</sup> Accordingly, it can only be carried out if the asylum-seekers can be accommodated on the airport premises during the procedure (with the sole exception that an asylum-seeker has to be sent to hospital and therefore cannot be accommodated on the airport premises) and if a branch office of the Federal Office for Migration and Refugees (Federal Office) is assigned to the border checkpoint. The necessary facilities exist in five airports.<sup>66</sup> 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”.<sup>67</sup>

Potential outcomes of airport procedures are as follows:

- a. The Federal Office decides within two calendar days that the application is “manifestly unfounded”: Entry to the territory is denied. A copy of the decision is sent to the competent

<sup>63</sup> 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.

<sup>64</sup> Section 57 of the Residence Act.

<sup>65</sup> Section 18a Asylum Procedures Act.

<sup>66</sup> These are Berlin-Schönefeld, Düsseldorf, Frankfurt/Main, Hamburg and Munich. While airport procedures regularly take place in Frankfurt/Main, these special procedures are only of “marginal significance” at the other airports; 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. This is because authorities may decide upon the applicant's arrival that an airport procedure cannot be carried out within the shortened timeframe 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.

<sup>67</sup> 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.

administrative court.<sup>68</sup> The applicant may ask the court for an interim measure against deportation within three calendar days.

- b. 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.
- c. 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.
- d. 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 2012, 720 out of 787 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. Only in 60 cases a decision was taken within the two-day period, 59 of which were rejections classified as “manifestly unfounded”.<sup>69</sup> 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.<sup>70</sup> 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.<sup>71</sup>

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.<sup>72</sup>

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<sup>68</sup> Section 18a II through IV of the Asylum Procedures Act.

<sup>69</sup> Federal Office for Migration and Refugees, Das Bundesamt in Zahlen 2012 – Asyl (*The Federal Office in numbers 2012 – Asylum matters*). February 2013, p. 36.

<sup>70</sup> Ines Welge. Hastig, unfair, mangelhaft. Untersuchungen zum Flughafenverfahren gem. § 18a AsylVfG. Edited by Pro Asyl, April 2009, p. viii.

<sup>71</sup> Pro Asyl. Nach Abschiebung aus Frankfurt knapp dem Tod entkommen (*After deportation from Frankfurt barely escaped death*). Press release, 9 September 2010.

<sup>72</sup> 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

## Appeal

### Indicators:

- Does the law provide for an appeal against a decision taken in a border procedure?
  - Yes  No
- o if yes, is the appeal
  - judicial  administrative
- o 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.<sup>73</sup>

The administrative court shall decide upon the application for an interim measure in a written procedure, i.e. without an oral hearing of the applicant.<sup>74</sup> 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.<sup>75</sup>

## Personal Interview

### Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in a border procedure?  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.<sup>76</sup>

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Bhullar in *Lebensgefahr (After illegal deportation from Germany: Davinder Pal Singh Bhullar’s life is in jeopardy)*. Press release, 17 April 2013.

<sup>73</sup> Section 18a IV of the Asylum Procedures Act.

<sup>74</sup> Section 18a IV of the Asylum Procedures Act.

<sup>75</sup> Section 18a VI of the Asylum Procedures Act.

<sup>76</sup> 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.<sup>77</sup> 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.<sup>78</sup> 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<sup>79</sup> 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.

At the appeal stage there is an "acceleration" of procedures with regard to "manifestly unfounded" asylum claims. This has its legal basis in the Asylum Procedures Act: An appeal against the rejection of an asylum application as "manifestly unfounded" does not have suspensive effect. According to section 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 in written procedure, i.e. without hearing the applicant. 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.

<sup>77</sup> Federal Constitutional Court/Bundesverfassungsgericht, decision of 14 May 1996 – 2 BvR 1516/93 –, cf. Reinhard Marx. AsylVfG – Kommentar zum Asylverfahrensgesetz (*Asylum Procedures Act – Commentary*), 7<sup>th</sup> edition, 2009, p. 432.

<sup>78</sup> *Ibid.*

<sup>79</sup> 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.

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”.

