Information and Cooperation Forum (ICF)

- Country Report Germany -

Implemented by
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Introduction

Current situation

With 35,607 people applying for asylum in Germany, the number of asylum applications decreased again in 2004, with a decrease of 14,956 applications or 29.6 percent compared to 2003 (50,563). Once more, the numbers drastically fell below the historic low of 2002 (which saw the lowest number of asylum applicants since 1984).
Between January and December 2004, the Federal Office for Refugees and Migration (or Federal Office) - the German asylum authority - made 61,961 decisions (compared to 93,885 in 2003). It recognised 960 individuals (or 1.5 percent) as persons entitled to asylum under Article 16a of the German Basic Law. Under § 51 section 1 of the Aliens Act 1,107 individuals (or 1.8 percent) received protection from deportation (refugee status on the basis of the Geneva Convention). In 964 cases, the Federal Office established obstacles to deportation as defined by § 53 of the Aliens Act (subsidiary protection).
The number of refugees who lost their refugee status in 2004 increased strongly. The Federal Office initiated more than 18,000 revocation procedures last year, mainly for refugees from Kosovo and Iraq.
After more than four years of argument, the Immigration Act was adopted on July 9, 2004, and came into force on January 1, 2005.

2. Statistics

APPLICATIONS

1. ***Total number of individual asylum seekers who arrived (with variation in %)*:**

2003	2004	Variation +/- (%)
50,563	35,607	-29.6

Source: Federal Ministry of the Interior

2. ***Breakdown according to the country of origin/nationality*:**

Country of origin / nationality	2003	2004	Variation +/- (%)
Turkey	6,301	4,148	-34.2
Serbia and Montenegro	4,909	3,855	-21.5
Russian Federation	3,383	2,757	-21.5
Vietnam	2,096	1,668	-20.4

Iran	2,049	1,369	-33.2
Azerbaijan	1,291	1,363	+5.6
Iraq	3,850	1,293	-66.4
China	2,387	1,186	-50.3
Nigeria	1,051	1,130	+7.5
India	1,736	1,118	-35.6

Source: Federal Ministry of the Interior

3. Unaccompanied minors (only children under 16) according to the country of origin/nationality:

Country of origin (2004)	**Total**
Vietnam	153
Turkey	55
Ethiopia	53
Serbia and Montenegro	51
Afghanistan	33
Russian Federation	32
Eritrea	29
Congo (DR)	29
Nigeria	23
Syria	22
Total	**801**

Source: Federal Office for Migration and Refugees

RECOGNITION RATES

4. Total number of applications decided and the statuses accorded:[1]

	2003		2004	
Statuses	**Number**	**%**	**Number**	**%**
Recognition (Art. 16a German Constitutional Law)	1,534	1.6	960	1.5
Convention status (Section 51,1 Aliens Law)	1,602	1.7	1,107	1.8
Statutory Temporary Suspension of Deportation (Section 53 Aliens Law)	1,567	1.7	964	1.6
No status awarded	63,002	67.1	38,599	62.3
Other decisions	26,180	27.9	20,331	32.8
Total decisions	**93,885**	**100**	**61,961**	**100**

Source: Federal Office for Migration and Refugees

5. Decisions and decision rates 2004 according to the country of origin: [2]

Country of origin	**Total Decisions (absolute number)**	**Recognitions 16 a GG**	**Protection from deportation according to Sect. 51, para. 1 Aliens Act**	**Impediments to deportation according to Section 53 Aliens Act**	**Rejections**	**Formal Decisions**
Turkey	8,201	389 (4.7%)	211 (2.6%)	66 (0.8%)	4,334 (52.8%)	3,201 (39.0%)

[1] These figures include exclusively decisions of the Federal Office for Migration and Refugees.
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Serbia and Montenegro	9,402	4 (0.0%)	1 (0.0%)	77 (0.8%)	3,880 (41.3%)	5,440 (57.9%)
Russian Federation	3,650	38 (1.0%)	512 (14.0%)	114 (3.1%)	1,766 (48.4%)	1,220 (33.4%)
Vietnam	2,183	1 (0.0%)	3 (0.1%)	32 (1.5%)	1,758 (80.5%)	389 (17.8%)
Iran	3,040	138 (4.5%)	129 (4.2%)	22 (0.7%)	1,668 (54.9%)	1,083 (35.6%)
Azerbaijan	1,702	25 (1.5%)	19 (1.1%)	14 (0.8%)	1,319 (77.5%)	325 (19.1%)
Iraq	3,988	29 (0.7%)	11 (0.3%)	49 (1.2%)	3,327 (83.4%)	572 (14.3%)
China	1,600	17 (1.1%)	43 (2.7%)	0 (0.0%)	1,351 (84.4%)	189 (11.8%)
Nigeria	1,504	0 (0.0%)	0 (0.0%)	10 (0.7%)	1,335 (88.8%)	159 (10.6%)
India	1,512	0 (0.0%)	3 (0.2%)	2 (0.1%)	1,122 (74.2%)	385 (25.5%)

Source: Federal Office for Migration and Refugees

DEPORTATIONS / REMOVALS

6. Persons returned on third country grounds:

No data available.

***7. Deportations of rejected asylum seekers (via air)*:**

2001: 27,051[3]
2002: 26,286[4]
2003: 23,944[5]

The main destinations countries: Former Yugoslavia (4,361 persons) [6]

[3] This figure includes deportations of other aliens.
[4] This figure includes deportations of other aliens.
[5] This figure includes deportations of other aliens.
[6] This figure includes deportations of other aliens.

Turkey (4,052 persons) [7]

Source: Stenographic Report of the 93rd meeting of the German Federal Parliament

8. Dublin II Convention practice:

Requests addressed to Germany by other Dublin II States				
from...	**Number of requests addressed to Germany by other Dublin II states**	**Requests refused by the Federal Office for Migration and Refugees**	**Requests accepted by the Federal Office for Migration and Refugees**	**Transfers to Germany**
Austria	478	123	359	141
Belgium	977	207	771	304
Czech Republic	34	21	13	5
Spain	54	22	32	2
Finland	386	36	354	163
France	1,447	512	940	315
Greece	5	1	4	3
Hungary	3	1	1	
Ireland	24	5	19	1
Iceland	7	2	6	3
Italy	66	56	9	2
Luxembourg	140	13	130	87
Netherlands	395	48	339	140
Norway	894	144	768	430
Poland	12	6	5	2
Portugal	7	2	6	2
Sweden	1,857	226	1,668	780
Slovenia	18	12	6	1
Slovakia	16	13	3	
Great Britain	643	67	576	300
Total	**7,463**	**1,517**	**6,009**	**2,681**

Requests presented by Germany to other Dublin II States				
to...	**Number of request presented by Germany to other Dublin II**	**Requests refused by the Dublin II member state**	**Requests accepted by the Dublin II member state**	**Transfers to the Dublin II member state**

[7] This figure includes deportations of other aliens.

	states			
Austria	1,253	140	1,260	897
Belgium	580	65	468	249
Cyprus	1			
Czech Repulic	117	40	47	15
Estonia	2	2		
Spain	170	37	113	45
Finland	70	14	49	26
France	673	128	477	247
Greece	254	21	247	126
Hungary	49	3	34	17
Ireland	4	2		
Iceland	2	1		
Italy	423	95	252	134
Lithuania	6		4	1
Luxembourg	57	23	30	15
Netherlands	573	116	460	311
Norway	356	94	239	128
Poland	658	15	481	90
Portugal	13	13	3	2
Sweden	780	217	552	336
Slovenia	22	1	19	3
Slovakia	409	16	338	102
Great Britain	64	25	37	21
Total	**6.536**	**1.068**	**5.110**	**2.765**

Source: Federal Office for Migration and Refugees

SPECIAL PROCEDURES

9. Airport procedure

	Cases	**No decision within two days or further investigations / permission to enter**	**Decisions within two days**	**Appeals Administrative Court**[8]

[8] This information is only in regard to the Rhein-Main airport in Frankfurt. Asylum seekers who choose to enter the country by plane almost exclusively choose Frankfurt as their destination.

			total	Recognised	Manifestly unfounded		Granted [9]	rejected[10]
2004	587	278	304	0	304			
January 1,2004 – June 30, 2004	313	157	153	0	153	114	2	108
2003	734	458	279	0	271	199	7	193

Source: Federal Office for Migration and Refugees

A. Legal and structural conditions

1. International law

	Ratified	**In force**	**Status**
Geneva Convention on Refugees	September 1, 1953	April 22, 1954	Statutory status
European Convention on Human Rights	August 7, 1952	September 3, 1953	Statutory status
UN Convention on the Rights of the Child	April 5, 1992	July 10, 1992	The Federal Republic of Germany only ratified the UN Convention on the Rights of the Child with the proviso that it not be interpreted in such a way as to "restrict the right of the Federal Republic of Germany to pass law and regulations concerning the entry of aliens and the conditions of their stay or to make a distinction between nationals and aliens".
UN Convention	October 1,	October 31,	The Federal Government has not yet

[9] This includes possible decisions on legal remedies that were pending from the year before. The given data refers only on additional appeals with suspensive effect that are aimed at granting the applicant entry into the country. The decision in the main asylum procedure is not made thereby.

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against Torture	1990	1990	signed and ratified the additional protocol to the UN Convention against Torture.

2. Constitutional law and Acts

Basic Law *(Grundgesetz)* (Constitution)	In force since 1948	Art. 16a: Persons persecuted on political grounds shall have the right of asylum. The amendment of the Basic Law came into force on May 1, 1993: the concepts of "safe country of origin" and "safe third country" were introduced, clearly restricting this Law. "Safe third countries" are defined as all EU member states as well as further European states respecting the Geneva Convention on Refugees (GC) and the Commission on Human Rights. At present, these non-EU countries are Switzerland and Norway.
Asylum Procedure Act *(Asylverfahrensgesetz)*	Announcement of July 27, 1993 (Federal Law Gazette (*BGBl.*) I, p. 1361), last amended by Art. 3 of the Immigration Act of July 30, 2004 (*BGBl.* I 2004, p. 1950)	Governs the asylum procedure.
Asylum Seekers Benefits Act *(Asylbewerberleistungs-gesetz)*	In force since November 1, 1993 and amended several times	Governs the conditions for social benefits granted during the asylum procedure.
Federal Social Assistance Act *(Bundessozialhilfegesetz)*	In force until January 31, 2004	Governs the claims of remaining persons in need of social assistance.
Social Security Code II *(Sozialgesetzbuch II)*	In force since January 1, 2005	Governs the claims of job-seekers, especially *Arbeitslosengeld II* (reformed unemployment benefits).

Social Security Code XII ***(Sozialgesetz XII)***	In force since January 1, 2005	Governs the claims of remaining persons in need of social assistance.
Aliens Act ***(Ausländergesetz)***	In force until December 31, 2004	General Regulation on the entry and stay of aliens, became ineffective on December 31, 2004.
Residence Act ***(Aufenthaltsgesetz)***	In force since January 1, 2005	Replaces the Aliens Act. Regulates entry and stay of aliens as well as refugee status and subsidiary protection.
Child and Youth Services Act ***(Kinder- und Jugendhilfegesetz (KJHG))*** **The Social Security Code *(SGB)* VIII is the first of 20 chapters of the *KJHG***	Published in the Federal Law Gazette (*Bundesgesetzblatt*) on June 26, 1990	The acronym *KJHG* describes the Social Security Code VIII *(das Achte Buch Sozialgesetzbuch (SGB VIII))* - child and youth services - summarizing all relevant youth services legislation. Relevant areas include youth work, child and youth protection, counselling in separation and divorce matters, child day care centres, and education services; they include offers of assistance which are strongly oriented towards social pedagogy as well regulatory tasks. For example, the *KJHG* provides for the way minors are taken into care.