### Appeal

*Indicators:*

- Does the law provide for an appeal against a decision taken in an accelerated procedure?  
 Yes       N/A

Not applicable. (As 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)). However, on the “acceleration” of the procedure at the appeal stage in case of a “manifestly unfounded” application see section general above with regard to accelerated procedures.

### Personal Interview

*Indicators:*

- Is a personal interview of the asylum seeker systematically conducted in practice in an accelerated procedure?       Yes       N/A

Not applicable. (As 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 of 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” 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 “manifestly unfounded” 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,<sup>80</sup> 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);<sup>81</sup>  
an information sheet on the Dublin procedure (available in about 15 languages);<sup>82</sup>
- 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.

The applicant has to sign an acknowledgement of the receipt of these information sheets. 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.

<sup>80</sup> 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 [Pro Asyl](#).

<sup>81</sup> European Agency for Fundamental Rights. *Country Factsheet Germany*, 2010. p. 2.

<sup>82</sup> *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.<sup>83</sup>

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”.<sup>84</sup> In particular, they are not considered suitable to render the significance and content of questions during interviews sufficiently understandable to applicants.

Apart from the information leaflet on the “Dublin procedure”, asylum-seekers are notified if the procedure has been referred to the “Dublin unit” of the Federal Office. However, this letter is in German and, according to the Dublin Transnational Project, “completely incomprehensible for the majority” of asylum-seekers.<sup>85</sup>

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 have been criticised for being 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. Apart from practical problems, there is a legal obstacle with regards to the so-called “residence obligation” for asylum-seekers (legally: “geographic restriction”). Section 56 of the Asylum Procedure Act stipulates that asylum-seekers' residence permits (*Aufenthaltsgestattung*) shall be limited to the town or district, in which their accommodation is located. Therefore, the law does not allow asylum-seekers to leave the town or district, to which they have been referred, they have to be granted permission to do so. This permission may be granted by the authorities if there are “compelling reasons” to leave the area.<sup>86</sup> Furthermore, it has to be granted

*“...in order to enable the foreigner to keep appointments with legal representatives, the United Nations High Commissioner for Refugees and organizations providing welfare services to refugees.”<sup>87</sup>*

Media and NGOs have frequently reported that, in spite of this regulation, it has proved difficult for asylum-seekers to obtain permission in practice, since no common standard has been adopted on the issuance of permissions which is applicable to all responsible municipal authorities.<sup>88</sup> Some authorities were reported to charge a fee for handling the necessary application, or they were restricting the number of permissions they were handing out, e.g. to one per month for each applicant. Furthermore, if asylum-seekers have to make an appointment with their lawyer or an NGO at short notice, it may prove impossible to obtain the permission on time. However, the situation has improved to some extent in

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<sup>83</sup> 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.

<sup>84</sup> Amnesty International et al., ed. *Memorandum zur derzeitigen Situation des deutschen Asylverfahrens (Memoranda on current situation of the German asylum procedure)*. 2005, p. 21.

<sup>85</sup> Cf. above, section 3. Dublin Transnational Project, *Dublin II Regulation, National Report – Germany*, December 2012, p. 19.

<sup>86</sup> Section 57 I of the Asylum Procedure Act.

<sup>87</sup> Section 57 II of the Asylum Procedure Act.

<sup>88</sup> A collection of such reports is made available [here](#).

recent years, since most Federal States have issued regulations which enable asylum-seekers to travel within the territory of the state or at least to neighbouring districts without permission.

## D. Subsequent applications

Indicators:

- Does the legislation provide for a specific procedure for subsequent applications?  
 Yes       No
- Is a removal order suspended during the examination of a first subsequent application?  
Please note: This question cannot really be answered with yes or no since there is a preliminary examination and suspension only takes effect if the authorities decide (or are requested) to carry out the full examination of the application.
- Is a removal order suspended during the examination of a second, third, subsequent application?  
Please note: Same as above.

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.<sup>89</sup> 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.<sup>90</sup> 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.<sup>91</sup>

Further requirements are:

- a. 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.<sup>92</sup>

<sup>89</sup> Section 71 of the Asylum Procedure Act.

<sup>90</sup> Section 51 I-III, Administrative Procedure Act (*Verwaltungsverfahrensgesetz*).