On the level below the Acts with national scope, almost all of the 16 *Bundesländer* (federal states) have *Flüchtlingsaufnahmegesetze* (Refugee Reception Acts), laying down the reception conditions for asylum seekers in the respective *länder* in more concrete terms. These Reception Acts are complemented by ordinances or ministerial decrees.

3. Competences

The Federal Office for Migration and Refugees (Federal Office) was formerly called the Federal Office for the Recognition of Foreign Refugees – until the corresponding provisions of the Immigration Act entered into force – and holds chief responsibility for decisions under the asylum law and aliens law during the asylum procedure. The Federal Office is a federal authority that reports to the Federal Ministry of the Interior.
The branch of the Federal Office competent under the law is responsible for handling the asylum application (cf. §14(1) Asylum Procedure Act (AsylVfG)), i.e. the branch assigned to the first reception centre. It conducts the hearing and makes the decision in the first administrative instance. The responsibility for a follow-up application *(Asylfolgeantrag)* always lies with the branch that was responsible for the handling of the case in the first procedure (cf. §71(2) sentence 1 Asylum Procedure Act (AsylVfG)).

Responsibility for first reception lies with the reception facility at which the person concerned registered, provided that a place is available for reception of this person at the set reception rate, and provided that the designated Federal Office branch does handle asylum applications from the country of origin of the person concerned (cf. § 44 ff Asylum Procedure Act (AsylVfG)). The lodging of the asylum application becomes legally effective when the asylum seeker reports in person to the Federal Office branch responsible for the handling of

his/her asylum claim; otherwise the legal term is not "asylum application" *(Asylantrag)* but "request for asylum" *(Asylersuchen)*.
To a great extent, it is the competence of the *länder* to execute aliens law, i.e. it is essentially the competence of the Federal States' Ministries of the Interior and subordinate authorities.
The aliens' authorities (*Ausländerbehörden*) are competent for all measures and decisions concerning residence and passport matters under the Residence Act (formerly Aliens Act). The aliens' authorities come under the respective Ministry of the Interior of the federal state.
The social security offices *(Sozialämter)* are, as a rule, responsible for decisions on benefits under the Asylum Seekers Benefits Act.

4. Societal context (social benefits)

Persons who are not able to meet their own living costs are entitled to state aid. The legislature has changed the social security system through a fundamental reform. The amendments came into force on January 1, 2005.

The situation until December 31, 2004:

In keeping with the previous legal position, an unemployed person was first entitled to unemployment benefit *(Arbeitslosengeld)*; a long-term unemployed person was subsequently entitled to unemployment assistance *(Arbeitslosenhilfe)* - both amounts depending on the most recent income.
Persons in need of social welfare were entitled to benefits under the Federal Act on the Granting of Social Assistance (*Bundessozialhilfegesetz, BSHG)*. Social benefits for an adult (head of the household) were €345 in the Western *länder* and €331 in the Eastern *länder*. In addition, the corresponding social welfare office of the local authorities covered rent and health care costs.

The situation since January 1, 2005:

The former unemployment assistance and social assistance benefits were amalgamated by the legislature to form *Arbeitslosengeld II* (unemployment benefits II). Persons in need between 15 and 65 years of age who are capable of gainful employment and whose ordinary residence (*gewöhnlicher Aufenthalt*) is the Federal Republic of Germany are now entitled to these benefits. Their family members are also registered. The size of unemployment benefits II is made up of benefits approximately amounting to the social welfare benefits rate, a lump sum for one-off payments, and an "appropriate" housing subsidy. If a person receives *Arbeitslosengeld II*, having been entitled to unemployment benefit in the previous circumstances, an allowance of up to €160 is paid in addition to the basic amount for two years. In general, only persons who are capable of gainful employment are entitled to *Arbeitslosengeld II*. Individuals who are not part of the country's labour force are either entitled to social welfare or other relevant benefit.

Special situation for asylum seekers:

As under the previous legal position, asylum seekers have a special legal status. They are not entitled to normal social welfare benefits (formerly social assistance, now *Arbeitslosengeld II*).
Asylum seekers fall under the Asylum Seekers Benefits Act (*AsylbLG*). This special Act was introduced in 1993. Under §3 *AsylbLG* the regular rate for adults (head of household) is €184.07, mainly to be granted as benefits in kind or non-cash disbursements such as vouchers.

In addition, cash benefits of €40.90 are granted (spending money). The Asylum Seekers Benefits Act has created a kind of "second class human dignity" by fixing benefits for asylum seekers at about 30 percent below *BSHG* level, and therefore clearly under subsistence level. Basic needs are difficult to meet, health care for asylum seekers is restricted to acute cases, and legal protection is literally denied as asylum seekers have little wherewithal for legal assistance since benefits are generally paid in kind

5. Access to the asylum process: conditions of entry and making application

Since 1993, the "safe third country" concept has applied to individuals trying to enter the Federal Republic by land and applying for asylum at the border. Following the Basic Law amendment of 1993, all EU member states and former neighbouring non-EU states (and Norway) have been declared "safe third countries".

Asylum seekers can be returned to the "safe third country" without examination of their asylum application as regards content or the reasons for asylum. There was no provision for checking on the neighbouring country's "safe" status in the individual case.
Until May 1, 2004, border authorities had to deny entry to asylum seekers trying to enter from a safe third country. Applying for asylum at the national border was only possible in theory. In practice, this never happened as the Federal Republic of Germany was surrounded by safe third countries.

Since September 1, 2003, the Dublin II Regulation has applied. This Regulation is European Community Law and replaces multilateral agreements such as Dublin I (Dublin Agreement). It lays down which EU member state is competent for the examination of an asylum claim. The third country rule has become obsolete with the accession to the EU of neighbouring countries to the east. Now Dublin II decisions are applied to these countries.
Until May 1, 2004, asylum applicants who entered Germany illegally at the eastern border were placed in Federal Border Police (*BGS*) cells and were usually returned within 48 hours to the neighbouring country if entry via this country could be proved and if this country had agreed to readmission.
Since May 1, 2004, asylum seekers who are intercepted upon illegal entry have often been put in deportation custody. The Federal Office for Migration and Refugees (*BAMF*) then examines the competences for carrying out the asylum procedure and applies for readmission to the country responsible under Dublin II. If this country accepts competence for the asylum procedure, the Federal Border Police returns the asylum seeker.
Foreigners who have entered the country illegally cannot be returned, regardless of the period established in international agreements, if they have illegally stayed in Germany for more than six months. In this event, deportation is the only possibility.
For refugees entering by air there is an "airport procedure" (see below): this is a special procedure preceding the "regular" asylum procedure that applies to two groups of refugees.
Asylum seekers applying for asylum within the country are referred to and accommodated in the nearest first reception facility. A national distribution system facilitates the establishing of the competent reception facility within a few days, taking into consideration reception rates for the individual *länder* which are provided for by the law (see below). The asylum seeker then formally lodges the asylum application at this facility.

Duration of the asylum procedure

There is no current data on the average duration of asylum procedures - until the first decision is given. In 2002, first-instance decisions rejecting asylum applications as "manifestly unfounded" took two weeks on average; other cases took up to three months. In 2003, the

average asylum procedure lasted 23.7 months until the final, last-instance decision was given: about 25 percent of asylum applications were finally decided within the first 6 months. An additional 6.4 percent of applicants were forced to wait more than five years for the decision (Source: *BAMF*).

6. Special procedures[11]

In Germany there is only one special procedure for the border areas. Following the Basic Law amendment, the airport procedure was introduced by a regulation with statutory status. It has been applied since July 1, 1993.

The airport procedure

A special procedure applies to persons entering the country by air and applying for asylum, namely the airport procedure (§ 18a Asylum Procedure Act (*AsylVfG*)). The asylum procedure is carried out before the Federal Border Police decides on the permission to enter - while the foreigner is still in the transit area. The airport procedure applies to two groups:

1) asylum seekers with forged ID documents or without any ID documents, and
2) asylum seekers from safe countries of origin (cf. §29a *AsylVfG*): Bulgaria, Ghana, Poland, Romania, Hungary, Senegal, Slovakia or the Czech Republic.

If the asylum application is rejected as "manifestly unfounded" by the Federal Office within two days, the applicant is not allowed to enter the country. In this event the asylum seeker is offered the possibility to seek advice by a lawyer on a possible appeal and its prospect of success. The Federal Government (*Bund*) covers the counselling costs. An application for temporary legal protection must be made within three days to the Administrative Court and can be prolonged by four days upon request. The foreigner must be allowed to enter the country if the court does not give a decision on the urgent application (*Eilantrag*) within 14 days. (The responsible judge at the Administrative Court generally makes a decision without hearing the asylum seeker in person.) The asylum seeker then goes through the regular asylum procedure; he/she stays in the airport's transit area until the court has made a decision in the urgent procedure (*Eilverfahren*). If the court rejects the application, the foreigner is returned immediately.

The asylum seeker must be allowed to enter the country (§ 18a VI Asylum Procedure Act (*AsylVfG*)) if the Federal Office does not decide on the application as "manifestly unfounded", and if it informs the Federal Border Guards that it is impossible to take a decision in such a short time - either because the case is especially difficult or because further investigation is necessary - or if it has not taken a decision within two days after the asylum claim has been made. The same rule applies if, subsequent to a Federal Office decision on the application as "manifestly unfounded", an application for temporary legal protection has been made under §18a IV *AsylVfG* which the Administrative Court has either granted or on which it has not made a decision within 14 days.

Asylum seekers who have been rejected in the urgent procedure and who cannot be returned (for lack of documents or if their country of origin does not agree to receive them, etc.) must either sign a "voluntary agreement" (*Freiwilligkeitserklärung*) and stay in the airport's transit area or they are taken into deportation or return custody. Those asylum seekers who remain in the transit area are - unlike those who are taken into deportation custody - not brought before

[11] The ICF team visited the refugee accommodation facility at Frankfurt airport on September 16, 2004.

the magistrate. Despite the fact that they are actually in custody, the legality of their detention is not reviewed regularly by an independent instance.

Where does the airport procedure take place?

In order to carry out an airport procedure, there have to be accommodation facilities on the airport premises. The airport procedure can be carried out at the following airports: Berlin-Schönefeld, Düsseldorf, Frankfurt/Main, Hamburg and Munich.

The **airport procedure** is mainly carried out in Frankfurt/Main as almost all asylum seekers entering the country by air enter via this major international airport. In Frankfurt there is a permanently staffed branch of the Federal Office while branches at the Düsseldorf, Hamburg, Berlin-Schönefeld and Munich airports are only used if necessary.

Social reception conditions: accommodation situation in Frankfurt/Main (example)

Since January 2004, the social care of refugees at Frankfurt airport has been provided by employees of the federal state of Hesse (in January 2004, the care contract was terminated by Hesse). Out of 18 members of staff of Caritas and the *Evangelischer Regionalverband* (protestant regional association) who were working full-time at the airport social service of the Church, only two full-time staff members are still working at the service. In future, the federal state will perform a self-monitoring function, thus terminating social and political monitoring. In the past, isolated refugees in the airport procedure always had a "window to the world" – thanks to the church-run service.
The new accommodation facility (building no. 587, opened in May 2002 for refugees to move into) is located away from the central airport building.
The Federal Border Police and a security company authorised by the federal state of Hesse are responsible for carrying out checks inside the building. There is a public phone in the common room. Food is delivered by a catering service. There are machines where cigarettes, drinks and sweets can be purchased while water, coffee and tea are always available. The library is open all day long. For children, there is a playroom and playground equipment. One room each for prayers is made available to Muslims and Christians. There is a maximum of four persons per room. For families, there are rooms which are connected. One section of the building is for unaccompanied minors only.
Upon first reception by a social worker placement requests are taken into consideration. One of the four social workers is present overnight. In addition, there is administration and organisation staff. Medical consultation hours are held three times a week by an authorised doctor (general medicine and tropical hygiene). In the case of serious problems, asylum seekers are taken to the hospital. An X-ray is carried out at the airport hospital. Interpreters for Farsi, Arabic and Dari are present twice a week; interpreters for other languages can be requested, if needed. The social workers should speak two languages. It is possible to receive visits from friends and relatives, if they have been announced.
There is a special room for legal advice, provided by lawyers, in the area of asylum law.[12]

Criticism of the airport procedure

The legality of the airport procedure is questionable because of the type of accommodation available (detention conditions), the dominance of police measures and the difficulties in

[12] Since May 30,1998, asylum seekers in the Frankfurt aiport transit area are provided with free legal advice by lawyers. They are supposed to organise the advice programme and, especially, ensure that legal advice for asylum seekers, after a first-instance rejection, is guaranteed within the short time limits of the airport procedure.

finding legal representation. The emotional situation of refugees – especially of unaccompanied minors or traumatised persons – is not taken into consideration. Furthermore, the legal procedure appears unsatisfactory as the Administrative Court regularly takes decisions on the basis of the written urgent application alone, without a personal hearing of the person concerned. After years of debate, a legal emergency service has been set up at the airport. The disastrous accommodation situation has been improved, but serious time pressures and refugees' emotional status make a proper and comprehensive account of the reasons for persecution difficult. Many of the rejections, including rejections in airport procedures, are therefore based on an alleged lack of credibility of the refugee. An assessment of credibility, however, must always be based on a personal impression – something the judges do not have when taking the decision on the basis of a written application.

7. Distribution

There is at least one central first reception facility and one refugee camp (accommodation centre) in each of the 16 federal states. The number of facilities is different in each of the *länder* and their capacity can stretch to more than 500 places. A large number of these accommodation facilities are run by private companies, but there are also facilities managed by the local authorities or charitable associations.[13]

After an asylum claim has been made asylum seekers are referred to the nearest first reception facility where identification measures are carried out and they are accommodated. From there on, the national distribution system EASY (first distribution of asylum seekers) is used to establish the first reception centre responsible for their accommodation. First reception centres are run by the federal states. A Federal Office branch is assigned to each of the centres; currently there are 24 branches.

The reception rates of the individual *länder* are based on the "Königsteiner Schlüssel" (Königstein key) and are calculated annually on the basis of their respective tax revenues and population.

Federal state	**Reception rate**
Baden-Wurttemberg	12.66 %
Bavaria	14.84 %
Berlin	4.93 %
Brandenburg	3.13 %
Bremen	0.95 %
Hamburg	2.49 %
Hesse	7.23 %
Mecklenburg-Western Pomerania	2.15 %
Lower Saxony	9.14 %
North Rhine-Westphalia	21.84 %
Rhineland Palatinate	4.72 %
Saarland	1.25 %
Saxony	5.34 %
Saxony-Anhalt	3.13 %
Schleswig-Holstein	3.26 %
Thuringia	2.94 %

[13] Especially the *Arbeiterwohlfahrt* (*Workers' Welfare Organisation, AWO*).

The distribution key of asylum seekers within a federal state is set out in its own Refugee Reception Act. Generally, each local authority (*Gemeinde*) must receive and accommodate a certain percentage of refugees.

Since the Immigration Act took effect, any violation of the obligation to register (*Meldepflicht*) has been followed by far-reaching legal consequences. If an asylum seeker communicates a request for asylum to an authority which is not competent for the examination of asylum applications – such as the police or the Federal Border Police – he/she will be referred to the nearest reception centre. It is possible that this centre will refer the would-be applicant to another facility which is responsible for this case.
If the asylum seeker violates this possible further referral there are severe procedural sanctions. An asylum procedure is not carried out if the asylum seeker does not comply with the demand to register with the competent reception facility. In the event that he/she makes another asylum claim at a later date this application will be regarded as a follow-up application, i.e. the person concerned is treated as if a first application had been unsuccessful. In these cases an asylum procedure is only carried out if the situation or legal position has changed in the person's favour since the moment when the asylum application could have been made as required, or if new evidence has come to light.

New distribution arrangement since January 1, 2005, for persons not applying for asylum

The Immigration Act, which entered into force on January 1, 2005, now stipulates that foreigners who have illegally entered the country are also distributed nation-wide, under §15a Residence Act (*AufenthG*). This applies to all foreigners who have illegally entered the Federal Republic of Germany and have not applied for asylum, but who cannot be taken into deportation custody, upon establishment of their illegal entry, to be deported or returned. This is a fairly heterogeneous group and includes persons requesting a subsidiary form of protection under alien law. It also includes children between 16 and 18 years of age who are indeed in need of protection but do not apply for asylum to avoid the nation-wide distribution system in Germany.

In the event of distribution, identification measures must be carried out to establish the identity. These measures are forbidden for children under 14 years of age. This does not apply to other measures, especially questioning.
Distribution to the *länder* is carried out by a central distribution office, determined by the Federal Ministry of the Interior. The distribution mechanism follows the mechanism for asylum seekers. The persons affected are not entitled to be placed in a certain federal state or city. Placing a foreigner in a specific city must only be urgently taken into account if the foreigner proves, before distribution is initiated, that he/she forms part of a household of husband and wife or parents and minor children or if "other urgent reasons exist which are obstacles to the distribution of a person to a certain place".
The Federal Office for Migration and Refugees is the central distribution office. Each federal state will determine a maximum of seven authorities to initiate distribution by the central distribution office and receive 'distributed' foreigners.
The aliens' authority a foreigner registered at can oblige him/her to go to these authorities, unless the protection of marriage and family or compelling reasons are obstacles to distribution. An appeal against distribution is not permitted and the complaint does not have a suspensive effect. In the end, the federal state authority passes the order that the foreigner must go to the reception centre responsible.

The foreigner is obliged to live in this reception centre until he/she is re-distributed within the federal state. It is not possible to lodge an appeal against this rule and the complaint does not have a suspensive effect. This residence obligation (*Wohnverpflichtung*) ends when a residence permit (*Aufenthaltstitel*) or stay of deportation i.e. a toleration visa (*Duldung*), is granted. However, it is possible for the federal state legislature to stipulate accommodation of persons with a *toleration visa* in similar facilities, as in-state distribution is to be governed by statutory ordinances (*Rechtsverordnungen*) or federal state acts. This regulation has introduced a side effect of the Immigration Act, namely the possibility of obligatory accommodation in camps for persons with a *toleration visa*.

8. Dublin II

On the basis of the Dublin Agreement regulations and the Council Regulation (EC) No. 343/2003 ("Dublin II"), which has been applied since September 1, 2003, the Federal Office made 4,883 requests that charge be taken by other EU member states in 2003 (2002: 4,729). Other EU member states made 7,475 requests that charge be taken by the Federal Republic of Germany in 2003 (2002: 8,649). There is no telling how these numbers developed in 2004, especially in relation to the new EU member states. Many asylum seekers who fall under the responsibility of another EU member state, under the Dublin II Regulation, are taken into deportation custody until their deportation is carried out.

For example, in the second half of 2004 this situation applied increasingly to refugees from Chechnya entering the German federal state of Brandenburg via Poland. In the case of Chechen families, the husband/father was taken to the deportation custody facility at Eisenhüttenstadt while the rest of his family was forced to wait until responsibility has been determined, in keeping with Dublin II. The first reception centre for the family members is located on the same premises.

In 2004, several cases became known where the persons affected were detained for up to eight months during the determination of responsibility. Under German asylum law, placing an asylum seeker in detention is only allowed for a maximum of four weeks after the receipt of the asylum application (§14(4) sentence 3 Asylum Procedure Act). This also applies to Dublin II cases. Asylum seekers may take legal action in order to be released from custody if the time limit has been exceeded.

The deadlines for requests that charge be taken, set forth in the Dublin II Regulation, are not fully complied with. Dublin II procedures are continued despite the fact that deadlines have expired. There are legal uncertainties in the application of the Dublin II Regulation. The fact that, in many cases, courts are not able to provide legal protection against Dublin II decisions poses another problem. The norms applied stipulate an exclusion from temporary legal protection on the grounds of entry via a third country. Furthermore, it remains unclear to what extent Dublin II takes into consideration obstacles to deportation under §60(2-7) of the Residence Act (subsidiary protection).

Asylum seekers who have been re-transferred to Germany from other EU member states are assigned to the districts (*Landkreis*) that originally held responsibility.

B. Details: What does the Directive stipulate? What has been transposed?

The Immigration Act has not yet transposed the majority of EU Directives passed in the area of asylum and refugees. Only parts of the Qualification Directive have been transposed by §60 of the Residence Act, including clarification that victims of non-state or gender-based persecution fall under the scope of protection within the Geneva Convention, etc.

A second amendment act (*Änderungsgesetz*) is planned for spring 2005, which will allow the different EU Directives to be transposed into national law. In January 2005, no bills had yet been brought before the house. The deadline for the implementation of the Reception Directive has not been kept. The Federal Ministry of the Interior has published a number of statements pointing out that there is no immediate need for implementation of the Reception Directive in Germany. During Council negotiations, Germany tightened up the Directive in a number of passages. The most serious points are:

1) Restrictive access to the labour market (Germany did not want any community regulations on access to the labour market)
2) Restrictions on the freedom of movement
3) The possibility of placing children aged 16 and over in accommodation centres together with adults.

1. Information (CD Art. 5)

Federal Office staff provides asylum seekers at the beginning of their asylum procedure with general information about it. During the first hearing, they receive a fact sheet, which is available in 56 languages. The purpose of this fact sheet is to inform asylum seekers of the course of the procedure and, especially, of their obligation to cooperate. The fact sheet does not contain information on "organisations or groups of persons that provide specific legal assistance" or that could provide assistance as regards reception conditions, as mentioned in the Directive.
The Asylum Seekers Benefits Act does not contain details on obligations to inform asylum seekers of social reception conditions or access to health care.
In Germany, there is no legal and procedural advice, enshrined in law, as an essential condition for a fair and efficient asylum procedure. Free legal advice is only provided in the airport procedure, on the basis of a decision by the Constitutional Court in 1996.