<sup>91</sup> The relevant grounds for this third alternative are listed in section 580 of the Code of Civil Procedure (“action for retrial of a case”), to which the Asylum 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.

<sup>92</sup> Section 51 II of the Administrative Procedure Act.

- b. The application must be made within three months after the applicant has learned of the grounds for resumption of proceedings.<sup>93</sup>

Only if these requirements are met, the applicant regains the legal status of asylum-seeker and the merits of the case will be examined in a 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.<sup>94</sup> 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.<sup>95</sup> The applicant may also be detained pending deportation until it is decided that a subsequent asylum procedure is carried out.<sup>96</sup>

The decision on admissibility of a subsequent application can be carried out without hearing the applicant.<sup>97</sup> 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.

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.

In contrast, if the Federal Office decides to carry out a new procedure, this will be in the form of a “regular procedure”<sup>98</sup> and the applicant regains the status of asylum-seeker, including the 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. This contrasts sharply with the rates for other applicants:

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<sup>93</sup> Section 51 III of the Administrative Procedure Act.

<sup>94</sup> Kerstin Müller, AsylVfG § 71, par. 44, in Hofmann/Hoffmann, eds., *HK-AuslR (Handkommentar Ausländerrecht)*, 2008, p. 1830.

<sup>95</sup> Section 71 V of the Asylum Procedure Act.

<sup>96</sup> Section 71 VIII of the Asylum Procedure Act.

<sup>97</sup> Section 71 III third sentence of the Asylum Procedure Act.

<sup>98</sup> Reinhard Marx, § 71, par. 132–133, *AsylVfG – Kommentar zum Asylverfahrensgesetz (Asylum Procedures Act - Commentary)*, 7<sup>th</sup> ed., 2009, p. 1252,

## Decisions on subsequent applications for selected countries of origin, 2012<sup>99</sup>

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
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%)

## 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 minors). 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).<sup>100</sup> If staff members stationed at the first contact point have grounds to

<sup>99</sup> 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.

<sup>100</sup> A short project description is available [here](#).

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 particular sensitive manner and, if necessary, by specially-trained decision-makers:<sup>101</sup>

- Unaccompanied minors,
- victims of gender-specific prosecution, and
- victims of torture and traumatised asylum-seekers.

If during the interview it becomes evident 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 minors, 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.<sup>102</sup> 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.

## 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.<sup>103</sup> As a general rule, applicants are not expected to provide written evidence, but are only obliged to hand over to the authorities those certificates and documents which are already in their possession and which are necessary “to substantiate his claim or which are relevant for the decisions and measures to be taken under asylum and foreigners law, including the decision and enforcement of possible deportation to another country”.<sup>104</sup> 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.<sup>105</sup> Such a risk may also consist in a potential serious harm on health grounds or in a risk which might result from a lack of appropriate health care in the country of origin.

<sup>101</sup> Federal Office for Migration and Refugees. *DA-Asyl (Dienstanweisung Asylverfahren) – Belehrungen*, 2010, p. 139.

<sup>102</sup> Federal Office for Migration and Refugees. *Das deutsche Asylverfahren – ausführlich erklärt. Zuständigkeiten, Verfahren, Statistiken, Rechtsfolgen*. December 2012, p. 23

<sup>103</sup> Section 24 I of the Asylum Procedure Act.

<sup>104</sup> Section 15 III of the Asylum Procedure Act.

<sup>105</sup> Section 60 VII first sentence of the Residence Act.

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.<sup>106</sup>

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.<sup>107</sup> 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.<sup>108</sup> 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).<sup>109</sup> In such cases, it may also prove highly difficult to find experts to submit a medical opinion.

### 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 minors 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 minors into care is not enforced consistently. The Association estimates that as many as 25 per cent of unaccompanied minors are not taken into care. One of the main reasons is that the legal situation is inconsistent as far as unaccompanied minors aged between 16 and 18 years are concerned: While the Youth Welfare Act (*Jugendhilfegesetz*) stipulates that any person under the age of

<sup>106</sup> Federal Office for Migration and Refugees. *DA-Asyl (Dienstanweisung Asylverfahren) – Darlegungslast*, 2010, p. 237.