2. Documentation (CD Art. 6)

After having made their asylum claim, asylum seekers are issued with a temporary residence permit (*Aufenthaltsgestattung*) (cf. §55 Asylum Procedure Act). As long as the foreigner is obliged to live in a reception centre the respective Federal Office branch is responsible for the issuing of the temporary residence permit certificate. Otherwise, responsibility lies with the aliens' authority to the district of which the permit is restricted (§63 Asylum Procedure Act (*AsylVfG*)). The temporary residence permit contains a photo, the asylum seeker's personal data, an observation that the area of residence is restricted (residence obligation) and a note indicating how much access the asylum seeker has to the labour market.

3. Legal advice, legal protection, social counselling, NGO access (CD Art. 14)

Social benefits for asylum seekers are granted on the basis of the Asylum Seekers Benefits Act and are therefore legally enforceable. However, additional circular directives and administrative ordinances on the concrete implementation of this Act are not always publicly known. Often, administrative staff interprets these regulations to the asylum seekers' detriment, flouting legal regulations.
Access to independent procedural advice as well as conditions for qualified social counselling and legal advice are different in the individual *länder*. In general, advice offices in eastern Germany are far less independent than those in western Germany. In view of financial cuts in

the social area and strongly decreasing asylum seeker numbers, there has been a reduction of advice capacities throughout the entire country.
Since the first hearing is of decisive importance for the rest of the procedure and its outcome, it would be of paramount importance to have access to independent procedural advice before the first hearing. This is generally not the case.

Access to accommodation facilities

The operators of accommodation centres have the right – as householders – to forbid and allow entrance. At some centres, as is the case in the Chemnitz first reception facility, the aliens' authority has imposed a general prohibition to receive visitors.
Legal advisers or counsellors of asylum seekers have access to the centres - if they do visit the facilities at all, which are often situated in remote areas. In many cases, there are debates about NGO access. The term “non-governmental organisation” covers organisations of very different kinds. Small refugee organisations and initiatives face particular difficulties. In some cases access is denied even though security reasons are not discernible. The asylum seekers' right to receive visitors who are NGO representatives is a product of general personal rights, which can only be restricted on special conditions. Art. 14 section 7 of the Directive seems to misjudge the particular character of non-governmental organisations, not every one of which is registered, in providing that access shall only be granted to NGOs which have been designated by the UNHCR and recognised by the member state.

4. Residence and freedom of movement (CD Art. 7)

The "residence obligation" has existed since 1982 and is set forth in §56 of the Asylum Procedure Act. According to this regulation, the asylum seeker is not allowed to leave the district he/she has been assigned to. It is possible to apply for "leave of absence" (§58) on special grounds from the aliens' authority, but in many cases permission to leave the district is denied. In the event that an asylum seeker is checked in a control outside the assigned district without permission he/she may be faced with a fine. An asylum seeker who has repeatedly violated the residence obligation may be sentenced to a maximum of one year in prison. Examples of such sentences are known. Appointments at court or authorities, where the asylum seeker is obliged to be personally present, may be fulfilled without a permission to leave.
In keeping with the Reception Directive the aliens' authority must give reasons for the rejection of a corresponding application for "leave of absence". In practice, applications to leave the assigned district are often rejected verbally in Germany, without any reasons given, despite the fact that, under German administrative procedural law, administrative actions must be decided upon in writing and with an explanation of legal remedy (*Rechtsbehelfsbelehrung*), in order to have a basis for a possible appeal. Since the Directive has been transposed, the persons concerned have been entitled to notification in writing.
Increasingly, refugees are fighting the residence obligation. Apart from demonstrations and other political activities against residence obligation, some refugees are trying to use legal channels to bring the Act before the European Court of Human Rights, hoping the Court will rule it a violation of the European Convention on Human Rights.
The new Immigration Act does not abolish the residence obligation, it even expands it under the new regulation. In future, the residence obligation will automatically continue to apply after the temporary residence permit has expired, resulting in rejected asylum seekers who cannot be deported being restricted in their freedom of movement until the aliens' authority explicitly lifts the obligation.

5. Families (CD Art. 8)

Family unity is maintained if a family arrives together in the Federal Republic of Germany and applies for asylum. If the asylum claims of family members are made at different times in Germany, families may request re-assignment (*Umverteilung*) after having been assigned to a centre. However, prospects for permission are only good for the immediate core family, that is, parents and their minor children aged 15 and under. If re-assignment has been requested by other family members or by brothers and sisters aged 16 and over, its granting depends on the goodwill of the responsible authorities.
As a rule, minor children of asylum seekers are accommodated with their parents. Some courts share the view that parents and children should not be accommodated in the same room, at least not permanently, but *länder* decrees and practice do not always take this into consideration. Thus, the parents' right to protection of partnership and the sphere of private life is not sufficiently taken into account. The situation is aggravated by the fact that many accommodation centre common rooms are not suitable for children and that no suitable activities are offered for children.

6. Medical screening (CD Art. 9)

In Germany, there is no quarantine period immediately after the filing of an application for asylum. In line with §62(1) of the Asylum Procedure Act (*AsylVfG*), asylum seekers in reception or accommodation centres are obliged to agree to medical screening for communicable diseases and an X-ray of the respiratory organs. There is no obligatory testing for HIV. Nevertheless, social workers from Saxony and Bavaria report that HIV tests are carried out without the asylum seekers' consent.
The respective federal state stipulates which doctor is to carry out the examinations and to what extent. Interpreters are usually not available during the medical screening.

7. Schooling and education of minors, access to employment, vocational training

7.a Access to education CD Art. 10

In principle, children and youth in all federal states have the right to attend school, regardless of their nationality or residence status. However, this right is often only enforceable if there is an *obligation* to attend school. As the area of education falls under the competence of the *länder,* the respective School Laws (*Schulgesetz*) differ in their provisions.

Under the School Laws of the majority of federal states, children and adolescents are obliged to attend school if their place of residence (*Wohnsitz*), their ordinary residence (*gewöhnlicher Aufenthalt*), their place of vocational training or workplace is in this state. Other regulations, such as §52 of the Bremen School Law and §40 of the Schleswig-Holstein School Law follow the concept of "residence" (*Wohnung*) or "place of vocational training". Bavaria (§35(1) sentence 2 Education Law (*EUG*)) and Berlin (§15 School Law) have explicitly regulated the obligation to attend school for asylum seekers and refugees with a stay of deportation. Other federal states, such as Hamburg, stipulate the obligation for children of asylum seekers and refugees with a stay of deportation to attend school in an administrative order. In the majority of federal states where asylum seekers are obliged to attend school this obligation does not start until they are allowed to leave the reception facility.
An overview of the situation presents the following picture: refugee children and children of asylum seekers are fully obliged to attend school in Berlin, Hamburg, North Rhine-Westphalia and Schleswig-Holstein. They are partly obliged to attend school – after being allowed to leave the reception centres – in Bavaria, Brandenburg, Bremen, Hesse,

Mecklenburg-Western Pomerania and Lower Saxony; here, the regulation includes asylum seekers and recognised refugees. Asylum seekers are excluded from the obligation to attend school (while persons with a long-term stay of deportation are obliged to attend school under §§53 and 54 Aliens Law) in the *lände*r of Baden-Wurttemberg, Rhineland-Palatinate, Saarland, Saxony-Anhalt, Saxony und Thuringia. The reason given, in all federal states concerned, for asylum seekers constituting an exception to the obligation to attend school is that in these cases there was no "ordinary residence" in the sense of the respective School Law. However, in keeping with Art. 7 of the Basic Law (*GG*), the state's educational remit and the children's right to education speak in favour of children not being excluded from school attendance, under School Law, if their duration of stay is limited by law but mostly lasts several years, judging by experience. Experience shows that ordinary residence status is expected to be issued after the asylum seekers have left the reception centres, i.e. after the expiry of the first three months of their stay.
Obligation to attend school can cover nine or ten years; in general there is an obligation to attend vocational secondary education until the age of 18. This may be complied with by attending secondary school, undergoing vocational training or being in employment.

Overall, the education of refugee children in Germany is not standardised, resulting, in practice, in varying educational opportunities for these children. The actual shape and form of school attendance and possible educational programmes for refugee children cannot be generalised. They depend, among other factors, on the location of the centre (the distance to school, etc.), whether the centre's management is interested in sending the children to school, and the commitment of volunteers.

In federal states where the obligation to attend school does not exist, it has proven difficult, in many cases, to enforce the right to education (*Beschulung*) with the school authority. In effect, this results in many refugee children being denied school attendance. Often, German language classes and assistance programmes are not available to these children, making it even more difficult for them to attend school.
Secondary school attendance is possible, in principle, until graduation (*Abitur*). However, in practice children are often denied attendance upon reaching majority. Vocational training or enrolling at university is generally not possible for children of asylum seekers.

In Bramsche-Hesepe, in the federal state of Lower Saxony, the first school for children living at a centre is currently being established. It is planned to run special programmes (*Förderklassen*) at this camp in order to prepare children for regular school attendance. At the end of each term a decision will be made as to whether or not the individual child is able to "attend regular school from the beginning of the next term". This decision is not only based on the performance and development of the child but also on the predicted duration of stay. However, based on the general situation of refugees, the duration of stay is likely to be rather short. Thus, it is quite unlikely that any of the children at the camp will attend a regular school in Bramsche or Hesepe.

7.b Access to the labour market (CD Art. 11)

The Immigration Act has re-structured the area of labour market access. In the previous system, the residence permit (*Aufenthaltsgenehmigung*) and work permit were applied for separately. In future, the initial residence permit (*Aufenthaltstitel*) will also contain the decision on the possibility of employment. In this matter, however, the decision on access to employment is not made by the aliens' authority but requires the consent of the Federal Employment Agency (*Bundesagentur für Arbeit*).

For asylum seekers, access to the labour market is limited during the asylum procedure. The entering into force of the new Immigration Act has not changed the fact that, for asylum seekers, access to employment is still limited.
During the entire asylum procedure, asylum seekers are not allowed to be self-employed. The possibility of finding employment, however, is also regulated in a restrictive manner. Asylum seekers are subject to a one-year labour ban, laid down by law (§61(2) Asylum Procedure Act (*AsylVfG*)).
After the expiry of this one-year labour ban, asylum seekers' access to the labour market is still given low priority: they may only enter into employment in Germany if the vacancy cannot be filled with a German national, EU citizen or another employee entitled to take priority. This examination of the labour market is decidedly bureaucratic and takes several weeks. Often, employers cannot wait for the refugee's work permit to be issued and fill the vacant job with another person. Whether or not asylum seekers have an opportunity to find a job depends on the federal state. In some regions, where unemployment rates are high, the "priority examination" (*Vorrangigkeitsprüfung*) results, in effect, in a labour ban, as is the case in large parts of Eastern Germany.
Asylum seekers may be obliged to take up "work opportunities" at the reception centres. In the event that an asylum seeker "unfoundedly" refuses such a job he/she loses the title to social benefits.
These "work opportunities" include jobs at the reception centre but also work for non-profit organisations, with a payment of €1.05 per hour.
However, these occupations are not available at all centres, their number is quite low and their nature is often only temporary.
There are disadvantages for asylum seekers who found employment and then become unemployed. They are entitled to receive unemployment benefit for one year; however, after this period they are legally excluded from the right to obtain the basic needs benefit available to persons capable of gainful employment (*Arbeitslosengeld II*). This is discrimination in relation to other persons looking for work. Nor are asylum seekers entitled to vocational assistance programmes (*Arbeitsfördermaßnahmen*) such as further training.
Asylum seekers are not entitled to integration classes promoting, first and foremost, language skills. Only recognised refugees are entitled to language classes. This regulation leads to enormous and unnecessary delays in integrating asylum seekers into the labour market, since acquiring the necessary language skills is a very time-consuming process.

Asylum seekers are not entitled to regular social benefits (*Arbeitslosengeld II* or social assistance); they receive benefits under a special Act, the Asylum Seekers Benefits Act. Benefits are about 30 percent lower than regular social benefits.
Asylum seekers in accommodation centres might receive social benefits in kind. They are only granted €40 as spending money.

7.c Access to vocational training (CD Art. 12)

Education is only granted to asylum seekers in the form of schooling for children and teenagers; it is granted only until they obtain their secondary school leaving certificate (*Abitur*) or until the child reaches the minimum statutory school leaving age (*Schulpflichtaltergrenze*). University attendance is generally not possible until the asylum seeker has been granted permanent residence status (*fester Aufenthaltsstatus*).
Young refugees with a stay of deportation (*Duldung*) or temporary residence permit (*Aufenthaltsgestattung*) face considerable difficulties in finding an apprenticeship. This is due, on the one hand, to the generally tense situation of the labour and vocational training market, and, on the other, to the fact that their stay is of limited duration. This presents a disadvantage

compared to other applicants for an apprenticeship: Companies offering vocational training often exclude them from the group of applicants as they cannot be sure that the refugee will remain in the country during the entire vocational training relationship.

Furthermore, young refugees face legal obstacles, making it even more difficult to find an apprenticeship. In order to be employed for vocational training, they need a work permit. Here German applicants and foreign applicants on the same legal level are given placement priority. Despite reservations about the labour market situation, refugees may be issued a work permit – in particular cases and as an exception – if refusal would cause particular hardship.

This makes vocational training almost impossible for refugees with a temporary residence permit or stay of deportation who are living in federal states or regions with a high unemployment rate and lack of apprenticeship positions.
Due to the fact that young asylum seekers and persons with a stay of deportation have little opportunity to find an apprenticeship, access to vocational training for them is reduced, in many cases, to preparatory programmes or vocational training at school. To attend these classes, a work permit is only necessary if they contain a considerable amount of practical experience. However, the number of places for general apprenticeships is very limited as well; places are mainly offered in cities and only for a small number of occupations.

In some cities of Lower Saxony, among others, work experience training is offered for asylum seekers between 16 and 25 years of age.
In addition, projects have been developed since 2002 in the federal states of Thuringia, Hamburg, Bavaria, Lower Saxony, Schleswig-Holstein, Saarland, and North Rhine-Westphalia, offering asylum seekers with certain and uncertain residence status classes leading to a vocational qualification – under the EU's joint initiative EQUAL. This programme is undergoing a testing phase of three years; it is unclear whether it will be continued after 2005.

8. (Material) reception conditions

8.a Modalities of provision (CD Art. 13/14)

The goverments of the *länder* are responsible for the granting of maintenance benefits. The amount of benefits is governed by the Asylum Seekers Benefits Act (*AsylbLG*), allowing for discretion as far as the modalities of provision are concerned. Here, the federal states vary in their practice. Apart from providing accommodation as benefit in kind, some federal states widely grant cash benefits while others rigidly implement the benefit in kind principle. The allocation of vouchers and, in some cases, full maintenance with food packages ensure that the basic needs are met. Asylum seekers who receive full maintenance with benefits in kind are only entitled to a monthly cash payment of €40.90 (aged 15 and over) or €20.45 (aged 14 and under).
Apart from the "basic benefit", the *AsylbLG* provides for benefit in the case of illness, pregnancy and birth (§ 4), limiting it in the event of an illness to the treatment of acute illnesses and pain. Under §6 *AsylbLG* further benefits can be granted in special cases at the authorities' discretion if they are imperative for a person's health or the meeting of basic needs, if they are necessary for children's special needs to be met or as part of the authorities' obligation to assist under administrative law. It cannot be assumed, especially not in these cases, that the authority responsible for the granting of benefits will examine *ex officio* whether such a need exists.

In order to secure accommodation and the care involved after the first reception period some of the *länder,* as a rule, use private- or NGO-run accommodation facilities. Accommodation costs are usually reimbursed to the facility operators in the form of per capita lump sums. These sums are usually governed by ordinances; the entire running costs and staff wages have to be met as well.
In some of the federal states, Reception Acts or the ordinances thereto only insufficiently govern the way the operators provide their services or their extent. Not every federal state has minimum standards for accommodation centres, regulating housing space, equipment or other matters. Where they do exist, they are rarely ethical. There is very little effective monitoring of facilities and operators; where facilities are monitored, very few regulations provide guidelines for such monitoring.
Benefits granted to asylum seekers under the Asylum Seekers Benefits Act (*AsylbLG*) are not enough to meet the needs, regardless of whether they are granted in kind or in cash. They are at least 30 percent lower than the benefit level of the Federal Social Assistance Act (*Bundessozialhilfegesetz, BSHG*). The total value of benefits granted to asylum seekers not living in accommodation facilities pursuant to § 44 Asylum Procedure Act (*AsylVfG*) is €184.07; members of the household receive €112.48 (aged 7 and under) or €158.50 (aged 8 and over).
There are several forms of under-supply. Individuals who received these low benefits for three years are, as a rule, entitled to the regular level of social assistance after three years of stay, if they have not "influenced the duration of stay in an unlawful manner". The Immigration Act which entered into force on January 1, 2005 increases the number of persons receiving reduced benefits.

Who receives benefits under the Asylum Seekers Benefits Act (AsylbLG)? (State: January 1, 2005)

1. Individuals with a temporary residence permit (*Aufenthaltsgestattung*) under the Asylum Procedure Act (*AsylVfG*) are entitled to benefits. Asylum seekers subjected to Dublin procedures receive the same benefits as asylum seekers whose asylum claim is examined in Germany.
2. Individuals who want to enter the country via an airport and have not or not yet been allowed to enter (airport procedure).
3. Refugees with a residence permit (*Aufenthaltserlaubnis*) under §23 I, §24 (temporary protection) or §25(4 or 5) (stay on humanitarian grounds) of the Residence Act (*AufenthG*).
4. Individuals allowed to stay on a temporary basis under §60a (*Duldung*) of the *AufenthG* and
5. Individuals under obligation to leave the country even if the deportation threat is not yet enforceable or not enforceable anymore. The same applies to spouses, partners and minor children of individuals mentioned in No. 1 - 5.
6. Individuals making a follow-up application under § 71 of the *AsylVfG* or a second application under § 71a of the *AsylVfG*.

8.b Facilities / living conditions[14]

For making the asylum claim, asylum seekers must be living in a reception facility. The obligation to live in such a centre ends after a maximum of three months. Asylum seekers who are no longer obliged to live in a reception facility are usually to be placed in accommodation centres in the districts and cities responsible for reception at that point in time. Public interest must be weighed against the interests of the foreigner. In keeping with this point, accommodation in private apartments or apartments of relatives is possible. Administrative practices vary as much as the share of asylum seekers in private accommodation compared to the total number of asylum seekers in one federal state.
The Sangershausen district in Saxony-Anhalt, for example, has had a decentralised accommodation system for asylum seekers since 1992. In all other districts placement in accommodation centres is the rule.
In Saxony, by comparison, refugees are hardly ever allowed to live in private apartments. In December 2002, 9,742 asylum seekers in Saxony were living in one of the 59 accommodation centres and only 1,230 of them (11.2 percent) were living in private apartments. Families with children and refugees with an appropriate medical certificate have the best prospects of being accommodated according to a decentralised system. However, contrary examples do exist. In Saxony one family with two children has been forced to live in an accommodation centre for more than ten years.

The size, capacity and actual occupation of facilities are just as different as their location. Some of the *länder* prefer large accommodation facilities with hundreds of places - despite the fact that, according to NGO findings, problems generally increase with the size of the accommodation facility. Against this background, possible properties are often former military barracks or similar facilities. Their location and accessibility vary. A large number of centres, especially in eastern Germany, are former military barracks and therefore located in the middle of the woods, often many kilometres away from the next village. Public transport to these centres is insufficient. Asylum seekers must bear the costs for transportation from their own resources (spending money), except for travel required to comply with their obligation to cooperate under administrative law. This further restricts their mobility and opportunities.

No statements can be made on the average duration of stay in accommodation centres. The situation is heterogeneous due e.g. to different practices in the federal states with respect to accommodating persons with a long-term stay of deportation, and exceptions in accommodation for particular groups. The possibility of discretion provided for in §53(1) of the Asylum Procedure Act (*AsylVfG*), in the case of decisions on exceptions to placement in accommodation centres, is often applied insufficiently, if at all. In many cases, the authorities decide in favour of public interest. Only in a restricted manner can administrative courts check whether or not public interest outweighs the interests of the asylum seeker in a particular case. The provision set out in §53(2) *AsylVfG,* according to which the residence obligation in accommodation centres ends with the recognition being decided on by the Federal Office or a court, remains without much effect, as the recognition rate is quite low in asylum procedures.

[14] These are only a few examples (facilities visited). This chapter does not cover the accommodation situation as a whole in a country but compares the huge differences in accommodation standards. See preface.

Furthermore, the foreigners concerned are obliged to prove, in such cases, that another form of accommodation is possible without creating additional costs in comparison to the accommodation centre.
In practice, individuals live in accommodation centres for many years. Even if they cannot be deported after a negative decision in the asylum procedure due to obstacles to deportation, and are therefore issued with a stay of deportation, they are forced to remain in the centres.

At some of the facilities, asylum seekers report that there are violent clashes because of factors such as long-term lack of space, careless way of making placements, lack of leisure activities and mobility. Facility staff is often overburdened and reacts by imposing internal sanctions, sometimes in the form of "collective sentences", as reported by some of the centres. Whether or not these constitute preventive measures depends on the operator's view and on the staff, who is often not specially qualified for this task. At accommodation centres in particular regions, residents do not feel protected enough against violence by externals. Due to the isolated location of the centres they feel as if they are "on display" for right-wing radicals' attacks. Victims are not even regularly re-assigned after attacks on accommodation centres, in order to protect them from violence. This fact increases their feeling of insecurity.

Women in particular often complain that their need for protection against harassment and sexualised violence is not sufficiently met, through the way the accommodation facilities are built. Complaints include harassment not being prevented effectively, a situation which is encouraged through insufficient gender separation of sanitary facilities and rooms which cannot be locked.