<sup>107</sup> Federal Administrative Court. Decision of 11 September 2007 - 10 C 8.07 – (asyl.net, M12108).

<sup>108</sup> Melanie Glocker, Hans Wolfgang Gierlich, 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.

<sup>109</sup> [Psychosoziale Zentrum für Flüchtlinge Düsseldorf](#) (*Psycho-social Centre for refugees Dusseldorf*) is a centre providing consultation and therapy to traumatised refugees.

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.<sup>110</sup> As a result, many minors aged between 16 and 18 are treated as adults. Moreover, minors may be treated as adults because of questionable age assessments.<sup>111</sup>

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 minor. 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 a CT or an 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.<sup>112</sup>

The role of the guardian in the asylum procedure has been described as “unclear“: Often, guardians appointed by the youth welfare offices are not in a position to sufficiently support the minors in the 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 minor in the asylum procedure. In other federal states, attempts to establish a similar practice have not been successful.<sup>113</sup>

## 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

<sup>110</sup> Section 12 of the Asylum Procedure Act.

<sup>111</sup> 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.

<sup>112</sup> *Ibid.*, p. 15-16.

<sup>113</sup> *Ibid.*, p. 27-28.



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 Procedure Act.<sup>114</sup>

**Safe third country:**<sup>115</sup> 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.<sup>116</sup> Accordingly, asylum-seekers can be sent back to safe third countries with neither an asylum application, nor an application for international or national protection being considered. Today the safe third country concept has its main impact at land borders:<sup>117</sup> 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.<sup>118</sup> Asylum applications are usually not accepted or referred to the responsible authority by the border police, 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.

**Safe country of origin:**<sup>119</sup> Member states of the European Union are by definition considered to be safe countries of origin.<sup>120</sup> 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”.*<sup>121</sup>

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

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<sup>114</sup> Article 16a II and III of the Basic Law.

<sup>115</sup> Section 26a of the Asylum Procedure Act.

<sup>116</sup> Federal Constitutional Court, decision of 14<sup>th</sup> May 1996 – 2 BvR 1938/93, 2 BvR 2315/93 –, BVerfGE 94, 49 (189).

<sup>117</sup> Section 18 of the Asylum Procedure Act.

<sup>118</sup> The border area is defined as a strip of 30 kilometres.

<sup>119</sup> Section 29a of the Asylum Procedure Act.

<sup>120</sup> Section 29a II of the Asylum Procedure Act.

<sup>121</sup> Art. 16a III of the Basic Law.

Refugees.<sup>122</sup>

At present, the list of safe countries consists of Ghana and Senegal. 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).<sup>123</sup> The number of applications from EU countries has almost been insignificant in recent years.<sup>124</sup>

## G. Treatment of specific nationalities

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 does not have a basis in law but consists of a series of administrative measures such as shifting of personnel to certain caseloads and target-setting for decision-makers. The aim is to conduct the interview on the day that the application is registered or within two days after the application. The decision is supposed to be made and handed out within one week.<sup>125</sup>

The prioritisation of applications from the “Western Balkan” countries led to an increase in the backlog for applications from other countries.<sup>126</sup>

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<sup>122</sup> UNHCR. *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice. Detailed Research on Key Asylum Procedures Directive Provisions*. March 2010. p. 339.

<sup>123</sup> Margret Müller, *Asylentscheidungen 2012 (Asylum decisions 2012)*. Detailed statistics compiled from figures of the Federal Office for Migration and Refugees. Flüchtlingsrat Coesfeld, 2013.

<sup>124</sup> Federal Office for Migration and Refugees. *Das Bundesamt in Zahlen 2012 – Asyl (The Federal Office in numbers 2012)*, 2013, p. 10.

<sup>125</sup> Federal Office for Migration and Refugees, *Entscheiderbrief (Letter from the decision-maker)*, 9/2012, p. 2

<sup>126</sup> Federal Government of Germany: *Response to information request by the parliamentary group of “The Left” party/“Die Linke”*, 31<sup>st</sup> January 2013, No. 17/12234, p. 25.