In view of the large number of centres in the different *länder*, it is difficult to make general statements about their structural status, cleanness, equipment, the food or similar issues.[15]

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[15] Of all the facilities visited by the ICF team in Germany, the accommodation centre Großhartau/Seeligstadt in Saxony was an especially repulsive example.
The structural status of the facility is alarming. Staircases and corridors are bare, have not been painted in a while, and lighting is dim. The rooms are lined with linoleum which bends at the walls. The windows are old and rooms are probably difficult to heat in cold weather. The basic room furniture is poor: iron beds, chairs and lockers seem to be remnants from the NVA era (National People's Army of the former GDR). Refugees, especially the ones who have been living there for quite a while, have usually added salvaged furniture to their rooms. Refrigerators are not provided, either. Asylum seekers usually find them when searching through piles of bulky waste as well. In the accommodation barracks there are large numbers of cockroaches. According to the operator of the facility, there have been regular measures to fight the pest, but in the opinion of refugees and the ICF team alike, these measures seem highly ineffective.
Residents criticise the sanitary facilities in the strongest terms. In only one of the buildings are they truly separated by gender. Facility staff explains this by pointing out that refugees do not follow the signs. The refugees, and especially two young girls, remarked that they did not dare take a shower since sanitary facilities were not separated and men were watching them in the showers. There are hardly any toilets or washbasins. According to one member of staff, vandalised sanitary facilities were only partly renewed for lack of finance.
Apparently, the rooms are cleaned by refugees themselves. Cleaning sanitary facilities, staircases and corridors are "charitable jobs" done by refugees for an hourly wage of €1.02.
Apart from a playground and a sports field there are no generally accessible opportunities for education or entertainment. According to the aliens' office, German language classes were offered irregularly in a "common room". This common room, which is supposed to have a TV

Occasionally residents are transferred to another accommodation centre. When transfers are carried out, the person concerned is not informed about this until very late in the process and the necessity of the transfer is not sufficiently explained. Due to decreasing refugee numbers, many accommodation facilities are closed. In practice, the result is problems for individuals who have been living there for some time and lose local contacts or when children are forced to change schools because of the transfer. The decision to close accommodation facilities is mainly on economic grounds; quality is hardly ever taken into consideration. Generally, it is enough for the authorities to mention the necessity of closing a facility as planned to carry through the transfer. Mecklenburg-Western Pomerania is the only state which systematically aims at closing the remote facilities.

Refugee advisory committees

Only very rarely do refugees living at the centres form advisory committees or delegations that would be able to participate in the administration of material or non-material aspects of life. Due to the high level of fluctuation and the different origin of refugees it is difficult to commit oneself to possible issues of common interest. In order to revive refugees' willingness to participate in the administration of accommodation centres, the competent authorities and ministries should show a willingness to clearly regulate human accommodation and set minimum standards for it, which should then be communicated to those concerned in understandable form. This would show the framework in which participation is possible and the regulations limiting it.

8.c Sociocultural Environment

In many cases, the placement of asylum seekers assembly camps (*Sammellager*) has resulted - and is still resulting - in defensive reactions by local citizens. Attacks on accommodation facilities, which increased strongly at the beginning of the 1990s, are especially drastic. The possibility of establishing social contacts and taking advantage of cultural activities depends strongly on the location of the facility. Again, there is a visible city-country divide as well as an East-West divide.
Sociocultural contacts are mostly established by members of civil society: by committed individuals, groups, parishes or charitable associations offering social counselling and care.

8.d Staff (CD Art. 14(5))

There are no guidelines under national law for the qualification and training of accommodation facility staff. In some cases, the federal state law provides some guidelines. In most cases, however, no bindingly determined formal qualifications, such as a relevant university degree, are required. Thus, companies which operate accommodation facilities are free to decide to which extent they will employ specialised staff in the framework of their overall tasks. The main points of focus in providing accommodation are the prevention of homelessness, the provision of material care, conflict prevention and monitoring. There is only partial understanding that the specific disadvantaged circumstances of asylum seekers create a special need for counselling and advice. Not every facility employs social workers or

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and a table tennis table, is only made accessible for special occasions. At the time of visit, the TV and the table tennis table were non-existent. When asked about this fact, the director of the facility said the table was broken and was not replaced for financial and "educational" reasons.

staff with a similar professional qualification. Some facilities only provide external social care (more or less intensive), mostly through social workers of the authorities. As far as the other staff is concerned, there are shortcomings in the area of targeted further training within an inter-cultural context. If operating companies hire private security services, thus outsourcing security matters, this often results in conflicts.[16]

There is no qualified mental health care at the refugee centres; it is only available at special centres for social psychology. Whether or not these centres exist and are accessible depends on the region. The extent to which volunteers participate in refugee care depends on the operator or director of each centre.

8. e Exceptions, detention (CD 14(8) and 16)

In principle, refugees are not to be placed in deportation custody during the asylum procedure. However, there are exceptions to this basic rule.
Asylum seekers who have to lodge their asylum claim through the airport procedure are, in practice, held in some form of detention. Secondly, the regulations contain exceptions for cases where the application for asylum is made from custody. Thirdly, it is possible to detain asylum seekers when making a follow-up or second application. Furthermore, detention is imposed more often in Dublin procedures. No statistical data is yet available.
All case groups which are detained during this procedure, by way of exception, receive benefits under the Asylum Seekers Benefits Act. Spending money is reduced for individuals in deportation custody. They receive €28.63 instead of €40.90 (cf. Asylum Seekers Benefits Act, §3 Basic Benefits: "The amount for individuals entitled to benefits who are being held in deportation custody or detention while awaiting trial is 70 percent of the amount....."). Asylum seekers subject to the airport procedure receive the regular amount of spending money.

[16] The staff employed at the Großhartau/Seeligstadt accommodation centre, visited by the ICF team (see report), has not been trained in social work or social education. Staff members are mainly responsible for the smooth running of daily business, thereby carrying out more the functions of a caretaker at the centre. Despite the size of the centre (340-place capacity), regular independent counselling or care is not available. In particular cases, assistance can be granted, but only if volunteers of the Saxony Refugee Council (*Sächsischer Flüchtlingsrat*) are able to travel from Dresden to the centre, which is very rarely the case. These voluntary activities are not appreciated by the operator of the centre, neither does he support or promote it.
The private operator of the Chemnitz first reception centre, in comparison, employs three trained social workers. Some of them speak foreign languages. Their contact with the refugees seemed fairly positive, mainly due to the fact that they had been migrants or refugees themselves. However, the high degree of dependence on their employer was obvious when the ICF team visited the centre. The first reception facility has further staff, dealing with the daily business. Voluntary commitment is not possible due to the visiting ban.
At the Löbau first reception centre, there are a number of staff, including a social worker. Voluntary commitment is clearly encouraged and supported by the director of the centre in areas such as providing language classes and other forms of care.

Airport procedure

Asylum seekers subject to the airport procedure are kept in the airport's transit area. This applies to asylum seekers entering the country via air from "safe countries of origin" or without valid passport documents. The Federal Constitutional Court does not consider the keeping of asylum seekers at the airport a deprivation or a restriction of liberty since the foreigner was not entitled to a general entitlement to entry and stay. Nor is he/she prevented from leaving the country in any form (Decisions of the Federal Constitutional Court (*BverfGE*) 94,166). Thus, the constitutional limits (*verfassungsrechtliche Schranken*) for wrongful detention are not applied. It follows from this that the judge's reservation (*Richtervorbehalt*), i.e. a prompt judicial examination in relation to keeping foreigners at the airport, is not applicable. The Federal Constitutional Court's decision was met with considerable criticism, as the possibility of leaving the country towards a third state does not always exist and returning to the country of origin is not an option under the entitlement to protection of the basic asylum law (cf. European Court of Human Rights decision in the "Amuur" case, in: *Neue Zeitschrift für Verwaltungsrecht (NVwZ)* 1997, 1102). It is probably doubtful as to whether this jurisdiction can be maintained in view of the demands of the EU Asylum Procedure Directive (Art. 17 II Draft Directive of April 30, 2004). The draft Directive provides for a prompt judicial examination of the taking into custody and is based on a broader understanding of "custody" than the definition in the German Constitution. For the future, this could mean that keeping refugees at the airport's transit area could, as such, be subject to a judicial examination.
Formally, the Asylum Procedure Act provides for tight deadlines for the duration of accommodation in the transit area. However, asylum seekers whose claims have been rejected as manifestly unfounded and whose claims for temporary legal protection (*einstweiliger Rechtsschutzantrag*) have failed are subsequently held in custody for weeks or months. In rare cases it is possible to achieve entry through a new claim for temporary legal protection or through a humanitarian decision.

Detention during the regular asylum procedure

Despite an existing asylum claim, deportation custody can be ordered under §14(4) of the Asylum Procedure Act. This regulation has applied in Germany since January 1, 1997.

Deportation custody can be ordered or maintained if the asylum seeker, at the time of making the application, is

- in detention while awaiting trial (*Untersuchungshaft*)
- in penalty detention (*Strafhaft*)
- in preliminary custody (*Vorbereitungshaft*) under § 62 section 1 of the Residence Act
- in surety custody (*Sicherungshaft*) under § 62 section 2 No. 1 of the Residence Act (because he/she has stayed on Federal territory for more than one month after illegal entry, without possession of a residence permit)
- in surety custody (*Sicherungshaft*) under § 62 section 1 No. 2-5 of the Residence Act.

Therefore, it is a condition for the ordering of deportation custody during the asylum procedure that the asylum claim can be made from detention, in the cases mentioned above. Penalty detention is for serving criminal punishment; detention while awaiting trial is ordered if there is a risk of an escape attempt during a preliminary inquiry under criminal law.

Preliminary and surety custody are mentioned in the law; these are the variations of deportation custody.

From the point of view of refugee law, these two possibilities are especially relevant for practice. In the event that a refugee is intercepted on grounds of illegal entry, and placed in deportation custody, he/she is forced to apply for asylum from custody. This situation could be avoided if the authorities comprehensively verified whether or not the person concerned would like to make an asylum claim *before* ordering deportation custody – and enabling him/her to make the asylum claim in practice.
Problems arise with asylum seekers who have entered from a safe third country and apply for asylum after detention. It is common practice to leave it to the person concerned to make sure the written claim is sent to the Federal Office. Since the asylum seeker is in detention, it usually takes 1-2 weeks until the asylum claim has been received and registered by the Federal Office. The asylum seeker in detention does not have any way of filing the written asylum claim to the Federal Office by fax. If this possibility was given, the ordering of deportation custody would be forbidden.
Under § 14 section 4 p. 2 of the Asylum Procedure Act deportation custody ends *with the submission of the Federal Office's decision, at the latest four weeks after the Federal Office has received the asylum claim, unless the asylum claim has been rejected as disregarded or manifestly unfounded.*
The time limit begins with the receipt of an effective asylum claim and ends when the four-week time limit expires or when the Federal Office submits its decision. If the Federal Office has not been informed of the detention, it cannot be ensured that it will, of its own accord, immediately inform the aliens' authority of the receipt of the asylum claim or its decision.
If no decision is given within the four week time limit, the detainee is to be released. In the event that the Federal Office gives a decision before expiry of the time limit, rejecting the asylum claim as disregarded or manifestly unfounded, detention can be continued.
The reasons for the Federal Office not giving a decision within the time limit are of no significance. Detention ends after the time limit has expired, even in the event that the Federal Office has tried to make another EU member state admit the refugee under the Dublin II Regulation.

Follow-up and second application

There is a special regulation for cases where a first asylum procedure has been concluded, finally and absolute, and asylum seekers later file a follow-up or second application. Under § 71 section 8 and § 71a section 2 p.3 of the Asylum Procedure Act, detention is not forbidden until the Federal Office has decided that another asylum procedure will be carried out. If no asylum procedure is carried out, the asylum seeker can be placed in deportation custody. There is no time limit for this. Detention may also be ordered if appeals have been lodged at the administrative court against the rejection of another asylum procedure. In order to achieve the release of the asylum seeker from detention, the administrative court must decide on temporary legal protection against the Federal Office's decision to reject the claim.