## 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 :
  - o During the accelerated procedure?  
 Yes       Yes, but limited to reduced material conditions       No
  - o During border procedures:  
 Yes       Yes, but limited to reduced material conditions       No
  - o During the regular procedure:  
 Yes       Yes, but limited to reduced material conditions       No
  - o During the appeal procedure (first appeal and onward appeal):  
 Yes       Yes, but limited to reduced material conditions       No
  - o 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*) until a final, non-appealable decision is made on their application. 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 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*):<sup>127</sup> These standard social benefits consist of the basic social assistance and of possible "supplements in specific circumstances". However, asylum-seekers are generally not entitled to "benefits for jobseekers", so they are excluded from funds which are designed to assist with integration into the labour market even after the 48-months-period has expired.

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.<sup>128</sup>

<sup>127</sup> 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.

<sup>128</sup> Section 7 of the Asylum Seekers' Benefits Act.

The Federal Constitutional Court decided on 18 July 2012 that the Asylum Seekers' Benefits Act in its present form is 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”.<sup>129</sup>

## 2. Forms and levels of material reception conditions

*Indicators:*

- Amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2012 (per month, in original currency and in euros): (minimum) 78 € – 134 €, (maximum) 205 € – 346 €

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 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 ys.).

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.<sup>130</sup> The court obliged the legislator to “immediately” revise the law and for the period until a new law is passed, it asked authorities to calculate the basic allowances of the Asylum Seekers Benefits Act on the basis of the generally applicable provisions of the Social Code. A first draft for a new law was published in December 2012 by the Ministry of Labour and Social Affairs, but no bill has been passed to parliament as of May 2013. This means that the transitional arrangement as required by the Federal Constitutional Court is still in force and asylum-seekers at present are entitled 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 2012.**<sup>131</sup>

	<b>Single person</b>	<b>Spouse</b>	<b>Member of household &gt; 18 ys.</b>	<b>Member of household 14-17 ys.</b>	<b>Member of household 6-13 ys.</b>	<b>Member of household &lt; 6 ys</b>
Allowance for basic needs*	212 €	191 €	170 €	192 €	152 €	127 €
Allowance in cash	134 €	120 €	107 €	79 €	86 €	78 €
<b>Total</b>	<b>346 €</b>	<b>311 €</b>	<b>277 €</b>	<b>271 €</b>	<b>238 €</b>	<b>205 €</b>

\* 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.

<sup>129</sup> Federal Constitutional Court, decision of 18 July 2012 – 1 BvL 10/10, 1 BvL 2/11 - asyl.net, M19839; for details cf. next question.

<sup>130</sup> 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 (in [English](#)).

<sup>131</sup> Georg Classen, “Das BVerfG-Urteil zur Verfassungswidrigkeit des AsylbLG”, Asylmagazin 9/2012, S. 286–293.

### 3. Types of accommodation

#### Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals): N/A
- Number of places in private accommodation: N/A
- Number of reception centres: N/A
- Are there any problems of overcrowding in the reception centres?  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

Asylum-seekers are obliged to stay in an initial reception centre for a maximum period of three months. Places in those reception centres are allocated according to a distribution system. There is at least one initial reception centre in each of Germany's 16 Federal States, and responsibility for the running of these centres lies with the central foreigners' authorities of the states.

Following the initial reception period, asylum-seekers are usually sent to another accommodation centre within the same Federal State and they are obliged to stay in the municipality to which they have been allocated for the whole duration of their procedure, i.e. including during court proceedings. The Federal States are entitled by law to organise the distribution and the accommodation of asylum-seekers within their territories.<sup>132</sup> 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.

Accommodation at this stage is usually provided in the form of a place in a local accommodation centre, but it is possible that the rent for an apartment is covered by the authorities. In most Federal States this is only granted in exceptional circumstances, e.g. if an asylum-seeker cannot be expected to live in an accommodation centre for medical reasons. Only the Federal State of Berlin has adopted a policy, according to which asylum-seekers shall be accommodated in apartments after the initial reception period.