9. Health care (CD Art. 15)

The Asylum Seekers Benefits Act (*AsylbLG*) stipulates in §4 that necessary medical and dental treatment shall only be granted in the case of acute illnesses and pain. Furthermore, only those benefits are granted under §6 which are essential for maintaining one's health. These provisions are often interpreted in such a way that treatment of chronic illnesses without pain is denied. In many cases, other forms of assistance are also denied. Often,

asylum seekers have to meet the costs for dentures and glasses from their own resources. It is inconsistent with Art. 15 of the Directive to regard pain as a basic condition for these benefits. Also, Art. 15 does not distinguish between chronic and acute illnesses.
In many particular cases, restricted health care results in drastic consequences for those affected. In Seeligstadt (Saxony), for example, an asylum seeker from Turkey (dependent on a wheelchair) was denied the re-assignment to the city of Dresden, despite the fact that, in the city, he could have received treatment for his illness.[1]
Generally, asylum seekers must request a voucher for medical treatment (*Krankenschein*) at the social welfare office responsible for paying the costs for medical treatment. This social welfare office must also bear the travel expenses and costs for adjuvants and medicaments prescribed, in the case of acute and/or painful illnesses under §4 of the *AsylbLG*. Asylum seekers need this voucher for medical treatment to consult a doctor. However, social welfare office staff often refuses to issue such vouchers, based on arbitrary reasons. The only possibility for asylum seekers to make a stand against this refusal of a *Krankenschein* is to take action against it (complaints, etc.), if their language skills and knowledge of the law are good enough, that is.
Bureaucratic procedures are time- and energy-consuming if the doctor wants to refer refugees to a specialist. The ICF team was told at the Löbau facility that it can take up to seven days until the medical officer responsible has examined the necessity of treatment by a specialist. However, asylum seekers can only consult a specialist with the approval of the medical officer.[2]
If additional treatment is necessary, due to a serious illness, the bureaucratic procedures at the different social welfare offices responsible can contain many obstacles. There are a number of cases where the scope of discretion of social welfare office staff resulted in necessary treatments being delayed or refused.
There is no medical staff at the refugee facilities visited (Löbau, Seeligstadt and Chemnitz first reception centre)[3] Should medical treatment be necessary, it must be carried out outside of the accommodation centres. Interpreters are not available, either. Asylum seekers are therefore responsible for providing the necessary communication assistance.

10. Reduction and withdrawal of benefits (CD Art. 16)

During the asylum procedure, refugees receive reduced benefits under the Asylum Seekers Benefits Act. These benefits are reduced again or fully withdrawn in particular cases. The fact that, in most cases, the persons concerned are subjected to a legal or actual labour ban, making it impossible for them to take up gainful employment and help themselves, presents a serious problem.

Reduction and withdrawal of benefits will be imposed if

- the asylum seeker leaves the assigned place of stay:

> If a person entitled to benefits leaves the place he/she is assigned to stay at (cf. §11(2) *AsylbLG*), the local authority may only grant him/her the assistance that is absolutely necessary, usually only the travel expenses to the regular place of residence.

- the asylum seeker refuses to perform charitable "job opportunities":

> The Asylum Seekers Benefits Act (*AsylbLG*) stipulates the creation of "job opportunities" for persons entitled to benefits. If an asylum seeker who is entitled to benefits refuses to perform such a job, with a payment of €1.05 per hour, the person

concerned loses the claim to benefits if he/she was informed of this consequence beforehand.

- a third person has taken on a commitment (withdrawal):

In the event that third persons have undertaken to pay the living costs, benefits under the *AsylbLG* are not granted (§8 *AsylbLG*). For example: if an individual has agreed to pay the living costs, prior to the asylum seeker's entry, this person is obliged to continue paying these costs during his/her asylum procedure.
There are certain exceptions for the withdrawal of benefits in the event that a third person has taken on a commitment. The authorities responsible must pay the costs for benefits in the events of illness, disability or if a person needs looking after. Federal state law stipulates the extent of benefits.

- a follow-up application has been made (possible withdrawal):

Benefits can be withdrawn under §1a *AsylbLG* if an individual was rejected in the first procedure and has lodged a follow-up application. This possibility applies to cases where the asylum seeker is reproached for having entered Germany in order to receive benefits under the *AsylbLG*. It also includes asylum seekers who bear sole responsibility for obstacles to deportation (refusing information on their identity, etc.). In this event, only benefits are granted which are absolutely necessary.
According to the restriction of claims under §1a, the spending money can be reduced or withdrawn. In addition, benefit payments for food, clothing and hygiene can be changed to benefits in kind, if this has not happened yet.

11. General principles for persons with special needs (CD Art. 17)

General principles (CD Art. 17)

The Asylum Seekers Benefits Act does not contain any special regulation on benefits for persons with special needs. These special needs can only be claimed on the basis of a regulation counterbalancing the benefits. The *AsylbLG* stipulates in §6 that further benefits are granted if, in a particular case, they are essential for securing the maintenance or health of an asylum seeker, necessary for meeting the special needs of children or for performing an obligation to cooperate under administrative law. The decision on these benefits is at the authorities' discretion.
In many cases, it is therefore disputed whether or not benefits shall be granted to persons with special needs. In practice, social welfare offices often refuse to pay the costs for necessary treatments, such as therapeutic treatment of post-traumatic stress disorders. Even the interpretation of §6 *AsylbLG* by the courts does not result in sufficient benefits being granted. Here, the Directive provides for more obligations, not only in exceptional cases. The legistlature has not yet taken the initiative to meet the need for implementation arising from the Reception Directive.

11.a Minors (CD Art. 18) and 11.b Unaccompanied minors (CD Art. 19)

It has been possible to turn away from the notion of the best interests of the child (German authorities are obliged to protect the best interests of the child in the case of minor refugees to the best possible extent) and to undermine the respective provisions of the Convention on the

Rights of the Child, because Germany pronounced a reservation when ratifying the Convention, stating that the provisions of the Convention may not be interpreted in such a way that "it restricts the right of the Federal Republic of Germany to pass law and regulations concerning the entry of aliens and the conditions of their stay or to make a distinction between nationals and aliens."

This reservation has had the following consequences:

- Refugees aged 16 and over are treated as adults in the asylum procedure. Usually, they do not receive legal assistance or personal care. Minors come of age, as far as the procedure is concerned, when they turn 17. They are required to make all necessary requests without the help of a legal representative and to perform all procedural actions. Unless they have an attorney-in-fact, they must be informed of and served with all orders. The minor asylum seekers' ability to act on their own accord follows §12 Asylum Procedure Act.
- Their situation is often worse than that of German children in the areas of school attendance, health care or vocational training.
- In many cases, authorities doubt the stated age of minors and raise the details of their age with the aid of questionable methods.
- Placing children aged 16 and over in large assembly camps holds great risks for these persons with special needs.
- In principle, minors may be detained for the preparation and securing of deportation. Only some of the federal state decrees and ordinances provide for a minimum age for detention.
- The airport procedure applies to unaccompanied minors and adults alike.

Minors

Minors are placed in accommodation centres, together with their parents. Usually, there is no staff at the centres which focuses on and is supposed to focus on special care for these children. In most cases, children of school age only receive homework assistance if there are volunteers to provide it.

Forms of accommodation for unaccompanied minors

There is no standardised, country-wide provision system for unaccompanied minor refugees as there is no regulated "clearing" procedure in some of the *länder*. Shortcomings especially occur in those regions. In some cases, minors aged 15 and under are accommodated in youth assistance (*Jugendhilfe*) facilities. At these facilities, there are either mostly German adolescents or other youths with a migration background, or they are (community) homes specialised in the accommodation of young refugees.
Under §12 of the Asylum Procedure Act unaccompanied refugees aged 16 and over are treated as adults in the asylum procedure by aliens' and youth authorities. In principle, they are not taken into care, despite a clear legal regulation. Often, the need for education is not examined in the particular case. Upon reaching the age of 16, minor refugees do not fall under the youth assistance anymore: they are transferred from the youth assistance accommodation facility to a centre where no special care is provided.
There are "clearing" facilities in Berlin, Fürstenwalde, Norden/Norddeich, Magdeburg (Saxony-Anhalt) and Cologne (North Rhine-Westphalia). A first reception centre is located in Cologne and there is a reception centre for unaccompanied minors in Frankfurt, run by the *AWO*. The federal state of Bavaria has two clearing points: in Hallbergmoos and Nuremberg.

The city-state of Hamburg (example):

Unaccompanied refugees aged 16 and under (to be more precise: refugees accepted as such by the authorities) are given a guardian and are taken into care at *Erstversorgungseinrichtungen* (first care centres, *EVE*) by the Hamburg youth office (§42 Child and Youth Services Act, *KJHG*). In the past years, the refugees spent several months at the *EVE*s, received assistance from social education workers in filing the application for asylum, in school attendance and in solving the problems of daily life. If the youth office established "a need for education", the refugees moved to a youth apartment (sheltered housing) following §§30 or 34 of the *KJHG*. Today, appointing a guardian only takes 2-3 weeks and adolescents are, upon being given a guardian, forced to apply for asylum, move out of the *EVE* and move to a home where the care situation is worse than in "§34 youth apartments" (so-called "§34 light facilities").

Baden- Württemberg (example):

- Minors aged 15 and under:

Adequate provision and assistance by taking into care, establishing the need for assistance, suitable accommodation in the framework of youth assistance services, appointment of a guardian or education (language, school) are not guaranteed, according to the *AK Asyl* (asylum working group).

- Minors aged 16 and over:

In principle, there is no taking into care, establishing the need for assistance, suitable accommodation in the framework of youth assistance services, appointment of a guardian or education (language, school, vocational training). Adolescents are placed in state-run accommodation centres or district centres.

Taking into care (procedure)

The legal conditions for the "taking into care" of minors are governed by §42 of the The Social Security Code *(SGB)* VIII. The taking into care is a short-term protection measure for minors. The youth office taking the minor into care is obliged to request an immediate decision on custody by the Family Court (local court). The duration of this situation is not identical with the duration of the "clearing" procedure. A "clearing house" is a youth assistance facility for unaccompanied minors which is authorised to take minors into care, following §42 *SGB VIII*.

11.c Victims of torture and violence (CD Art. 20)

If it turns out, during the course of the asylum procedure, that the asylum seeker is traumatised, there is a theoretical possibility for the person concerned to be given a hearing before a special representative of the Federal Office. Today, there are special representatives in each federal state. This fact shows that the people involved in dealing with victims of torture and violence have been made more sensitive to this situation. However, recognising a traumatised asylum seeker during the procedure poses a problem. The request that traumatised persons should be given a hearing before specially trained staff is, in practice, met with serious problems. Furthermore, a hearing before a special representative is not obligatory. It is a possibility offered to the asylum seeker. If the asylum seeker does not recognise the

importance of this possibility and does not accept it, the hearing is carried out before regular staff.
The fact that these special representatives are not trained in the field of psychology presents an additional problem. Further training programmes only provide them with a fairly restricted additional knowledge in this area, which is also shown by the fact that about 50 percent of Federal Office decision-makers have the stats of "special representatives".
During the first procedure, many of the traumatised refugees are not able to present the reasons for their flight. Many of them are only able to speak about their persecution after years of therapy. However, the Germany asylum procedure offers very few possibilities to claim asylum after such a long period of time. Therefore, traumatised refugees should be able to claim an interruption of the proceedings or their reopening - in the event that a trauma is diagnosed at a later date.
In principle, therapeutic treatment for traumatised refugees is possible at special psycho-social centres. However, such centres are not available in every federal state, and capacities for treatment are not enough to meet the needs. Thus, those affected are often forced to wait a fairly long time until therapy is available.
The fact that requests for re-assignment, aiming at placing the asylum seeker concerned in an accommodation facility close to a centre for therapy, are often refused by the responsible authorities presents another difficulty. In addition, social welfare offices do not undertake to pay the costs for therapy at these centres, despite the fact that they are responsible for paying the regular health care costs for asylum seekers. The *OVG* (Higher Administrative Court) of Lower Saxony, for example, gave a decision on July 6, 2004, stating that the costs for the treatment of post-traumatic stress disorders under §6 of the Asylum Seekers Benefits Act are only paid in exceptional cases, if therapy is necessary and if, among other things, a medical certificate confirms that an equivalent, more economic form of treatment was not possible (Decision of July 6, 2004. Decision No. 12 ME 209/04).