Unaccompanied minors should be taken into care of a youth welfare office and the youth welfare office has to seek "adequate accommodation".<sup>133</sup> 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 minors and which have been strongly criticised for being inadequate to meet the special needs of this group.<sup>134</sup> Furthermore, because of some inconsistencies in legislation, the procedure for taking unaccompanied minors 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 minors are not taken into care and do not regularly receive benefits and services from the youth welfare office.<sup>135</sup>

<sup>132</sup> Section 10 of the Asylum Seekers' Benefits Act.

<sup>133</sup> Section 42 I first sentence of the Eighth Book of the Social Code.

<sup>134</sup> 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.

<sup>135</sup> Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (*Federal Association for Unaccompanied Refugee Minors*). *Supplementary Report on the third and fourth periodic reports of Germany to the United*

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. 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.<sup>136</sup> In practice, this means that payments in cash may be reduced or omitted, subject to the discretion of the authorities. 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.<sup>137</sup>

However, this provision does not generally affect asylum-seekers as long as their procedure is on-going, since the legal preconditions for reductions of benefits cannot be held against them.

#### 5. Access to reception centres by third parties

*Indicators:*

- 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.<sup>138</sup> Any restriction of access to reception centres for UNHCR would therefore be considered illegal.

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

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*Nations pursuant to Art. 44 of the UN Convention of the Rights of the Child.* 2013, p. 27.

<sup>136</sup> Section 1a of the Asylum Seekers' Benefits Act.

<sup>137</sup> 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 [here](#).

<sup>138</sup> Section 9 of the Asylum Procedure Act.

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.

## 6. Addressing special reception needs of vulnerable persons

*Indicators:*

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

## 7. 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.”<sup>139</sup>

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.

## 8. Freedom of movement

Freedom of movement of asylum-seekers is restricted by the so-called “residence obligation” for asylum-seekers (legally: “geographic restriction”). Section 56 of the Asylum Procedure Act stipulates that asylum-seekers' residence permits (*Aufenthaltsgestattung*) shall be limited to the town or district in which their place of accommodation is located. Therefore, the law does not allow asylum-seekers to leave the municipality to which they have been allocated on their own initiative. Instead, they have to apply for a permission to do so. This permission may be granted by the authorities if there are “compelling reasons” to leave the area.<sup>140</sup> Furthermore, permission has to be granted

“...in order to enable the foreigner to keep appointments with legal representatives, the United Nations High Commissioner for Refugees and organizations providing welfare services to refugees.”<sup>141</sup>

<sup>139</sup> Section 47 IV of the Asylum Procedure Act.

<sup>140</sup> Section 57 I of the Asylum Procedure Act.

<sup>141</sup> Section 57 II of the Asylum Procedure Act.

Media and NGOs have frequently reported that it has proved difficult for asylum-seekers to obtain the necessary permission in practice, since there is no common standard for the issuing of permissions among the responsible municipal authorities.<sup>142</sup> For example, some authorities were reported to charge a fee for handling the necessary application, or they were restricting the number of permissions they were handing out, e.g. to one per month for each applicant. Furthermore, if an asylum-seeker has to make an appointment with his lawyer or an NGO at short notice, it may prove impossible to obtain the necessary permission in time.

In recent years, most Federal States have issued regulations which have softened the impact of the “residence obligation” to some extent, e.g. in most Federal states asylum-seekers may travel within the whole territory of the state or at least to neighbouring municipalities without having to ask for permission. Furthermore, the Federal States of Berlin and Brandenburg have agreed to enable asylum-seekers to travel between these two states without having to ask for permission each time.<sup>143</sup>

## 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:  
1 year
- Are there restrictions to access employment in practice?  Yes  No

As of December 2012, asylum-seekers are not allowed access to the labour market for a period of one year.<sup>144</sup> In addition, they 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.<sup>145</sup>

After the waiting period of one year has expired, access to the labour market is granted in principle, but only with severe restrictions:

- 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.
- The job centre carries 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.

<sup>142</sup> A collection of such reports is made available [here](#).

<sup>143</sup> For an overview of regulations as at December 2012 cf. Kay Wendel. *Die neuen Formen der Residenzpflicht. Synopse der Anwendungshinweise zur räumlichen Aufenthaltsbeschränkung von Flüchtlingen nach den “Lockerungen”* (New types of the obligation to residency. Synopsis of the instructions on spatial restrictions on residency of refugees after the “relaxation of regulations”), edited by Flüchtlingsrat Brandenburg and Pro Asyl, January 2013, pp. 7-8.

<sup>144</sup> Section 61 II of the Asylum Procedure Act.

<sup>145</sup> Section 21 VI of the Residence Act.



- 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.

A further obstacle for asylum-seekers in accessing the labour market consists in the “residence obligation”. Permission to travel to their workplace shall generally be granted where it is located outside the municipality to which an asylum-seeker had been allocated.<sup>146</sup> Nevertheless, the residence obligation creates a serious obstacle to get in contact with potential employers in the first place.

## 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 minors 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.<sup>147</sup>

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.

<sup>146</sup> Section 58 I of the Asylum Procedure Act.

<sup>147</sup> 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       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.<sup>148</sup>

In addition, the law states that further benefits can be granted “if they are indispensable in an individual case to secure health”.<sup>149</sup>

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.<sup>150</sup>

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.<sup>151</sup>

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*).<sup>152</sup> This includes access to health care under the same conditions that apply to German citizens who receive social benefits.

<sup>148</sup> Section 4 of the Asylum Seekers' Benefits Act.

<sup>149</sup> Section 6 of the Asylum Seekers' Benefits Act.

<sup>150</sup> Georg Classen, *Krankenhilfe nach dem Asylbewerberleistungsgesetz (Medical assistance according to the Asylum Seekers' Benefits Act)*. Updated version, May 2012. p. 6-7.

<sup>151</sup> *Ibid.*, p. 7-8.

<sup>152</sup> 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.

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*).<sup>153</sup> 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.

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<sup>153</sup> A list of treatment centres is available [here](#).

## Detention of Asylum Seekers

### A. General

#### Indicators:

- Number of asylum seekers who entered detention in the previous year: 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, 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.<sup>154</sup>

### B. Grounds for detention

#### Indicators:

- In practice, are asylum seekers automatically detained
  - o on the territory:  Yes  No
  - o at the border:  Yes  No
- Are asylum seekers detained in practice during the Dublin procedure?  Yes  No
- Are asylum seekers ever detained during a regular procedure?  Yes  No
- Are unaccompanied asylum-seeking children ever detained?  
 Yes  Yes, but only in border/transit zones  No
- Are asylum seeking children in families ever detained?  
 Yes  Yes, but rarely  No
- What is the maximum detention period set in the legislation (inc 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? N/A

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.<sup>155</sup>

<sup>154</sup> 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.

<sup>155</sup> Section 67 of the Asylum Procedure Act.

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.<sup>156</sup>

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

- in pre-trial detention,
- in prison, 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.<sup>157</sup>

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”.<sup>158</sup>

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 beforehand. In such cases, the detention order has to be subsequently obtained from a court as soon as possible.

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<sup>156</sup> Federal Constitutional Court, decision of 14<sup>th</sup> May 1996 – 2 BvR 1516/93 -.

<sup>157</sup> Section 14 III of the Asylum Procedure Act.

<sup>158</sup> 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.

## 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? N/A
- Do detainees have access to health care in practice?  Yes  No
- Is access to detention centres allowed to
  - o Lawyers:  Yes  Yes, but with some limitations  No
  - o NGOs:  Yes  Yes, but with some limitations  No
  - o UNHCR:  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. National law only provides basic rules for detention centres. As a result, conditions differ very much throughout the country.<sup>159</sup>

## D. Judicial Review of the detention order

### Indicators:

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

Only a judge is competent for the ordering and the prolongation of detention under German law. 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 foreigner 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.

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.

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

<sup>159</sup> JRS, [Detention in Europe: Germany](#).

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<sup>160</sup> Detention based on insufficient ground 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 application 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.<sup>161</sup> However, this does not include free legal assistance. 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.

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<sup>160</sup> Peter Fahlbusch, "Haft in Verfahren nach der Dublin II-Verordnung" (Detention in the context of the Dublin procedure), *Asylmagazin* 9/2010, pp. 289-295.

<sup>161</sup> Section 14 III of the Asylum Procedure Act.