Psycho-social centres

In Germany, the number of professional therapy programmes for traumatised refugees is not high enough to meet the needs. Generally, programmes are only available in cities. Therapy is provided at special centres where refugees can receive treatment or at charitable organisations, established on private initiatives, such as welfare associations, etc. Still, there are not enough doctors who are familiar with a) the forms of external traumatism and b) intercultural communication and the use of interpreters. Even today, it cannot be guaranteed that psychiatrists in private practice, let alone GPs, are familiar with the symptoms of traumatism.
The *Bundesweite Arbeitsgemeinschaft der Psychosozialen Zentren für Flüchtlinge und Folteropfer* (German Association of Psychosocial Centres for Refugees and Victims of Torture, *BAFF*) is an association where centres, institutions and projects joined together and made it their task to provide social, mental health and health care and treatment for refugees and survivors of organised violence. (List of adresses)

12 . Training staff of authorities and organisations (CD Art. 24)

According to the Federal Office, further training programmes are carried out in the corresponding areas for staff members. However, the last training measure carried out by external experts (such a psychologists, etc) took place several years ago. In-house training programmes are carried out regularly but are limited to the exchange of experience. It is difficult to assess from a distance whether in-house training helps improve the understanding of traumatised people or whether existing prejudices are reinforced. At the accommodation

centres, there are hardly any training programmes for staff members. Whether or not they are carried out depends on the operators and the commitment of staff. Also, there is apparently no regular supervision.

Self-organisation

Over the past few years, refugees have increasingly joined together to make their problems publicly known. In some cases, organisations were established that include very different members. Members of *Karawane der Flüchtlinge und Migranten* (caravan of refugees and migrants) include asylum seekers, work migrants (who have been living in Germany for a while) and German activists. *The Voice* brings together African refugees in Germany. *Flüchtlingsinitiative Brandenburg* (Brandenburg refugee initiative) includes refugees from different centres in the federal state of Brandenburg. In addition, there are several organisations that were established on the basis of a common country of origin. The political goals of these groups are as diverse as their members.
There is no information yet that advisory committees have been set up at the centres, a possibility provided for by the Directive.

C. Actions needed

Actions needed in transposing the EU Directive laying down minimum standards for the reception of asylum seekers into national law:

The following will provide an overview of amendments needed in the Federal Republic of Germany to comply with the conditions of the Reception Directive.

The Asylum Seekers Benefits Act conflicts with the harmonisation of law at European level. The Directive provides for material reception conditions to be conform with a standard of living that guarantees the health and wellbeing of asylum seekers and family members accompanying them as well as the protection of their basic rights . These requirements are not complied with by the Asylum Seekers Benefits Act and its consequences in practice.

Art. 5 Information

The Directive demands that asylum seekers be informed, in written form, of their social rights and obligations and the possibility to receive social counselling and legal advice by non-governmental organisations. The obligation to inform must be carried out within a period of 15 days after the application for asylum has been made. There is a need for implementation as the German law - especially the Asylum Seekers Benefits Act - does not provide for such a general right to information.

Art. 10 Schooling and education of minors

Access to schooling and education is granted by the Directive, in similar form to schooling and education for nationals. Access to secondary schools must not be refused on the basis of majority alone.
There is a need for implementation since federal state law does not explicitly enshrine the asylum seekers' right to regular school attendance, especially not the attendance of secondary schools. In most cases, the obligation to attend school (thus including a limited right to school attendance) is linked to the place of residence. In future, the right to school attendance cannot

be refused anymore in this form, due to the mentioned content of the Directive. The federal states' School Laws must be clarified in order to transpose Art. 10 of the Directive into German law.

Art.7 Freedom of movement

In keeping with the Reception Directive, reasons must be given for negative decisions on corresponding "leaves of absence". In practice, requests for leave of absence are often only rejected verbally in Germany, without any reasons given, despite the fact that, under German administrative procedural law, administrative actions must be decided upon in written form, if so requested, and with an explanation of legal remedy (*Rechtsbehelfsbelehrung*) in order to have a basis for a possible appeal. Upon implementation of the Directive, at the latest, the persons concerned will be entitled to a decision given in written form.

Accommodation

Obligatory placement of refugees in first reception and accommodation centres - which are actually in most cases similar to camps - is not in line with the Directive's dictate of human dignity. This form of accommodation is more costly than individual accommodation and results in emotional problems. Therefore, §53 of the Asylum Procedure Act, stipulating the regular placement in accommodation centres, should be struck from the statute books. There should, at least, be a time limit for the placement in accommodation centres.

Art. 15 Health care

Necessary health care and emergency care are granted by the Directive. They must always be provided. Art. 15 of the Directive does not distinguish between acute and chronic illnesses, neither does it mention pain as a reason for treatment but only the fact that treatment is *essential*.

Asylum seekers with special needs do not receive essential treatment. In Germany, health care is, in part, still refused. The scope of treatments under §§4 and 6 of the Asylum Seekers Benefits Act (*AsylbLG*) remains unclear.
There is a need for implementation as §4 of the *AsylbLG* does not fully comply with these demands and the wording of §6 of the *AsylbLG* is not precise enough.

The demands of the Reception Directive regarding Art. 15, 17, 18, 19 and 20 must be transposed into national law, similar to the way the demands of the Directive on Temporary Protection [4] are transposed.

Chapter IV Provisions for persons with special needs (Art. 17-20)

Art. 17 General principle
Compared to the German law, the Directive contains significantly better standards for persons with special needs in terms of protection and assistance. After an examination of the particular case, members states are to take into account the special needs of vulnerable persons, such as minors, disabled people, elderly people, pregnant women, single parents, victims of torture, rape or other forms of psychological, physical or sexual violence. It is necessary to clarify the law with regard to §§4 and 6 of the Asylum Seekers Benefits Act.

Section 1 applies exclusively to persons who have been recognised as persons with special needs after an examination of their particular situation.

- The examination of the particular case requires a high amount of expertise.
- The examination of the particular case must be carried out in a responsible manner by public health bodies (not the *BAMF*) which are financially backed by the social law.
- It must be guaranteed that trained interpreters are called in for this kind of public health work.
- In the event that the examination of a particular case results in a positive decision, access to treatment must be automatically provided.

Art. 18 Minors and Art. 19 unaccompanied minors

The best interests of the child are a primary consideration under the Directive. It provides for rehabilitation services for victims of any form of abuse, neglect, exploitation, etc. In German practice, services are not granted to this extent. Accommodation standards, provision and medical standards are insufficient and do not correspond to the best interests of the child (see education).

The Directive provides for members states to ensure the necessary representation of unaccompanied minors as soon as possible. Minors are represented by a legal guardian, by an organisation responsible for the care and well-being of minors or by any other appropriate representation.
The children are to be placed with relatives, foster families or in facilities which are suitable for children - in this order. A regular assessment of quality is required by the Directive. Some of the youth offices in Germany refuse to appoint a guardian for unaccompanied minors. This is not in line with the Directive.
There is a need for action -despite the fact that Germany, regrettably, suceeded in including the possibility of placing minors aged 16 and over in camps as an authorization in the Directive.
The best interests of the child must be the top priority in all matters concerning unaccompanied minors. They must be taken into account all-embracingly and without any restrictions.

Equal treatment of refugee children and German children

Benefits under the Child and Youth Services Act (*KJHG*) must, as a matter of principle, be available to all minor refugees. The *KJHG* contains the notion of protection under social law, which must be given priority over regulations under aliens law. This also includes unlimited participation of refugee children in social structures (school attendance, education, etc.).

Taking into care under §42 of the *KJHG*

In order to carry out a clearing procedure on the sound basis of expertise, all unaccompanied minors must be taken into care, following §42 of the *KJHG*.

The age of 16 - a limiting factor

Many of the youth offices refuse access to educational assistance to refugee children who have turned 16. Their decisions are based on the ability to act under the Asylum Procedure Act, although the *KJHG* does not contain this limit (age 16). This situation cannot be tolerated any longer and must be changed. This includes appointing a guardian for every unaccompanied minor.

Accommodation

Overall, the Directive provides for significant improvements. The hirarchy of placement options has not yet been applied in Germany.

Unaccompanied minors are not to be placed in accommodation facilities together with adults until they turn 19.

- Trained care staff must be available at the accommodation facilities. In most cases, there is no care for unaccompanied minors at the general accommodation centres.

- We call for an examination of each particular case and a nation-wide clearing procedure. Accommodation in foster families or with relatives must be adequate and correspond to the best interests of the child.

Art. 20 Victims of torture and violence

The Directive grants the necessary treatment for victims of torture, rape or other serious acts of violence, if necessary.

In Germany, the number of treatment capacities is not enough to meet the needs. Often, social welfare offices and hospitals refuse to pay the costs for psychotherapy and rehabilitation programmes. Furthermore, access to treatment is made impossible, in many cases, due to the residence obligation.

The current legal position in Germany does not secure the granting of these benefits for asylum seekers who are especially vulnerable. This is shown in the wording of §§4 and 6 of the Asylum Seekers Benefits Act and of administrative ordinances in some of the federal states.
It is obvious that the provisions of Art. 17-20 of the EU Directive do not only substantiate the discretion of the authorities responsible but rather subjective and legally recoverable rights of the individual.This must be expressly set down when transposing it into nation-state law, in Acts or statutory instruments.
- It is necessary to develop mechanism that make it possible to identify survivors of torture and violence as early as possible after their entry. The treatment of these refugees should be left to specialised medical staff and institutions.
- The necessary treatment includes calling in qualified interpreters in the event that communication is not sufficiently possible. In this situation, the standards for public health interpreters apply.

In order to meet the requirements of the Directive, the specialised clinical offers for asylum seekers in Germany must be expanded.

[1] See report on Seeligstadt in the annex
[2] See report on Löbau in the annex

[3] This is an important difference to the facilities visited in some of the new EU members states where nurses and/or doctors are present every day, sometimes even 24 hours a day.
[4] The legislature plans to transpose the Council Directive on giving temporary protection[4] into national law by expanding §6 of the Asylum Seekers Benefits Act. In the area of health care, Art. 13(4) of this Directive provides for the granting of privileges to persons with special needs and with temporary protection, on humanitarian grounds. Under the Directive, this group includes, among others, unaccompanied minors and persons who have become victims of severe violence. To different degrees, the Directive provides for these persons to be entitled to the necessary special medical assistance, exceeding general health care, and other forms of assistance, especially the treatment of physical and mental long-term consequences of persecution.